

STATE OF MARYLAND

vs. Indictment No. 199103042-

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

TRANSCRIBED BY:

Christopher W. Metcalf  
Official Court Reporter  
507 Courthouse West  
Baltimore, Maryland 21202

1

1 White, do you -- one moment. Do you usually see  
2 yourself in the monitor? Can you turn that monitor  
3 that way? You do. Okay. That's the only thing I can  
4 do.

5 Ms. Gutierrez, I think that's the best we're going  
6 to able to do and I apologize for the family that may  
7 not be able to see, but that will be only as to the  
8 exhibits that are placed up there. I must ask, too,  
9 the witness is going to be seated here, so if you move  
10 to this side you'll be able to see the witness better  
11 or you are welcome to sit on the front row. Do not  
12 feel restricted in your movement in the courtroom, this  
13 is a larger courtroom.

14 MS. GUTIERREZ: Well, Judge I would ask Mr.  
15 Urick to confine himself to the opposite side because  
16 if he's on this side then we can't see it.

17 THE COURT: No, I think that that will  
18 probably work well.

19 MS. GUTIERREZ: That would mean that --

20 THE COURT: And there's a mic, Mr. Urick on  
21 that side as you can see by the jury box and that's  
22 what will activate the cameras and also activate the  
23 machine.

24 At this point, Mr. Church if you will kindly bring  
25 my jurors. I think we're pretty well set up at this

PROCEEDINGS

(12:22 p.m.)

THE COURT: Does that help?

MS. GUTIERREZ: Well yes, but I think there

5 is an angle to it the spectators can at least get a  
6 glimpse of that and if that means that this has to stay  
7 over there and then be moved when they need it.  
8 They're obviously not going to be able to use both at  
9 the same time.

THE COURT: Ms. Gutierrez, there's one other

11 problem is that your client can't see the board. If  
12 your client moves, so does the correctional officer and  
13 that means that he needs to have a seat or somewhere he  
14 can stand and that's going to cause a problem as well.

MS. GUTIERREZ: Well, he can't see it there  
16 anyway.

THE COURT: But, if it's pushed back he can.

18 If you push that back -- yeah, see. Syed would be able  
19 to see the board. I know it's very difficult. You  
20 know, we're in a bigger courtroom, we have more space,  
21 but it's -- and still we have problems.

MS. GUTIERREZ: And it creates more problems.

THE COURT: So, that's the best I can do.

24 The only other thing I can suggest is that we talk  
25 about what's on the diagram the best we can. Mr.

1 juncture. I would note it is now 12:20. I don't  
2 expect that we're going to get very far in that I  
3 pretty much given a schedule of when we're going to do  
4 things. I apologize that the morning docket downstairs  
5 took longer than I expected. However, Court should be  
6 advised that from now on we will start matters in this  
7 courtroom here and not report downstairs.

8 (The jury returned to the courtroom.)

9 THE COURT: Ladies and gentlemen, as you come  
10 in you'll find that this is a new and different  
11 courtroom. Look for your juror number on the seats.  
12 The alternates are down front. Alternates are on the  
13 front row. Alternates are on the front row. When I  
14 say on the front row I mean down front in front of the  
15 box. You all may be seated.

16 Ladies and gentlemen, welcome back to part 9,  
17 believe it or not we were able to secure this larger  
18 courtroom for the rest of the week and I would also  
19 advise you that this is where you'll report. I  
20 understand the jury room isn't as nice as my jury room,  
21 but as you can see the courtroom is much, much bigger  
22 and affords us more space. I would ask that you listen  
23 up. We are going to try to go back to the schedule I  
24 gave you although I didn't finish my docket until late  
25 this morning, but I am going to take a few bits of

1 testimony and then we'll recess for lunch and then  
 2 we'll come back after lunch. We have been working  
 3 although not in this case all morning, so my staff is  
 4 entitled to a luncheon recess, but we will come back  
 5 and continue with the case for the rest of today and  
 6 try to stay to the schedule for next few days as close  
 7 as we can in this courtroom.

8 When you recess now and come back from lunch you  
 9 should not go to the old jury room on the third floor,  
 10 but rather you should come back to the jury room here  
 11 on this floor and consider this our courtroom for the  
 12 rest of this trial until I direct you otherwise. At  
 13 this time I need you to just formally call the case  
 14 because this is now a video courtroom, ladies and  
 15 gentlemen. We do not have a stenographer. That means  
 16 you'll notice that I'll ask people to keep their voices  
 17 up. The video courtroom is controlled by cameras and  
 18 voice. That is, the cameras turn and are directed to  
 19 the person who is speaking. I notice that as I speak  
 20 the cameras turn to me and as individuals around the  
 21 courtroom speak the cameras will then shift and direct  
 22 themselves and record what is being said in that  
 23 fashion. So, Mr. Urick for the record in this  
 24 courtroom will you please formally call the case again.

25 MR. URICK: Thank you. Good afternoon. Your

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



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

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

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

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

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

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

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

1 BY MS. GUTIERREZ:

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

4 MR. WARANOWITZ:

5 A Correct.

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

8 A They are different, correct.

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

12 A Correct.

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

15 A No, that would not be correct.

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

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

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

24 A Correct.

25 Q Either in the design of it?

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

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

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

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

14 MR. WARANOWITZ:

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

17 Q Produced by other companies?

18 A No.

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

21 A Not that I'm aware of.

22 Q Okay. Now, I've finished my voir dire.  
23 Thank you, Your Honor.

24 THE COURT: Any questions just on voir dire?

25 VOIR DIRE

1 A Correct.

2 Q The building of it?

3 A Correct.

4 Q Or the troubleshooting?

5 A Correct.

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

8 A Yes.

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

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

16 MS. GUTIERREZ: Objection.

17 BY MR. URICK:

18 Q How many hours of training have you had?

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

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



1 indicated any expertise. Now, if there's some  
 2 expertise for specifically a particular phone, Mr.  
 3 Urick if you want to tell me that there's a particular  
 4 phone that he'll be asked about, but you have indicated  
 5 a general expertise I believe. Are you restricting him  
 6 to AT&T only?

7 MR. URICK: I will restrict him to the AT&T  
 8 Wireless Network in the Baltimore region.

9 THE COURT: And your expertise as an AT&T  
 10 Wireless Phone network, design and functioning expert,  
 11 is that it?

12 MR. URICK: Yes.

13 THE COURT: At this point the Court's --

14 MS. GUTIERREZ: I renew my objection on all  
 15 the other grounds that have already been made on the  
 16 declared expertise in regard to lack of disclosure of  
 17 any as heard.

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

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

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

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

1 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 Erick, 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 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 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 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 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 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 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. It 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 is belongs to Mr. Waranowitz and it's going to be  
 16 admitted falls a trifle short of what disclosure is  
 17 mean to do and frankly, Judge I can't tell. And since  
 18 I can't tell whether it's significant, whether these  
 19 markings are significant, whether the handwriting is  
 20 significant. In light of the limited disclosure I  
 21 can't tell if it is necessary for me to review it with  
 22 my staff, with Mr. Syed, to compare it with what we  
 23 have in order to meet my obligation to him. If there  
 24 was some specific proffer as to what this map meant,  
 25 what this witness was going to say perhaps I would be

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

9 BY MR. URICK:

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

12 MR. WARANOWITZ:

13 A Yes.

14 Q What test did you perform there?

15 A I originated a phone call.

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

18 A Yes.

19 Q And what was that cell site?

20 A L654C.

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

23 A On Dorchester Road.

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

1 computer generated business records of the Defendant?

2 A Yes.

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

5 A Yes.

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

10 MS. GUTIERREZ: Objection.

11 THE COURT: Sustained.

12 BY MR. URICK:

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

18 MR. WARANOWITZ:

19 A Yes.

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

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

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

3 A Yes.

4 Q Could you please find that?

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

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

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

16 THE COURT: Yes you may. Exhibit 45.

17 BY MR. URICK:

18 Q Can you identify that?

19 MR. WARANOWITZ:

20 A Yes.

21 Q And what is that?

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

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

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

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

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

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



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 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 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 many dropped calls a certain  
 14 phone has for example. That is flagged for us and then  
 15 we try to identify if it's a bad phone or poor  
 16 performing phone.  
 17 Q Does the system perform this function  
 18 regardless of the brand of phone?  
 19 A Yes.  
 20 Q And then what do you do as a result of  
 21 information -- of that information that you receive?  
 22 A We pass that information on to another group  
 23 called customer care.  
 24 Q Now, is there any difference in the  
 25 functioning of the Nokia phone as opposed to the

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 THE COURT: Okay. So, you're saying Govins

2 Manor is located at 2121 Windgard Lane?

3 MR. URICK: Yes, that is the address --

4 THE COURT: Of the tower.

5 MR. URICK: Of the tower or whatever  
6 structure that particular cell site.

7 THE COURT: And this particular cell tower is  
8 at L688A is at Routes 29 and I175.

9 MR. URICK: Yes.

10 MS. GUTIERREZ: Well, Judge --

11 THE COURT: Isn't it interesting, Mr. Urick  
12 that I've been listening closely to the testimony and I  
13 did not know that.

14 MR. URICK: I'm sorry, I was focusing on  
15 other question.

16 THE COURT: Okay. I'm just letting you know,  
17 you have an exhibit that L -- with regard to a picture  
18 of L689 Govins Manor and it's marked as 43F, but no  
19 address has ever been given for that tower.

20 MS. GUTIERREZ: And, Judge we'd object to --

21 THE COURT: And that's why the Court  
22 abstained the objection because right now there is no  
23 testimony in evidence that would allow for the  
24 admissibility of 34.

25 MS. GUTIERREZ: And, Judge I would object to

1 area noted by the tower or any tower in either C or A  
2 as it relates or B as it relates, but if you look at  
3 your chart so are a lot of other addresses in the  
4 shaded area noted C and B and A. The phone that was  
5 being tested is not as you related it the phone that  
6 was actually making these calls, so can you tell me how  
7 you got the addresses that are listed in the last  
8 column because there's been no testimony from any  
9 witnesses how these addresses were derived.

10 MR. URICK: These are the business records of  
11 the AT&T company. These are generated from the  
12 computer based on these cell sites, this is the address  
13 where that cell tower is located at that cell site.

14 THE COURT: Okay. You're saying cell site L8  
15 -- excuse me. Cell site L68 --

16 MS. GUTIERREZ: What one are you asking?

17 THE COURT: I'm just looking, I picked one  
18 randomly.

19 MS. GUTIERREZ: Okay.

20 THE COURT: Twenty two.

21 MS. GUTIERREZ: Twenty two.

22 THE COURT: L689A. that tower or whatever  
23 that is, that cell site is, according to my note, wait  
24 I'll tell you what it is. It's Govins Manor.

25 MS. GUTIERREZ: Right.

1 this witness being allowed -- he's not been classified  
2 as a custodian, he is not a custodian. We would  
3 maintain this witness didn't check the actual existence  
4 or the actual address whether or not it exists in any  
5 record or in actuality much less. And if he checked it  
6 in the business records he's not entitled to testify to  
7 that, he's not a custodian of business records, he  
8 hasn't been disclosed as a custodian of business  
9 records and we would object to any of that coming in  
10 through this witness.

11 THE COURT: If this witness can testify that  
12 he knows the address of the different cell towers the  
13 Court will allow it. And there was other questions  
14 that the Court asked that the State inquire at this  
15 time.

16 MR. URICK: Thank you.

17 THE COURT: No, this is my copy.

18 MR. URICK: Sorry.

19 THE COURT: That's all right.

20 (Counsel returned to the trial tables and the following  
21 ensued:)

22 THE COURT: For the record the objection is  
23 sustained. Your next question.

24 BY MR. URICK:

25 Q Mr. Waranowitz, are you familiar with the

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

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

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

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

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

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

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

1 A This cite has no street address. It is  
2 located at the intersection of 29 and 70.

3 Q And do you recall the street address for  
4 L654?

5 A That would be the 824 Dorchester Water Tank.

6 Q And do you recall the street address for  
7 L602?

8 A We call that Central Savings.

9 THE COURT: I'm sorry, I can't hear you.

10 MR. WARANOWITZ: We call that Central Savings  
11 and it is located on 201 North Charles Street.

12 BY MR. URICK:

13 Q Now, these street addresses are what?

14 MR. WARANOWITZ:

15 A These street addresses are where the owner of  
16 the property that we rent space for, for the cell site  
17 resides.

18 Q And you have placed what at these street  
19 addresses?

20 A Cell sites.

21 Q And the information in the final column for  
22 the address for each of those then, that is the address  
23 for the particular cell site that's listed in the  
24 column just before it --

25 MS. GUTIERREZ: Objection. Form of the

1 marked for identification, was  
2 received into evidence.)

3 THE COURT: I note that it is now five  
4 o'clock, Ms. Gutierrez. How long do you expect to be  
5 on cross?

6 MS. GUTIERREZ: A while.

7 THE COURT: A while meaning at least an hour?

8 MS. GUTIERREZ: I would think so, Judge.

9 THE COURT: Very well. Ladies and gentlemen,  
10 I promised that we'd end at 4:30 today, but as you can  
11 we're well after five. I try, it's the best thing I

12 can tell you is I try and so at this juncture I'm going  
13 to recess you for today. I also must advise you that  
14 tomorrow, on tomorrow I'm going to change our schedule  
15 a little bit. I know that we've had some problems with  
16 this witness. Mr. Urick, do you think that if we got  
17 started earlier in the morning that would assist you in  
18 any way with this witness?

19 MR. URICK: Can we approach?

20 THE COURT: Yes. One minute, ladies and  
21 gentlemen. And what I'm talking about doing is rather  
22 than having you go to the jury assembly first we may  
23 ask that the jurors come here first in the morning and  
24 be paid at a later time as a group.

25 (Counsel approached the bench and following

1 question.

2 THE COURT: Overruled.

3 MR. WARANOWITZ: Please restate the question.

4 MR. URICK: The -- you've got the cell site  
5 in the second to last column and then the address and  
6 the address is the -- the address is for the cell site  
7 in the column before it.

8 MR. WARANOWITZ:

9 A Yes.

10 MR. URICK: Would offer into evidence State's  
11 Exhibit 34.

12 THE COURT: Any objection at this time?

13 MS. GUTIERREZ: If I may have a minute, Your  
14 Honor.

15 THE COURT: Certainly.

16 MS. GUTIERREZ: Yes, Your Honor we would  
17 object on the same basis.

18 THE COURT: With regard to the addresses?

19 MS. GUTIERREZ: Yes.

20 THE COURT: Very well. The objection will be  
21 admitted.

22 MR. URICK: I'd like to give the exhibit to  
23 the Clerk at this time to mark it into evidence.

24 THE COURT: Very well.

25 (State's Exhibit No. 34, previously

1 ensued:)

2 MR. URICK: I believe he's schedule to fly to  
3 Seattle first thing in the morning. I don't know of  
4 his exact time of departure, that's why I asked to  
5 approach.

6 THE COURT: Well, you can ask him the one  
7 question, what time does his plane leave.

8 MR. URICK: From here?

9 THE COURT: Just turn around and lean over  
10 and ask him.

11 MR. URICK: 9:45.

12 THE COURT: Well, what would you like me to,  
13 Mr. Urick?

14 MR. URICK: I don't -- let me ask you. Are  
15 we going to accommodate the juror who's leaving Friday  
16 morning?

17 THE COURT: Well, I don't know how that helps  
18 if today is Monday and tomorrow --

19 MS. GUTIERREZ: Today is Tuesday.

20 THE COURT: Is today Tuesday?

21 MS. GUTIERREZ: Yes.

22 THE COURT: I'm sorry. Ladies and gentlemen,  
23 yesterday is a blur.

24 MS. GUTIERREZ: You missed us. That's what  
25 that is.



1 THE COURT: All right. Today is Tuesday and  
2 as a result I would expect that I will work tomorrow  
3 and Thursday and we would have to discuss how we were  
4 handling Friday. Friday we have two choices. We can  
5 either skip Friday and come back on Monday or we can  
6 excuse the juror who wants to travel since she leaves  
7 on a bus trip, I think she said 6:00 a.m. on Friday and  
8 move juror alternate number one into her seat. But  
9 we're not there and I frankly don't understand how that  
10 relates to your witness.

11 MR. URICK: Well, I was going to say if we  
12 were going to not sit Friday to accommodate that juror  
13 that means that we only have two days of testimony  
14 left. I would anticipate the remaining State's  
15 witnesses will pretty much fill those two days and may  
16 very well go into Monday. If so, maybe we can excuse  
17 this witness at this time and bring him back first  
18 thing Monday morning for cross examination.

19 MS. GUTIERREZ: Judge, I'm certainly not  
20 going to agree to that. I would vigorously object.  
21 I've already agreed to accommodate the State. They  
22 made the choice, they knew this witness had difficulty  
23 and yet they chose to call another witness knowing.  
24 Now, if they made the decision thinking that this  
25 witness would be on and off in an hour or two, well

1 they loose.

2 THE COURT: Please keep your voice down.

3 MS. GUTIERREZ: They don't have a right to do  
4 that. We're not going to agree to that. This is --  
5 there are only two critical things in this case as far  
6 as Adnan Syed is concerned and based on their opening  
7 and that is whatever inferences they're attempting to  
8 make from what they're attempting to establish from  
9 this witness in regard to the alleged track of the cell  
10 phone in Jay Wilds. We've already been forced to  
11 interrupt Jay Wilds the most important witness which is  
12 disruptive.

13 THE COURT: Ms. Gutierrez, you must admit you  
14 didn't oppose the interruption of Mr. Wilds.

15 MS. GUTIERREZ: I didn't, Judge.

16 THE COURT: And you agreed and I just take it  
17 --

18 MS. GUTIERREZ: Now, I think I should have.

19 THE COURT: Well, now I take it that you're  
20 opposing any interruption of your opportunity to cross  
21 examine this witness?

22 MS. GUTIERREZ: Yes, Judge. Because he --

23 THE COURT: You don't have to argue any  
24 further because I would agree with you and I would just  
25 indicate that I think that we spent a lot of time on

1 what turned to be questionably relevant information and  
2 that time could have been spent on cross.

3 So, you're going to have to speak to your witness.  
4 I will advise him that he'll have to be here tomorrow  
5 morning. Now, I'm willing to accommodate him by  
6 starting early, that is starting us at nine o'clock on  
7 this case and to the extent that you're able to do that  
8 we will do that and then I'll do my docket after that.  
9 But that's the best that I can for you.

10 MR. URICK: Thank you.

11 (Counsel returned to the trial tables and the following  
12 ensued:)

13 THE COURT: All right. Very well. Now,  
14 ladies and gentlemen as I was about to say. Tomorrow  
15 morning you will be asked to go to jury assembly first.  
16 I'm sorry, strike that. You will be asked to come here  
17 first. I will make arrangements with the jury assembly  
18 to have you paid at lunch time, so that you all can go  
19 over as a group at lunch time and receive your payment  
20 rather than going in the morning with everyone else. I  
21 will start this case first at 9:00 a.m. sharp. I can  
22 not start before nine o'clock, I can't get a courtroom  
23 clerk. Well, I don't know. Can I get a courtroom  
24 clerk before nine o'clock?

25 THE CLERK: Yes, we're suppose to be here at

1 8:30 in the morning.

2 THE COURT: Can you be here at 8:30?

3 THE CLERK: Yes.

4 THE COURT: I will start this case at 8:30.

5 The Baltimore City Jail is directed to bring the  
6 Defendant at 8:30. Counsel, is directed to be here at  
7 8:30 and the jurors I'm going to ask you, ladies and  
8 gentlemen to be here at 8:30. This is a video  
9 courtroom, so therefore I don't need a stenographer and  
10 we will be able to start promptly at 8:30. We will do  
11 this case and then we'll recess at lunch time. I will  
12 have them make arrangements for you to be paid at that  
13 time and then we will continue. I may take a break to  
14 deal with my docket, but it will be a break which will  
15 allow you to stretch like a morning break would be and  
16 then we'll bring you back and I will direct everyone on  
17 my docket to come here, so everyone will report here.

18 The jury room will be open for your use at 8:30.  
19 When you come in the front door be advised that they  
20 may try to stop you because normally the building is  
21 not open to the public until nine o'clock. I will  
22 advise them that you're coming, just let them know  
23 you're a juror for Judge Heard and they will let you  
24 up.

25 At this time I must also advise you as you leave,

1 leave your note pads face down, leave your messages or  
 2 whatever you have written face down. Do not discuss  
 3 the testimony that you have heard with anyone. Do not  
 4 discuss anything about this case with anyone at home  
 5 and do not permit anyone to discuss the case with you.  
 6 You have not heard all the evidence, you have not heard  
 7 all the testimony, you have not heard the law and you  
 8 have not heard closing argument, so it would be  
 9 inappropriate to have any discussions with anyone about  
 10 this case. Ladies and gentlemen, please go with Ms.  
 11 Connelly at this time. She will escort you back to the  
 12 jury room. This Court stands in recess until tomorrow  
 13 at 8:30.

14 THE CLERK: All rise.

15 (Whereupon, the trial was recessed for the day.)

16  
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### CERTIFICATE

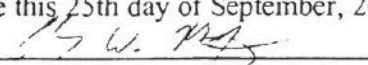
This is to certify that the proceedings in  
 the matter of State of Maryland vs. Adnan Syed,  
 199103042-46, held on February 8, 2000, were recorded  
 by means of videotape.

I do hereby certify that the foregoing

153 pages constitute the official transcript as

transcribed by me from said videotaped proceedings in a  
 complete and accurate manner.

In Witness Whereof, I have hereunto  
 subscribed my name this 25th day of September, 2000.

  
 CHRISTOPHER W. METCALF, CVR  
 Official Court Reporter

CHRISTOPHER W. METCALF, CVR  
 Official Court Reporter  
 507 Courthouse West  
 Baltimore, MD 21202

