

Cited Excerpts of Trial Testimony  
from Abraham Waranowitz  
(2/8/2000) (Pages 6 – 146)

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IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND

vs.

Indictment No. 199103042-  
46

ADNAN SYED,

Defendant.

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS  
(Trial on the merits)

Baltimore, Maryland

February 8, 2000

BEFORE:

HONORABLE WANDA KEYES HEARD, Associate Judge  
(and a jury)

APPEARANCES:

For the State:

KEVIN URICK, ESQ.,  
KATHLEEN MURPHY, ESQ.

For the Defendant:

CRISTINA GUTIERREZ, ESQ.

RECORDED BY: VIDEOTAPE

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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           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       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?

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

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

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

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 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 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 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

1 indicated any expertiss. 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 junction  
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?

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,

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.

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 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 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 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 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 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 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 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 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 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?

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

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

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 --

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 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 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 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 then 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 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 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 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.

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

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

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.



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 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 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 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 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 it 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 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 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 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 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 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 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 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 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       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 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 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 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 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 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 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 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 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?

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:

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.

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.



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.

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

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 --

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.

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?

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

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.

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



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 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. 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 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 wave 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

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.

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 droppped 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

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.



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 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 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 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 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 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 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

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

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

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



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 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 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 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 you 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 his 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 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

**Cited Excerpts of Trial Testimony  
from Abraham Waranowitz  
(2/9/2000) (Pages 32 - 193)**

923-00  
215735

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND

vs.

Indictment No. 199103042-  
46

ADNAN SYED,

Defendant.

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS  
(Trial on the merits)

Baltimore, Maryland

February 9, 2000

BEFORE:

HONORABLE WANDA KEYES HEARD, Associate Judge

APPEARANCES:

For the State:

KEVIN URICK, ESQ.,  
KATHLEEN MURPHY, ESQ.

For the Defendant:

CRISTINA GUTIERREZ, ESQ.

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Baltimore, Maryland 21202

CRIMINAL APPEALS  
DIVISION

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THE ATTORNEY GENERAL

1 continuing objection to any further questions asked.

2 THE COURT: Yes, and as we proceed I'd ask  
3 that Counsel be advised that -- of my previous ruling  
4 with regard to this witness, ask that those preliminary  
5 foundation questions be made if you intend to go in the  
6 area that we've previously discussed.

7 MR. URICK: Thank you, Your Honor. At this  
8 time I'll continue with what I was going to do when we  
9 were breaking yesterday. If the witness may get off  
10 the stand and approach.

11 THE COURT: Yes, and Mr. Urick, I must remind  
12 you, you must keep your voice up. The jurors have  
13 indicated they can not hear you. I know the mic is far  
14 away from you, but I think that part of the problems  
15 that so are the easels. So, if you could keep your  
16 voice up so that your voice can be heard it would be  
17 greatly appreciated.

18 MR. URICK: I will do that. Thank you, Your  
19 Honor.

20 THE COURT: Mr. Waranowitz, please step over  
21 to the easel.

22 EXAMINATION

23 BY MR. URICK: I'd ask him to approach what's  
24 been marked for identification as State's Exhibit 33.

25 (State's Exhibit 33 was marked for

1 identification.)

2 MR. URICK:

3 Q Mr. Waranowitz, at this time I would ask you  
4 on the map to find the spot you testified to at Gelston  
5 Park and to fix this sticker that says Park at that  
6 location on the map. Secondly, I'd ask you to find the  
7 location that you identified yesterday as the 2700  
8 block of Gateway Terrace. Affix the sticker that I  
9 wrote A. T-E-R-R. at that spot. I would note for the  
10 record that he has affixed those stickers at the two  
11 places he identified yesterday later in the day when  
12 everybody was using Scotch tape I'm going to put tape  
13 over those to make sure that they are permanently  
14 affixed. You may returned to the stand at this time.  
15 At this time I'd move into evidence State's Exhibit 33,  
16 the exhibit that he just affixed the final stickers to.

17 THE COURT: And 33 includes the map only, is  
18 that correct?

19 MR. URICK: That's the map and the overlay.

20 THE COURT: And the overlay, they're two  
21 separate exhibits?

22 MR. URICK: I have them as a collective  
23 exhibit, I can mark them 33A and 33B.

24 THE COURT: Why don't we do that just for the  
25 continuity sake in the event that there is any problem.

1 The map then would be 33, correct? What did you say,  
2 33?

3 MR. URICK: Thirty-three.

4 THE COURT: Thirty-three A and then the  
5 overlay will be 33B. Any objection from the Defense  
6 with regard to 33A, the map?

7 MS. GUTIERREZ: No, Your Honor.

8 THE COURT: And with regard to 33B, the  
9 overlay?

10 MS. GUTIERREZ: Yes. For all the previous  
11 listed stated, correct.

12 THE COURT: The overlay and the map will be  
13 accepted as evidence at this time.

14 (State's Exhibit No. 33A &  
15 33B, previously marked for  
16 identification, will be received  
17 into evidence.)

18 BY MR. URICK:

19 Q Mr. Waranowitz, do you have a Nokia phone?

20 MR. WARANOWITZ:

21 A No, not currently.

22 Q Have you ever had a Nokia phone?

23 A Yes, I have.

24 Q And what -- what cellular phone system did  
25 you use that phone with?



1 A AT&T Wireless Services.

2 Q How did you obtain that phone?

3 A It was given to me by the company.

4 Q And did you have occasion to use that phone  
5 while you were in the Baltimore/Metropolitan area?

6 A Yes.

7 Q And have you had occasion to receive billing  
8 information on that phone as a result of the calls you  
9 may have received or made in the Baltimore/Metropolitan  
10 region?

11 A Yes.

12 Q Now, in the course of your for the AT&T  
13 Wireless Corporation, have you had occasion to test the  
14 performance of Nokia phones on the AT&T wireless  
15 network in the Baltimore region?

16 MS. GUTIERREZ: Objection.

17 THE COURT: Overruled. You may answer it.  
18 And your objection is noted for the record. You may  
19 continue.

20 MR. WARANOWITZ: Yes.

21 BY MR. URICK:

22 Q What sorts of tests do you perform on Nokia  
23 phones?

24 MS. GUTIERREZ: Objection.

25 THE COURT: Overruled. At this point the

1 argument you previously made will be incorporated  
2 herein by reference and is overruled.

3 MS. GUTIERREZ: Thank you, Your Honor. May I  
4 have a continuing objection?

5 THE COURT: Very well. You may continue.

6 MR. WARANOWITZ: We monitored the Nokia --  
7 the massive Nokia phones in our network statistically.  
8 We also use it in test mode. The Nokia phone has a  
9 test phone in it that you can enable that will test us  
10 what cell site you were on and what frequency you're  
11 on. So, we were able to compare the performance of the  
12 Nokia phone versus other phones in our network.

13 MS. GUTIERREZ: Objection. Move to strike.  
14 He's not responding to the question.

15 THE COURT: Overruled. You may continue.

16 BY MR. URICK:

17 Q How often do you conduct these sorts of tests  
18 on Nokia phones?

19 MR. WARANOWITZ:

20 A Usually once when we first get the phone. We  
21 monitor it over a period of time.

22 Q How many phones have you done this to?

23 A I've used my own phone and I monitor phones  
24 used by the customers in our network.

25 Q And about how many customer's phones have you

1 monitored?

2 A Hundreds of thousands.

3 Q And what sorts of factors have you found  
4 effect the performance of the Nokia phones on the AT&T  
5 Wireless network?

6 A If a found was dropped it will have problems,  
7 physically dropped on the floor and broken, we found a  
8 few of those. But we have not found any significant  
9 problems with the Nokia 6160.

10 Q What sort of factors might effect their  
11 performance though?

12 A Poor antennas, problems with the batteries.

13 Q How would these problems be appearing?

14 A When we monitor the network that phone number  
15 or rather that phone shows up in our statistics with  
16 high dropped calls. And what I mean by dropped call is  
17 the call gets disconnected in the middle of a call.

18 Q And would the customer be aware of that  
19 factor?

20 A Sometimes, yes.

21 Q What other effects on performance might these  
22 factors have?

23 A Voice quality. If you have a poor antenna  
24 your phone is going to see the site at a lower signal  
25 strength which distorts the phone quality, the voice

1 quality. It makes it sound warbley.

2 Q Are there any variables in performance over  
3 different makes of Nokia phones?

4 A Yes.

5 Q And what performance -- what -- how might  
6 these factors effect performance?

7 A Different makes of different Nokia phones  
8 appear to perform differently. I have not tested  
9 anything other then a Nokia 6160.

10 Q And what effects might these have on -- in  
11 terms of relating to the network?

12 A Our network performance shows higher dropped  
13 calls if we have a lot of dropped calls -- if we have a  
14 lot of poor performing phones.

15 MR. URICK: At this time would offer the  
16 witness for his expertise in the performance of Nokia  
17 phones on the AT&T wireless network.

18 MS. GUTIERREZ: Objection.

19 THE COURT: Counsel, may I see you at the  
20 bench. Sorry.

21 (Counsel approached the bench and following  
22 ensued:)

23 THE COURT: Can you proffer what the purpose  
24 of offering him as an expert at this point with regard  
25 to any additional questions you intend to ask?

1 MR. URICK: I thought you wanted me to do  
2 that before I asked the question so that I could get --

3 THE COURT: Which questions are they?

4 MR. URICK: Based on your expertise and  
5 training would a properly functioning Nokia phone  
6 respond to the system in the manner that these records  
7 indicate.

8 THE COURT: Okay. You're going to make an  
9 objection to that question, are you not?

10 MS. GUTIERREZ: Yes, for all the previous  
11 articulate reasons and I would state --

12 THE COURT: Before you go any farther, Ms.  
13 Gutierrez I just have a question and this may be  
14 dispositive of this whole issue. The phone that was  
15 tested by this witness, the one that he has indicated  
16 that he has expertise one is a Nokia 6160. Is that the  
17 same model of the phone that the Defendant had?

18 THE COURT: His expertise is not as to all  
19 phones. He's already indicated that different phones  
20 perform different ways and the only Nokia he's an  
21 expert on and has tested is the Nokia 6160.

22 MR. URICK: That's what this is.

23 THE COURT: A Nokia 6160?

24 MR. URICK: Yes.

25 THE COURT: Very well. And you're going to

1 ask then that he be qualified. If you re-ask the  
2 question for his expertise I will overrule the  
3 objection for the -- you can leave it apart, I don't  
4 think it matters because you don't have it on, but for  
5 the purposes of this objection as asked the objection  
6 is sustained. You can rephrase your question and offer  
7 him as an expert with regard to the 6160 and it will be  
8 overruled.

9 MR. URICK: Thank you.

10 THE COURT: And I would also note he did  
11 reiterate each time you asked the question specifically  
12 model 6160, yes the Nokia, 6160 which is why my -- I'm  
13 not willing to find him as an expert as to all Nokia  
14 phones because frankly I have no idea how many there  
15 are and he's already said the performance varies from  
16 phone to phone.

17 MR. URICK: Thank you very much.

18 THE COURT: All right.

19 MS. GUTIERREZ: Well, Judge --

20 THE COURT: One moment. Something we want to  
21 place on the record.

22 MS. GUTIERREZ: Yes, Judge because I'm now  
23 unclear. Is he now being offered as an expert in that  
24 particular model as to how it would perform because he  
25 is only testified as to what he does with it. He

1 monitors the network, that they statistically monitor  
2 phones. He hasn't testified as to doing any testing  
3 much less any testing in regard to performance such as  
4 which they wish to intimate, i.e. Would that phone  
5 make or receive or see a certain signal strength from a  
6 certain cell site, would it be capable of performing?  
7 What he testified to --

8 THE COURT: Would you like to voir dire the  
9 witness on that issue?

10 MS. GUTIERREZ: No, Judge I don't think  
11 that's necessary, I guess I'm stating for the record.  
12 There is nothing in evidence to support any expertise  
13 as to testing the phone for anything relevant much less  
14 testing it for anything. His only testimony is that  
15 they've observed a high number of dropped calls, that  
16 they have a lot of poor performing phone, not  
17 specifically Nokia phone, but --

18 THE COURT: Or specifically this phone.

19 MS. GUTIERREZ: Or specifically any phone.  
20 But that that doesn't stand to qualify him as any  
21 specific expert on anything. You know, he said they've  
22 monitored statistically, whatever that means, you know,  
23 doesn't establish an expertise in establishing even a  
24 base line of performance on this model phone or any  
25 phone to say, well we monitor it statistically. We

1 don't even know what that means. That's not  
2 establishing an expertise in monitoring or testing the  
3 performance thereof of any phone.

4 THE COURT: Mr. Urick, state again the  
5 expertise that you're offering him so that I can  
6 address Ms. Gutierrez's point.

7 MR. URICK: We're offering from his expertise  
8 in the performance of the Nokia 6160 phone on the AT&T  
9 wireless network.

10 THE COURT: In the performance of the --

11 MR. URICK: In the Baltimore/Metropolitan  
12 area.

13 THE COURT: Nokia 6160 on the AT&T network  
14 system, correct?

15 MR. URICK: Yes.

16 THE COURT: All right. Very well, you may  
17 step back. Thank you very much, Counsel.

18 (Counsel returned to the trial tables and  
19 the following ensued:)

20 THE COURT: Over objection by Counsel that  
21 will be noted for the record the witness will be  
22 accepted as an expert in the performance of the Nokia  
23 6160 on the AT&T network system. Mr. Urick, you may  
24 ask your next question.

25 MR. URICK: Thank you, Your Honor. At



1 this time with the Court's permission I would like to  
2 approach the witness and show him what's already in  
3 evidence as State's Exhibit 30 from the Defendant.

4 THE COURT: Yes, you may.

5 BY MR. URICK:

6 Q Can you take a few seconds and examine that  
7 please?

8 THE COURT: While he's examining that piece  
9 of equipment, may I see Counsel at the bench please?

10 (Court hears other matters, the case resumes  
11 as follows:)

12 THE COURT: All right. Very well.

13 BY MR. URICK:

14 Q Have yo had a chance to examine the exhibit?

15 MR. WARANOWITZ:

16 A Yes, I have.

17 Q And can you identify that type of model of  
18 cell phone?

19 A This is a Nokia 6160 phone.

20 Q Now, yesterday we had you testifying  
21 concerning a test that you made at the Gateway Terrace  
22 location, the Gelston Park location and the Lincoln  
23 Park location to determine if it was possible for the  
24 system to respond in a particular way. Based on your  
25 experience with using the Nokia phone personally and

1 through testing it with -- as part of your duties with  
 2 the AT&T wireless network, are you able to form an  
 3 opinion whether or not a properly functioning Nokia  
 4 6160 phone would be capable of interacting with the  
 5 AT&T wireless network in the same way as you described  
 6 yesterday?

7 A Yes.

8 MS. GUTIERREZ: Objection.

9 THE COURT: Overruled.

10 BY MR. URICK:

11 Q And what is that opinion?

12 MR. WARANOWITZ:

13 A The opinion is that the Nokia 6160 is  
 14 equivalent to the test phone that we used in the test.

15 THE COURT: I'm sorry, I couldn't hear that.

16 MR. WARANOWITZ: The Nokia 6160 appears to  
 17 perform equally to the Erickson test phone that we used  
 18 in the test.

19 BY MR. URICK:

20 Q And if in fact it did interact in that manner  
 21 would the computer cell phone records record that  
 22 interaction in the same way as in State's Exhibit 34?

23 MR. WARANOWITZ:

24 A Yes.

25 MR. URICK: Witness with the Defense.

1 THE COURT: You may proceed, Ms. Gutierrez.

2 MS. GUTIERREZ: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MS. GUTIERREZ:

5 Q Mr. Waranowitz, would you step down off the  
6 witness stand?

7 THE COURT: Yes, you may follow her lead.

8 BY MS. GUTIERREZ:

9 Q Now, this Exhibit 33A and B, both the map and  
10 the colored overlay are exhibits that you prepared,  
11 correct?

12 MR. WARANOWITZ:

13 A Yes.

14 Q The underlaying map was from geological  
15 survey map service?

16 A Yes.

17 Q And that map indicates in many places the  
18 names of roads, does it not? And directions of roads?

19 A Yes.

20 Q And names of neighborhoods?

21 A Yes.

22 Q And you didn't put any of that on there,  
23 that's already on there, correct?

24 A That is correct.

25 Q Now, the overlay is prepared on a clear see

1 through sheet of transparent plastic, is it not?

2 A Yes.

3 Q And the areas where that transparent plastic  
4 is colored is what you did, correct?

5 A Yes.

6 Q And there are various colors on there, are  
7 they not?

8 A Yes.

9 Q And sometimes the colors are repeated?

10 A Yes.

11 Q And the repeats in fact appear all over the  
12 map?

13 A Correct.

14 Q And there's no independent, significance to  
15 the colors, are there?

16 A There are not unique colors, unique cell  
17 sites, yes.

18 Q For instance, the blue doesn't mean something  
19 special because it's blue, does it?

20 A Correct.

21 Q Or what you called orange here in the middle  
22 doesn't have some special significance because it's  
23 orange, right?

24 A Right.

25 Q Now, you showed us again, if you could just

1 step back for a minute, sir and discussed yesterday  
 2 State's Exhibit 43B as a demonstration that you  
 3 prepared to show us how the coverage area sites, the A,  
 4 B and C sites that emanate from a cell site should  
 5 appear, correct?

6 A Yes.

7 Q And you drew this, correct?

8 A Yes.

9 Q This doesn't appear somewhere naturally, you  
 10 drew it?

11 A Correct.

12 Q All right. And what you've described -- and  
 13 this is how ideally a cell site coverage area should  
 14 appear, correct?

15 A Yes, it's symbolic of that.

16 Q It's symbolic of that. Now, if you would  
 17 step back and look at, you have listed one, two, three,  
 18 four, five, six, seven cell site numbers on this cover  
 19 overlay, have you not?

20 A Yes.

21 Q And you drew in those cell site numbers, did  
 22 you not?

23 A I drew in the numbers.

24 Q And you're the one that determined what would  
 25 be the outlines of any particular color, did you not?

1 A No, that was generated by the computer.

2 Q So, and the computer generated those outlines  
3 based on information about the boundaries of the  
4 specific sector that emanates from a specific cell  
5 site, correct?

6 A Could you (inaudible)

7 Q The computer didn't decide what the coverage  
8 sites should look like, did it?

9 A Yes, it did.

10 Q The computer didn't decide what the  
11 boundaries of the coverage area was, did it?

12 A Yes, it did.

13 Q The computer merely generated what  
14 information was in it, correct?

15 A Yes.

16 Q The computer doesn't decide that here all  
17 cell sites ideally should look like the neat little  
18 circles that you've drawn, does it?

19 A Where I drew these at?

20 Q Yes, Mr. Waranowitz. On your drawing which  
21 you made which was computer assisted. You indicated  
22 that ideally the A, B and C sectors are exactly alike  
23 just in different locations, did you not?

24 A Yes.

25 Q The area that they cover is exactly the same

1 for each three sectors, is it not?

2 A Yes.

3 Q There's not a single one on your Exhibit 33B  
4 that looks like your ideal model, does it?

5 A No.

6 Q There's not a single one that has nice, neat  
7 little circles that express the coverage area, is  
8 there?

9 A No.

10 Q There's not a single one in which the  
11 coverage areas A, B and Ca are the same, is there?

12 A No.

13 Q You described for instance, for Mr. Urick in  
14 great detail the 653 has an A, B and C, did you not?

15 A Yes, I did.

16 Q And the A, B and C are the little purple area  
17 here right or brownish purple, right?

18 A 653A.

19 Q 653A. But I'm pointing to the right place,  
20 am I not?

21 A Yes.

22 Q And another sector and I don't remember if  
23 it's B and C is what you've described as the larger  
24 orange area, isn't that correct?

25 A That would be L653C.

1 Q 63C and that B was what I would call purple  
2 right there to the right of it, is it not?

3 A Yes.

4 Q And you would agree, sir, that the area  
5 defined by the computer as B is far more than three  
6 times the area defined by what you've defined as A,  
7 would you not?

8 A That is correct.

9 Q And in fact, if you look at any of these  
10 there's not a single coverage sector that is the same  
11 as A, B and C as any cell site, is it?

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

14 Q You didn't understand it?

15 A Please ask me again.

16 Q Okay. Now, sir, you prepared this, did you  
17 not?

18 A Yes.

19 Q And are you the one that taped it together so  
20 that the overlay goes over the map?

21 A Yes.

22 Q And so you're the one that determined that  
23 the overlay should not match the top line of the map,  
24 is that correct? You determined where to put the  
25 outline, didn't you?



1 THE COURT: Ms. Gutierrez, well, Ms.  
2 Gutierrez, you've asked the question, let the witness  
3 answer the question. Mr. Waranowitz, can you answer  
4 the first question? Did you decide that the map should  
5 -- the overlay should go up above the map area or not?

6 MR. WARANOWITZ: The maps are slightly  
7 different size and the location is to we printed this  
8 out. I printed out both the overlay and the underlay  
9 at the same scale and eventually rose up in-between.  
10 So, where the overlay matches the map underneath it  
11 covers the areas in question.

12 THE COURT: Okay.

13 BY MS. GUTIERREZ:

14 Q Now, on the overlay --

15 THE COURT: One moment, Ms. Gutierrez. but  
16 the question is, that you see how the overlay is moved  
17 up to the top of the map?

18 MR. WARANOWITZ: Yes, I understand that the  
19 difference between them.

20 THE COURT: There's about -- is that about an  
21 inch above?

22 MR. WARANOWITZ: Yes.

23 THE COURT: And that's the correct placement  
24 of the overlay?

25 MR. WARANOWITZ: Yes.

1 THE COURT: Very well. Your next question,  
2 Ms. Gutierrez.

3 BY MS. GUTIERREZ:

4 Q Now, the overlay, sir, has no definitions  
5 that define any of the roads, does it?

6 MR. WARANOWITZ:

7 A No, it does not.

8 Q It just has a series of lines, correct?

9 A Correct.

10 Q And those lines, sir, you put them there?

11 A No, they're part of the computer program.

12 Q The overlay has no logo on it that should be  
13 matched up to something underneath of it, does it?

14 A Just the road maps.

15 Q Just the roads that were generated by the  
16 computer, is that correct?

17 A Yes.

18 Q And that was generated by information fed  
19 into that computer by whom?

20 A The software is created by LCC.

21 Q So, it's software that exists in the  
22 computer, correct?

23 A Yes.

24 Q All right. Not something that your records  
25 created, is that correct?

1 A Correct.

2 Q Not something that you yourself put in the  
3 computer at any given time?

4 A Correct.

5 Q But this overlay is suppose to represent, not  
6 the ideal cell site coverage, but the actual cell site  
7 coverage, correct?

8 A Yes.

9 Q And the overlay in no way looks anywhere  
10 close to your ideal cell site coverage, does it?

11 A No.

12 Q You can take back your seat. Now, Mr.  
13 Waranowitz, before we go any further, let me ask you a  
14 question that really concerned me that Mr. Urick didn't  
15 bother to ask. You referred to -- you were asked to do  
16 this test, were you not?

17 A Yes.

18 Q You were asked by him were you not?

19 A Yes.

20 Q Okay. And you met with him, didn't you?

21 A Yes, I did.

22 Q And the information you received before doing  
23 anything you got from him, did you not?

24 A Yes.

25 Q You got a list of addresses, did you not?

1 A Yes.

2 Q He gave them to you, right?

3 A Yes.

4 Q You didn't of your own independent knowledge  
5 know what if any significance those addresses have, did  
6 you?

7 A No, I did not.

8 Q And you were asked to conduct a test to see  
9 if it was consistent with what he thought, were you  
10 not?

11 A I was asked to see if the test wold be  
12 consistent with the locations and the phone records.

13 THE COURT: I'm sorry, I couldn't hear the  
14 end of that.

15 MR. WARANOWITZ: I'm sorry. The test -- I  
16 was asked to demonstrate or verify or test that the  
17 billing -- do the billing records correspond with the  
18 cell sites and the locations.

19 THE COURT: Your next question.

20 BY MS. GUTIERREZ:

21 Q Let me get this straight, Mr. Waranowitz.  
22 The billing information for the AT&T wireless system  
23 isn't something you're responsible for, is it?

24 MR. WARANOWITZ:

25 A Correct.

1 Q And it isn't something you have anything to  
2 do with putting in information into to generate, is it?

3 A Correct.

4 Q That's done by somebody else, is it not?

5 A Yes.

6 Q And much of that is done by computers, is it  
7 not?

8 A I don't know.

9 Q You think all those entries are entered in by  
10 hand?

11 A I don't know.

12 Q You don't know. Mr. Waranowitz, the reason  
13 the billing information on a wireless includes  
14 information such as the time of the call and the  
15 duration of the call has to do with the way wireless  
16 phones are billed differently than land based phones,  
17 does it not?

18 A Correct.

19 Q Often time a cellular customer is billed for  
20 the minute of use, are they not?

21 A I don't know how they bill for minutes of  
22 use.

23 Q Well, sir, you testified all day yesterday  
24 and today that you're familiar because you in fact, are  
25 and AT&T wireless customer, did you not?

1 A Yes.

2 Q And does that information appear on your  
3 bills?

4 A Yes.

5 Q The duration of the call?

6 THE COURT: Is that a question, Ms.  
7 Gutierrez?

8 MS. GUTIERREZ: Yes, ma'am.

9 THE COURT: Is the duration of the call  
10 appear on your bill, Mr. Waranowitz?

11 MR. WARANOWITZ: It would, yes.

12 BY MS. GUTIERREZ:

13 Q Okay. And you're familiar with that because  
14 you've seen it in your own bill.

15 MR. WARANOWITZ:

16 A Yes.

17 Q And now you don't pay by the minute of use  
18 for your own phone?

19 A No, I don't.

20 Q Your company pays for it, right?

21 A That is correct.

22 Q So, you're not concerned with verifying  
23 accuracy of any information that might appear on your  
24 bill, are you?

25 A No.

1 Q You don't have to check your bill to see if  
2 they counted up your minutes of use correctly?

3 A No, I don't do that.

4 Q You don't have to carefully check the  
5 accuracy of any information regarding the time of the  
6 call, do you?

7 A No.

8 Q You wouldn't be concerned for billing  
9 purposes if there appeared because some computer  
10 somewhere or some person somewhere made a mistake in  
11 entry as to that information, are you?

12 A No, I don't handle billing.

13 Q I didn't ask you that, sir. I'm asking you  
14 about your own phone bill.

15 A No.

16 Q You don't enter any information that  
17 generates your own phone bill, do you?

18 A No, I do not.

19 Q No, and because you don't pay for it like the  
20 rest of us because it's provided by your company,  
21 you're not concerned in regard to how much you pay,  
22 whether or not that information is accurate or not, are  
23 you?

24 A No.

25 MS. GUTIERREZ: Can I have State's Exhibit

1 34?

2 MR. URICK: I believe that's the exhibit over  
3 here.

4 THE COURT: Actually, it's the chart, but  
5 there is a I believe a blank copy of that.

6 MS. GUTIERREZ: I thought that there was a  
7 record.

8 THE COURT: No, I don't believe that it was  
9 ever generated.

10 BY MS. GUTIERREZ:

11 Q I would like you to step off, sir and come  
12 look at 34.

13 THE COURT: You may.

14 BY MS. GUTIERREZ:

15 Q You were asked to review this yesterday, were  
16 you not?

17 MR. WARANOWITZ:

18 A Yes.

19 Q And before yesterday you've reviewed this  
20 before, have you not?

21 A Yes.

22 Q You are familiar with the information in it,  
23 were you not?

24 A Yes.

25 Q In regard to the columns in the far right



1 side, sir, you were asked to identify whether or not  
2 those numbers correctly stated cell sites?

3 A I recognize the cell site.

4 Q Okay. And because you've looked at it  
5 before, correct?

6 A Yes.

7 Q And you knew that every single entry in that  
8 column was a cell site with which you were familiar?

9 A Correct.

10 Q Did you not? Now, the address column, sir,  
11 you didn't fill that in, did you?

12 A No, I did not.

13 Q And, sir, we spoke a minute ago about you  
14 were provided addresses by Mr. Urick, do you recall  
15 that?

16 A Yes.

17 Q One of the addresses that you were provided  
18 was 1208 Macado Road, Street whatever, was it not?

19 A Yes.

20 Q Now, 1208 Macado doesn't appear in this  
21 column, does it?

22 A No, it does not.

23 Q No, and 1208 Macado is not the address of a  
24 cell site, is it?

25 A No.

1 Q And the address of a cell site as you've  
2 explained to us is the address of the owner of the  
3 property, correct?

4 A Correct.

5 Q So, now the address -- the photos that you  
6 were asked to look at were the antennas on top of the  
7 building that defined as what you and we people you  
8 worked with called the Social Security building,  
9 correct?

10 A Yes.

11 Q Are you familiar with that complex that  
12 actually fronts on Security Boulevard?

13 A I'm familiar with the complex.

14 Q Are you aware that there's a complex, a  
15 Social Security buildings?

16 A Yes.

17 Q And that in fact, the name of that set of  
18 buildings is the Social Security Administration  
19 headquarters.

20 A I'm aware.

21 Q And are you aware that at that complex there  
22 are eleven separate buildings as part of the  
23 headquarters of the Social Security Administration?

24 A No, I wasn't aware of that.

25 Q And that all of those buildings are owned by

1 the Federal Government, the United States Government.

2 A No, I didn't know that.

3 Q And are you aware that there is not a single  
4 address that applies to all of eleven buildings?

5 A I am not aware of that.

6 Q The building that you identified in the  
7 picture though is what you and your colleagues called  
8 the Social Security building, correct?

9 A That is correct.

10 Q You of course couldn't tell us which of the  
11 eleven buildings is the one that you and your  
12 colleagues have designated by your own name for it,  
13 could you?

14 A I've identified a building (inaudible)

15 THE COURT: I'm sorry. Wait a minute, sir.  
16 You've got to -- you have to understand this is a  
17 recording device and the mics pick up what you're  
18 saying and record it, so if you speak softly I can't  
19 hear and I bet the mics not picking up what you're  
20 saying. So I need you to keep your voice up. Now, she  
21 asked you about how you could identify that building  
22 and your answer is?

23 MR. WARANOWITZ: I could identify it by the  
24 AT&T equipment on the roof of the building.

25 THE COURT: Very well. Your next question.

1 BY MS. GUTIERREZ:

2 Q But you, sir, couldn't differentiate that  
3 building if you couldn't see the antennas from the  
4 other ten buildings as part of the complex?

5 MR. WARANOWITZ:

6 A I'm sorry, Rephrase that again.

7 Q Sir, you could not differentiate that  
8 building without seeing the antennas from the other ten  
9 buildings in the complex, could you?

10 A No.

11 Q Now, and, sir, could you tell us without  
12 seeing the antenna what the street address of the  
13 building that contains the antennas that you tell us  
14 you could recognize is?

15 A I don't know exactly.

16 Q Now, while you're still up here and then I'll  
17 let you sit down. Let me ask you about other addresses  
18 that Mr. Urick gave you to conduct your test. One of  
19 those was Rolling Road at I70, was it not?

20 A Yes.

21 Q And Rolling Road at I70 doesn't appear in  
22 this column, does it?

23 A No, just the map.

24 Q Another address that you had given was  
25 Security Square Mall, correct?

1 A Correct.

2 Q And are you aware of the street address of  
3 that mall?

4 A No, I am not.

5 Q No, and Security Square Mall doesn't appear  
6 here, does it?

7 A No, it does not.

8 Q And the 4703 Gateway Terrace address that you  
9 were both told about and taken to, were you not?

10 A I'm sorry, say again.

11 Q The 4703 Gateway Terrace, the address that  
12 Mr. Urick questioned you about extensively just moments  
13 ago, do you recall that?

14 A Yes.

15 Q And that doesn't appear in this column, does  
16 it?

17 A No, it does not.

18 Q And the Lincoln Park, what you referred to  
19 burial site, does that have an address?

20 A No, it does not.

21 Q And incidentally you went there, did you not?

22 A I was taken there, yes.

23 Q You were taken there by Mr. Urick?

24 A I was taken by Ms. Murphy.

25 Q Okay. And you were shown a location,

1 correct?

2 A Yes.

3 Q And you were told information about that  
4 location, were you not?

5 A A little bit, yes.

6 Q And that location, sir, was located a good  
7 distance from the road, was it not?

8 A No, it was right off the road.

9 Q Right off the road. Could you tell us the  
10 distance off the road that you were shown and told a  
11 body had been buried?

12 A I was told that the body was buried behind  
13 the concrete barriers.

14 Q And you saw those concrete barriers, did you  
15 not?

16 A Yes, I did.

17 Q Were you actually taken into the wood and  
18 shown an exact spot and told this is where a body was  
19 buried?

20 A No.

21 Q So, you were just taken up to the area that  
22 surrounded by concrete barriers?

23 A Yes.

24 Q We call them Jersey walls or the construction  
25 industry calls them Jersey walls, are you aware of

1 that?

2 A Yes, Jersey walls.

3 Q Okay. And you were taken there and then you  
4 said the body was buried behind here, correct?

5 A Correct.

6 Q And you weren't taken over those concrete  
7 barriers, were you?

8 A No, I was not.

9 Q There wasn't any ready way to get over the  
10 concrete barriers without climbing over them, was  
11 there?

12 A No, I don't remember.

13 Q You weren't taken to a place, were you?

14 A I'm sorry.

15 Q You weren't taken to a place, were you?

16 A I was taken to that location.

17 Q Where the Jersey walls are.

18 A Yes.

19 Q And the Jersey walls are located immediately  
20 adjacent to the road, are they not?

21 A Yes.

22 Q And that's where you were then said, what was  
23 said to you was that the body was buried beyond here,  
24 is that correct?

25 A That is my understanding.

1 Q And, sir, did you explore the terrain beyond  
2 the Jersey walls?  
3 A No, I did not.  
4 Q You could have if you wanted to, couldn't you  
5 have?  
6 A Yes.  
7 Q Nobody stopped you from exploring, did they?  
8 A No.  
9 Q And were you taken anywhere from that place  
10 that led you to the edge of stream?  
11 A No.  
12 Q Or were you told that a stream meandered back  
13 there behind the Jersey wall?  
14 A No.  
15 Q And the body wasn't there when you did this,  
16 was it?  
17 A No, it was not.  
18 Q This part of this test that you tell us about  
19 you conducted in the fall, did you not?  
20 A Yes.  
21 Q The exact date?  
22 A I don't remember the exact date.  
23 Q And you didn't write it down?  
24 A I wrote it down somewhere, I don't remember  
25 the date.



1 Q But you don't remember the date, sir. Your  
2 definition of fall, sir, includes October?

3 A Yes.

4 Q And November?

5 A Yes.

6 Q And parts of December?

7 A I'm not sure.

8 THE COURT: I'm sorry, I couldn't hear you.

9 MR. WARANOWITZ: I'm not sure.

10 BY MS. GUTIERREZ:

11 Q But it could, could it not?

12 MR. WARANOWITZ:

13 A It might be.

14 Q And parts of September, correct?

15 A Yes.

16 Q And your test could have occurred because you  
17 don't recall sometime at the end of September?

18 A I don't remember the exact date.

19 Q Well, my question, sir, could it occur  
20 sometime at the end of September?

21 A Yes.

22 Q Any day in October?

23 A Yes.

24 Q Any day in November?

25 A Yes.

1 Q And perhaps, but not necessarily a day in  
2 early December, is that correct?

3 A It's possible.

4 Q And that right now you don't recall the date  
5 this test occurred?

6 A No, I do not recall the date the test  
7 occurred.

8 Q And you may have written it down, but you  
9 didn't bring any of that material with you?

10 A No.

11 Q And on the day whenever it was during any of  
12 the those four months, sir, were you always accompanied  
13 by Ms. Murphy or Mr. Urick?

14 A I'm sorry, could you ask that again?

15 Q On whatever day it may have been sometime  
16 during the month of September, October, November or  
17 December that you conducted the test about which you've  
18 testified, sir, were you always accompanied?

19 A By Ms. Murphy.

20 Q By Ms. Murphy. So, any address that you were  
21 asked to conduct a test on was given to you by her?

22 A Yes.

23 Q And --

24 THE COURT: Ms. Gutierrez, may the witness  
25 return to the witness stand?

1 MS. GUTIERREZ: I'm just going to finish  
2 these. I have a couple more addresses.

3 THE COURT: With regard to the Exhibit 34?

4 BY MS. GUTIERREZ: Yes.

5 Q In regard to the address column, sir, you  
6 were also given an address of Briar Cliff Road, were  
7 you not?

8 MR. WARANOWITZ:

9 A I don't recall that address.

10 Q Well, did you speak to Mr. Murphy -- Ms.  
11 Murphy and Mr. Urick after you conducted the test?

12 A Yes.

13 Q And did you give them a report of your  
14 findings?

15 A No.

16 Q You didn't report your findings to them?

17 A I verbally gave Ms. Murphy my readings as we  
18 conducted the test.

19 Q Okay. So, you don't consider that to be a  
20 report?

21 A (inaudible) reports.

22 Q And --

23 THE COURT: Ms. Gutierrez, I'm going to ask  
24 the witness -- you may return to the witness stand and  
25 at which time you need him to return to the --

1 MS. GUTIERREZ: Okay. Thank you, Judge.

2 THE COURT: To the exhibit then we'll have  
3 him do that.

4 BY MS. GUTIERREZ:

5 Q Would you be surprised, sir --

6 THE COURT: Ms. Gutierrez, if you could  
7 return to the trial table or --

8 MS. GUTIERREZ: Well, I need to focus on  
9 this. Thank you.

10 THE COURT: All right. If you're going to  
11 use that exhibit.

12 BY MS. GUTIERREZ:

13 Q Would you surprised, sir, that Ms. Murphy or  
14 Mr. Urick reported to me what the results of your  
15 findings were in regard to specific addresses?

16 MR. WARANOWITZ:

17 A I am not surprised.

18 Q And if they did so you of course would have  
19 expected them to be accurate as to the addresses,  
20 correct?

21 A Yes.

22 Q And that wouldn't be a surprise to you, would  
23 it?

24 A No.

25 Q You'd expect them to accurately tell me what

1 addresses they asked you to test about, would you not?

2 A Yes.

3 Q And if Briar Cliff Road were in the list that  
4 they told me about that would not be a surprise to you,  
5 would it?

6 A I'm sorry, could you ask that again?

7 Q If Briar Cliff Road, the address you don't  
8 remember appeared in their list to me about the  
9 addresses they asked you to test that would not be a  
10 surprise to you, would it?

11 A If that address was given to me.

12 Q You just can't remember whether it was, can  
13 you?

14 A I don't remember exactly where it was.

15 Q If it appeared in their list it would be fair  
16 to say that it was among the addresses that they gave  
17 you, would it not?

18 A Yes.

19 Q And Briar Cliff Road, any number on Briar  
20 Cliff Road doesn't appear in this column, does it?

21 A No, it does not.

22 Q Best Buy, whatever it's address or location  
23 is, that also doesn't appear as an address, does it?

24 A No.

25 Q I70, Interstate 70 Park and Ride doesn't

1 appear on the address column anywhere, does it?

2 A No.

3 Q And Crosby, if that's a street, road or lane,

4 whatever at Interstate 695, it doesn't appear anywhere

5 in this address list, does it?

6 A No.

7 Q Route 40 and Cooks Lane up to Forest Park

8 doesn't appear on this, does it?

9 A No.

10 Q And West Hill doesn't appear, does it?

11 A No.

12 Q And Forest Park/Park and Ride, it's nowhere

13 in this column, isn't it?

14 A No.

15 Q It's not the address of a cell site, is it?

16 A No, it is not.

17 Q Forest Park, four blocks east, whatever

18 direction that may be of Security Boulevard is not an

19 address that appears here, is it?

20 A No, it is not.

21 Q And Gelston Park, west of Rolling Road

22 doesn't appear in this column, does it?

23 A No.

24 Q And Woodlawn High School doesn't appear in

25 this column, is it?

1 A No.

2 Q The address of Woodlawn High School doesn't  
3 appear in this column, does it?

4 A No.

5 Q You are aware, sir, that Woodlawn High School  
6 is around the corner from the headquarters of the  
7 Social Security Administration, are you not?

8 A Yes.

9 Q And you're aware, sir, based on your own  
10 report that Woodlawn High School in your words would  
11 trigger 65L, 651A, are you not?

12 A Correct.

13 Q And L651A is written on this exhibit tat you  
14 prepared in the middle of three differing areas  
15 outlined in different colors, are you not?

16 A Correct.

17 Q And the high school is the pink A, B or C?

18 A The pink would be C.

19 Q And the orange, would that be a correct  
20 designation of that color?

21 A That would be sector A.

22 Q That would be A and the purple and I note a  
23 different color purple then what you described as  
24 purple 653, that would be B?

25 A That would be sector B, correct.

1 Q And it would be fair to say, sir, that those  
2 areas by those three colors all cover different sizes  
3 of geography, would it not?

4 A Yes.

5 Q And you would expect, Sir, Woodlawn High  
6 School to be within one of those boundaries, would you  
7 not?

8 A Correct.

9 Q And because it would trigger that cell site,  
10 you'd expect it to be there, correct?

11 A Yes.

12 Q As 651A appears on this map, does it not?

13 A Yes.

14 Q And the address in the column listed as  
15 addresses for 651A is 1500 Woodlawn Drive, is it not?

16 A Correct.

17 Q And that's the cell site that you've  
18 indicated to us that you triggered for the antenna on  
19 top of the Social Security building, would it not?

20 A Yes.

21 Q And you are aware, Sir, that the building  
22 faces Security Boulevard, are you not?

23 A Yes.

24 Q And you aware, Sir, that Security Boulevard  
25 is a separate and distinct street then Rolling Road?



1 A Correct.

2 Q Now, Sir, you were asked a lot of questions  
3 about these maps that you say, again your computer  
4 generated State's Exhibit 44 and 45?

5 A Yes.

6 Q And one of them, I don't recall which, Sir,  
7 perhaps if you look at my copy you could tell us,  
8 designates Rolling Road, does it not?

9 A Rolling Road is not written on this map.

10 Q Well, you, Sir, testified about Rolling Road  
11 though, didn't you?

12 A I know that that road is Rolling Road.

13 Q And you know that from your own knowledge,  
14 right?

15 A Yes.

16 Q But the map you forwarded doesn't say Rolling  
17 Road on it, does it?

18 A No.

19 Q So, if we aren't you we wouldn't know that  
20 Rolling Road appears on that map, would we?

21 A If you were familiar with the area you would  
22 know.

23 Q If we were familiar with the area and the  
24 streets without their names being printed, correct?

25 A Correct.

1 Q You also were asked about a place that  
2 appears on one of these maps that you refer to as  
3 Gelston Park, do you recall that?

4 A Yes.

5 Q Now, Gelston Park doesn't appear, it's not  
6 printed on either of these maps, is it?

7 A It is not printed on these maps, no.

8 Q And you didn't print it in to designate it  
9 perhaps for people who weren't familiar with that  
10 location, did you?

11 A No, I did not note that in.

12 Q And there's -- your name doesn't appear on  
13 this, does it?

14 A No, my name is not on there.

15 Q And there's nothing on either of these maps  
16 that in fact designate all of the things that the map  
17 shows, is there?

18 A I'm sorry. Could you ask the question again?

19 Q No. I won't bother. Gelston Park, Mr.  
20 Waranowitz also doesn't appear in the address list,  
21 does it?

22 A No, it does not.

23 Q Now, let me get this straight. The cell site  
24 is a location where the antenna actually exists,  
25 correct?

1 A Correct.

2 Q So, and what you called the site is that  
3 which emanates the signal, correct?

4 A Yes.

5 Q The only importance of it, why it needs a  
6 name is because it emanates or receives a signal, isn't  
7 it?

8 A Yes.

9 Q And the addresses you defined that as in this  
10 column is the address of essentially the property, the  
11 real estate on which the antenna is located, is that  
12 correct?

13 A Yes, that is my understanding.

14 Q But a cover -- well, it's not your  
15 understanding --

16 MR. URICK: Objection.

17 BY MS. GUTIERREZ:

18 Q You've testified to it about as an expert,  
19 have you not?

20 THE COURT: Sustained.

21 BY MS. GUTIERREZ:

22 Q The coverage area is an area larger than the  
23 cell site, is it not?

24 MR. WARANOWITZ:

25 A Yes.

1 Q Whether that cell site is a separate tower or  
2 placed on an existing structure, correct?

3 A Yes.

4 Q The coverage area in regard to 651 would  
5 include all the purple area, right?

6 A Yes.

7 Q All the orange area, right?

8 A Yes.

9 Q And all the pink area, correct?

10 A Correct.

11 Q And you would agree that that area is a  
12 considerable larger geographical location than the  
13 simple address of the cell site, would you not?

14 A Correct.

15 Q And the column marked address is only for the  
16 purpose of the designating the address of the real  
17 estate on which the cell site as listed is located,  
18 correct?

19 A Correct.

20 Q And in no way indicates that that address is  
21 the coverage area for what that cell site ideally is  
22 designed to cover?

23 A Correct.

24 Q Now, you were asked yesterday, Mr. Waranowitz  
25 and you indicated, well this network went up two or

1 three years ago, correct?

2 A Yes.

3 Q Okay. Was there something hard about that  
4 questions?

5 MR. URICK: Objection.

6 THE COURT: Sustained.

7 BY MR. GUTIERREZ:

8 Q Is there any reason you hesitated to answer?

9 MR. WARANOWITZ:

10 A I was listening for more of the question.

11 Q But there's no dispute that the network is  
12 relatively new, isn't that correct?

13 A That is correct.

14 Q And you told us that you were in on it from  
15 the beginning, correct?

16 A From -- from before it was launched, yes.

17 Q Okay. And by launched you mean started,  
18 right?

19 A Yes.

20 Q Launched meant it was operational, correct?

21 A Correct.

22 Q Meaning people with phones who were  
23 subscribers could use the network to make sure their  
24 phone calls got to where ever it was they were calling,  
25 correct?

1 A Yes.

2 Q That's the meaning of the word launching the  
3 network, correct?

4 A Correct.

5 Q And you were involved in the design, correct?

6 A Yes.

7 Q You weren't the only one, correct?

8 A Correct.

9 Q And you would agree because you told us  
10 yesterday that even today 25% of your time is connected  
11 to design, correct?

12 A Correct.

13 Q And the design involves a process about which  
14 you told us selecting your cell sites are, correct?

15 A Yes.

16 Q And in the two or three years from the first  
17 time that cell sites were selected some of them have  
18 been replaced, have they not?

19 A There have been a few, yes.

20 Q And that's because whether you designed those  
21 cell sites to be the optimum of cell sites, in some  
22 cases it turns out that your design was wrong in that  
23 regard, did it not?

24 A That would not indicate that my design was  
25 wrong.

1 Q Your design, sir, was correct from the  
2 beginning?

3 A I'm sorry, was that a question?

4 Q Yes, it was.

5 A The network is a changing entity in terms of  
6 capacity and coverage. We design for what we need at  
7 the time.

8 Q By coverage, sir, you're using that term in  
9 the same way to describe the coverage that is expected  
10 to be gotten from the cell site signal, is it not?

11 A Yes.

12 Q And by coverage, you're using that term in  
13 the same way as we describe to encompass the actual  
14 geographical location of the A, B and C sectors,  
15 correct?

16 A Correct.

17 Q All right. And, sir, you weren't normally on  
18 that design that sector, were you?

19 A No, I worked with team of engineers.

20 Q Engineers like you, correct?

21 A Yes.

22 Q All right. Now, sir, one of the things that  
23 you described doing yesterday was troubleshooting, did  
24 you not?

25 A Yes.

1 Q And troubleshooting was because there would  
2 be a constant, daily borage of complaints from  
3 customers, correct?

4 A There are complaints from customers, correct.

5 Q That's a daily event, is it not?

6 A Yes, yes.

7 Q Even now, is it not?

8 A Yes.

9 Q And the complaints from customers would be  
10 connected with whether or not they could get their  
11 calls through, correct?

12 A Yes.

13 Q And to this thing that you call dropped  
14 calls, correct?

15 A Yes.

16 Q And whether or not they could hear calls  
17 being made to them?

18 A Yes.

19 Q Sufficiently to participate in the  
20 conversation, correct?

21 A Correct.

22 Q Now you, sir, testified that AT&T doesn't  
23 require a subscriber to use an AT&T phone, correct?

24 A Correct.

25 Q A subscriber can use any phone they want, can



1 they not?

2 A Not necessarily.

3 Q Not necessarily. They have to meet certain  
4 requirements, do they not?

5 A Yes.

6 Q It has to be a phone of sufficient quality,  
7 does it not?

8 A It would have to have sufficient -- it would  
9 have to have the same capability to talk to our  
10 network.

11 Q Well, to talk to your network really boils  
12 down to triggering a signal in your cell towers or have  
13 that cell tower being able to send a signal to it, does  
14 it not?

15 A Correct.

16 Q All right. And there are many phones varying  
17 in defection that meet that capacity, are there not?

18 A Yes.

19 Q Some are manufactured by Motorola, correct?

20 A Yes.

21 Q Some are manufactured by Erickson, right?

22 A Yes.

23 Q Some are sold by AT&T under other names of  
24 the -- not manufactured by AT&T?

25 A Yes.

1 Q Some are manufactured by a company by the  
2 name of Nokia, isn't that correct?

3 A Yes.

4 Q And Nokia phones just like all other phones  
5 come in varying quality, do they not?

6 A Yes.

7 Q And they are varying types of phones, are  
8 they not?

9 A Yes.

10 Q Some are cheaper, some are more expensive?

11 A Yes.

12 Q Some have more features than others?

13 A Correct.

14 Q And that may run throughout a lot of the  
15 phones produced and manufactured by the same  
16 manufacturer --

17 A Correct.

18 Q Would it not? And AT&T doesn't forbid it's  
19 subscribers from employing any phone as long as it can  
20 receive the signal, correct?

21 A Correct.

22 Q Even if the receipt to that signal might be  
23 less strong than another phone, is that correct?

24 A Yes.

25 Q And I imagine, sir, based on what you've told

1 us that the receipt of signals among phones on your  
2 network still varies, correct?

3 A Yes, it does.

4 Q And I'm sure, sir, that you and the we that  
5 you refer to, your colleagues have an opinion as to  
6 what is the best phone to be used in your network, do  
7 you not?

8 A Yes.

9 Q And what phone is that?

10 A That would be the Nokia 6160.

11 Q The 6160. The same phone that your company  
12 issues to your engineers, correct?

13 A Yes.

14 Q Although you currently use a Motorola,  
15 correct?

16 A Yes.

17 Q And, sir, in the testing that you do, sir,  
18 you're still dealing with complaints of dropped calls,  
19 are you not?

20 A Correct.

21 Q And some of those dropped call complaints  
22 come from customers that are utilizing a Nokia phone,  
23 are they not?

24 A Yes.

25 Q A Nokia 6160?

1 A Yes.

2 Q Because you can, sir, from your statistical  
3 monitoring always determine what phone the customer is  
4 using, can you not?

5 A Yes.

6 Q Yes, and that is because your computer has  
7 the capability to distinguish the signals, correct?

8 A Correct.

9 Q Now lets talk about this test that you do,  
10 sir. Well, let me make sure, I forgot. So, are we  
11 clear that in your experience in your own network on  
12 whatever phones you've had experience with, phones  
13 perform at different levels.

14 A Correct.

15 Q Correct? That's a truism, is it not?

16 A Could you rephrase that?

17 Q Well, by saying phones perform at different  
18 levels the only performance the phones have to do is  
19 receive or send the call, correct?

20 A No.

21 Q Well, they have to be able to be heard,  
22 correct?

23 A Yes.

24 Q And if they're unable to see as the term  
25 you've used it, a signal their performance would be

1 deemed low, would it not?

2 A Yes.

3 Q And if they were unable to receive a signal  
4 sent to them, their performance would be deemed low,  
5 would it not?

6 A Yes.

7 Q And if a signal were sent from a cell site to  
8 a poor performing phone the owner of which because of  
9 the poor performance could not hear, the signal relay  
10 would still be tripped, would it not?

11 A No, it may not be.

12 Q But it might be?

13 A It can be.

14 Q It can be. And that again would depend on  
15 the quality of the signal, correct?

16 A Yes.

17 Q And the quality of the phone for which the  
18 signal is wasn't handled, correct?

19 A Yes.

20 Q Now, that phones perform differently there is  
21 an ideal performance for cell phones, is there not?

22 A Cell phones should perform within certain  
23 specifications.

24 Q Okay. And within those specifications  
25 relates to the quality of the radio sound, does it not?

1 A Yes.

2 Q And the ability to make a connection if one  
3 chooses to dial a number on the cell phone seeing  
4 communication with another number?

5 A Yes.

6 Q Whether that number be a land line or another  
7 cell phone, correct?

8 A Correct.

9 Q And the ability of the phone connection to  
10 remain open for however long the use wants it, correct?

11 A Yes.

12 Q And for nothing to interfere with the call,  
13 correct?

14 A Correct.

15 Q And the quality of sound in whatever  
16 connection for however long to be sufficient that each  
17 party can plainly hear each other.

18 A Yes.

19 Q And that there be no interference, correct?

20 A Correct.

21 Q But even though the ideal is to meet that  
22 standard of performance you would agree that because  
23 phones differ all phones don't always perform up to the  
24 ideal, correct?

25 A Correct.

1 Q And back on whatever day that is was over the  
2 time period of the call whatever months, fall included,  
3 you knew all of that, did you not?

4 A Yes.

5 Q And the test that you keep referring to as an  
6 origination test, is that correct?

7 A An origination test.

8 Q Okay. And that test occurs as a scientific  
9 test?

10 A What do mean by scientific?

11 Q Well, is there a protocol for it?

12 A Yes.

13 Q Is there a manual written as to how to  
14 perform the test?

15 A Yes, there are.

16 Q The results of what happens when you do the  
17 test is you make a phone call or you cause one to be  
18 made to you, isn't that right?

19 A There can be more to it.

20 Q Well, it includes that, does it not?

21 A Yes.

22 Q In fact, to originate one must make a call or  
23 cause one to be made to you, correct?

24 A Yes.

25 Q And when one is doing this origination test

1       you dial the numbers just like the rest of us, don't  
2       you?

3       A     No.

4       Q     And, sir, when you did that origination test,  
5       sir, you dialed a certain number, did you not?

6       A     I dialed a code, yes.

7       Q     And you dialed it from a certain location,  
8       did you not?

9       A     Yes.

10      Q     And that location was determined by Ms.  
11      Murphy, was it not?

12      A     Yes.

13      Q     And when you did this origination test you  
14      already knew all these things about the differences in  
15      phones, did you not?

16      A     Yes.

17      Q     And you were aware that the information that  
18      Ms. Murphy gave you because of what she told you  
19      involved an actual phone, were you not?

20      A     Yes.

21      Q     And an actual number, correct?

22      A     Yes.

23      Q     And you were aware that that actual number  
24      belonged to a person who subscribed to your network?

25      A     Yes.



1 Q Isn't that true? And the AT&T wireless  
2 network, correct?

3 A Yes.

4 Q And you were aware that the addresses you  
5 were given didn't appear on the phone bill?

6 A Yes.

7 Q And they didn't appear -- the addresses you  
8 were given didn't appear as significant addresses in  
9 phone records other than the phone bill, were you not?

10 A I'm sorry, could you rephrase that?

11 Q The addresses you were given didn't appear as  
12 a list inside A&T records, did they?

13 A No.

14 Q Anywhere, right?

15 A No.

16 Q Not in billing and not in anywhere else,  
17 correct?

18 A Correct.

19 Q And you were aware that what you would be  
20 asked to in your words was to check what happened and  
21 you made a phone call, not in the ordinary way, from a  
22 phone at a address that Ms. Murphy determined, correct?

23 A No.

24 Q No. That's what you were asked to do, isn't  
25 that correct?

1           A     I was asked to do that, yes.

2           Q     Okay.

3           A     The process is different.

4           Q     And you, sir, you didn't decide what it was,

5     did you? Your test. Did you make up this test?

6           A     No, I did not make it up.

7           Q     You, sir, consulted with the manual that

8     outlines how this test should be performed, is that

9     correct?

10          A     No, I did not consult with a manual.

11          Q     No, you didn't. And did you consult with

12     anyone else?

13          A     No.

14          Q     And, sir, you of course were made aware that

15     the phone -- you reviewed the billing records of this

16     phone, did you not?

17          A     Yes.

18          Q     And that's how a list of the cell sites

19     appear, is it not?

20          A     Yes.

21          Q     Because the cell sites appear on the record,

22     correct?

23          A     They appear on the billing records I was

24     provided, yes.

25          Q     Okay. And you looked at them before doing

1 this test, did you not?

2 A Yes.

3 Q And you, sir -- you were aware, sir, that the  
4 cell phone to the records you were using still existed,  
5 were you not?

6 A I'm sorry, could you say that again?

7 Q You were aware at the time you reviewed the  
8 records of the specific cell phone that the cell phone  
9 attached -- to which that number was attached still  
10 existed, were you not?

11 A I was not aware if that phone was still in  
12 use.

13 Q Did you ask?

14 A No, I did not.

15 Q And this phone, 6160 Nokia is a different  
16 phone than your Erickson, right?

17 A Yes.

18 Q And your experience you believe that they  
19 perform comparably, right?

20 A Yes.

21 Q In an ideal way, correct?

22 A In the real world they perform comparably.

23 Q And by comparably that doesn't mean exactly  
24 the same, does it?

25 A No, it does not.

1 Q And, sir, this phone isn't activated, is it?

2 A I don't know.

3 Q As far as looking at it, it appears to be  
4 capable of functioning in an ideal way, does it not?

5 A Would do mean by that?

6 Q By looking at it you can tell it's capacity  
7 for functioning, can you not?

8 A I can not tell.

9 Q Well, you just told us that based on your  
10 experience a phone such as this would perform  
11 comparably to the phone you used at whatever day you  
12 used it to perform what you call, your origination  
13 test.

14 A Yes.

15 Q Did Ms. Murphy advise you that this phone was  
16 available?

17 A No.

18 Q And if it's not functioning, sir, it would be  
19 a very simple matter to activate it, would it not?

20 A Yes.

21 Q And you, sir, you can't tell by looking  
22 whether or not it was dropped anywhere?

23 A No, I can not.

24 Q By anyone, can you?

25 A No.

1 Q Whether it was dropped during manufacture?

2 A No.

3 Q Or packaging?

4 A No.

5 Q Or shipping?

6 A Nope.

7 Q Or prior to sale while it sat in the store?

8 A No.

9 Q You've never examined this phone to see if

10 it's capable of functioning, have you?

11 A No, I have not.

12 Q Or how it acts once it's turned on, if it

13 could be turned on, have you?

14 A No, I have not tested it.

15 Q You could have, couldn't you?

16 A I was not aware that I could.

17 Q Well, you could have though physically, could

18 you have not?

19 A I could do that, yes.

20 Q And you could have back then, could you have

21 not?

22 A I could have.

23 Q Back then, whatever day it was this phone

24 call, you knew all that you told us about different

25 phones might act differently, did you not?

1           A     Yes.

2           Q     That's not knew knowledge you've gained since  
3           the time you did this test, is it?

4           A     No, it's not.

5           Q     And you designed the test based on what Ms.  
6           Murphy told you, correct?

7           A     Yes.

8           Q     You designed the test yourself, correct?

9           A     Yes.

10          Q     And you of course advised them that, well, we  
11          better use the same phone since phones perform  
12          differently, did you not?

13          A     No, I did not.

14          Q     So, you of course asked where was the phone  
15          attached to the number, the records of which you were  
16          asked to review, did you not?

17          A     I did not ask.

18          Q     You didn't, exactly. You didn't even suggest  
19          that?

20          A     No, I did not.

21          Q     And the phone you tested, this origination  
22          test to which you looked at not a manual, but the how  
23          you did it was an Erickson phone, was it not?

24          A     Yes it was.

25          Q     Your own Erickson phone, was it not?

1 A It was one of our test phones.

2 Q And the addresses from which you tested your  
3 Erickson phone did not include an address listed as a  
4 cell site, did it?

5 A Not that I know of.

6 Q And you, of course didn't go to any place  
7 that Ms. Murphy didn't tell you to go, did you?

8 A No.

9 Q But when you reported the results of your  
10 test to her or Mr. Urlick you essentially gave the  
11 information that at the addresses that you were asked  
12 to check, that a cell phone at any specific address  
13 would trigger two different cell sites, did you not?

14 A There are two different possibilities, but  
15 they would not trigger the same cell site at the same  
16 time.

17 Q Sir, I only asked you, did you report to them  
18 that a cell phone used for instance, at Rolling Road  
19 and I70, an address provided to you by Ms. Murphy  
20 triggers, with an S at the end of it, cell site L651C  
21 or L698A, is that correct?

22 A That is correct.

23 Q And, sir, you would agree that 69 --651C and  
24 that's the pink?

25 A Correct.

1 Q Correct, on -- is there a do north on this  
2 map?

3 A Yes.

4 Q Is north to the top?

5 A That is correct.

6 Q So, the pink would be the western edge of the  
7 map, correct?

8 A Correct.

9 Q All right. And the other cell site that it  
10 could trigger would be L698A, is that correct?

11 A That is correct.

12 Q So, your report to them said, well if I went  
13 and used a cell phone at this address you told me about  
14 either it would put a signal over here, correct?

15 A Correct.

16 Q Or a signal over here, correct?

17 A Correct.

18 Q And, in fact, as to each address they gave  
19 you, you reported similarly that it would trigger two  
20 different cell sites, one or the other, correct?

21 A Correct.

22 Q And this was after you did the test, correct?

23 A No, that was during the test.

24 Q During the test as you reported them to her,  
25 correct?



1 A Correct.

2 Q And during the test as you were reporting  
3 ongoing results, Ms. Murphy didn't say, oh, that's not  
4 good enough, did she?

5 A She did not say anything like that.

6 Q Nothing like that, right? She didn't suggest  
7 to you other things that you could do, did she?

8 A No.

9 Q She didn't suggest to you that there should  
10 be or that you should find a way to report to her that  
11 a certain address would only trigger one cell site, did  
12 she?

13 A No, I explained --

14 Q As to --

15 MS. MURPHY: Objection.

16 THE COURT: Sustained.

17 BY MS. GUTIERREZ:

18 Q As to Rolling -- so, you explained it to her,  
19 your results?

20 MR. WARANOWITZ:

21 A Yes.

22 Q As they went along.

23 A Yes.

24 Q And you recall that in your reporting, would  
25 you not?

1 A Yes.

2 Q And you explained it to her in great deal,  
3 did you not?

4 A I explained my results.

5 Q And you explained to her more then the simple  
6 reporting of a cell phone at Rolling Road at I70  
7 triggers cell site L651C or L698A, did you not?

8 A Yes.

9 Q Your conversation was more then that with Ms.  
10 Murphy, was it not?

11 A Yes.

12 Q You answered any questions she had, did you  
13 not?

14 A Yes.

15 Q And that was part of your reporting and you  
16 explaining the test as it went along?

17 A Yes.

18 Q And you so reported and explained to her  
19 after each single address, did you not?

20 A I reported it at the address.

21 Q Now, sir, your map that you tell us you  
22 carefully prepared doesn't indicate where Rolling Road  
23 at I70 exists, does it?

24 A No, it does not.

25 Q There's not a place that flags it either on

1 33A, the underlying map, right?

2 A No.

3 Q And certainly not on the overlay?

4 A No.

5 Q And on the map, the address 1208 Macado isn't

6 flagged either?

7 A Correct?

8 Q Nor is Security Square Mall?

9 A Correct.

10 Q And nor is 4703 Gateway Terrace?

11 A Correct.

12 Q Or --

13 A Oh, I put Gateway Terrace on there a few

14 minutes ago.

15 Q You put that on yesterday or this morning.

16 A This morning.

17 Q This morning. It wasn't on the map in it of

18 itself?

19 A No.

20 Q On either A?

21 A No.

22 Q Or B?

23 A No, it was not.

24 Q And Briar Cliff Road, without an address,

25 that's not indicated on A or B either?

1 A No.

2 Q Or Best Buy, whatever it may be located?

3 A Nope.

4 Q And Crosby, where ever that is?

5 A No.

6 Q And I70 Park and Ride?

7 A No.

8 Q Cooks Lane up to Forest Park?

9 A No.

10 Q And Forest Park, four blocks east of Security

11 Boulevard?

12 A No.

13 Q Nor put Gelston Park?

14 A I put Gelston Park on this morning.

15 Q You put it on.

16 A That's correct.

17 Q It didn't appear independently on the 33A

18 map that you said you, yourself drew up?

19 A No, it did not.

20 Q And it doesn't appear on the overlay?

21 A No.

22 Q Or Woodlawn High School doesn't appear on the

23 map?

24 A I'm not sure where that is.

25 Q You didn't make an independent designation

1 where it was before you testified, did you?

2 A Well, I know where it is.

3 Q That's not my question, sir. This isn't a  
4 quiz.

5 MR. URICK: Objection.

6 THE COURT: Ms. Gutierrez.

7 BY MS. GUTIERREZ:

8 Q Did you put a designation of where Woodlawn  
9 High School was --

10 MR. WARANOWITZ:

11 A No.

12 Q On the underlaying map?

13 A No.

14 Q Did you put such a designation on the  
15 overlaying --

16 A No.

17 Q You also prepared?

18 A No.

19 Q Were you ever asked to do so before today?

20 A No, I was not.

21 Q No. If I may have a moment, Your Honor.

22 THE COURT: Certainly.

23 MR. WARANOWITZ: Can we take a break, Your  
24 Honor?

25 THE COURT: Pardon.

1 MR. WARANOWITZ: Can we take a break?

2 THE COURT: We are going to take a break. I  
3 may be able to finish with you. Can you give me ten  
4 minutes?

5 MR. WARANOWITZ: I can wait.

6 THE COURT: Is that --

7 MR. WARANOWITZ: Thank you, Your Honor.

8 THE COURT: Ms. Gutierrez, do you expect to  
9 be any longer then about ten minutes?

10 MS. GUTIERREZ: I do, Judge. I'll try to  
11 shorten it, but I do need more time.

12 THE COURT: That's all right. Can you come  
13 up for scheduling purposes?

14 (Counsel approached the bench and following  
15 ensued:)

16 THE COURT: Mr. Waranowitz, Mr. Waranowitz,  
17 you may step down and wait in the hall. What I'm  
18 trying to engage is whether or not we would finish with  
19 this witness on or by like 11:30, 11:20?

20 MS. GUTIERREZ: I don't know, Judge.

21 THE COURT: Okay.

22 MS. GUTIERREZ: I know I'm long winded. I'm  
23 not fast.

24 THE COURT: No, I'm not trying to rush you.  
25 I'm just trying to get --

1 MS. GUTIERREZ: I'm a terrible estimate of  
2 time.

3 THE COURT: I have Counsel that would like to  
4 do a postponement and --

5 MS. GUTIERREZ: It's just that because of  
6 this witness I know that I'm not rushing with it. So,  
7 I --

8 THE COURT: No. You're not asked to.

9 MS. GUTIERREZ: I don't think I'm going to be  
10 finished by then.

11 THE COURT: By 11:30?

12 MS. GUTIERREZ: No, I don't.

13 THE COURT: Okay. All right.

14 MS. GUTIERREZ: So, if you want to --

15 THE COURT: To take the postponement request?

16 MS. GUTIERREZ: That's fine.

17 THE COURT: Do you have a question, issue?

18 MR. URICK: She wanted to know that means  
19 we're going to take a brief break? She would like one.

20 THE COURT: Yes. We all can take a brief  
21 break.

22 MS. GUTIERREZ: Okay.

23 THE COURT: And I'll have Counsel -- and I'll  
24 have Counsel bring up -- all right.

25 (Counsel returned to the trial tables and

1 the following ensued:)

2 THE COURT: Ladies and gentlemen, we're going  
3 to take a brief recess. Allow you to use the  
4 facilities and then we'll bring you back and continue  
5 with this witness. I'm going to ask at this time that  
6 you leave your note pads face down, that you leave them  
7 there because we're going to come back and resume and  
8 continue with testimony for just a brief time after the  
9 break. Scheduling wise there has been a request by one  
10 of the jurors to do some things with his job, so  
11 therefore, what we're going to do is take a little  
12 longer lunch break than we would normally do to allow  
13 that juror to be accommodated, but I'm going to ask  
14 that you do come back with a few moments and at that  
15 time we'll give a better guesstimate as how the morning  
16 will go.

17 At this time will you go with the Deputy Sheriff  
18 Church who will walk you around to the jury room, he is  
19 at the door. Do not discuss the testimony you've heard  
20 this morning or any other day during the trial. Do not  
21 discuss it amongst yourselves or with anyone, you have  
22 not heard the entire case yet. You can go with Deputy  
23 Chief -- Deputy Church at this time.

24 (The jury was excused from the courtroom.)

25 THE COURT: Mr. Gilmore, you're free to leave



1 him here because we're not going to take a break that  
2 long. Counsel, if you would like to take a recess or  
3 step back, use the facilities please do so. I'm going  
4 to remain on -- actually, I'm going to take a brief  
5 break myself, but I'm going to ask that as soon as  
6 Danny Marcus and Lynn Stewart, the attorneys in that  
7 other case arrive and the Defendant who's being brought  
8 up arrives we will proceed. Ms. Connelly, will you let  
9 me know when Mr. Marcus and Ms. Stewart as well as the  
10 Defendant in the other matter arrive so that we can do  
11 this postponement request. The Court stands in recess.

12 THE CLERK: All rise.

13 (Brief recess.)

14 (Case hears other matters, case resumes as  
15 follows:)

16 (Jury not present upon reconvening.)

17 THE COURT: Mr. Urick, Ms. Murphy and Ms.  
18 Gutierrez, if you'll step back up, we can resume the  
19 Syed case with a few more questions and then I will  
20 send the jurors to lunch allowing juror number two to  
21 take care of the business he's indicated he must  
22 acquire. I would note that we would be resuming at  
23 about 1:30. You're frowning.

24 MR. URICK: If I may inquire. Did the Court  
25 anticipate finishing this witness before breaking for

1 lunch?

2 THE COURT: No. You have a juror as you  
3 heard that needs more then the hour lunch break in  
4 order to take care of his business. What I had  
5 suggested when we spoke to juror number two is that  
6 we'd break at 11:30 so then he would have from 11:30 to  
7 12:30 and 12:30 to 1:30 to take care of his business.  
8 Are you suggesting that we break at another time?

9 MR. URICK: Yes, I would request that Mr.  
10 Waranowitz was able to revise his flight plans for  
11 today, but that he would have to take a 3:30 flight  
12 this afternoon. We would request that he'd be allowed  
13 to finish his finish his testimony so that he could get  
14 to the airport on time.

15 THE COURT: And how do you propose that I  
16 accommodate your juror number two?

17 MR. URICK: Just move it up into the  
18 afternoon because the BC -- University -- Baltimore  
19 City College is open to 4:30. If he goes there before  
20 the lunch break or after lunch break he can still at  
21 either time --

22 THE COURT: Do you know that?

23 MR. URICK: I know he didn't specify a  
24 particular time that he had to be there. He just said  
25 he had to be there around -- he just needed time around

1 lunch.

2 THE COURT: Perhaps we ought to ask him that  
3 rather than just arbitrarily make a decision. Would  
4 note that from 12:30 to two o'clock this Court sits  
5 part of a three judge panel with Judge Quarles and  
6 Judge Cannon to review other cases involving  
7 sentencing. So, I am not available although the rest  
8 of you will be at lunch I will be part of a three judge  
9 panel from 12:30 to two o'clock and so we can take a  
10 longer lunch break, but we'd have to accommodate this  
11 Court in that fashion. That's why I suggested --

12 MS. GUTIERREZ: Judge, my only concern -- I'd  
13 object to further questioning the jury. Mr. Urick  
14 again, knew this ahead of time, we didn't know. There  
15 was ample opportunity. We've already brought it to  
16 this juror's attention. I think that we are rightfully  
17 concerned and not make more of it then there is and to  
18 put the juror at ease as to whatever concerns the juror  
19 may have. We've had a conversation with him, we've  
20 inquired, we've asked and we gave him a specific  
21 alternative.

22 Now, in light of what's happened in this trial is  
23 not being able to move expectations all the time  
24 because I think that they're unreasonable to try to  
25 presume what will happen. You know, I'd object to any

1 further questioning of the juror. We've already given  
 2 the juror a way out and, you know, reasonably I think  
 3 it is likely that if we come back at 1:30 or two that  
 4 we would finish this witness in time for him to get his  
 5 plane, but frankly, Judge that was a decision that they  
 6 made last Thursday when they chose not to call a witness  
 7 who had these constraints knowing that they were  
 8 calling a witness who would take forever and they made  
 9 that. You know at some point they've got to live with  
 10 it and I would object to any further interference in  
 11 regard to this juror who is now counted on and as to  
 12 what it is he can do.

13 THE COURT: Mr. Urick, Ms. Murphy and Ms.  
 14 Gutierrez, this Court has attempted, I think I've bent  
 15 over backwards to accommodate you both with your  
 16 personal schedules, with the Court's schedules, with  
 17 the witness's schedules and I would ask in the future  
 18 where you are aware of some scheduling difficulty and  
 19 the Court makes a special effort to accommodate  
 20 someone, whether that be your witness, a juror or  
 21 anyone else that you provide the Court with all the  
 22 information you have available, so that when I make a  
 23 decision I don't have to continually change it. That  
 24 would have been helpful this morning when I was talking  
 25 to the juror. I even asked, do you have any other

1 questions, but in light of that I'm going to ask that  
2 the juror be -- the jury be brought back in and I will  
3 speak to juror number two whether it differs to him  
4 whether we break at 11:30 to 1:30 or 12:30 to 2:30.

5 (The jury returned to the courtroom.)

6 THE COURT: Juror number two, if you would  
7 just step up here for just one moment. Will the rest  
8 of the jurors please have a seat as you come in. With  
9 the regard to the scheduling issue we just have one  
10 question for you. Does it matter if you break at -- if  
11 we break at 11:30 versus 12:30?

12 JUROR: No.

13 THE COURT: Okay. Very well, you may have a  
14 seat with everyone else. We are going to continue.

15 MR. URICK: Can I ask the Deputy to bring the  
16 witness in at this time?

17 THE COURT: Yes.

18 MR. URICK: Can you ask Mr. Waranowitz to  
19 step back in?

20 THE COURT: Thank you. One moment. All  
21 right. You may proceed, MS. Gutierrez.

22 BY MS. GUTIERREZ:

23 Q Yes, Mr. Waranowitz, we were talking about  
24 what has been referred to as the burial site, do you  
25 recall that?

1 MR. WARANOWITZ:

2 A Yes.

3 Q And that's where you were taken to the area  
4 right off the road that a concrete Jersey wall  
5 barriers, correct?

6 A Yes.

7 Q And, sir, you recall also that you told us  
8 this morning that because of the things that might  
9 effect the strength of the signal and as to how is was  
10 sent or received that winter is generally a better time  
11 to make a call than summer, correct?

12 A Correct.

13 Q And that seasonal difference, sir, you  
14 attributed to that in winter trees that have leaves on  
15 them that fall are likely not to have leaves on them,  
16 correct?

17 A Correct.

18 Q And so, therefore the leaves couldn't be  
19 interference, correct?

20 A Correct.

21 Q Now, sir, when you went to that place and  
22 again, to make sure, you were on the road side of the  
23 Jersey wall barriers, correct?

24 A Yes.

25 Q And you were asked to conduct an origination

1 test, were you not?

2 A Yes.

3 Q And your origination test was essentially  
4 causing a call to be made, correct?

5 A A test call.

6 Q A test call, right?

7 A Yes.

8 Q But a call, right?

9 A Yes.

10 Q Meaning a call to be that would emanate from  
11 your phone that you were using to conduct that test to  
12 have a call go out from your phone to seek whatever  
13 signal it would seek, correct?

14 A Correct.

15 Q Now, sir, have you ever driven through  
16 Lincoln Park before?

17 A Yes, I have.

18 Q And, sir, you are familiar with the road that  
19 goes through there, are you not?

20 A I am familiar with the coverage on the road,  
21 yes.

22 Q No, sir. That wasn't my question.

23 A I am familiar with the road.

24 Q I didn't ask you about the coverage zone, I  
25 asked you, were you familiar with the road.

1 A Yes.

2 Q And what's the name of the road?

3 A I'd have to look it up.

4 Q So, sir, whatever familiarity you have with  
5 the road you don't recall its name?

6 A That is correct.

7 Q That road, however familiar you are with it,  
8 runs the breath of Lincoln Park throughout Baltimore  
9 City, does it not?

10 A I think so, yes.

11 Q And, sir, are you aware of the difficulty any  
12 cell phone user has regardless of phone, regardless of  
13 network of actually speaking on the phone while one is  
14 in Lincoln Park?

15 A Yes.

16 Q And are you aware of the difficulty any cell  
17 phone user, regardless of the phone, regardless of what  
18 network is utilized, has in receiving a phone call if  
19 they at the time are in Lincoln Park?

20 A I'm sorry, could you rephrase that?

21 Q You are aware, are you not, of the difficulty  
22 any cell phone user no matter what cell phone is used  
23 in actually or what network is utilized in actually  
24 receiving a call while one is in Lincoln Park?

25 A I don't know about other networks.



1 Q You only know about your network?

2 A Yes.

3 Q And you are familiar with the difficulty that  
4 your network has for its users, are you not?

5 A Yes.

6 Q And that's not a surprise to you, is it?

7 A No, it is not.

8 Q Because the terrain in Lincoln Park is  
9 difficult, is it not?

10 A Yes, it is.

11 Q It's difficult in fall?

12 A Yes.

13 Q It's difficult in summer?

14 A Yes.

15 Q In spring?

16 A Yes.

17 Q And, in fact, it's difficult in winter, is it  
18 not?

19 A Yes, it is.

20 Q The terrain in Lincoln Park goes to terrain  
21 that is much, much higher than the terrain of the road  
22 who's name you don't remember, is it not?

23 A Yes.

24 Q And there's a major stream or waterway that  
25 runs through Lincoln Park, is there not?

1 A Yes.

2 Q And you're aware that the banks of the  
3 waterway because the terrain is uneven is often times  
4 below what we call street level, referring to the level  
5 of the street who's name you don't remember?

6 A Yes.

7 Q And none of that information is a surprise to  
8 you, is it?

9 A No.

10 Q And notwithstanding that, your network has  
11 been launched now for maybe up to three years. Lincoln  
12 Park as a coverage area, it's always been difficult,  
13 has it not?

14 A That is true.

15 Q All year long?

16 A Yes.

17 Q Regardless of what phones people use?

18 A Yes.

19 Q And that that difficulty has persisted  
20 whether the phone being used is the one making the call  
21 or the phone being used is the one receiving the call,  
22 isn't that correct?

23 A Yes.

24 Q And, sir, that existed back in fall when you  
25 conducted your origination test, did it not?

1 A Yes.

2 Q There's no magic change that altered the  
3 level of difficulty in regard to making or receiving  
4 calls in Lincoln Park during that time, was there?

5 A Between what time frame?

6 Q Whenever you made the test, which day you  
7 can't tell us.

8 A No, there is no big change, other than the  
9 trees.

10 Q Other than the trees. That may have lost  
11 their leaves, correct?

12 A Yes.

13 Q And you, of course, can't tell us whether all  
14 the trees surrounding the burial site lost their leaves  
15 if they had leaves to loose because you never actually  
16 visited the burial site, did you?

17 A I visited the location that I was taken to.  
18 I don't know the status of the leaves.

19 Q You weren't taken outside of the Jersey  
20 walls, were you?

21 A No.

22 Q And you weren't told that the body was buried  
23 inside those Jersey walls, were you? And you didn't  
24 ask for any further information about the burial site,  
25 did you?

1 A No, I did not.

2 Q You didn't inquire as to what day the burial  
3 took place?

4 A I was told the day the burial took place was  
5 the date of the billing records.

6 Q Was the date of the phone calls?

7 A Yes.

8 Q That's what you were told?

9 A Yes.

10 Q And by Ms. Murphy?

11 A Either Ms. Murphy or Mr. Urick.

12 Q You accepted that information, did you not?

13 A Yes.

14 Q The phone numbers indicate phone calls that  
15 occur on the 13th, correct?

16 A I'd have to look at the billing records to  
17 see what the date is on it.

18 Q Well, the billing records that you were asked  
19 to look at were the billing records a certain Nokia  
20 phone, were they not?

21 A Yes.

22 Q Not a -- your phone?

23 A Correct.

24 Q And not of any other kind of phone other than  
25 the Nokia, correct?

1 A Right.

2 Q And you accepted all of the information that  
3 you received, correct?

4 A Yes.

5 Q You didn't receive any other independent  
6 information that established on the billing records the  
7 burial of a body occurred on that date, did you?

8 A From an independent, I mean from another  
9 source?

10 Q From any source, sir?

11 A No.

12 Q And, sir, did you inquire as to what the  
13 weather was?

14 A No, I did not?

15 Q And did you make any attempt to duplicate the  
16 weather conditions --

17 A No.

18 Q That are alleged to have occurred on the date  
19 you were told the body was buried?

20 A No.

21 Q And were you aware that Ms. Murphy or Mr.  
22 Urick based their information as to the date of the  
23 burial from one source, from a man named, Jay Wiles?

24 A I don't know where their source was.

25 Q And did you hear that name?

1 A I have heard the name.

2 Q And you, of course, would have heard that  
3 from Mr. Urick or Ms. Murphy?

4 A Yes.

5 Q You don't have any other source of  
6 information connected to this case, do you?

7 A No.

8 Q Now, sir, you were told by Ms. Murphy  
9 whatever information you were told and you then  
10 conducted an origination test inside the Jersey wall  
11 area that you were shown to, did you not?

12 A Yes.

13 Q And that origination test was to cause a  
14 phone call to be made?

15 A Yes.

16 Q Because you were informed that it is alleged  
17 that whoever had that cell phone, which you didn't  
18 examine, is alleged to have made a call from Lincoln  
19 Park, were you not?

20 A That's my understanding, yes.

21 Q And it was based on that information that you  
22 conducted your test?

23 A Yes.

24 Q And only from that information?

25 A Yes.

1 Q After you conducted your test you reported to  
2 Ms. Murphy that a cell phone dialing out from that  
3 location, meaning what you were pointed out to be the  
4 burial site, would trigger either one site or another  
5 site, were you not?

6 A I thought it was only one site at the burial.

7 Q And that burial site, cell site number that  
8 you've indicated was 689B, correct?

9 A Correct.

10 Q And 689B sits where?

11 A It sits on the building called Govins Manor.

12 Q That's an apartment complex, is it not?

13 A I think it is.

14 Q And that apartment complex I believe as  
15 you've discussed before, is up near the intersection of  
16 Windsor Mill Road and Forest Park Avenue, is it not?

17 A Let me verify that please.

18 Q May I note for the record, sir, that you are  
19 looking through a map book, is that correct?

20 A Yes it is.

21 Q And that map book covers what geographical  
22 area?

23 A The greater Baltimore area.

24 Q Sir, I'm going to show you what's been marked  
25 into evidence as State's Exhibit 17. That is a greater

1 Baltimore area map book, is it not?

2 A Yes.

3 Q It in fact, contains this same cover as the  
4 one you are looking at, does it not?

5 A Yes it does.

6 Q And it's page are also the same?

7 A I don't know.

8 Q You carry that book with you?

9 A Yes, I do.

10 Q As part of your job?

11 A Yes.

12 Q Were you able to locate places with which you  
13 might not be familiar?

14 A Yes.

15 Q And you use it often, do you not?

16 A Yes.

17 Q And you're aware that you're not the only  
18 person that might carry map book with them, are you  
19 not?

20 MR. URICK: Objection.

21 THE COURT: Sustained.

22 BY MS. GUTIERREZ:

23 Q Is that map book issued to you by AT&T?

24 MR. URICK: Objection.

25 THE COURT: Sustained.



1 BY MS. GUTIERREZ:

2 Q The apartment complex -- you are familiar  
3 with the road, Security Boulevard, are you not?

4 MR. WARANOWITZ:

5 A Yes.

6 Q And you are familiar that the road by the  
7 name of Windsor Mill Road does not intersect the  
8 Security Boulevard, are you not?

9 A Yes.

10 Q You are aware that Windsor Mill Road runs at  
11 a distance in a parallel fashion to Security Boulevard,  
12 are you not?

13 A I don't know the extents of Windsor Mill off  
14 hand.

15 Q Windsor Mill Road is not the name of the road  
16 that you were on off of which your Jersey Wall barriers  
17 are, is it?

18 A No, I was down in Lincoln Park.

19 Q Down in Lincoln Park and from what you know  
20 of Windsor Mill Road it's up above Lincoln Park, is it  
21 not?

22 A Yes it is.

23 Q At least on that end of it, correct?

24 A It is higher, yes.

25 Q And you are aware that north Forest Park is a

1 road that is connected at one end to Security Boulevard  
2 and at another end it continues to go through the  
3 intersection at Windsor Mill Park, are you not?

4 A I think so.

5 Q And so it runs perpendicular to Security  
6 Boulevard?

7 A Yes.

8 Q And perpendicular to Windsor Mill Road?

9 A Yes.

10 Q And you are aware that north Forest Park  
11 Avenue does not run through Lincoln Park, are you not?

12 A I'd have to check on that.

13 Q You'd have to check you own maps?

14 A Yes.

15 Q And could you now?

16 A Forest Park Avenue does not appear to run  
17 through Lincoln Park.

18 Q And that's according to your knowledge,  
19 correct?

20 A Yes.

21 Q A map upon which you rely almost on a daily  
22 basis?

23 MR. URICK: Objection.

24 THE COURT: Well, Mr. Urick, you didn't  
25 object to him using the map, so why don't we have the

1 map marked as evidence since it is the map that the  
2 witness is using to testify to and then we'll have in  
3 evidence what it is that the witness is indicating is  
4 his recollection or his information. For the record,  
5 is that the same map that you used during the testing  
6 process that you've outlined for this Court?

7 MR. WARANOWITZ: I believe it was.

8 THE COURT: Very well. Thank you very much.

9 MR. URICK: Do you want a State's number or a  
10 Defense number for the exhibit?

11 THE COURT: Why don't we make a Court's  
12 number and that way we have it as a Court's exhibit  
13 since I'm requesting that it be placed in evidence.  
14 And if you would, Mr. Clerk, just tab the page that the  
15 witness was referring to so that the jurors -- or you  
16 can open it to that page, either way. You may  
17 continue, Ms. Gutierrez.

18 BY MS. GUTIERREZ: Thank you, Your Honor.

19 Q Sir, before the break we spoke about a  
20 location called Woodlawn High School.

21 MR. WARANOWITZ:

22 A Yes.

23 Q And, sir, you are aware of where that is  
24 located?

25 A Yes.

1 Q And that it is located on Woodlawn Drive?

2 A I'd have to verify that.

3 MS. GUTIERREZ: Can we show the witness our  
4 map so that he (inaudible).

5 THE COURT: Is there an object to any of  
6 this? I mean -- no.

7 MS. GUTIERREZ: Objection.

8 THE COURT: Good point, Ms. Gutierrez. Your  
9 objection is overruled. You may ask -- continue to ask  
10 your questions.

11 BY MS. GUTIERREZ: Thank you.

12 Q Can you see that, sir? Can you locate  
13 Woodlawn Drive in the map book?

14 MR. WARANOWITZ:

15 A Woodlawn Drive?

16 Q Yes, sir.

17 A Woodlawn High School?

18 Q Yes, sir.

19 A I've located it.

20 Q Okay. And Woodlawn High School, in fact, is  
21 on Woodlawn Drive, is it not?

22 A It appears to be, yes.

23 Q And it appears to be in your map, correct?

24 A Yes.

25 Q The same map upon which you rely, correct?

1 A Yes.

2 Q And that section of Woodlawn Drive runs  
3 between -- it may run further, but it at least runs  
4 between Security Boulevard and Dogwood Road, does it  
5 not?

6 A What road was that?

7 Q Dogwood, D-O-G-W-O-O-D.

8 A Right, Dogwood intersects Woodlawn Drive.

9 Q And on the other end Woodlawn Drive  
10 intersects Security Boulevard, does it not?

11 A Yes.

12 Q And if one follows Dogwood Road, one  
13 determines that it changes its name below the bridge  
14 that is Forest Park Avenue as it approaches the city  
15 line, does one not?

16 A Yes.

17 Q And the name to which Dogwood Road changes  
18 into is a road by the name of Franklinton, is it not?

19 A Yes.

20 Q And Franklinton is the road that you drove  
21 off of which the Jersey barrier concrete walls existed  
22 when Ms. Murphy took you, isn't that correct?

23 A I believe so, yes.

24 Q And from the map, that's not a great deal of  
25 distance, is it?

1 MR. URICK: Objection.

2 THE COURT: Overruled.

3 MR. WARANOWITZ: It is not far.

4 BY MS. GUTIERREZ:

5 Q No. And Woodlawn High School is not a  
6 location that Ms. Murphy directed you to, was it?

7 MR. WARANOWITZ:

8 A I was taken to Woodlawn High School.

9 Q And did you do an origination test there?

10 A Yes.

11 Q And that was to make a call from that  
12 location?

13 A Yes.

14 Q To determine, what if any, cell site such a  
15 call would trigger, is that correct?

16 A Yes.

17 Q And the cell site that such a call would  
18 trigger on your phone, the Erickson, on the date that  
19 you did the test was what?

20 A It was either 651A or 651C.

21 Q 651A, would that be the orange?

22 A Yes.

23 Q Or not that one, but the pink one, correct?

24 A Correct.

25 Q Is that correct?

1 A Correct.

2 Q Either one or the other, right?

3 A Yes.

4 Q And, sir, the address on that cell phone  
5 tower, the same cell phone tower would be the same  
6 whether it was orange, right?

7 A Yes.

8 Q Or pink, right?

9 A Yes.

10 Q The cell phone tower's address is -- what you  
11 are referring to now is your copy of this blown up  
12 version of State's Exhibit 34, is it not?

13 A Yes.

14 Q And the cell phone, cell site address is 1500  
15 Woodlawn Drive, is it not?

16 A Yes.

17 Q And that same address is whether or not the  
18 call was made by a cell phone in 651A, right?

19 A Yes.

20 Q Or whether or not it was made in 651C, is  
21 that correct?

22 A Yes.

23 Q And if it were made in A on your map which  
24 you prepared it includes more than one designated  
25 neighborhood, does it not?

1 A I'm sorry, could you rephrase that?

2 Q On your map which you prepared, if it were  
3 originated from 651A, A is the orange?

4 A Yes.

5 Q All right. If the cell phone was located in  
6 651, that area would include several different  
7 neighborhoods, would it not?

8 A Neighborhoods, yes.

9 Q Yes. And those neighborhoods would include  
10 several different defined subdivisions and listings of  
11 different neighborhoods, would it not?

12 MR. URICK: Objection.

13 THE COURT: Do you whether that would include  
14 several different neighborhoods in that area or not?

15 MR. WARANOWITZ: Yes it would.

16 BY MS. GUTIERREZ:

17 Q And that would also be true --

18 THE COURT: Overruled.

19 BY MS. GUTIERREZ:

20 Q If the cell phone, your Erickson cell phone  
21 were used to make a call if it had been located  
22 anywhere in 651C, that's the pink, right?

23 MR. WARANOWITZ:

24 A Right.

25 Q And that whole area, that pink also includes



1 several different neighborhoods, does it not?

2 A Yes.

3 Q Those being residential, correct?

4 A Residential and commercial.

5 Q And commercial, but does include residential,  
6 correct?

7 A Yes.

8 Q And includes a broader geographical range  
9 then does A, does it not?

10 A The coverage does go off the map.

11 Q So, in regard to what you call coverage,  
12 again, you are referring to the coverage that one would  
13 expect in an ideal situation to include an area much  
14 larger than just the location of this cell site,  
15 correct?

16 A Yes.

17 Q And the coverage area, although this be the  
18 ideal that you drew for us to help you explain, in  
19 reality doesn't look like this, does it?

20 MR. URICK: Objection.

21 THE COURT: Overruled.

22 MR. WARANOWITZ: It doesn't look like that,

23 no.

24 BY MS. GUTIERREZ:

25 Q Now, sir, in regard to the apartment building

1 that's located near the intersection of Windsor Mill  
2 Road and Forest Park Avenue, you call that apartment  
3 complex?

4 MR. WARANOWITZ:

5 A No, we call that Govins Manor.

6 Q Okay. You recalled that one, correct?

7 A Yes.

8 Q The cell site are antennas on top of the  
9 apartment complex, correct?

10 A Yes.

11 Q And the apartment complex contains more than  
12 one building, does it not?

13 A I don't recall.

14 Q But the antenna is on top, is it not?

15 A Yes.

16 Q And, sir, do you recall how high, how many  
17 stories the apartment complex is?

18 A I don't recall.

19 Q You didn't make a notation of that, did you?

20 A No.

21 Q And, sir, the apartment complex upon which  
22 your site antennas are covers almost, in addition to  
23 other areas, almost the entirety of the western edge of  
24 Lincoln Park, does it not?

25 A Correct.

1 Q Now that coverage area would exist whether or  
2 not it actually covers, would it not?

3 A I understand your question.

4 Q Well, you and your company designate what  
5 under ideal circumstances that cell site, wherever it  
6 may be, should cover in three directions, correct?

7 A We design within consideration of the  
8 terrain. We do not design to an ideal diagram that I  
9 demonstrated here.

10 Q And so the original design of the network  
11 would have expected that that was the best location for  
12 the site to cover, would it not?

13 A Yes.

14 Q And notwithstanding that hopeful expectation,  
15 actual coverage, meaning receipt and sending of calls  
16 throughout Lincoln Park still remains difficult, does  
17 it not?

18 A Yes it does.

19 Q And that's because of the terrain, correct?

20 A Yes.

21 Q And that's in spite of your expectation that  
22 a tower on an apartment building of some undetermined  
23 height would provide adequate coverage for an area that  
24 you knew to designated as Lincoln Park, correct?

25 A Well, we do take into consideration the

1 limitations of a cell site system.

2 Q Sir, my question was not withstanding your  
3 expectation in the design of your network, that you  
4 were selecting the optimum site for your cell tower to  
5 receive and send cellular signals seen, to be seen by  
6 all manner of cellular phones that the coverage area  
7 designated was expected to cover what you so  
8 designated. The difficulties in sending and receiving  
9 phone calls throughout the coverage area that includes  
10 the designated parts of Lincoln Park continue to  
11 problematical, do they not?

12 MR. URICK: Objection.

13 THE COURT: Sustained. You do not have to  
14 answer that question and Counsel, if you would like to  
15 restate it and phrase it, not in a compound fashion and  
16 in a different tone the Court might consider it.

17 MS. GUTIERREZ: I appreciate that offer,  
18 Judge, but I will pass.

19 THE COURT: Very well.

20 BY MS. GUTIERREZ:

21 Q Mr. Waranowitz, in regard to whatever  
22 validity your test has, all it involved was your  
23 attempt to calls to be made, lets take the Jersey wall  
24 area. A call to be made from a particular location,  
25 correct?

1 MR. WARANOWITZ:

2 A Yes.

3 Q And then your test included notating what  
4 cell site tower or cell site it triggered when you made  
5 that call?

6 A Yes.

7 Q And that was on your Erickson phone, correct?

8 A Yes.

9 Q Under circumstances of terrain or weather or  
10 leaves that you didn't investigate.

11 A Yes, with an explanation.

12 Q Okay. You just showed up at the location you  
13 were shown to, right?

14 MR. URICK: Objection.

15 THE COURT: Objection to the last question or  
16 to the previous witness not being able to complete his  
17 answer to the last -- the previous question.

18 MR. URICK: Not being able to complete his  
19 answer.

20 THE COURT: All right. First, Mr.  
21 Waranowitz, you said yes with an explanation. Can you  
22 complete your explanation?

23 MR. WARANOWITZ: Yes.

24 THE COURT: Go right ahead.

25 MR. WARANOWITZ: We do not take weather into

1 consideration in our network design.

2 BY MS. GUTIERREZ:

3 Q So the answer to my question is yes, you  
4 didn't do anything to match any conditions to any date,  
5 correct?

6 MR. WARANOWITZ:

7 A No, I did not.

8 Q And you didn't even attempt to do so, did  
9 you?

10 A No, with an explanation.

11 Q And you didn't make --

12 MR. URICK: Objection.

13 THE COURT: Well, Mr. Waranowitz, one moment,  
14 Counsel. What is your explanation?

15 MR. WARANOWITZ: The 689B is the strongest  
16 and in most cases the only site that gets in that area  
17 regardless of where you are located. Only 689B gets  
18 into that burial area strong enough to make a phone  
19 call.

20 THE COURT: I'm sorry, I didn't hear the end  
21 of that.

22 MR. WARANOWITZ: Strong enough to make a  
23 phone call.

24 THE COURT: Strong enough to make a phone  
25 call. Very well, your next question.

1 BY MS. GUTIERREZ:

2 Q So, if you can't reach that cell site you're  
3 not able to make a cell phone call, right?

4 MR. WARANOWITZ:

5 A That is correct.

6 Q And, sir, as you've told us before, different  
7 phone perform differently, correct?

8 A Yes.

9 Q And part of what that perform differently in,  
10 is related to what you have referred to is the ability  
11 of the phone to see the signal, correct?

12 A Yes.

13 Q The seeing of the signal refers to the signal  
14 that emanates from the tower, correct?

15 A Yes.

16 Q And that varying phones of varying quality  
17 would be able to see or not see the phone, correct?

18 A Correct.

19 Q And the difference in phones might mean that  
20 at sometimes a certain phone might see a signal,  
21 correct?

22 A Yes.

23 Q At other times that phone might not see the  
24 same signal it was able to see at some other designated  
25 time?

1 A Time ~~probably~~ wouldn't be a factor.

2 Q Because ~~time~~ isn't a factor you, of course,  
3 made no effort to conduct your test when the alleged  
4 calls that you were conducting this test to make an  
5 opinion actually occurred, did you?

6 A I'm sorry, could you say that again?

7 Q You didn't attempt to construct your test  
8 according to the ~~times~~ that your own phones records  
9 indicated certain calls were made, did you?

10 A My phone records?

11 THE COURT: Mr. Waranowitz, if you can't  
12 answer a question say, I do not understand the  
13 question, I'm sorry, I can't answer the question and  
14 then Counsel will rephrase the question, okay? At this  
15 point I assume you can't answer the question?

16 MR. WARANOWITZ: I don't understand the  
17 question.

18 THE COURT: You don't understand the  
19 question. Very well, your next question.

20 BY MS. GUTIERREZ:

21 Q When you reviewed the phone records of the  
22 certain cellular phone, did you not?

23 MR. WARANOWITZ:

24 A Yes.

25 Q And you understood that those phone records



1 belonged to an AT&T wireless customer, did you not?

2 A Yes.

3 Q Can I see the file? I think they're 31.

4 Yes. Thank you. May I approach the witness?

5 THE COURT: Yes, you may.

6 BY MS. GUTIERREZ:

7 Q I'm going to show you what's already been  
8 marked as State's Exhibit 31. Those are the phone  
9 records that you reviewed, are they not?

10 MR. WARANOWITZ:

11 A They appear to be, yes.

12 Q And those phone records are produced for the  
13 company you work for, right?

14 A Yes.

15 Q And they indicate there the phone records for  
16 a certain cell phone number, do they not?

17 A Yes.

18 Q And they indicate that that phone is billed  
19 to an account number with the name Balial Alned, does  
20 it not?

21 A This does show that.

22 Q Okay. And the phone number to which these  
23 records refer is listed as area code, 443-253-9023,  
24 does it not?

25 A Yes it does.

1 Q And attached to those pages, sir, are three  
2 pages on which are listed: dates, times, duration of  
3 call, are there not?

4 A Yes.

5 Q And you expect based on your experience for  
6 those records to be accurate, do you not?

7 A Yes.

8 Q And you're aware of these records as part of  
9 the way to do your so called, origination test, were  
10 you not?

11 A Yes.

12 Q And were you asked to conform your test in  
13 any way to the times in which calls were alleged to  
14 have been made?

15 A Time.

16 Q Do you not understand that question, sir?

17 A Please rephrase it.

18 Q Were you asked by anyone to conform your  
19 test, i.e., the structure, your test in a way that  
20 conformed to the information concerning actual calls  
21 that were made?

22 A No, I was not.

23 Q And you didn't do so, did you?

24 A No.

25 Q And you were not asked to structure your test

1 to conform to the order in which calls were made, were  
2 you?

3 A No.

4 Q And you didn't do so, did you?

5 A No.

6 Q Now, in regard to what you can tell us is  
7 from your Erickson phone, whatever model that may be,  
8 when you attempted to originate a call, whatever day  
9 you did so in the fall of 1998 it triggered that cell  
10 site up by the intersection of Windsor Mill Road and  
11 north Forest Park, did it not?

12 A I'm sorry, could you use shorter questions?

13 Q Sir, in the middle of that Jersey wall  
14 section where you were directed to by Ms. Murphy, you  
15 were asked to conduct the test that you keep calling  
16 origination test, correct?

17 A Yes.

18 Q And that origination test meant that you  
19 caused a phone call to be made from you Erickson phone,  
20 correct?

21 A Yes.

22 Q Not a Nokia phone, correct?

23 A Yes.

24 Q Of any model, correct?

25 A Yes.

1 Q And when you caused that phone to make a  
2 phone call based on whatever you did then, whatever day  
3 that may have been it triggered the cell site that's  
4 located on the apartment building, of indeterminate  
5 height that is located where the intersection of  
6 Windsor Mill Road and north Forest Park Avenue,  
7 correct?

8 A Yes.

9 Q Your origination test can't tell us where the  
10 cell phone, whatever model or make it may have been  
11 was, physically when it made a call on January 13th,  
12 '99, can it?

13 A No, it can not.

14 Q And it can only tell us that if it was where  
15 you were standing, on whatever day it was you were  
16 standing inside those Jersey wall embankments, that you  
17 would expect it to trigger that same cell site on top  
18 of the apartment building, correct?

19 A Yes.

20 Q But you can't tell us if it did, can you?

21 A It did.

22 Q Well, sir, let us backtrack here. All you  
23 can tell us is what your cell phone did, correct?

24 A Correct.

25 Q On whatever day you did something with your

1 cell phone, correct?

2 A Yes.

3 Q You can't tell us what another cell phone did

4 on any date, can you?

5 A I can tell some information.

6 Q You can tell us what you would expect a cell

7 phone to do if it was in a certain place, correct?

8 A Yes.

9 Q But you can't tell us it did that, correct?

10 A No.

11 Q Whether some other cell phone that was a

12 Motorola was involved, correct?

13 A I'm sorry, say that question again.

14 Q Whether or not the cell phone involved was a

15 Motorola, correct?

16 A I don't understand what you're referring to.

17 Q Well, sir, you used an Erickson, right?

18 A Yes.

19 Q And based on what your cell phone did or does

20 you'd expect all other similar Ericksons to act the

21 same way, right?

22 A Yes.

23 Q If they were in the same place, correct?

24 A Correct.

25 Q But notwithstanding, notwithstanding your

1 high expectations for the performance of phones, you've  
2 come across bad phones, have you not?

3 A Yes.

4 Q Phones that do not perform according to your  
5 expectations about them, correct?

6 A Yes.

7 Q Because phones don't always perform according  
8 to specification?

9 A Yes.

10 Q Your model number for your Erickson phone is  
11 what, sir?

12 A I don't recall the number. Oh, the model  
13 number is ED398.

14 Q And, sir, would it be fair to assume if there  
15 are more phones at that same manufacture by Erickson?

16 A Yes.

17 Q And, sir, all you can tell us in regard to  
18 other similar model number Erickson phone, is that you  
19 would expect it to perform like yours, correct?

20 A Yes.

21 Q But it may not, correct?

22 A Yes.

23 Q Because it could be a bad quality Erickson of  
24 that number, right?

25 A Yes.

1 Q And, sir, where ever another phone was that  
2 made a call that you are trying to duplicate the input,  
3 if it made a call in a specific location within a  
4 designated A, B or C sector, if it were in C it would  
5 trigger the same site whether it was at the northern  
6 most portion of C, correct?

7 A Yes.

8 Q Or the southern most portion?

9 A Yes.

10 Q Correct? Or the middle?

11 A Yes.

12 Q Or the western most edge?

13 A Yes.

14 Q Whatever one of the numerous neighborhoods,  
15 it might exist, it would still signal the same cell  
16 site, correct?

17 A Yes.

18 Q So, all that you can tell us about is what  
19 your phone, whatever model it was, did when you made a  
20 call at a location you were directed to, right?

21 A Yes.

22 Q You can not tell us where the cell phone that  
23 made any call on that exhibit, I believe is still in  
24 your hands, was at any point any call was made, can  
25 you?

1 A No.

2 Q Did you hesitate (inaudible)?

3 A Yes, I did.

4 Q But your answer is no, isn't it?

5 A My answer is no, I can not tell where a cell  
6 site -- a cell phone is when it originates a call based  
7 on the billing records.

8 Q And your test can't tell us where the cell  
9 phone was physically when the call from the line was  
10 made?

11 A No, it can not.

12 Q And it can only tell us that where ever it  
13 was, when it made this call that it triggered the  
14 signal that you've located as cell site L651C, correct?

15 A Correct.

16 Q And 651C would be the purple blob on the  
17 right hand side --

18 A No.

19 Q Of 651?

20 A No.

21 Q It would be the pink?

22 A Correct.

23 Q Okay. B is the purple, right?

24 A Yes.

25 Q So that that cell phone, that was utilized in



1 describing call one could have been anywhere, correct?

2 A Yes.

3 Q And it still would have signaled the same  
4 cell site?

5 A Yes.

6 Q And your test can't help us with picking a  
7 spot where it might have been, correct?

8 A My test can show that if you were in a  
9 certain location, with a certain phone, that you would  
10 originate on a certain cell site.

11 Q And the certain location that you did this  
12 originating test was selected by Ms. Murphy, correct?

13 A Yes.

14 Q You didn't select any location to make a  
15 certain call, correct?

16 A Correct.

17 Q And your certain phone call made a designated  
18 location can't tell us where this phone was when the  
19 call was made, can it?

20 A No, it can not.

21 Q It can only tell us that where ever it was it  
22 triggered this cell site tower signal, correct?

23 A Correct.

24 Q And that would hold true for every single one  
25 of these entries, would it not?

1 A Correct.

2 Q And, sir, it would be very easy, the cell  
3 phone I showed you that you opened up and identified as  
4 a Nokia, sir?

5 A Yes.

6 Q That cell phone, other than what you did on  
7 the stand, you never really examined?

8 A No, I have not examined that particular  
9 phone.

10 Q And you didn't conduct any test on that one,  
11 correct?

12 A No, I did not.

13 Q And the fact that may have examined other  
14 Nokia phones at other times, which you may or may not  
15 remember, only tells you what you might expect a  
16 similar model of the Nokia to act like?

17 A Yes.

18 Q And to act like means, how it performs,  
19 correct?

20 A Yes.

21 Q And that includes how it sees signals,  
22 correct?

23 A Yes.

24 Q Because different phones, though they may be  
25 of the same model, of the same manufacturer may perform

1 outside of what one it expects it to perform, correct?

2 A Yes.

3 Q And some phones, although it may come from  
4 the same manufacturer's batch and model number, some  
5 phones might see a signal and other phones might not,  
6 correct?

7 A Correct.

8 Q And if a phone doesn't see a signal then it  
9 doesn't trigger, correct?

10 A Correct.

11 Q And whether a phone is a good performance  
12 phone or a bad performance phone doesn't add to your  
13 ability to tell where it was when it sent out a signal,  
14 does it?

15 A No.

16 Q And your test can't help us with that, can  
17 it? Can it?

18 A I disagree.

19 Q Sir, your test -- lets deal with 651,  
20 correct? And lets us assume for the purpose of this  
21 question, that the cell tower is located in the middle  
22 of the bottom circle of the five, okay? Can you assume  
23 that?

24 A Yes.

25 Q All right. If a cell phone is physically

1 located in it's entirety, somewhere inside the  
2 geographical area outlined and what appears in the hot  
3 pink. That's L5 -- 651C, right?

4 A Yes.

5 Q You would expect that cell phone to trigger  
6 that signal inside the five, correct?

7 A Correct.

8 Q And for your records to be able to tell us  
9 that, correct?

10 A Yes.

11 Q But your records, based on receipt of the  
12 signal can't tell us exactly where the cell phone was  
13 when it made that, can it?

14 A No, it can not.

15 Q And it can't tell us, for instance, if it's a  
16 good performance phone, correct?

17 A No.

18 MR. URICK: Objection.

19 BY MS. GUTIERREZ:

20 Q Or a bad performance phone, correct?

21 MR. WARANOWITZ:

22 A No.

23 Q And from your expertise, what the records can  
24 tell us is that you would expect the phone that made  
25 the call, that triggered the signal inside the five to

1 be located somewhere with it appears pink, right?

2 A Yes.

3 Q But no way can it tell us exactly where it  
4 was, can it?

5 A No.

6 Q Or give us an address to name the place where  
7 the cell phone was, correct?

8 MR. URICK: Objection.

9 THE COURT: This question has been asked and  
10 answered and Mr. Waranowitz I'll let you answer it one  
11 more time and your answer to that question is, it can't  
12 give you an address of where the phone was, can it?

13 MR. WARANOWITZ: No, it can not give you an  
14 address of where the phone was.

15 THE COURT: Very well. Your next question.

16 BY MS. GUTIERREZ:

17 Q On any day, right?

18 MR. WARANOWITZ:

19 A On any day.

20 Q Now, sir, when you made the origination test  
21 you said you caused a phone call to be made, correct?

22 A Yes.

23 Q You didn't have to dial the phone numbers  
24 into the phone correct?

25 A I dialed a code.

1 Q You dialed a code which is not the phone  
2 number, correct?

3 A It could be considered a phone number.

4 Q Okay. But it wasn't the phone number that  
5 you were dialing, right?

6 A It does the same thing a phone number does.

7 Q It does the same thing meaning it triggers  
8 the signal at the cell site, correct?

9 A Yes.

10 Q But you weren't asked when you did your  
11 origination test to actually dial the same numbers that  
12 you knew to have been dialed back on January 13th,  
13 1999?

14 MR. URICK: Objection.

15 BY MS. GUTIERREZ:

16 Q Were you?

17 THE COURT: Overruled.

18 MR. WARANOWITZ: No, with an explanation.

19 BY MS. GUTIERREZ:

20 Q Well, my question only asked for a yes or  
21 not.

22 MR. URICK: Objection.

23 THE COURT: Overruled or sustained. I'm  
24 going to allow the witness to explain his answer and if  
25 you would explain your answer. You do not have to

1 answer a yes or no and you don't have to say with an  
2 explanation, just answer the question would be fine.

3 MR. WARANOWITZ: Yes, ma'am.

4 THE COURT: You may now provide your answer.

5 MR. WARANOWITZ: The phone number that you  
6 are dialling on a cell phone does not effect what cell  
7 site you originate on, whether it's long distance,  
8 local or your voice mail. It does not effect how you  
9 access that cell site.

10 BY MS. GUTIERREZ:

11 Q Well, sir, so the answer to my question is  
12 no, you weren't asked to dial these numbers?

13 MR. WARANOWITZ:

14 A No, I was not asked to dial those numbers.

15 Q And you didn't, did you?

16 A No.

17 Q You didn't dial call number one to that  
18 number, did you?

19 A No, it was not necessary.

20 Q And you didn't dial -- I didn't ask you that,  
21 sir.

22 THE COURT: Ms. Gutierrez.

23 BY MS. GUTIERREZ:

24 Q Did you dial --

25 THE COURT: Ms. Gutierrez, one moment. Your

1 answer, sir, was, I was not asked to do that, is that  
2 what you said?

3 MR. WARANOWITZ: That is correct. I was not  
4 asked to do that and it is not necessary to do that.

5 BY MS. GUTIERREZ:

6 Q It's not necessary to conduct your  
7 origination test, correct?

8 THE COURT: Do you understand the question?

9 MR. WARANOWITZ: Could you ask that again  
10 please?

11 BY MS. GUTIERREZ:

12 Q You answered it wasn't necessary to dial the  
13 number I asked you if you dialed correct, right?

14 MR. WARANOWITZ:

15 A Right.

16 Q And your answer was you didn't dial it,  
17 right?

18 A No.

19 Q Well, did you dial it or didn't you?

20 A No, I did not dial it.

21 Q All right. And then you said you needed to  
22 explain why not, correct?

23 A Yes.

24 Q And you said it wasn't necessary, right?

25 A It was not necessary to dial those specific



1 phone numbers.

2 Q So, your answer to my question is, yes. You  
3 then said, it wasn't necessary, right?

4 MR. URICK: Objection.

5 THE COURT: The objection is sustained. Mr.  
6 Waranowitz, we're sitting here, why don't you tell us  
7 why it wasn't necessary.

8 MR. WARANOWITZ: I just did.

9 THE COURT: No, tell us why it wasn't  
10 necessary for you not to dial the numbers. Ms.  
11 Gutierrez is asking you that question, if you could  
12 just answer it.

13 MR. WARANOWITZ: It is not necessary to dial  
14 those phone numbers because they do not effect what  
15 cell site you originate on.

16 THE COURT: All right. Very well. Next  
17 question.

18 BY MS. GUTIERREZ:

19 Q So, the only impact would have been to your  
20 origination test, right?

21 MR. WARANOWITZ:

22 A Impact?

23 Q Of dialing or not dialing the numbers would  
24 have been to your origination test, correct?

25 A I'm sorry, I don't understand.

1 Q Mr. Waranowitz, lets go back to the  
2 triangular --

3 MR. URICK: Objection.

4 BY MS. GUTIERREZ:

5 Q Up here on call site 651, correct?

6 THE COURT: The objection is overruled. The  
7 witness has indicated he does not understand Counsel's  
8 question, so Counsel may clarify the question and Mr.  
9 Waranowitz, if you would follow her direction and  
10 again, if you don't understand her question, just say,  
11 I do not understand the question.

12 MR. WARANOWITZ: Yes, Your Honor.

13 THE COURT: All right. Very well.

14 BY MS. GUTIERREZ:

15 Q The test that you performed, you performed it  
16 you told us in may different locations, correct?

17 MR. WARANOWITZ:

18 A Yes.

19 Q And the test that you performed was the same  
20 at every location, was it not?

21 A Yes.

22 Q And it was always performed under your phone,  
23 correct?

24 A Yes.

25 Q Your Erickson phone, correct?

1 A Yes.

2 Q Not a Nokia, correct?

3 A Correct.

4 Q Not a Nokia of this certain model, correct?

5 A Correct.

6 Q And the purpose when you performed that test  
7 was to determine when you performed the test on the day  
8 that you did so, what if any cell site it would signal,  
9 correct?

10 A Yes.

11 Q It was the only purpose of your test,  
12 correct?

13 A Yes.

14 Q Now, you never dialed the number, 869-9498 --

15 MR. URICK: Objection.

16 BY MS. GUTIERREZ:

17 Q Did you?

18 THE COURT: Overruled.

19 MR. WARANOWITZ: No, I did not dial that  
20 number.

21 BY MS. GUTIERREZ:

22 Q And you weren't asked to do so, were you?

23 MR. WARANOWITZ:

24 A No, I was not asked to do so.

25 Q By anyone?

1 A By anyone.

2 Q But when you didn't dial 340-7374, did you?

3 A No.

4 Q And if you would look at your sheet, you

5 didn't dial the phone number listed in four, did you?

6 MR. URICK: Objection.

7 MR. WARANOWITZ: No.

8 THE COURT: Overruled.

9 BY MS. GUTIERREZ:

10 Q Or in five?

11 MR. WARANOWITZ:

12 A No.

13 Q Or in six?

14 A No.

15 Q Or in seven?

16 A No.

17 Q Or in eight?

18 A No.

19 Q Or in nine?

20 A No.

21 Q Or in twelve?

22 A No.

23 Q Thirteen?

24 A No.

25 Q Seventeen.

1 A No.

2 Q Eighteen?

3 A No.

4 Q Twenty-two?

5 A No.

6 Q Twenty-three, twenty-four, twenty-five?

7 A No.

8 Q Twenty-six?

9 A No.

10 Q Thirty?

11 A No.

12 Q Thirty-one through thirty-four?

13 A No.

14 Q You were never asked to dial any of those

15 numbers, correct?

16 A Correct.

17 Q And you did not do so, correct?

18 A Correct.

19 Q And you didn't dial any of your calls at any

20 of the locations you were taken by Ms. Murphy at any of

21 the specific times listed in call time, were you?

22 A No.

23 Q No. After you completed all of the tests at

24 the locations that don't appear on the chart, after you

25 completed them you had reported all of your findings to

1 Ms. Murphy because she was there in the car with you,  
2 right?

3 A I reported them as I saw them, yes.

4 Q Okay. So, as you went along, you gave her  
5 the heads up, right?

6 A Yes.

7 Q And at no time during that day, at any time  
8 did you tell Ms. Murphy, I did this test, Ms. Murphy,  
9 and I can tell you --

10 THE COURT: Ms. Gutierrez, at this point  
11 we're going to interrupt because I note that it is now  
12 12:30. I'm going to take a lunch and recess at this  
13 time and you will come back after lunch and continue  
14 with this questioning. Ladies and gentlemen, we have a  
15 number of things that are going to be taken place at  
16 lunch time. This Court will be tied up at lunch time  
17 as well.

18 So, we're going to recess from this time until  
19 2:15 at which time we will return with the continued  
20 questioning of this witness. Ladies and gentlemen, as  
21 you go out please leave your note pads face down.  
22 Please do not discuss the testimony of this witness or  
23 anyone else, amongst yourselves or with anyone. Your  
24 note pads will be locked away by the Clerk and returned  
25 to your chairs after the lunch and recess. Please go

1 with Deputy Church and he will take you back to the  
2 jury room. I'm sorry. Yes, you may go over to the  
3 jury assembly room any time now -- between now and  
4 1:30, they are ready for you. Any time between now and  
5 1:30 you may go to jury assembly and be paid. They're  
6 expecting you to come over any time between now and  
7 1:30. It's up to you. You can go first or not, it's  
8 up to you.

9 MS. GUTIERREZ: The courtroom will be locked  
10 again?

11 THE COURT: The courtroom will be locked  
12 during the recess.

13 MS. GUTIERREZ: Thank you.

14 THE COURT: If Counsel will wait one moment  
15 until all of out jurors leave.

16 (The jury was excused from the courtroom.)

17 THE COURT: Mr. Waranowitz, I understand you  
18 have made changes or adjustments to your travel  
19 schedule?

20 MR. WARANOWITZ: Yes.

21 THE COURT: To depart at 3:30. I need to  
22 advise you I have no idea what time you're going to  
23 finish. I do not want you to be misled in anyway that  
24 I know or am aware of what time you will be done.  
25 Counsel has the right to ask you questions and I can't

1 anticipate or expect what that will entail.  
 2 Unfortunately, from 12:30 to two o'clock at least, this  
 3 Court is tied up in a sentencing hearing involving  
 4 three other judges. I am already late, I am going  
 5 directly there. We will resume promptly at 2:15 at  
 6 which time we will continue with the questions of Ms.  
 7 Gutierrez. Also let me advise you during the break,  
 8 you may not discuss your testimony with either the  
 9 State's attorneys or the Defense. They should have no  
 10 conversations with you regarding your testimony and you  
 11 should have no conversations with anyone else. You are  
 12 a sequestered witness, do you understand?

13 MR. WARANOWITZ: Yes, Your Honor.

14 THE COURT: Very well. This Court then  
 15 stands in recess until 2:15.

16 MR. URICK: Your Honor, before we go off the  
 17 record we would just like to note for the record that  
 18 Ms. Gutierrez pounded very heavily on Ms. Murphy's  
 19 chair at their last questioning in her questioning and  
 20 there was no reason for that display towards Ms.  
 21 Murphy.

22 THE COURT: Ms. Gutierrez, I'm going to ask  
 23 that you not pound on any chairs whether it be your  
 24 chair or anyone else's chair. I would also ask that  
 25 you will have an absolute right to conduct cross



1 examination, but I'd ask that you adjust your tone with  
2 this witness. This witness is a witness subpoenaed by  
3 the State. He is not here of his own accord, he is  
4 already as you know, being inconvenienced as to his  
5 work or personal schedule.

6 That has nothing to do with you, but I'd ask that  
7 common courtesy be afforded the witness and I'd ask  
8 that of all witnesses that come into this Court.  
9 However, you have absolute right to cross examine the  
10 witness and I'd ask that you continue to do that, but I  
11 would just ask that you be mindful of those things and  
12 I would ask that all of us be mindful of common  
13 courtesy. Not only with the witnesses, with the jurors  
14 and with each other, and with that this Court will  
15 stand in recess until 2:15.

16 BAILIFF: All rise.

17 (Lunch recess.)

18 (Jury not present upon reconvening.)

19 THE COURT: We have called for the Defendant  
20 to be brought up, he should be here shortly. Ms.  
21 Gutierrez, your client should be here shortly. Once he  
22 is settled in we will have the jury brought back.

23 MS. GUTIERREZ: Judge, can we approach the  
24 bench?

25 THE COURT: Certainly, please come up. Is

1 this something we need to discuss with your client?

2 (Counsel approached the bench and the  
3 following ensued:)

4 MS. GUTIERREZ: No, I don't think so.

5 THE COURT: Is it a scheduling matter?

6 MS. GUTIERREZ: Sort of.

7 THE COURT: You're sure you don't need your  
8 client here?

9 MS. GUTIERREZ: I don't need my client here.  
10 Judge, the rest of my cross is not going to be that  
11 long on this witness. Over the break I went and I ate  
12 lunch, I don't know if the Court's aware, I'm a  
13 diabetic?

14 THE COURT: Are you okay?

15 MS. GUTIERREZ: Well, I'm not sure. I don't  
16 -- I had lunch, things seemed to be fine. I was going  
17 to say something to the Court anyway because yesterday  
18 eating so late is something that throws me off --

19 THE COURT: Okay.

20 MS. GUTIERREZ: And I should have stopped and  
21 I didn't, I felt fine, but often times I just have bad  
22 reactions a day or so later. I was fine, I left, we  
23 walked back and by the time I got in the building I was  
24 overwhelmed and had to vomit. I didn't feel like  
25 walking up to my office where my blood sugar tester is,

1 so I would like to do is to finish cross of this  
2 witness which I don't think will take long, let them do  
3 whatever redirect and then ask the Court to take a  
4 short break. I would like to walk up to my office --

5 THE COURT: That's fine.

6 MS. GUTIERREZ: And test my blood sugar and  
7 see if there's anything I can do, my medication is up  
8 there and see if I can clear it up.

9 THE COURT: That will be fine. I have no --  
10 you have no problem with that, do you?

11 MR. URICK: No.

12 THE COURT: And I would tell you that if you  
13 want depending on what is going on we can stop.

14 MS. GUTIERREZ: Yes, I know, but I'm not -- I  
15 just don't know and it's early enough that if I walk up  
16 it may pass and I'll be fine.

17 THE COURT: Fine.

18 MR. URICK: Shouldn't we have the Defendant  
19 present?

20 THE COURT: I really would like the Defendant  
21 here.

22 MS. GUTIERREZ: Okay. All right.

23 THE COURT: When it is scheduled --

24 MS. GUTIERREZ: We can do it afterwards or  
25 something.

1 THE COURT: To the witnesses or something.

2 MR. URICK: What are your plans for Friday  
3 with the juror who wants to go on the weekend trip?

4 THE COURT: Well, today is?

5 MR. URICK: Wednesday.

6 MS. GUTIERREZ: Wednesday.

7 MR. URICK: Tomorrow is Thursday.

8 THE COURT: Tomorrow is Thursday, we're not  
9 going to finish by tomorrow. So, why don't you guys  
10 think about --

11 MS. GUTIERREZ: I need to talk to my client -

12 THE COURT: Yeah, talk to him.

13 MS. GUTIERREZ: but I don't think he'll have  
14 any objection to that.

15 THE COURT: And the choice would be, we  
16 continue through Friday or we stop and we continue on  
17 Monday.

18 MS. GUTIERREZ: Right.

19 THE COURT: Just --

20 MR. URICK: We have --

21 THE COURT: You guys think about what you  
22 want to do. Actually, he's here. So, why don't we  
23 just bring him up.

24 MS. GUTIERREZ: Mr. Syed, come up for a  
25 minute.

1 THE COURT: Mr. Syed, we were discussing  
2 scheduling for Friday. We have a juror that has  
3 indicated that they had a vacation planned and they  
4 would be departing at 6:00 a.m. on Friday. We --

5 MS. GUTIERREZ: It's juror number twelve, is  
6 it?

7 THE COURT: I thought it was six.

8 MR. URICK: I think six.

9 MS. GUTIERREZ: Okay.

10 THE COURT: And that juror doesn't -- has  
11 planned to leave at 6:00 a.m. on Friday and we weren't  
12 sure whether we were going to have to sit on Friday  
13 depending upon how the case progressed. What Counsel  
14 and I are now about to discuss, we were waiting for  
15 you, is what the State and the Defense's pleasure is.

16 The choices are as follows: we can continue on  
17 Friday which would mean that juror number six would be  
18 struck from the panel by agreement, alternate number  
19 would take that seat because we can't take testimony  
20 with a missing juror and juror number six would be  
21 excused or we can stop the testimony altogether on  
22 Friday and resume with the testimony on Monday when all  
23 the jurors that are currently in the panel will be  
24 present.

25 So, those are the choices. You can talk to your

1 attorney and indicate your feeling one way or another.  
2 Have you already discussed this and are prepared to  
3 tell me what your choice is?

4 MR. URICK: I think we have a slight  
5 preference not to sit Friday.

6 MS. MURPHY: Our witnesses need to go to  
7 work.

8 MR. URICK: And also being in Felony  
9 narcotics, I've got so much other work, another day out  
10 of Court would give me a chance to get caught up.

11 THE COURT: Well, maybe we can do something  
12 by agreement. It would be nice if we could do it by  
13 agreement then that way --

14 MR. URICK: We're not going to disagree one  
15 way or the other. We would prefer Friday.

16 THE COURT: Okay. Whichever --

17 MS. GUTIERREZ: Judge, we would like to delay  
18 the decision making until the jury comes out and we an  
19 picture --

20 THE COURT: Who?

21 MS. GUTIERREZ: Right, who's who and --

22 THE COURT: Okay.

23 MS. GUTIERREZ: And then so if we could come  
24 up at the end of this witness we could then give you  
25 our answer --

1 THE COURT: Very well.

2 MS. GUTIERREZ: In regard to that.

3 THE COURT: That will be fine. We'll start  
4 as soon as we can have the jury brought back. Thank  
5 you.

6 (Counsel and Defendant returned to the trial  
7 tables and the following ensued:)

8 MR. URICK: Should we ask the witness to step  
9 back in at this time?

10 THE COURT: Yes, please. And I'll have --  
11 Deputy Church, if you could have the witness, Mr.  
12 Waranowitz come back in the courtroom.

13 (A bell sounded.)

14 THE COURT: That's probably the jury telling  
15 us that they're ready.

16 (The jury returned to the courtroom.)

17 THE COURT: Please be seated everyone. Ms.  
18 Gutierrez, you may continue.

19 MS. GUTIERREZ: Yes, Your Honor.

20 THE COURT: And if I may just, for the  
21 record, just indicate your name, sir.

22 MR. WARANOWITZ: My name is Abraham John  
23 Waranowitz.

24 THE COURT: I'm reminding you you're still  
25 under oath from this morning. You may continue.

1 BY MS. GUTIERREZ:

2 Q Mr. Waranowitz, just to clarify, you  
3 indicated that you reported your findings based on what  
4 you called your origination test as they occurred to  
5 Ms. Murphy?

6 MR. WARANOWITZ:

7 A Yes.

8 Q Is that correct? And your findings could be  
9 categorized essentially as a statement that a certain  
10 address would trigger a certain site, is that not  
11 correct?

12 A No.

13 Q Well, sir, did you report your findings to  
14 Ms. Murphy in regard to all of the addresses that she  
15 pointed out and she took you to as to whether or not  
16 they trigger a site or sites?

17 A Yes.

18 Q So, you reported that information, correct?

19 A Yes.

20 Q And that information would fairly be  
21 characterized if it were written as if a cell phone at  
22 Rolling Road at I70 triggers cell site L651C or L698A,  
23 is that correct?

24 A Yes.

25 Q Okay. And in fact, on many of the addresses,



1 1208 Macado again, you listed two separate cell sites,  
2 did you not?

3 A Yes.

4 Q And as for the Security Mall site, sir?

5 A Yes.

6 Q You also listed two separate cell sites?

7 A I believe I did, yes.

8 Q And, sir, you were in what specific location  
9 at Security Mall?

10 A We drove around the mall.

11 Q Around the mall?

12 A Yes.

13 Q Not inside the mall?

14 A Correct.

15 Q So the phone call that you caused to be  
16 originated was made from outside the mall?

17 A Yes.

18 Q And, sir, after you reported these findings  
19 to Ms. Murphy you didn't then generate on top of that a  
20 written report, did you?

21 A No.

22 Q No, and you've generated no written report,  
23 did you?

24 A No, I did not.

25 Q And there's no information generated by your

1 company, such as would be generated when a real sell  
2 phone user using any type of phone would make such a  
3 call and the computer would record it and then at  
4 billing print out the length of the call that your --  
5 the time the call was made and the cell site that it  
6 triggered?

7 A The test calls are not billable.

8 Q Okay. So, the answer to my question then,  
9 sir, is no.

10 A No.

11 Q And in regard to the Briar Cliff Road  
12 address, again you indicated to Ms. Murphy that that  
13 also triggered two sites, is that correct?

14 A I'd like to see the report on that.

15 Q Well, sir, you didn't write a report, did  
16 you?

17 A No, I did not.

18 Q And did you take notes?

19 A No, Ms. Murphy took notes for me.

20 Q Ms. Murphy took notes. You took no notes of  
21 your own origination test, correct?

22 A Correct.

23 Q And did you check her notes for accuracy?

24 A I reviewed her notes and it was consistent.

25 Q And were they --

1 THE COURT: One moment, I'm sorry.

2 MR. WARANOWITZ: I reviewed her notes, I'm  
3 sorry, Your Honor.

4 THE COURT: You said, I reviewed her notes  
5 and --

6 MR. WARANOWITZ: I reviewed her notes and  
7 they were consistent with what I say that date.

8 BY MS. GUTIERREZ:

9 Q Did you review her notes as she took them?

10 MR. WARANOWITZ:

11 A No, I did not.

12 Q You reviewed them after you were all done,  
13 correct?

14 A Yes.

15 Q I gather to say you went to visit a number of  
16 addresses, did you not?

17 A Yes.

18 Q Thirteen in fact, isn't that correct?

19 A Yes.

20 Q And that took you a little while, didn't it?

21 A Yes.

22 Q And you reviewed her notes after you finished  
23 visiting and performing your origination test at those  
24 locations, correct?

25 A Yes.

1 Q And at that time you recalled that her notes  
2 appeared to be accurate, correct?

3 A Yes.

4 Q Now, sir, you don't know the cell site names  
5 and numbers off the top of your head ordinarily, do  
6 you?

7 A No, I do not have them memorized.

8 Q And you don't know their addresses, do you?

9 A No, I do not work with addresses on a daily  
10 basis.

11 Q So, the answer to my question is no?

12 A No.

13 Q And, sir, yesterday when you were asked you  
14 were given a list of addresses and identities of all  
15 cell sites in the network, were you not?

16 A Yes.

17 Q When you were asked questions about the  
18 location you merely looked them up, did you not?

19 A Yes.

20 Q They didn't refresh your lost memory off  
21 where those cell sites were, was it?

22 A No, I know where the cell sites are from  
23 experience.

24 Q From experience of having tested them before,  
25 correct?

1 A Yes.

2 Q But you never tested any of these addresses  
3 before, did you?

4 A No.

5 Q You weren't asked ever before by Ms. Murphy  
6 or anyone to go to that specific list of thirteen  
7 locations, were you?

8 A I'm sorry. Ask that question again.

9 Q You were never asked before by Ms. Murphy or  
10 by anyone to go to that list of thirteen locations,  
11 were you?

12 A No.

13 Q Nor to perform tests?

14 A No.

15 Q And that none of the thirteen locations did  
16 you, yourself take notes?

17 A No, I did not.

18 Q You relied on her to take notes, right?

19 A Yes.

20 Q And then later after you were all done all  
21 thirteen locations you checked her notes for accuracy,  
22 correct?

23 A Yes.

24 Q All right. Now, Crosby on your list you  
25 listed as also triggering two separate cell sites, did

1 you not?

2 A I believe so.

3 Q And Crosby, is that a name of a building or a  
4 street perhaps?

5 A Crosby I believe is a street that crosses  
6 695.

7 Q And I70 Park and Ride you listed as  
8 triggering two separate cell sites depending upon where  
9 you were at that location, correct?

10 A Yes.

11 Q And Route 40 at Cooks Lane up to Forest Park  
12 triggered, in fact, depending again on where you were  
13 on one of those roads, three separate cell sites, did  
14 it not?

15 A I'd have to review the notes.

16 Q Okay. You don't recall that off hand?

17 A I don't recall off hand exactly.

18 Q Okay. And, sir, it would be fair to say that  
19 a location triggering three cell sites, not two cell  
20 sites was unusual even from your list of thirteen  
21 properties, wasn't it?

22 A It is not unusual.

23 Q No, but now, sir, in regard to Gelston Park,  
24 again, you indicated to Ms. Murphy that that location  
25 would trigger three separate cell sites, did you not?

1 A I recall two cell sites.

2 Q Two cell sites. And, sir, as to the only  
3 other location was Woodlawn High School, correct?

4 A I don't remember if there are more at this  
5 point.

6 Q Well, sir, do you recall that Ms. Murphy  
7 listed thirteen locations that you reported to her  
8 orally on?

9 A Yes.

10 Q And are you aware that of the list I just  
11 read you, that Woodlawn would be the thirteenth  
12 location?

13 A Woodlawn High School?

14 Q Yes, sir.

15 A Yes.

16 Q And, sir, that's the Woodlawn High School  
17 that we discussed and you looked up on your map book,  
18 correct?

19 A Yes.

20 Q And that was a place that Ms. Murphy took  
21 you, correct?

22 A Yes.

23 Q On that day, that you don't recall when it  
24 was?

25 A Yes.

1 Q Now, sir, this morning and we discussed again  
2 that, of course, on the test that you did, you knew  
3 where you were when you were doing the test, right?

4 A Yes.

5 Q And you knew where the cell phone was  
6 physically located that you caused to originate a phone  
7 call, correct?

8 A Yes, the test phone call.

9 Q That what you did was punch in a code as you  
10 said, correct?

11 A Yes.

12 Q Not a phone number, correct?

13 A Not a standard phone number.

14 Q And in any event, not a phone number on  
15 State's Exhibit 34, correct?

16 A Yes.

17 Q And you knew the location of the cell phone  
18 that would processing the signal, whatever code you  
19 entered into it, were it was, right?

20 A Yes.

21 Q It was in your hand, right?

22 A Yes.,

23 Q And your hand was next to the physical  
24 presence of Ms. Murphy, was it not?

25 A Yes.



1 Q On each occasion that you visited these  
2 thirteen locations, correct?

3 A Yes.

4 Q But you know that because you were there,  
5 right?

6 A Yes.

7 Q You knew who had that cell phone in their  
8 hand, did you not?

9 A Which cell phone?

10 Q Cell phone you were using, sir.

11 A Yes.

12 Q Okay. There isn't any other cell phone that  
13 we don't know about, is there?

14 A No.

15 MR. URICK: Objection.

16 BY MS. GUTIERREZ:

17 Q There isn't a hidden cell phone here, is  
18 there?

19 THE COURT: Sustained.

20 BY MS. GUTIERREZ:

21 Q You didn't conduct the test on any other cell  
22 phone then your own Erickson that you used at the time,  
23 correct?

24 MR. WARANOWITZ:

25 A Yes.

1 Q And, sir, at the time you conducted this test  
2 you were an engineer for AT&T, were you not?

3 A Yes.

4 Q You were using an Erickson phone, correct?

5 A Yes.

6 Q Although you told us that AT&T had issued its  
7 engineers Nokias, correct?

8 A Yes.

9 Q You chose the Erickson phone for the test  
10 that you were going to administer at Ms. Murphy's  
11 directions, did you not?

12 A Yes.

13 Q She didn't chose it for you, did she?

14 A No she did not.

15 Q And you never substituted another phone for  
16 any of these tests, did you?

17 A No.

18 Q No, sir, you were asked by Mr. Murphy this  
19 morning that based on your experience with Nokias in  
20 your business, whether or not a Nokia would perform  
21 competently, comparably to the Erickson, correct?

22 A Yes.

23 Q And you answered that you thought so, that  
24 was your opinion, right?

25 A Yes.

1 Q And by comparably you meant that they'd  
2 perform exactly the same?

3 A They perform almost exactly the same.

4 Q And, sir, is that your opinion as to every  
5 Erickson and every Nokia?

6 A Generally.

7 Q Generally, ideally, right?

8 A Yes.

9 Q What you'd expect them to perform, correct?

10 A Yes.

11 Q But it's fair to say based on your earlier  
12 statements that phones perform in a different fashion,  
13 do they not?

14 A Yes.

15 Q And it would be fair to say that among Nokias  
16 on any model number, some are very good performers, are  
17 they not?

18 A I am familiar with the Nokia 6160.

19 Q Only as to the 6160. Out of the thousands of  
20 Nokia 6160 some are good performers, are they not?

21 A Yes.

22 Q Some exceed expectations, do they not?

23 A Yes.

24 Q And some are mediocre performers, are they  
25 not?

1 A Yes.

2 Q And some are poor performers, are they not?

3 A Yes.

4 Q You couldn't tell which category any Nokia  
5 6160 fell into by looking at it, could you?

6 A No.

7 Q You'd have to test that individual phone to  
8 know what type of performer it was, would you not?

9 A Yes.

10 Q To find out whether it met expectations and  
11 performed as it was expected to do, correct?

12 A Yes.

13 Q Or whether it fell below that line and  
14 performed poorly.

15 A Yes.

16 Q Isn't that correct? And part of performance  
17 in the differences of phones are that some phones are  
18 able to see some signals and other phones can not,  
19 isn't that correct?

20 A Some phones would be able to see signals at  
21 different levels than other phones.

22 Q And the level at which a phone sees a signal  
23 you would characterize in terms of strength or  
24 weakness, would you not?

25 A Yes.

1 Q And the readings one gets from phones that  
2 are translated to the computer records are related to  
3 the phones seeing a signal or not, are they not?

4 A I'm sorry, could you ask that again?

5 Q A phone either sees a signal or it does not,  
6 correct?

7 A Yes.

8 Q And the seeing part of the signal is the  
9 ability to recognize and communicate with the signal,  
10 correct?

11 A Yes.

12 Q So, two phones that are side by side in  
13 equate distance from a signal being sent from the cell  
14 phone tower, one could read it and one could not,  
15 correct?

16 A Yes.

17 Q And one of them could read one signal that's  
18 actually closer to both phones, correct?

19 A Yes.

20 Q And one phone couldn't read that signal  
21 that's closest, correct?

22 A Yes.

23 Q In fact, for some reason one phone could see  
24 a signal that's further away but not see a signal  
25 that's closer, could it not?

1 A No.

2 Q Well, sir, the ability to see a signal is  
3 part of what you would call its performance, correct?

4 A Yes.

5 Q Now, sir, in regard to the same thing that  
6 we're talking about, your test you can only tell us  
7 that that phone was in your hand because you did it,  
8 right?

9 A Yes.

10 Q And you were there, right?

11 A Yes.

12 Q And Ms. Murphy was there and saw you did it,  
13 right?

14 A Yes.

15 Q In regard to the AT&T records, the billing  
16 records, do you recall those billing records that I  
17 showed this morning?

18 A Yes.

19 Q They print out the existence of a call, do  
20 they not?

21 A Yes.

22 Q They print out the number the call was made?

23 A Yes.

24 Q And the records are set up so that it is  
25 clear that it is the cell phone whose bill it is that

1 is suppose to have made those calls, correct?

2 A Yes.

3 Q Okay. And they also print out the time the  
4 calls were made?

5 A Yes.

6 Q And the duration of the call?

7 A Yes.

8 Q And the cell site it triggered, correct?

9 A Yes.

10 Q Okay. Those billing records can never tell  
11 you who had the cell phone in their hand when they made  
12 the call the computer registers, can they?

13 A That is true.

14 Q And they never attempt to do so, do they?

15 A No.

16 Q And all the records from your company or  
17 anywhere else regarding testing a phone, the records  
18 don't reveal who had the phone, do they?

19 A No.

20 Q Or who dialed the numbers?

21 A No.

22 Q Nor who they were next to, if anyone?

23 A No.

24 Q And they can't tell us the location of  
25 whoever it was that may have caused a phone call to be

1 made --

2 A No.

3 Q From that particular phone, correct?

4 A Correct.

5 Q Just like your testing on your phone, that  
6 day that you don't remember, you can only tell us what  
7 your phone did according to you, right?

8 A Correct.

9 Q And the records also can't tell us, they  
10 record, cell phone records record when, if I own a cell  
11 phone and somebody calls me on my telephone, I don't  
12 ask them to call me, but they call me anyway, I pay for  
13 that, don't I?

14 A I think so.

15 Q If I'm charged by the minute of use, right?

16 A I think so.

17 Q Even if I don't know the person and it's a  
18 wrong number, they reach me on my cell phone and I have  
19 to talk to them for thirty seconds to figure out they  
20 dialed the wrong number, I still get billed for that  
21 thirty seconds, do I not?

22 A Yes.

23 Q Even though I don't know the person who  
24 originated the call on another unknown phone, correct?

25 A Yes.



1 Q And their's bill may bill them if they called  
2 me on their cell phone too, might they not?

3 A Yes.

4 Q And that would be even if my cell phone  
5 network billed me, correct?

6 A I believe so.

7 Q But my cell phone record can only bill the  
8 number that dialed my number, correct?

9 A I don't know.

10 Q Well, my cell phone records would list the  
11 number just like it listed in the records you reviewed  
12 this morning, would it not?

13 MR. URICK: Objection.

14 THE COURT: Sustained.

15 BY MS. GUTIERREZ:

16 Q Now, sir, those records, whatever it is they  
17 list, can never tell me who actually dialed the number,  
18 can it?

19 MR. URICK: Objection.

20 THE COURT: Sustained. This has been asked  
21 and answered at least twice.

22 BY MS. GUTIERREZ:

23 Q Sir, if I looked at my records and it  
24 designated a call, if I recalled making that call then  
25 I would know I made it, correct?

1 MR. URICK: Objection.

2 THE COURT: Sustained.

3 BY MS. GUTIERREZ:

4 Q Sir, if I didn't recall making the call and I  
5 enquired of your network to tell me who made the call  
6 from my cell phone it couldn't tell me that, could it?

7 MR. URICK: Objection.

8 THE COURT: Sustained. We've asked and  
9 answered this line of questioning, please move on.

10 BY MS. GUTIERREZ:

11 Q Sir, many phones of many makes and models  
12 have memory capability, do they not?

13 MR. WARANOWITZ:

14 A Yes.

15 Q That record within the phone itself, a list  
16 of numbers that's called, does it now?

17 A Yes.

18 Q And that would include Erickson phones that  
19 have memory capability, correct?

20 A Yes.

21 Q And Motorola phones that have memory  
22 capability, correct?

23 A Yes.

24 Q And Nokia phones that have memory capability,  
25 correct?

1 A Yes.

2 Q If the phone has memory capability if can  
3 print up or display the identity of numbers that have  
4 either called that phone or been called by that phone,  
5 can it not?

6 A In most cases, yes.

7 Q But that's the limit of what it can tell you,  
8 isn't that correct?

9 A Yes.

10 Q It can't tell you who placed the calls, can  
11 it?

12 MR. URICK: Objection.

13 THE COURT: Sustained.

14 BY MS. GUTIERREZ:

15 Q As to the memory capability, sir, can it?

16 MR. URICK: Objection.

17 THE COURT: Overruled. As the memory  
18 capabilities of the phone can it tell you who made the  
19 call?

20 MR. WARANOWITZ: No, it can not.

21 BY MS. GUTIERREZ:

22 Q And it can not tell you as to the memory  
23 capability the identity of who received the call, can  
24 it?

25 MR. WARANOWITZ:

1 A No it can not.

2 Q Given what you've described as your  
3 familiarity with Nokia phones, sir, I'm going to show  
4 you what's in evidence. Can you tell us if that phone  
5 has memory capability?

6 A I've had a Nokia 6160 and it has memory  
7 capability.

8 Q Your Nokia 6160 has memory capabilities, is  
9 that correct?

10 A The Nokia that I -- the Nokia 6160s that I  
11 have used all have memory capability.

12 Q Well, sir, I'm asking you, can you look at  
13 this particular 6160 and tell us if it has memory.

14 MR. URICK: Objection.

15 THE COURT: Overruled. Can you tell if this  
16 particular exhibit, whether it has memory or not?

17 MR. WARANOWITZ: I can not do that because  
18 the battery is dead.

19 BY MS. GUTIERREZ:

20 Q Were you never asked to examine its memory  
21 capabilities which you believe it would have?

22 MR. WARANOWITZ:

23 A I'm sorry. Could you ask that question  
24 again?

25 Q Were you personally ever asked by anyone to

1 examine the memory of this phone?

2 A Before now, no.

3 Q And you, of course, did not, did you?

4 A I did not.

5 MS. GUTIERREZ: Nothing further.

6 THE COURT: Anything further from the State?

7 MR. URICK: Extremely briefly, Your Honor.

8

9 REDIRECT EXAMINATION

10 BY MR. URICK:

11 Q Lets cut to the chase here.

12 MS. GUTIERREZ: Objection.

13 THE COURT: Mr. Urick, without the added  
14 commentary you make ask your first question.

15 BY MR. URICK:

16 Q Cell phone records are computer records  
17 maintained by the AT&T Wireless Corporation, are they  
18 not?

19 MR. WARANOWITZ:

20 A Yes.

21 Q They show that a particular number on a  
22 particular date either dial up or received a call, is  
23 that correct?

24 A Correct.

25 Q That that call went through a particular cell

1 site tower or structure, correct?

2 A Correct.

3 Q And in order for that to have occurred the  
4 phone had to be somewhere within the coverage area for  
5 that particular cell site sector?

6 A Correct.

7 Q And if somebody, drawing your attention now  
8 to my ten and eleven, what is now in evidence as  
9 State's 34. If somebody were in Lincoln Park with an  
10 AT&T wireless subscriber phone and two calls those  
11 calls would be recorded in the computer records,  
12 correct?

13 A Correct.

14 Q And the would indicate the cell site for  
15 Lincoln Park, which L689C, is that correct?

16 A Correct.

17 Q Can I see State's 31 please. Now, Ms.  
18 Gutierrez showed you the business records for the cell  
19 phone, showed to you the account billing date. I'd  
20 like you to look on there and see if you can see a  
21 listing for the service user.

22 A Next to the text service user I see Adrian M.  
23 Syed.

24 Q And does there -- that record indicate when  
25 the order was placed or the service was started?

1           A     I see an order date of January 1st -- January  
2 11th, 1999.

3           Q     Thank you. If I may have the Court's  
4 indulgence for just second.

5           THE COURT: Certainly.

6           MR. URICK: No further questions. Thank you.

7           THE COURT: Anything further, Ms. Gutierrez?

8           MS. GUTIERREZ: Yes, Your Honor.

9

10                               RECROSS EXAMINATION

11           BY MS. GUTIERREZ:

12           Q     With regard to, the question you were asked  
13 about Lincoln Park, sir.

14           MR. WARANOWITZ:

15           A     Yes.

16           Q     The cell site that you say would be triggered  
17 if one were in Lincoln Park and made a phone call,  
18 isn't in Lincoln Park, is it?

19           A     It is not.

20           Q     It isn't even near a street that goes through  
21 Lincoln Park, is it?

22           A     No it is not.

23           Q     And the cell site that you say was triggered,  
24 would be triggered from any number of places in the  
25 coverage area, correct?