

85. 3

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND

vs.

Indictment No. 199103042-46

ADNAN SYED,

Defendant.

---

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

Baltimore, Maryland

February 9, 2000

BEFORE:

HONORABLE WANDA KEYES HEARD, Associate Judge

APPEARANCES:

For the State:

KEVIN URICK, ESQ.,  
KATHLEEN MURPHY, ESQ.

For the Defendant:

CRISTINA GUTIERREZ, ESQ.

RECORDED BY: VIDEOTAPE

TRANSCRIBED BY:

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



# C O N T E N T S

## PAGE

### STATE'S WITNESSES

### EXAMINATION BY

ABE WARANOWITZ

DIRECT-MR. URICK	32
CROSS-MS. GUTIERREZ	45
REDIRECT-MR. URICK	191
RECROSS-MS. GUTIERREZ	193

### STATE'S EXHIBITS FOR IDENTIFICATION IN EVIDENCE

NO. 200, FAX & RECEIPT	23
------------------------	----

NO. 33, MAP & OVERLAY	32	34
-----------------------	----	----

### DEFENDANT'S EXHIBITS FOR IDENTIFICATION IN EVIDENCE

NO. 2	204
-------	-----

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND

vs.

Indictment No. 199103042-

ADNAN SYED,

Defendant.

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

(Trial on the merits)

Baltimore, Maryland

February 9, 2000

BEFORE:

HONORABLE WANDA KEYES HEARD, Associate Judge

APPEARANCES:

For the State:

KEVIN URICK, ESQ.,

KATHLEEN MURPHY, ESQ.

For the Defendant:

CRISTINA GUTIERREZ, ESQ.

RECORDED BY: VIDEOTAPE

TRANSCRIBED BY:

Christopher W. Metcalf

Official Court Reporter

507 Courthouse West

Baltimore, Maryland 21202

1 if there's an issue that his employers, you know the  
2 Madame Clerk can be of assistance. We certainly don't  
3 want this juror's mind off on -- he's sitting on jury  
4 duty being engulfed in his job.

5 THE COURT: I would be happy to ask that  
6 additional question and, Mr. Urick you wouldn't have no  
7 problem with that, do you?

8 MR. URICK: No, Your Honor.

9 THE COURT: I would, before I bring all the  
10 panel, just bring juror number two and then inquire.  
11 Let him know what time we'll try to get him so that he  
12 can -- if eleven o'clock, 11:30 which would work for  
13 him to have that extra hour. As I said I need to  
14 handle my docket. Before you bring the jury out though  
15 I understand there are motions or issues or --

16 MR. URICK: Can we approach?

17 THE COURT: Something you need to do outside  
18 the presence of the people in the courtroom?

19 MR. URICK: I'll take it back. I can do it  
20 from here.

21 THE COURT: Okay.

22 MR. URICK: At this time, Your Honor the  
23 State would like to renew it's previously made motion  
24 for a mistrial. Yesterday in front of the jury Defense  
25 Counsel got up on two occasions. One occasion she

## P R O C E E D I N G S

3 THE COURT: Good morning, everyone. I've just  
4 passed a note to Counsel that was received this morning  
5 from, by my law clerk. I believe it's juror number two  
6 has indicated some difficulty on her job. You can pass  
7 that back to me if you would. And what I -- I'm not  
8 sure what an extra hour for lunch is, but I do have to  
9 stop Court at some point today to handle my docket.  
10 So, certainly it would afford her, I guess if we do it  
11 around lunch time, say eleven o'clock or so. It should  
12 afford her an opportunity to do whatever she needs to  
13 do. Does either attorney, the State or the Defense  
14 have any problem with that?

15 MR. URICK: No, I believe it's the big  
16 gentlemen in seat number two.

17 THE COURT: Yes, I believe so, on the back  
18 row.

19 MR. URICK: Yes.

20 THE COURT: Do you have a problem with that  
21 Ms. Gutierrez?

22 MS. GUTIERREZ: No, Judge I don't, but I  
23 guess in light of the other comments on the note I just  
24 thought I'd ask that the Court inquire, you know if  
25 there's anything that the Court can do to help verify

1 said, I never received this witness's CV or resume.  
2 Later when we brought State's Exhibits 44 and 45 she  
3 stood up again in front of the jury and said, I have  
4 never seen these exhibits. At the bench conference Ms.  
5 Murphy proffered to the Court how she had pursuant to  
6 Defense request to see all possible exhibits in the  
7 case made available all the 44, 45 other exhibits.  
8 Defense was allowed to view them, copy anything they  
9 wanted to at that time.

10 This morning Mr. Waranowitz came up to me and  
11 handed me something, he said, I want to give you this.  
12 I was upset that she said she had not gotten this  
13 material. It's a --

14 THE COURT: Okay. Wait a minute, slow down.  
15 The gentlemen that you said you spoke to was who?

16 MR. URICK: Abe Waranowitz, the witness.

17 THE COURT: Said to you this morning?

18 MR. URICK: He handed me an item, said I want  
19 to give this to you. I was upset that she said she had  
20 not gotten these materials. What he handed me is first  
21 of all, a Federal Express receipt or air bill rather  
22 which is his sender's copy for the -- when he mailed  
23 the large overlay map to Ms. Gutierrez. That was  
24 mailed on October 8th, 1999.

25 The second thing is a copy of a fax that he sent



1 to Ms. Gutierrez on December 7th, it's a nine page fax.  
2 Page one is his resume, page two are a list of seven  
3 cell sites with the site name, addresses, the latitude  
4 and longitude for those sites. Page three are the  
5 error call report from that date. Page four is a copy  
6 of what we entered as State's --

7 THE COURT: State's 44?

8 MR. URICK: I'm just checking on that.  
9 Forty-five. The next one is a copy of State's 44 and  
10 then there's four pages of cell sites along with their  
11 frequency plan which is technical data relating to the  
12 cell sites.

13 So, Ms. Gutierrez not only had an opportunity to  
14 observe and copy this stuff in our office, she actually  
15 had the materials faxed to her. For her to stand up in  
16 front of the jury and say she had never seen it is a  
17 egregious misconduct that is overly prejudicial.  
18 That's why we're at this time renewing our motion for a  
19 mistrial.

20 In lieu of that, if the Court's not inclined to  
21 grant a mistrial we would ask for a motion in limine  
22 that Ms. Gutierrez be instructed not make any comments  
23 related to discovery matters or issues in front of the  
24 jury and the -- that the Court give a curative  
25 instruction and a corrective statement that this is not

1 did have the numbers of the cell sites as they appear  
2 there in large letters and that ultimately we were able  
3 to figure that out. I received nothing else from any  
4 source. Certainly never received except for the  
5 disclosure that we discussed yesterday, the State's  
6 amended disclosure that I believe is stamped in and my  
7 office stamp is received on October 8th or 9th, I'm not  
8 sure which day. That was the two page amended  
9 disclosure that should have a list of cell sites and  
10 said, an address would trigger this cell site or that  
11 cell site, that is the only disclosure. We never  
12 received any other lists --

13 THE COURT: Ms. Gutierrez, really to be  
14 honest with you, you could go on. The Court found that  
15 the discovery rules had been made by the State. It in  
16 fact ruled against you and I would tell you that as far  
17 as I'm concerned I feel that the materials that you  
18 should have gotten were turned over to you and I agree  
19 that there may have been some misunderstanding, there  
20 may have an abundance of records that were provided to  
21 you with -- with no indication by the expert as to what  
22 each item was, but I did find that the discovery rules  
23 had been met and I ruled against you. With regard to  
24 the motion for mistrial I will tell the State it is  
25 denied. I have instructed the jury and I've reminded

1 evidence and that it was incorrect information that was  
2 stated.

3 THE COURT: Ms. Gutierrez, you don't really  
4 want to be heard on that, do you?

5 MS. GUTIERREZ: No, Judge. Only to correct  
6 the record. Ms. Murphy did not testify that she gave  
7 it to us, that she saw anybody xerox it. I think I  
8 made the record very clear. Although the Court asked  
9 her repeatedly, she didn't say what Mr. Urick tries to  
10 imply that she said yesterday. I will state  
11 categorically for the record, the only thing that I  
12 received from -- and again, I didn't receive it from  
13 the State at all, it's there obligation no matter what  
14 other source from which I can get it from Mr.  
15 Waranowitz's boss who's name I don't remember, but I'm  
16 sure I can locate, was the overlay map without the  
17 underlay that is large that I believe duplicates or was  
18 presented to duplicate the colored portion that appears  
19 on the board.

20 THE COURT: An you indicated that you got the  
21 overlay without the benefit of the map, --

22 MS. GUTIERREZ: Yes.

23 THE COURT: So the overlay was meaningless to  
24 you because you didn't have it.

25 MS. GUTIERREZ: Well, except that we -- it

1 them on numerous occasions that there will be  
2 opportunities when the Defense would make and state  
3 things and that the State would make and state things  
4 regarding legal issues that if they were done in front  
5 of the jury that it is not evidence. That the  
6 attorneys were acting in an appropriate fashion to  
7 indicate those items that should not or would not be  
8 reflected in their consideration. That they are not  
9 issues for the jury, that the evidence comes from the  
10 witness stand. That the evidence are those items that  
11 were marked an admitted into evidence. That they would  
12 be referenced by way of red and blue stickers and that  
13 they should disregard the statements of Counsel because  
14 what State and what Counsel says is not evidence in  
15 this case. I did indicate that on the outset, I think  
16 I even said it a couple time during the course of the  
17 trial and so, with regard to the motion for a mistrial  
18 made by the State I do deny that.

19 I would ask both Counsel, I'm not picking on  
20 either one, that during the course of the proceedings  
21 if I asked you to come to the bench that you keep your  
22 voices down, that you not raise them. I would indicate  
23 that it allows us to handle bench conferences in such a  
24 way that the jury can not hear what is being said. I  
25 would add that in light of the fact that this is a very

1 large courtroom and the jurors have already said that  
 2 they can't often understand the attorneys unless they  
 3 speak up. I think that we have a courtroom where if we  
 4 all just, you know keep our voices raised out there and  
 5 whisper at the bench we'd be able to handle that.  
 6 So, for the reasons indicated I don't believe  
 7 there's been any unfairness, I don't believe there's  
 8 been any misunderstanding by the jury that was being  
 9 said with regard to evidence or what rulings I'm making  
 10 relative to those evidentiary issues are just that.  
 11 And so for that reason the State's motion is denied. I  
 12 don't believe there's any prejudice that's been placed  
 13 against the State at this juncture. With regard to any  
 14 other issues before I bring the jury out?  
 15 MS. GUTIERREZ: Judge, I do have, as the  
 16 Court -- as the Court knows I arranged to get a Defense  
 17 copy of the videotape yesterday and I reviewed most  
 18 parts of that videotape for particularly reason  
 19 regarding the Court's ruling and when I did I observed  
 20 two separate things that concern me.  
 21 The first of which was that at some point we were  
 22 up at the bench and waiting for something and the jury  
 23 was sitting there and the Court allowed the jury,  
 24 encouraged the jury to get up and walk or get water.  
 25 And at least three jurors walked over to the water

1 fountain by the clerk and went and obtained paper cups.  
 2 The water fountain which has the bottled water on top  
 3 of it is what people use. Lodged right next to it  
 4 (inaudible) another water fountain that you would bend  
 5 down. And I earlier observed (inaudible) --  
 6 THE COURT: Is there something behind the  
 7 water cooler?  
 8 MS. GUTIERREZ: That behind the water  
 9 fountain is where the guards place the handcuffs. I  
 10 believe that would be, you know, not have the handcuffs  
 11 visible in an attempt to hide them, but once one gets  
 12 to the water fountain the handcuffs are readily visible  
 13 if one looks.  
 14 Additionally, at the end of the day when we were  
 15 trying to sort out time and the Court was trying to  
 16 settle out and ultimately arrived in asking everyone to  
 17 be here at 8:30. In front of the jury, the Court I  
 18 believe inadvertently, certainly had a little  
 19 discussion with the guard about can you get him here at  
 20 8:30 and the jury was still in the room because you  
 21 were trying to figure out what time to tell them and,  
 22 you know --  
 23 THE COURT: Are you making a motion?  
 24 MS. GUTIERREZ: Well, I am, Judge, but for  
 25 certain relief and I guess, I don't want to make it

1 worse, I don't want to draw any more attention. I  
 2 don't know and you couldn't tell from the tape wheth  
 3 the jurors actually looked down. I just knew because I  
 4 had observed them there. That once you're there you  
 5 can see them on the ground and they're plainly visible,  
 6 the handcuffs.  
 7 I guess my request for relief would be to gently  
 8 advise the jury, you know you may have observed  
 9 yesterday that I made a comment that clearly indicated  
 10 Mr. Syed was in custody and again, you know I'm  
 11 entitled to keep that out, but at this juncture I'm not  
 12 asking for relief. What's done is done and whatever  
 13 inferences they made are made. What I'm concerned  
 14 about is that they get correct information. My belief  
 15 is that if you bring it out and say it so that they  
 16 don't think something otherwards, do you know? And  
 17 just to advise them, you know the fact that he may have  
 18 been incarcerated pending this trial is not something  
 19 that you're allowed to hold against him to consider as  
 20 evidence, whatever because my belief is that jurors  
 21 will strive to live up to their duty and although I  
 22 don't want to underscore it I think that if the Court  
 23 just mentions it without even saying why you think they  
 24 might, but to remind them, you know. The fact that he's  
 25 incarcerated and what inadvertently is not something

1 that you could consider against him.  
 2 THE COURT: I'd be happy to do that.  
 3 Actually, I recalled my remark and if --  
 4 MS. GUTIERREZ: It didn't occur to me, I mean  
 5 I remember hearing it, but it never occurred to me  
 6 until I looked at the tape last night.  
 7 THE COURT: If it's all right, I could say  
 8 that you might have observed that the Defendant has  
 9 been occupied by someone from the institution each day.  
 10 You're not to consider that as anything relative to  
 11 anything, that is he is considered innocent until  
 12 proven guilty and his status pretrial is not of  
 13 anything for your concern. Does the State have any  
 14 objection to that?  
 15 MR. URICK: State would oppose any comment on  
 16 this subject. We think that it would be incorrect to  
 17 address it. They clearly can that he's -- that the  
 18 guard is present. I don't think they have any more  
 19 information now then they had previously.  
 20 THE COURT: In light of the fact the Defense  
 21 has requested this curative instruction I'm inclined to  
 22 give the curative instructions for the reason that the  
 23 Defense has requested it. And I would note that  
 24 arguably the Court concedes that it did make the remark  
 25 and perhaps that would assist and ask or inquire first,

1 Officer Gilmore, are they in fact your shackles?

2 OFFICER GILMORE: Yes, they are, Your Honor.

3 THE COURT: All right.

4 OFFICER GILMORE: To sit on them all day long  
5 it kind of tough.

6 THE COURT: I understand.

7 OFFICER GILMORE: I could wear them on my  
8 side, but then the shackles would be visible on my side  
9 rather than having them out of sight.

10 THE COURT: Is there anywhere else we could  
11 place them that would be convenient to you?

12 OFFICER GILMORE: The problem with me putting  
13 them in my pocket is when I come -- when someone comes  
14 to relieve me I have to take them out and give them to  
15 the other officer which is more of a deal.

16 THE COURT: All right. Could we --

17 MS. GUTIERREZ: Well, Judge I guess I'm not  
18 requesting that you move them. In light of the fact  
19 that the Court is going to say something --

20 THE COURT: Okay. Very well.

21 MS. GUTIERREZ: To the jury, I think that,  
22 you know they're just they're as unobtrusive as  
23 possible, if they see them they see them.

24 THE COURT: Fine.

25 MS. GUTIERREZ: I will note that of all the

1 the Court's offer to sort of let us with greater leeway  
2 then would normally occur including, you know, telling  
3 us we could ask the exact same questions and make the  
4 exact same inferences of this witness in our cross.

5 Judge I seriously believe that that is not sufficient  
6 to make up for the misleading nature of Mr.  
7 Waranowitz's testimony and we would request relief.

8 Number one, I would move to have the entire  
9 testimony of Mr. Waranowitz stricken and the jury so  
10 advised that it is stricken. That notwithstanding  
11 everything they heard you have stricken it and that  
12 they should disregard it and pay no attention and in  
13 that instruction advise the jury, you know that it is  
14 unusual to do so, that it is being done so without that  
15 testimony having been afforded an opportunity to cross  
16 examine.

17 And further, I would move that the Court advise  
18 the jury that the Court has found that the use of this  
19 person as an expert was misleading in that that is the  
20 basis for striking this witness' testimony. Having  
21 reviewed that and as a result of reviewing that  
22 literally going back to listening and watch the entire  
23 videotape.

24 Notwithstanding the Court's efforts which were  
25 numerous to advise the jury, you know, when things

1 days that was the only day the jurors got up from their  
2 seats and walked somewhere else in the courtroom.

3 THE COURT: And under the circumstances we  
4 had delayed them, it was warm.

5 MS. GUTIERREZ: Yes.

6 THE COURT: And I actually observed a number  
7 of people actually seek the water including you.

8 MS. GUTIERREZ: Yes.

9 THE COURT: So, we will leave them where they  
10 were and I will provide the Defense -- the jurors with  
11 the curative instruction. Is there anything else?

12 MS. GUTIERREZ: Yes, Judge. In -- again, in  
13 light of my review of the tape yesterday particularly  
14 as to the part where the Court and it was late in the  
15 day, the Court essentially made a finding that the  
16 State's use of the expert was misleading. And having  
17 reviewed carefully the Court's instructions and the  
18 Court's assertion that of course it was going to give  
19 us great leeway in light of that to cross examine.

20 That's really, frankly why I was reviewing the tape,  
21 that because of what was going on I had not taken great  
22 notes although I did write, you know the State's use of  
23 the expert is misleading, but that's the portion of the  
24 tape my intent was to review last. In light of what I  
25 believe is a finding by the Court and not withstanding

1 shifted and this expert was attempted to be led  
2 somewhere else and limiting or qualifying that person  
3 to the jury and did that on numerous occasions, you  
4 know, for the very reason that led the Court to find  
5 and to alter the Court's position and understand that  
6 of course there had to some remedy. The State chooses  
7 to put on a witness intending to mislead, we believe  
8 that the remedy of just expanding out right to cross  
9 examine thereby attacking that testimony is not  
10 sufficient. They shouldn't be allowed to mislead the  
11 jury. They shouldn't be allowed to attempt to mislead  
12 the jury and all the efforts of the Court to blunt the  
13 impact of that we believe altogether are not.

14 And I will tell you, Judge I thought very long and  
15 hard about this as the Court must be aware, as a  
16 Defense lawyer I would never willingly give up any  
17 opportunity to cross examine an adverse witness. But I  
18 believe allowing this witness' testimony to stand in  
19 light of the misleading nature of it is so violated of  
20 due process that the remedy the Court has fashioned by  
21 allowing broader cross examination and ordinarily I  
22 would have does nothing to blunt the misleading nature  
23 of where the State was allowed to go with this witness.  
24 And the only remedy is to strike the witness' entire  
25 testimony and advise the jury of why the Court has done



1 so.

2 THE COURT: Does the State wish to be heard?

3 MR. URICK: Yes, Your Honor we have a counter  
4 motion.

5 THE COURT: No, I would like to hear you  
6 respond to that motion first.

7 MR. URICK: I will proffer to the Court that  
8 when we went to Mr. Waranowitz -- when we were talking  
9 to him we said, we've got cell phone records and we  
10 have statements that this AT&T wireless phone were in  
11 these locations and these calls were received were  
12 made. Is it possible to test the system to see if it  
13 is possible for the system to respond in those places  
14 in these manners and that was the test to check out the  
15 cell phone records and the statements to see if it can  
16 be shown that this -- that the system can respond in  
17 this way. He explained to use you can never say from a  
18 cell phone record the spot where something was, you can  
19 never prove that. You can only show through the fact  
20 that it initiated a call through a cell site, that it  
21 was in that coverage area for that cell site. But you  
22 can go to specific locations and see if it's possible  
23 for the system to respond as the cell phone records do.  
24 That was his test, that was the purpose of it.

25 THE COURT: Do you believe that the test that

1 a particular day when the witness has shown through  
2 your questions that there are variables that would  
3 affect the performance of the phone which effectively  
4 makes your test totally irrelevant. If the weather was  
5 different, if there were leaves on the trees, if the  
6 model of the phone was different. I mean doesn't in  
7 fact everything you've presented make the test null and  
8 void and irrelevant to this proceeding? You didn't  
9 indicate that you did it with the same -- ran the test  
10 on a day when the weather conditions were identical to  
11 the date that you allege that the body was buried.  
12 That the weather conditions were such that there was no  
13 ice on the trees, there were no leaves on the trees,  
14 that there was no snow on the ground, that the  
15 temperature was about the same, that the equipment that  
16 was used to test was the same.

17 Your testimony that you've presented has not  
18 indicated any of the factors that your own witness say  
19 affects the performance and thereby doesn't the test  
20 itself become misleading to a jury, to give the  
21 impression that the phone that was the subject of this  
22 case performed in the same way. I mean granted, the  
23 weight of the testimony must be made, a weighing must  
24 be made by the jury, but my question is aren't we  
25 bordering on irrelevant versus relevant because the

1 you presented to this jury was indicative of what you  
2 were trying to prove?

3 MR. URICK: Yes, I do. We asked -- we told  
4 him what we wanted to show and we left it up to him as  
5 to how to do it based on his knowledge of the system.  
6 He went out and he did that and this shows that this is  
7 -- that the system in fact can respond in this manner.

8 THE COURT: You would agree that there are  
9 some flaws in his tests though.

10 MR. URICK: I don't believe they are flaws  
11 because I think he showed enough knowledge of the  
12 system and of the different phones, specifically Nokia  
13 and Erickson that we should be allowed to say, would a  
14 properly functioning Nokia phone be capable of  
15 responding to the system in this way and would it be  
16 recorded in this way. We think based on his expertise  
17 and training he can. Ms. Gutierrez would have a full  
18 right to talk about the different functions of  
19 different brand phones in relation to the test because  
20 that goes to the weight to which it should be give, not  
21 to it's admissibility. The admissibility is that it is  
22 helpful to the finder of fact in evaluating the  
23 information.

24 THE COURT: Mr. Urick, why isn't it  
25 irrelevant what a particular phone, an Erickson did on

1 weight is so tenuous here that it might not even way  
2 anything at all?

3 MR. URICK: The State respectfully disagrees,  
4 Your Honor. What we were showing is that yes, it is  
5 possible for this system to respond in the way that the  
6 cell phone records indicate it in fact did. We are  
7 showing the possibility that it did. This is  
8 corroborative of other testimony, hence it has great  
9 relevance, it goes into corroboration.

10 THE COURT: So you're saying no matter how  
11 weak or tenuous this might be that it is yet -- it is  
12 only one item to be weighed in the context with other  
13 items that it occurred in the fashion that you've  
14 presented?

15 MR. URICK: Yes, it is corroborative,  
16 therefore it is irrelevant.

17 THE COURT: That is with Wild's testimony  
18 that the phone did ring while they were at certain  
19 places to corroborate the fact that he was in fact in  
20 the areas that you've indicated.

21 MR. URICK: Yes.

22 THE COURT: I see.

23 MR. URICK: And that that particular phone  
24 would in fact register the particular records that it  
25 did as to the cell site that the call was initiated to.

1 Hence it is corroborative and it's relevant. The  
2 degree to which it is would be weight.

3 THE COURT: I understand. And that's your  
4 response to that -- the motion of the Defense at this -  
5 - at this point with regard to striking all of Abe  
6 Waranowitz's testimony?

7 MR. URICK: Yeah, and I believe he could  
8 adequately explain the degree to which it is a  
9 justifiable test for that situation.

10 THE COURT: With regard to the Defense motion  
11 I won't strike Abe Waranowitz's testimony. However,  
12 I'm going to instruct the jury and I'd ask that both  
13 the State and the Defense fashion an instruction to be  
14 used at the close of the case when I provide them the  
15 instruction as to how an expert's testimony shall be  
16 viewed. And so I'd ask that Counsel make a note that  
17 I'll be looking for an instruction to be submitted  
18 along with the other instructions specifically with  
19 regard to Abe Waranowitz's testimony. I don't know if  
20 there will be any other instructions that may have been  
21 provided, but I will also indicate and reiterate that  
22 the Defense because of the tenuous nature of the test  
23 that was run, I'm still am going to give you great  
24 latitude on cross with regard to bringing out those  
25 issues that would affect the reliability of the tests

1 to interact with the system in the same way.

2 THE COURT: Okay. In light of the questions  
3 of the Court yesterday, Ms. Gutierrez, do you have any  
4 objection to that question?

5 MS. GUTIERREZ: Yes, Your Honor.

6 THE COURT: All right. I will allow him to  
7 answer that question only as it relates to -- you'll  
8 have to lay the foundation that the Court sort o went  
9 into out of the presence of the jury, his knowledge he  
10 testified during that period that he had tested Nokias  
11 and other phones in the past, that they performed in  
12 certain ways, that it had to do with the model of the  
13 phone. You lay that foundation and then I will let you  
14 ask the question you just posed. You do not lay that  
15 foundation for his basis of knowledge, the question  
16 will be sustained.

17 MR. URICK: Thank you. I would ask that the  
18 item that I provided the Court be marked as State's  
19 Exhibit One for the motion of 2/9 and that it be  
20 incorporated into the Court file.

21 THE COURT: Which -- which item is that?

22 MR. URICK: The fax, Your Honor and receipt.

23 THE COURT: You're asking that the fax and  
24 receipt be marked for identification purposes?

25 MR. URICK: As far as an exhibit for the

1 that was run and would aid the jury in making the  
2 weighing that Counsel has just indicated, will have to  
3 be done with regard to the value if any, that the jury  
4 may find with regard to Mr. Waranowitz's testimony  
5 regarding his test.

6 However, I find that Mr. Waranowitz's testimony in  
7 other aspects with regard to his expertise in the  
8 knowledge of the network system was indeed extremely  
9 helpful and I do find that that information was of the  
10 quality that expert testimony is normally rendered in a  
11 proceeding and I do not find that there was any error  
12 made in accepting him as an expert. I also find that  
13 in fact, the fact that he is an expert he was able to  
14 help us sift through the value that or the problems  
15 that may have existed with regard to the test that was  
16 run.

17 So with that in mind, keep in mind I will be  
18 looking for an instruction relative to how Mr.  
19 Waranowitz's expert testimony and that test should be  
20 viewed. Mr. Urick, you said you had some other issue  
21 or motion.

22 MR. URICK: Yes, I would based on my previous  
23 proffer to the Court move that I'd be allowed to ask  
24 him based on your experience and understanding of the  
25 system would a properly functioning Nokia phone be able

1 motion, the motion exhibit.

2 THE COURT: You're welcome to submit it as an  
3 exhibit for the motion and why don't we give it a  
4 different sticky number apart from -- why don't we make  
5 it Exhibit 100. You're not going to have a 100, are  
6 you?

7 MR. URICK: I doubt it.

8 THE COURT: Why don't we make it Exhibit 200  
9 to make sure, absolutely, positively and put on there  
10 motion for mistrial, I think that was part of your  
11 evidence.

12 (State's Exhibit No. 200 was  
13 received into evidence.)  
14

15 And for the record the Court does recall that Ms.  
16 Gutierrez did qualify that she was not sure if someone  
17 in her office may have received this is as part of the  
18 stack, but that she did not have an independent  
19 recollection of having seen it. That was my  
20 recollection of what Ms. Gutierrez said at the bench.  
21 Ms. Gutierrez.

22 MS. GUTIERREZ: Well, the only difference,  
23 Judge is I stated affirmatively, not that I didn't  
24 recall that it could have been --

25 THE COURT: That it could have been part of a

1 pile.

2 MS. GUTIERREZ: Well, it may well have been  
3 part of not receipt by my office as part of the  
4 literally thousands of documents in the State's  
5 attorneys mandated review, but as particularly as  
6 related to what's been marked and introduced as State's  
7 Exhibit 44 and 45 that, you know I note that there's  
8 nothing on either of them that either identifies what  
9 they are, when they were made, for what purpose.  
10 Waranowitz's or AT&T's does not appear and that, you  
11 know I had not seen them, I had not received them. I  
12 did not mean and I don't believe what I said yesterday  
13 in anyway intimated, well maybe there was this  
14 possibility that someone else from my office at some  
15 point received something that wasn't brought to my  
16 attention. I'm not stating that.

17 THE COURT: Very well.

18 MS. GUTIERREZ: I'm not inferring that or  
19 intimating that.

20 THE COURT: Very well. We could go back and  
21 forth about what may or may not have existed. I think  
22 the record is clear on this issue. The Court's  
23 position is that the mistrial request is denied. I do  
24 not find that there is sufficient information that  
25 would warrant a mistrial and so, therefore it is

1 that are evidentiary stickers that are placed into the  
2 file and that those things are the things will take  
3 back and they'll be able to consider them. At this  
4 point, I'm going to ask if Counsel is here on my  
5 docket.

6 (Court hears other matters, case resumes as  
7 follows:)

8 THE COURT: All right. If we could have the  
9 jury come out.

10 MS. GUTIERREZ: Are we going to bring the one  
11 juror.

12 THE COURT: I'm sorry.

13 MS. GUTIERREZ: Are you going to bring the  
14 one juror?

15 THE COURT: Yes. You said juror number two,  
16 right.

17 MR. URICK: Mr. Waranowitz is out in the  
18 hallway. Should he wait there?

19 THE COURT: He should wait there until we  
20 deal with the issue with the juror and we will make  
21 sure the juror -- Juror number two if you would step up  
22 please. We've received your note, good morning.  
23 Perhaps you should come all the way up here. Just come  
24 all the way up and they can hear you, there's a  
25 microphone here. I just need to ask you a few

1 denied. And I understand that this item will now be  
2 part of the record. It is marked as Exhibit 200 for  
3 the support of the Defense -- of the State's motion for  
4 mistrial. Any further?

5 MR. URICK: I don't believe you ruled on my  
6 alternative motion in limine that Ms. Gutierrez be  
7 instructed not to make comments in front of the jury.

8 THE COURT: I did rule on that, actually. I  
9 said, that no, I was not going to give a particular  
10 instruction in limine, but that rather I'd ask both  
11 Counsel that when you're at the bench that you keep  
12 your voices down, that you're out in the open air, that  
13 you be reminded that the jury can hear what you're  
14 saying. I'm not going to specifically instruct anyone  
15 to that degree and that I will reiterate as often as I  
16 can when I hear Counsel speaking that what you all are  
17 saying is not evidence. I will continue to do that as  
18 I've done so far in the trial and I will continue to do  
19 that. At this time I would just ask both Counsel just  
20 try your case, it's the only thing I ask you to do.  
21 The jury knows what the evidence is going to be.  
22 They're going to be instructed that they should  
23 consider only the questions and the answers of the  
24 witness -- excuse me, the answers of the witness that  
25 testify and sworn that the evidence are those items

1 questions. Step back so that Ms. Gutierrez can get --  
2 just turn. Can you turn your body on an angle? There  
3 you go. You've indicated that you need an extra hour  
4 for -- to take care of something at your job.

5 JUROR: Yes.

6 THE COURT: If we were to break for lunch say  
7 around eleven and allow you to do -- or 11:30 and allow  
8 you to go from 11:30 to say 1:30, would that allow you  
9 to --

10 JUROR: Yes.

11 THE COURT: Do what you need to do?

12 JUROR: Yes. Yes, I just need to get over to  
13 the Community College of Baltimore.

14 THE COURT: The Community College of  
15 Baltimore?

16 JUROR: Yes, ma'am. And talk to my  
17 supervisor and sign some -- because if you don't sign  
18 your time sheets for two weeks --

19 THE COURT: You will not get paid?

20 JUROR: No, you won't get paid and you won't  
21 have a job.

22 THE COURT: All right. Now, --

23 JUROR: I'm a contractual worker.

24 THE COURT: All right. And I understand that  
25 you noted that you need to do this. If you are able to



1 do this would this then satisfy your concerns?

2 JUROR: Yes.

3 THE COURT: All right. And there's nothing  
4 about your job or your home situation that's  
5 interfering with your ability to pay attention or allow  
6 you to be -- continue to be fair and impartial?

7 JUROR: No. One of my co-workers called me  
8 last night.

9 THE COURT: One of your co-workers alerted  
10 you to the fact that you needed to get up there.

11 JUROR: That I needed to get up there, yeah.

12 THE COURT: All right. Ms. Gutierrez, are  
13 you satisfied? Mr. Urick, are you satisfied?

14 MR. URICK: Very much so. Thank you, Your  
15 Honor.

16 THE COURT: Very well, sir. At 11:30 we will  
17 break, I have the rest of my docket that I'm going to  
18 deal with and so, we'll allow you to do that and we'll  
19 bring the jury back at 1:30.

20 JUROR: All right.

21 THE COURT: Very well.. Also at 1:30 you'll  
22 hear me tell you, the jurors what they can do to get  
23 paid and you should do that as well.

24 JUROR: Thank you.

25 THE COURT: You may take your seat. There's

1 promptly this morning. I was advised that you all were  
2 here promptly at 8:30. We have dealt with some matters  
3 this morning and I want to let you know that we're  
4 going to proceed with this case. Before we get started  
5 I need to bring to your attention that at close of the  
6 day yesterday I made some reference to the fact, asking  
7 the correctional officers to transport the Defendant  
8 and you may have noticed that through the course of the  
9 trial that he is, the Defendant has been escorted by  
10 someone from Corrections. Please be advised that that  
11 means nothing. The pretrial status of the Defendant  
12 whether he's incarcerated or not is not relevant to  
13 this case in anyway and should not be considered by you  
14 in any way whatsoever with regard to the facts,  
15 circumstances, evidence or anything regarding this  
16 case.

17 An individual as I indicated to you at the outset  
18 charged with the Defense is innocent until proven  
19 guilty: The State priors that burden at all times, so  
20 therefore his pretrial status should have no relevance  
21 or bearing on you whatsoever during the course of this  
22 trial or your deliberations. At this time we're going  
23 to continue with the testimony of Mr. Waranowitz and at  
24 this time the State I believe has a few questions.

25 MS. GUTIERREZ: We would just have a

1 no reason you should leave. Yes.

2 UNKNOWN: (inaudible)

3 THE COURT: At 12:30. I understand, but I  
4 can make arrangements for him to be paid at 1:30, I was  
5 told as well. Thank you. Put that in the file, and if  
6 we could bring the remaining jurors.

7 MR. URICK: Yeah, just ask the witness to  
8 come in. It's okay for the witness to come in?

9 THE COURT: Whatever you'd like, Mr. Urick at  
10 this point.

11 MR. URICK: Thank you, Your Honor.

12 THE COURT: Obviously you've directed them  
13 and that's what -- she's gone so, she'll do whatever  
14 you've told her to do.

15 MR. URICK: I apologize if I was  
16 presumptuous.

17 THE COURT: That's all right. I just wanted  
18 to have the jury together as much as possible. Sir,  
19 you make take the witness stand.

20 MR. WARANOWITZ: Thank you, Your Honor.

21 (The jury returned to the courtroom.)

22 THE COURT: Good morning, ladies and  
23 gentlemen.

24 JURY: Good morning.

25 THE COURT: I thank you for being here

1 continuing objection to any further questions asked.

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

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

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

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

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

22 EXAMINATION

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

25 (State's Exhibit 33 was marked for

1 identification.)  
 2 MR. URICK:  
 3 Q Mr. Waranowitz, at this time I would ask you  
 4 on the map to find the spot you testified to at Gelston  
 5 Park and to fix this sticker that says Park at that  
 6 location on the map. Secondly, I'd ask you to find the  
 7 location that you identified yesterday as the 2700  
 8 block of Gateway Terrace. Affix the sticker that I  
 9 wrote A. T-E-R-R. at that spot. I would note for the  
 10 record that he has affixed those stickers at the two  
 11 places he identified yesterday later in the day when  
 12 everybody was using Scotch tape I'm going to put tape  
 13 over those to make sure that they are permanently  
 14 affixed. You may return to the stand at this time.  
 15 At this time I'd move into evidence State's Exhibit 33,  
 16 the exhibit that he just affixed the final stickers to.  
 17 THE COURT: And 33 includes the map only, is  
 18 that correct?  
 19 MR. URICK: That's the map and the overlay.  
 20 THE COURT: And the overlay, they're two  
 21 separate exhibits?  
 22 MR. URICK: I have them as a collective  
 23 exhibit, I can mark them 33A and 33B.  
 24 THE COURT: Why don't we do that just for the  
 25 continuity sake in the event that there is any problem.

1 The map then would be 33, correct? What did you say,  
 2 33?  
 3 MR. URICK: Thirty-three.  
 4 THE COURT: Thirty-three A and then the  
 5 overlay will be 33B. Any objection from the Defense  
 6 with regard to 33A, the map?  
 7 MS. GUTIERREZ: No, Your Honor.  
 8 THE COURT: And with regard to 33B, the  
 9 overlay?  
 10 MS. GUTIERREZ: Yes. For all the previous  
 11 listed stated, correct.  
 12 THE COURT: The overlay and the map will be  
 13 accepted as evidence at this time.  
 14 (State's Exhibit No. 33A &  
 15 33B, previously marked for  
 16 identification, will be received  
 17 into evidence.)  
 18 BY MR. URICK:  
 19 Q Mr. Waranowitz, do you have a Nokia phone?  
 20 MR. WARANOWITZ:  
 21 A No, not currently.  
 22 Q Have you ever had a Nokia phone?  
 23 A Yes, I have.  
 24 Q And what -- what cellular phone system did  
 25 you use that phone with?

1 A AT&T Wireless Services.  
 2 Q How did you obtain that phone?  
 3 A It was given to me by the company.  
 4 Q And did you have occasion to use that phone  
 5 while you were in the Baltimore/Metropolitan area?  
 6 A Yes.  
 7 Q And have you had occasion to receive billing  
 8 information on that phone as a result of the calls you  
 9 may have received or made in the Baltimore/Metropolitan  
 10 region?  
 11 A Yes.  
 12 Q Now, in the course of your for the AT&T  
 13 Wireless Corporation, have you had occasion to test the  
 14 performance of Nokia phones on the AT&T wireless  
 15 network in the Baltimore region?  
 16 MS. GUTIERREZ: Objection.  
 17 THE COURT: Overruled. You may answer it.  
 18 And your objection is noted for the record. You may  
 19 continue.  
 20 MR. WARANOWITZ: Yes.  
 21 BY MR. URICK:  
 22 Q What sorts of tests do you perform on Nokia  
 23 phones?  
 24 MS. GUTIERREZ: Objection.  
 25 THE COURT: Overruled. At this point the

1 argument you previously made will be incorporated  
 2 herein by reference and is overruled.  
 3 MS. GUTIERREZ: Thank you, Your Honor. May I  
 4 have a continuing objection?  
 5 THE COURT: Very well. You may continue.  
 6 MR. WARANOWITZ: We monitored the Nokia --  
 7 the massive Nokia phones in our network statistically.  
 8 We also use it in test mode. The Nokia phone has a  
 9 test phone in it that you can enable that will test us  
 10 what cell site you were on and what frequency you're  
 11 on. So, we were able to compare the performance of the  
 12 Nokia phone versus other phones in our network.  
 13 MS. GUTIERREZ: Objection. Move to strike.  
 14 He's not responding to the question.  
 15 THE COURT: Overruled. You may continue.  
 16 BY MR. URICK:  
 17 Q How often do you conduct these sorts of tests  
 18 on Nokia phones?  
 19 MR. WARANOWITZ:  
 20 A Usually once when we first get the phone. We  
 21 monitor it over a period of time.  
 22 Q How many phones have you done this to?  
 23 A I've used my own phone and I monitor phones  
 24 used by the customers in our network.  
 25 Q And about how many customer's phones have you



1 monitored?

2 A Hundreds of thousands.

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

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

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

12 A Poor antennas, problems with the batteries.

13 Q How would these problems be appearing?

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

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

20 A Sometimes, yes.

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

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

1 quality. It makes it sound warbley.

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

4 A Yes.

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

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

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

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

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

18 MS. GUTIERREZ: Objection.

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

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

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

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

3 THE COURT: Which questions are they?

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

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

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

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

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

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

23 THE COURT: A Nokia 6160?

24 MR. URICK: Yes.

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

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

9 MR. URICK: Thank you.

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

17 MR. URICK: Thank you very much.

18 THE COURT: All right.

19 MS. GUTIERREZ: Well, Judge --

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

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

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

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

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

18 THE COURT: Or specifically this phone.

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

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

4 THE COURT: Yes, you may.

5 BY MR. URICK:

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

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

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

12 THE COURT: All right. Very well.

13 BY MR. URICK:

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

15 MR. WARANOWITZ:

16 A Yes, I have...

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

19 A This is a Nokia 6160 phone.

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

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

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

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

10 THE COURT: In the performance of the --

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

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

15 MR. URICK: Yes.

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

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

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

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

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

7 A Yes.

8 MS. GUTIERREZ: Objection.

9 THE COURT: Overruled.

10 BY MR. URICK:

11 Q And what is that opinion?

12 MR. WARANOWITZ:

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

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

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

19 BY MR. URICK:

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

23 MR. WARANOWITZ:

24 A Yes.

25 MR. URICK: Witness with the Defense.

1 THE COURT: You may proceed, Ms. Gutierrez.  
 2 MS. GUTIERREZ: Thank you, Your Honor.  
 3 CROSS EXAMINATION  
 4 BY MS. GUTIERREZ:  
 5 Q Mr. Waranowitz, would you step down off the  
 6 witness stand?  
 7 THE COURT: Yes, you may follow her lead.  
 8 BY MS. GUTIERREZ:  
 9 Q Now, this Exhibit 33A and B, both the map and  
 10 the colored overlay are exhibits that you prepared,  
 11 correct?  
 12 MR. WARANOWITZ:  
 13 A Yes.  
 14 Q The underlaying map was from geological  
 15 survey map service?  
 16 A Yes.  
 17 Q And that map indicates in many places the  
 18 names of roads, does it not? And directions of roads?  
 19 A Yes.  
 20 Q And names of neighborhoods?  
 21 A Yes.  
 22 Q And you didn't put any of that on there,  
 23 that's already on there, correct?  
 24 A That is correct.  
 25 Q Now, the overlay is prepared on a clear see

1 through sheet of transparent plastic, is it not?  
 2 A Yes.  
 3 Q And the areas where that transparent plastic  
 4 is colored is what you did, correct?  
 5 A Yes.  
 6 Q And there are various colors on there, are  
 7 they not?  
 8 A Yes.  
 9 Q And sometimes the colors are repeated?  
 10 A Yes.  
 11 Q And the repeats in fact appear all over the  
 12 map?  
 13 A Correct.  
 14 Q And there's no independent, significance to  
 15 the colors, are there?  
 16 A There are not unique colors, unique cell  
 17 sites, yes.  
 18 Q For instance, the blue doesn't mean something  
 19 special because it's blue, does it?  
 20 A Correct.  
 21 Q Or what you called orange here in the middle  
 22 doesn't have some special significance because it's  
 23 orange, right?  
 24 A Right.  
 25 Q Now, you showed us again, if you could just

1 step back for a minute, sir and discussed yesterday  
 2 State's Exhibit 43B as a demonstration that you  
 3 prepared to show us how the coverage area sites, the A,  
 4 B and C sites that emanate from a cell site should  
 5 appear, correct?  
 6 A Yes.  
 7 Q And you drew this, correct?  
 8 A Yes.  
 9 Q This doesn't appear somewhere naturally, you  
 10 drew it?  
 11 A Correct.  
 12 Q All right. And what you've described -- and  
 13 this is how ideally a cell site coverage area should  
 14 appear, correct?  
 15 A Yes, it's symbolic of that.  
 16 Q It's symbolic of that. Now, if you would  
 17 step back and look at, you have listed one, two, three,  
 18 four, five, six, seven cell site numbers on this cover  
 19 overlay, have you not?  
 20 A Yes.  
 21 Q And you drew in those cell site numbers, did  
 22 you not?  
 23 A I drew in the numbers.  
 24 Q And you're the one that determined what would  
 25 be the outlines of any particular color, did you not?

1 A No, that was generated by the computer.  
 2 Q So, and the computer generated those outlines  
 3 based on information about the boundaries of the  
 4 specific sector that emanates from a specific cell  
 5 site, correct?  
 6 A Could you (inaudible)  
 7 Q The computer didn't decide what the coverage  
 8 sites should look like, did it?  
 9 A Yes, it did.  
 10 Q The computer didn't decide what the  
 11 boundaries of the coverage area was, did it?  
 12 A Yes, it did.  
 13 Q The computer merely generated what  
 14 information was in it, correct?  
 15 A Yes.  
 16 Q The computer doesn't decide that here all  
 17 cell sites ideally should look like the neat little  
 18 circles that you've drawn, does it?  
 19 A Where I drew these at?  
 20 Q Yes, Mr. Waranowitz. On your drawing which  
 21 you made which was computer assisted. You indicated  
 22 that ideally the A, B and C sectors are exactly alike  
 23 just in different locations, did you not?  
 24 A Yes.  
 25 Q The area that they cover is exactly the same



1 for each three sectors, is it not?

2 A Yes.

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

5 A No.

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

9 A No.

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

12 A No.

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

15 A Yes, I did.

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

18 A 653A.

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

21 A Yes.

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

25 A That would be L653C.

1 THE COURT: Ms. Gutierrez, well, Ms.

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

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

12 THE COURT: Okay.

13 BY MS. GUTIERREZ:

14 Q Now, on the overlay --

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

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

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

22 MR. WARANOWITZ: Yes.

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

25 MR. WARANOWITZ: Yes.

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

3 A Yes.

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

8 A That is correct.

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

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

14 Q You didn't understand it?

15 A Please ask me again.

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

18 A Yes.

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

21 A Yes.

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

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

3 BY MS. GUTIERREZ:

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

6 MR. WARANOWITZ:

7 A No, it does not.

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

9 A Correct.

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

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

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

14 A Just the road maps.

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

17 A Yes.

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

20 A The software is created by LCC.

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

23 A Yes.

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

1 A Correct.  
 2 Q Not something that you yourself put in the  
 3 computer at any given time?  
 4 A Correct.  
 5 Q But this overlay is suppose to represent, not  
 6 the ideal cell site coverage, but the actual cell site  
 7 coverage, correct?  
 8 A Yes.  
 9 Q And the overlay in no way looks anywhere  
 10 close to your ideal cell site coverage, does it?  
 11 A No.  
 12 Q You can take back your seat. Now, Mr.  
 13 Waranowitz, before we go any further, let me ask you a  
 14 question that really concerned me that Mr. Urick didn't  
 15 bother to ask. You referred to -- you were asked to do  
 16 this test, were you not?  
 17 A Yes.  
 18 Q You were asked by him were you not?  
 19 A Yes.  
 20 Q Okay. And you met with him, didn't you?  
 21 A Yes, I did.  
 22 Q And the information you received before doing  
 23 anything you got from him, did you not?  
 24 A Yes.  
 25 Q You got a list of addresses, did you not?

1 Q And it isn't something you have anything to  
 2 do with putting in information into to generate, is it?  
 3 A Correct.  
 4 Q That's done by somebody else, is it not?  
 5 A Yes.  
 6 Q And much of that is done by computers, is it  
 7 not?  
 8 A I don't know.  
 9 Q You think all those entries are entered in by  
 10 hand?  
 11 A I don't know.  
 12 Q You don't know. Mr. Waranowitz, the reason  
 13 the billing information on a wireless includes  
 14 information such as the time of the call and the  
 15 duration of the call has to do with the way wireless  
 16 phones are billed differently than land based phones,  
 17 does it not?  
 18 A Correct.  
 19 Q Often time a cellular customer is billed for  
 20 the minute of use, are they not?  
 21 A I don't know how they bill for minutes of  
 22 use.  
 23 Q Well, sir, you testified all day yesterday  
 24 and today that you're familiar because you in fact, are  
 25 and AT&T wireless customer, did you not?

1 A Yes.  
 2 Q He gave them to you, right?  
 3 A Yes.  
 4 Q You didn't of your own independent knowledge  
 5 know what if any significance those addresses have, did  
 6 you?  
 7 A No, I did not.  
 8 Q And you were asked to conduct a test to see  
 9 if it was consistent with what he thought, were you  
 10 not?  
 11 A I was asked to see if the test wold be  
 12 consistent with the locations and the phone records.  
 13 THE COURT: I'm sorry, I couldn't hear the  
 14 end of that.  
 15 MR. WARANOWITZ: I'm sorry. The test -- I  
 16 was asked to demonstrate or verify or test that the  
 17 billing -- do the billing records correspond with the  
 18 cell sites and the locations.  
 19 THE COURT: Your next question.  
 20 BY MS. GUTIERREZ:  
 21 Q Let me get this straight, Mr. Waranowitz.  
 22 The billing information for the AT&T wireless system  
 23 isn't something you're responsible for, is it?  
 24 MR. WARANOWITZ:  
 25 A Correct.

1 A Yes.  
 2 Q And does that information appear on your  
 3 bills?  
 4 A Yes.  
 5 Q The duration of the call?  
 6 THE COURT: Is that a question, Ms.  
 7 Gutierrez?  
 8 MS. GUTIERREZ: Yes, ma'am.  
 9 THE COURT: Is the duration of the call  
 10 appear on your bill, Mr. Waranowitz?  
 11 MR. WARANOWITZ: It would, yes.  
 12 BY MS. GUTIERREZ:  
 13 Q Okay. And you're familiar with that because  
 14 you've seen it in your own bill.  
 15 MR. WARANOWITZ:  
 16 A Yes.  
 17 Q And now you don't pay by the minute of use  
 18 for your own phone?  
 19 A No, I don't.  
 20 Q Your company pays for it, right?  
 21 A That is correct.  
 22 Q So, you're not concerned with verifying  
 23 accuracy of any information that might appear on your  
 24 bill, are you?  
 25 A No.

1 Q You don't have to check your bill to see if  
2 they counted up your minutes of use correctly?  
3 A No, I don't do that.  
4 Q You don't have to carefully check the  
5 accuracy of any information regarding the time of the  
6 call, do you?  
7 A No.  
8 Q You wouldn't be concerned for billing  
9 purposes if there appeared because some computer  
10 somewhere or some person somewhere made a mistake in  
11 entry as to that information, are you?  
12 A No, I don't handle billing.  
13 Q I didn't ask you that, sir. I'm asking you  
14 about your own phone bill.  
15 A No.  
16 Q You don't enter any information that  
17 generates your own phone bill, do you?  
18 A No, I do not.  
19 Q No, and because you don't pay for it like the  
20 rest of us because it's provided by your company,  
21 you're not concerned in regard to how much you pay,  
22 whether or not that information is accurate or not, are  
23 you?  
24 A No.  
25 MS. GUTIERREZ: Can I have State's Exhibit

1 side, sir, you were asked to identify whether or not  
2 those numbers correctly stated cell sites?  
3 A I recognize the cell site.  
4 Q Okay. And because you've looked at it  
5 before, correct?  
6 A Yes.  
7 Q And you knew that every single entry in that  
8 column was a cell site with which you were familiar?  
9 A Correct.  
10 Q Did you not? Now, the address column, sir,  
11 you didn't fill that in, did you?  
12 A No, I did not.  
13 Q And, sir, we spoke a minute ago about you  
14 were provided addresses by Mr. Urick, do you recall  
15 that?  
16 A Yes.  
17 Q One of the addresses that you were provided  
18 was 1208 Macado Road, Street whatever, was it not?  
19 A Yes.  
20 Q Now, 1208 Macado doesn't appear in this  
21 column, does it?  
22 A No, it does not.  
23 Q No, and 1208 Macado is not the address of a  
24 cell site, is it?  
25 A No.

1 34?  
2 MR. URICK: I believe that's the exhibit over  
3 here.  
4 THE COURT: Actually, it's the chart, but  
5 there is a I believe a blank copy of that.  
6 MS. GUTIERREZ: I thought that there was a  
7 record.  
8 THE COURT: No, I don't believe that it was  
9 ever generated.  
10 BY MS. GUTIERREZ:  
11 Q I would like you to step off, sir and come  
12 look at 34.  
13 THE COURT: You may.  
14 BY MS. GUTIERREZ:  
15 Q You were asked to review this yesterday, were  
16 you not?  
17 MR. WARANOWITZ:  
18 A Yes.  
19 Q And before yesterday you've reviewed this  
20 before, have you not?  
21 A Yes.  
22 Q You are familiar with the information in it,  
23 were you not?  
24 A Yes.  
25 Q In regard to the columns in the far right

1 Q And the address of a cell site as you've  
2 explained to us is the address of the owner of the  
3 property, correct?  
4 A Correct.  
5 Q So, now the address -- the photos that you  
6 were asked to look at were the antennas on top of the  
7 building that defined as what you and we people you  
8 worked with called the Social Security building,  
9 correct?  
10 A Yes.  
11 Q Are you familiar with that complex that  
12 actually fronts on Security Boulevard?  
13 A I'm familiar with the complex.  
14 Q Are you aware that there's a complex, a  
15 Social Security buildings?  
16 A Yes.  
17 Q And that in fact, the name of that set of  
18 buildings is the Social Security Administration  
19 headquarters.  
20 A I'm aware.  
21 Q And are you aware that at that complex there  
22 are eleven separate buildings as part of the  
23 headquarters of the Social Security Administration?  
24 A No, I wasn't aware of that.  
25 Q And that all of those buildings are owned by

1 the Federal Government, the United States Government.  
 2 A No, I didn't know that.  
 3 Q And are you aware that there is not a single  
 4 address that applies to all of eleven buildings?  
 5 A I am not aware of that.  
 6 Q The building that you identified in the  
 7 picture though is what you and your colleagues called  
 8 the Social Security building, correct?  
 9 A That is correct.  
 10 Q You of course couldn't tell us which of the  
 11 eleven buildings is the one that you and your  
 12 colleagues have designated by your own name for it,  
 13 could you?  
 14 A I've identified a building (inaudible)  
 15 THE COURT: I'm sorry. Wait a minute, sir.  
 16 You've got to -- you have to understand this is a  
 17 recording device and the mics pick up what you're  
 18 saying and record it, so if you speak softly I can't  
 19 hear and I bet the mics not picking up what you're  
 20 saying. So I need you to keep your voice up. Now, she  
 21 asked you about how you could identify that building  
 22 and your answer is?  
 23 MR. WARANOWITZ: I could identify it by the  
 24 AT&T equipment on the roof of the building.  
 25 THE COURT: Very well. Your next question.

1 BY MS. GUTIERREZ:  
 2 Q But you, sir, couldn't differentiate that  
 3 building if you couldn't see the antennas from the  
 4 other ten buildings as part of the complex?  
 5 MR. WARANOWITZ:  
 6 A I'm sorry. Rephrase that again.  
 7 Q Sir, you could not differentiate that  
 8 building without seeing the antennas from the other ten  
 9 buildings in the complex, could you?  
 10 A No.  
 11 Q Now, and, sir, could you tell us without  
 12 seeing the antenna what the street address of the  
 13 building that contains the antennas that you tell us  
 14 you could recognize is?  
 15 A I don't know exactly.  
 16 Q Now, while you're still up here and then I'll  
 17 let you sit down. Let me ask you about other addresses  
 18 that Mr. Urick gave you to conduct your test. One of  
 19 those was Rolling Road at I70, was it not?  
 20 A Yes.  
 21 Q And Rolling Road at I70 doesn't appear in  
 22 this column, does it?  
 23 A No, just the map.  
 24 Q Another address that you had given was  
 25 Security Square Mall, correct?

1 A Correct.  
 2 Q And are you aware of the street address of  
 3 that mall?  
 4 A No, I am not.  
 5 Q No, and Security Square Mall doesn't appear  
 6 here, does it?  
 7 A No, it does not.  
 8 Q And the 4703 Gateway Terrace address that you  
 9 were both told about and taken to, were you not?  
 10 A I'm sorry, say again.  
 11 Q The 4703 Gateway Terrace, the address that  
 12 Mr. Urick questioned you about extensively just moments  
 13 ago, do you recall that?  
 14 A Yes.  
 15 Q And that doesn't appear in this column, does  
 16 it?  
 17 A No, it does not.  
 18 Q And the Lincoln Park, what you referred to  
 19 burial site, does that have an address?  
 20 A No, it does not.  
 21 Q And incidentally you went there, did you not?  
 22 A I was taken there, yes.  
 23 Q You were taken there by Mr. Urick?  
 24 A I was taken by Ms. Murphy.  
 25 Q Okay. And you were shown a location,

1 correct?  
 2 A Yes.  
 3 Q And you were told information about that  
 4 location, were you not?  
 5 A A little bit, yes.  
 6 Q And that location, sir, was located a good  
 7 distance from the road, was it not?  
 8 A No, it was right off the road.  
 9 Q Right off the road. Could you tell us the  
 10 distance off the road that you were shown and told a  
 11 body had been buried?  
 12 A I was told that the body was buried behind  
 13 the concrete barriers.  
 14 Q And you saw those concrete barriers, did you  
 15 not?  
 16 A Yes, I did.  
 17 Q Were you actually taken into the wood and  
 18 shown an exact spot and told this is where a body was  
 19 buried?  
 20 A No.  
 21 Q So, you were just taken up to the area that  
 22 surrounded by concrete barriers?  
 23 A Yes.  
 24 Q We call them Jersey walls or the construction  
 25 industry calls them Jersey walls, are you aware of



1 that?  
 2 A Yes, Jersey walls.  
 3 Q Okay. And you were taken there and then you  
 4 said the body was buried behind here, correct?  
 5 A Correct.  
 6 Q And you weren't taken over those concrete  
 7 barriers, were you?  
 8 A No, I was not.  
 9 Q There wasn't any ready way to get over the  
 10 concrete barriers without climbing over them, was  
 11 there?  
 12 A No, I don't remember.  
 13 Q You weren't taken to a place, were you?  
 14 A I'm sorry.  
 15 Q You weren't taken to a place, were you?  
 16 A I was taken to that location.  
 17 Q Where the Jersey walls are.  
 18 A Yes.  
 19 Q And the Jersey walls are located immediately  
 20 adjacent to the road, are they not?  
 21 A Yes.  
 22 Q And that's where you were then said, what was  
 23 said to you was that the body was buried beyond here,  
 24 is that correct?  
 25 A That is my understanding.

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

1 Q But you don't remember the date, sir. Your  
 2 definition of fall, sir, includes October?  
 3 A Yes.  
 4 Q And November?  
 5 A Yes.  
 6 Q And parts of December?  
 7 A I'm not sure.  
 8 THE COURT: I'm sorry, I couldn't hear you.  
 9 MR. WARANOWITZ: I'm not sure.  
 10 BY MS. GUTIERREZ:  
 11 Q But it could, could it not?  
 12 MR. WARANOWITZ:  
 13 A It might be.  
 14 Q And parts of September, correct?  
 15 A Yes.  
 16 Q And your test could have occurred because you  
 17 don't recall sometime at the end of September?  
 18 A I don't remember the exact date.  
 19 Q Well, my question, sir, could it occur  
 20 sometime at the end of September?  
 21 A Yes.  
 22 Q Any day in October?  
 23 A Yes.  
 24 Q Any day in November?  
 25 A Yes.

1 Q And perhaps, but not necessarily a day in  
 2 early December, is that correct?  
 3 A It's possible.  
 4 Q And that right now you don't recall the date  
 5 this test occurred?  
 6 A No, I do not recall the date the test  
 7 occurred.  
 8 Q And you may have written it down, but you  
 9 didn't bring any of that material with you?  
 10 A No.  
 11 Q And on the day whenever it was during any of  
 12 the those four months, sir, were you always accompanied  
 13 by Ms. Murphy or Mr. Urick?  
 14 A I'm sorry, could you ask that again?  
 15 Q On whatever day it may have been sometime  
 16 during the month of September, October, November or  
 17 December that you conducted the test about which you've  
 18 testified, sir, were you always accompanied?  
 19 A By Ms. Murphy.  
 20 Q By Ms. Murphy. So, any address that you were  
 21 asked to conduct a test on was given to you by her?  
 22 A Yes.  
 23 Q And --  
 24 THE COURT: Ms. Gutierrez, may the witness  
 25 return to the witness stand?



1 MS. GUTIERREZ: I'm just going to finish  
2 these. I have a couple more addresses.  
3 THE COURT: With regard to the Exhibit 34?  
4 BY MS. GUTIERREZ: Yes.  
5 Q In regard to the address column, sir, you  
6 were also given an address of Briar Cliff Road, were  
7 you not?  
8 MR. WARANOWITZ:  
9 A I don't recall that address.  
10 Q Well, did you speak to Mr. Murphy -- Ms.  
11 Murphy and Mr. Urick after you conducted the test?  
12 A Yes.  
13 Q And did you give them a report of your  
14 findings?  
15 A No.  
16 Q You didn't report your findings to them?  
17 A I verbally gave Ms. Murphy my readings as we  
18 conducted the test.  
19 Q Okay. So, you don't consider that to be a  
20 report?  
21 A (inaudible) reports.  
22 Q And --  
23 THE COURT: Ms. Gutierrez, I'm going to ask  
24 the witness -- you may return to the witness stand and  
25 at which time you need him to return to the --

1 MS. GUTIERREZ: Okay. Thank you, Judge.  
2 THE COURT: To the exhibit then we'll have  
3 him do that.  
4 BY MS. GUTIERREZ:  
5 Q Would you be surprised, sir --  
6 THE COURT: Ms. Gutierrez, if you could  
7 return to the trial table or --  
8 MS. GUTIERREZ: Well, I need to focus on  
9 this. Thank you.  
10 THE COURT: All right. If you're going to  
11 use that exhibit.  
12 BY MS. GUTIERREZ:  
13 Q Would you surprised, sir, that Ms. Murphy or  
14 Mr. Urick reported to me what the results of your  
15 findings were in regard to specific addresses?  
16 MR. WARANOWITZ:  
17 A I am not surprised.  
18 Q And if they did so you of course would have  
19 expected them to be accurate as to the addresses,  
20 correct?  
21 A Yes.  
22 Q And that wouldn't be a surprise to you, would  
23 it?  
24 A No.  
25 Q You'd expect them to accurately tell me what

1 addresses they asked you to test about, would you not?  
2 A Yes.  
3 Q And if Briar Cliff Road were in the list that  
4 they told me about that would not be a surprise to you,  
5 would it?  
6 A I'm sorry, could you ask that again?  
7 Q If Briar Cliff Road, the address you don't  
8 remember appeared in their list to me about the  
9 addresses they asked you to test that would not be a  
10 surprise to you, would it?  
11 A If that address was given to me.  
12 Q You just can't remember whether it was, can  
13 you?  
14 A I don't remember exactly where it was.  
15 Q If it appeared in their list it would be fair  
16 to say that it was among the addresses that they gave  
17 you, would it not?  
18 A Yes.  
19 Q And Briar Cliff Road, any number on Briar  
20 Cliff Road doesn't appear in this column, does it?  
21 A No, it does not.  
22 Q Best Buy, whatever it's address or location  
23 is, that also doesn't appear as an address, does it?  
24 A No.  
25 Q I70, Interstate 70 Park and Ride doesn't

1 appear on the address column anywhere, does it?  
2 A No.  
3 Q And Crosby, if that's a street, road or lane;  
4 whatever at Interstate 695, it doesn't appear anywhere  
5 in this address list, does it?  
6 A No.  
7 Q Route 40 and Cooks Lane up to Forest Park  
8 doesn't appear on this, does it?  
9 A No.  
10 Q And West Hill doesn't appear, does it?  
11 A No.  
12 Q And Forest Park/Park and Ride, it's nowhere  
13 in this column, isn't it?  
14 A No.  
15 Q It's not the address of a cell site, is it?  
16 A No, it is not.  
17 Q Forest Park, four blocks east, whatever  
18 direction that may be of Security Boulevard is not an  
19 address that appears here, is it?  
20 A No, it is not.  
21 Q And Gelston Park, west of Rolling Road  
22 doesn't appear in this column, does it?  
23 A No.  
24 Q And Woodlawn High School doesn't appear in  
25 this column, is it?

1 A No.  
 2 Q The address of Woodlawn High School doesn't  
 3 appear in this column, does it?  
 4 A No.  
 5 Q You are aware, sir, that Woodlawn High School  
 6 is around the corner from the headquarters of the  
 7 Social Security Administration, are you not?  
 8 A Yes.  
 9 Q And you're aware, sir, based on your own  
 10 report that Woodlawn High School in your words would  
 11 trigger 65L, 651A, are you not?  
 12 A Correct.  
 13 Q And L651A is written on this exhibit tat you  
 14 prepared in the middle of three differing areas  
 15 outlined in different colors, are you not?  
 16 A Correct.  
 17 Q And the high school is the pink A, B or C?  
 18 A The pink would be C.  
 19 Q And the orange, would that be a correct  
 20 designation of that color?  
 21 A That would be sector A.  
 22 Q That would be A and the purple and I note a  
 23 different color purple then what you described as  
 24 purple 653, that would be B?  
 25 A That would be sector B, correct.

1 Q And it would be fair to say, sir, that those  
 2 areas by those three colors all cover different sizes  
 3 of geography, would it not?  
 4 A Yes.  
 5 Q And you would expect, Sir, Woodlawn High  
 6 School to be within one of those boundaries, would you  
 7 not?  
 8 A Correct.  
 9 Q And because it would trigger that cell site,  
 10 you'd expect it to be there, correct?  
 11 A Yes.  
 12 Q As 651A appears on this map, does it not?  
 13 A Yes.  
 14 Q And the address in the column listed as  
 15 addresses for 651A is 1500 Woodlawn Drive, is it not?  
 16 A Correct.  
 17 Q And that's the cell site that you've  
 18 indicated to us that you triggered for the antenna on  
 19 top of the Social Security building, would it not?  
 20 A Yes.  
 21 Q And you are aware, Sir, that the building  
 22 faces Security Boulevard, are you not?  
 23 A Yes.  
 24 Q And you aware, Sir, that Security Boulevard  
 25 is a separate and distinct street then Rolling Road?

1 A Correct.  
 2 Q Now, Sir, you were asked a lot of questions  
 3 about these maps that you say, again your computer  
 4 generated State's Exhibit 44 and 45?  
 5 A Yes.  
 6 Q And one of them, I don't recall which, Sir,  
 7 perhaps if you look at my copy you could tell us,  
 8 designates Rolling Road, does it not?  
 9 A Rolling Road is not written on this map.  
 10 Q Well, you, Sir, testified about Rolling Road  
 11 though, didn't you?  
 12 A I know that that road is Rolling Road.  
 13 Q And you know that from your own knowledge,  
 14 right?  
 15 A Yes.  
 16 Q But the map you forwarded doesn't say Rolling  
 17 Road on it, does it?  
 18 A No.  
 19 Q So, if we aren't you we wouldn't know that  
 20 Rolling Road appears on that map, would we?  
 21 A If you were familiar with the area you would  
 22 know.  
 23 Q If we were familiar with the area and the  
 24 streets without their names being printed, correct?  
 25 A Correct.

1 Q You also were asked about a place that  
 2 appears on one of these maps that you refer to as  
 3 Gelston Park, do you recall that?  
 4 A Yes.  
 5 Q Now, Gelston Park doesn't appear, it's not  
 6 printed on either of these maps, is it?  
 7 A It is not printed on these maps, no.  
 8 Q And you didn't print it in to designate it  
 9 perhaps for people who weren't familiar with that  
 10 location, did you?  
 11 A No, I did not note that in.  
 12 Q And there's -- your name doesn't appear on  
 13 this, does it?  
 14 A No, my name is not on there.  
 15 Q And there's nothing on either of these maps  
 16 that in fact designate all of the things that the map  
 17 shows, is there?  
 18 A I'm sorry. Could you ask the question again?  
 19 Q No. I won't bother. Gelston Park, Mr.  
 20 Waranowitz also doesn't appear in the address list,  
 21 does it?  
 22 A No, it does not.  
 23 Q Now, let me get this straight. The cell site  
 24 is a location where the antenna actually exists,  
 25 correct?

<p style="text-align: right;">Page 77</p> <p>1 A Correct.</p> <p>2 Q So, and what you called the site is that</p> <p>3 which emanates the signal, correct?</p> <p>4 A Yes.</p> <p>5 Q The only importance of it, why it needs a</p> <p>6 name is because it emanates or receives a signal, isn't</p> <p>7 it?</p> <p>8 A Yes.</p> <p>9 Q And the addresses you defined that as in this</p> <p>10 column is the address of essentially the property, the</p> <p>11 real estate on which the antenna is located, is that</p> <p>12 correct?</p> <p>13 A Yes, that is my understanding.</p> <p>14 Q But a cover -- well, it's not your</p> <p>15 understanding --</p> <p>16 MR. URICK: Objection.</p> <p>17 BY MS. GUTIERREZ:</p> <p>18 Q You've testified to it about as an expert,</p> <p>19 have you not?</p> <p>20 THE COURT: Sustained.</p> <p>21 BY MS. GUTIERREZ:</p> <p>22 Q The coverage area is an area larger than the</p> <p>23 cell site, is it not?</p> <p>24 MR. WARANOWITZ:</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 79</p> <p>1 three years ago, correct?</p> <p>2 A Yes.</p> <p>3 Q Okay. Was there something hard about that</p> <p>4 questions?</p> <p>5 MR. URICK: Objection.</p> <p>6 THE COURT: Sustained.</p> <p>7 BY MR. GUTIERREZ:</p> <p>8 Q Is there any reason you hesitated to answer?</p> <p>9 MR. WARANOWITZ:</p> <p>10 A I was listening for more of the question.</p> <p>11 Q But there's no dispute that the network is</p> <p>12 relatively new, isn't that correct?</p> <p>13 A That is correct.</p> <p>14 Q And you told us that you were in on it from</p> <p>15 the beginning, correct?</p> <p>16 A From -- from before it was launched, yes.</p> <p>17 Q Okay. And by launched you mean started,</p> <p>18 right?</p> <p>19 A Yes.</p> <p>20 Q Launched meant it was operational, correct?</p> <p>21 A Correct.</p> <p>22 Q Meaning people with phones who were</p> <p>23 subscribers could use the network to make sure their</p> <p>24 phone calls got to where ever it was they were calling,</p> <p>25 correct?</p>
<p style="text-align: right;">Page 78</p> <p>1 Q Whether that cell site is a separate tower or</p> <p>2 placed on an existing structure, correct?</p> <p>3 A Yes.</p> <p>4 Q The coverage area in regard to 651 would</p> <p>5 include all the purple area, right?</p> <p>6 A Yes.</p> <p>7 Q All the orange area, right?</p> <p>8 A Yes.</p> <p>9 Q And all the pink area, correct?</p> <p>10 A Correct.</p> <p>11 Q And you would agree that that area is a</p> <p>12 considerable larger geographical location than the</p> <p>13 simple address of the cell site, would you not?</p> <p>14 A Correct.</p> <p>15 Q And the column marked address is only for the</p> <p>16 purpose of the designating the address of the real</p> <p>17 estate on which the cell site as listed is located,</p> <p>18 correct?</p> <p>19 A Correct.</p> <p>20 Q And in no way indicates that that address is</p> <p>21 the coverage area for what that cell site ideally is</p> <p>22 designed to cover?</p> <p>23 A Correct.</p> <p>24 Q Now, you were asked yesterday, Mr. Waranowitz</p> <p>25 and you indicated, well this network went up two or</p>	<p style="text-align: right;">Page 80</p> <p>1 A Yes.</p> <p>2 Q That's the meaning of the word launching the</p> <p>3 network, correct?</p> <p>4 A Correct.</p> <p>5 Q And you were involved in the design, correct?</p> <p>6 A Yes.</p> <p>7 Q You weren't the only one, correct?</p> <p>8 A Correct.</p> <p>9 Q And you would agree because you told us</p> <p>10 yesterday that even today 25% of your time is connected</p> <p>11 to design, correct?</p> <p>12 A Correct.</p> <p>13 Q And the design involves a process about which</p> <p>14 you told us selecting your cell sites are, correct?</p> <p>15 A Yes.</p> <p>16 Q And in the two or three years from the first</p> <p>17 time that cell sites were selected some of them have</p> <p>18 been replaced, have they not?</p> <p>19 A There have been a few, yes.</p> <p>20 Q And that's because whether you designed those</p> <p>21 cell sites to be the optimum of cell sites, in some</p> <p>22 cases it turns out that your design was wrong in that</p> <p>23 regard, did it not?</p> <p>24 A That would not indicate that my design was</p> <p>25 wrong.</p>

1 Q Your design, sir, was correct from the  
2 beginning?  
3 A I'm sorry, was that a question?  
4 Q Yes, it was.  
5 A The network is a changing entity in terms of  
6 capacity and coverage. We design for what we need at  
7 the time.  
8 Q By coverage, sir, you're using that term in  
9 the same way to describe the coverage that is expected  
10 to be gotten from the cell site signal, is it not?  
11 A Yes.  
12 Q And by coverage, you're using that term in  
13 the same way as we describe to encompass the actual  
14 geographical location of the A, B and C sectors,  
15 correct?  
16 A Correct.  
17 Q All right. And, sir, you weren't normally on  
18 that design that sector, were you?  
19 A No, I worked with team of engineers.  
20 Q Engineers like you, correct?  
21 A Yes.  
22 Q All right. Now, sir, one of the things that  
23 you described doing yesterday was troubleshooting, did  
24 you not?  
25 A Yes.

1 Q And troubleshooting was because there would  
2 be a constant, daily borage of complaints from  
3 customers, correct?  
4 A There are complaints from customers, correct.  
5 Q That's a daily event, is it not?  
6 A Yes, yes.  
7 Q Even now, is it not?  
8 A Yes.  
9 Q And the complaints from customers would be  
10 connected with whether or not they could get their  
11 calls through, correct?  
12 A Yes.  
13 Q And to this thing that you call dropped  
14 calls, correct?  
15 A Yes.  
16 Q And whether or not they could hear calls  
17 being made to them?  
18 A Yes.  
19 Q Sufficiently to participate in the  
20 conversation, correct?  
21 A Correct.  
22 Q Now you, sir, testified that AT&T doesn't  
23 require a subscriber to use an AT&T phone, correct?  
24 A Correct.  
25 Q A subscriber can use any phone they want, can

1 they not?  
2 A Not necessarily.  
3 Q Not necessarily. They have to meet certain  
4 requirements, do they not?  
5 A Yes.  
6 Q It has to be a phone of sufficient quality,  
7 does it not?  
8 A It would have to have sufficient -- it would  
9 have to have the same capability to talk to our  
10 network.  
11 Q Well, to talk to your network really boils  
12 down to triggering a signal in your cell towers or have  
13 that cell tower being able to send a signal to it, does  
14 it not?  
15 A Correct.  
16 Q All right. And there are many phones varying  
17 in defection that meet that capacity, are there not?  
18 A Yes.  
19 Q Some are manufactured by Motorola, correct?  
20 A Yes.  
21 Q Some are manufactured by Erickson, right?  
22 A Yes.  
23 Q Some are sold by AT&T under other names of  
24 the -- not manufactured by AT&T?  
25 A Yes.

1 Q Some are manufactured by a company by the  
2 name of Nokia, isn't that correct?  
3 A Yes.  
4 Q And Nokia phones just like all other phones  
5 come in varying quality, do they not?  
6 A Yes.  
7 Q And they are varying types of phones, are  
8 they not?  
9 A Yes.  
10 Q Some are cheaper, some are more expensive?  
11 A Yes.  
12 Q Some have more features then others?  
13 A Correct.  
14 Q And that may run throughout a lot of the  
15 phones produced and manufactured by the same  
16 manufacturer --  
17 A Correct.  
18 Q Would it not? And AT&T doesn't forbid it's  
19 subscribers from employing any phone as long as it can  
20 receive the signal, correct?  
21 A Correct.  
22 Q Even if the receipt to that signal might be  
23 less strong than another phone, is that correct?  
24 A Yes.  
25 Q And I imagine, sir, based on what you've told



1 us that the receipt of signals among phones on your  
 2 network still varies, correct?  
 3 A Yes, it does.  
 4 Q And I'm sure, sir, that you and the we that  
 5 you refer to, your colleagues have an opinion as to  
 6 what is the best phone to be used in your network, do  
 7 you not?  
 8 A Yes.  
 9 Q And what phone is that?  
 10 A That would be the Nokia 6160.  
 11 Q The 6160. The same phone that your company  
 12 issues to your engineers, correct?  
 13 A Yes.  
 14 Q Although you currently use a Motorola,  
 15 correct?  
 16 A Yes.  
 17 Q And, sir, in the testing that you do, sir,  
 18 you're still dealing with complaints of dropped calls,  
 19 are you not?  
 20 A Correct.  
 21 Q And some of those dropped call complaints  
 22 come from customers that are utilizing a Nokia phone,  
 23 are they not?  
 24 A Yes.  
 25 Q A Nokia 6160?

1 A Yes.  
 2 Q Because you can, sir, from your statistical  
 3 monitoring always determine what phone the customer is  
 4 using, can you not?  
 5 A Yes.  
 6 Q Yes, and that is because your computer has  
 7 the capability to distinguish the signals, correct?  
 8 A Correct.  
 9 Q Now lets talk about this test that you do,  
 10 sir. Well, let me make sure, I forgot. So, are we  
 11 clear that in your experience in your own network on  
 12 whatever phones you've had experience with, phones  
 13 perform at different levels.  
 14 A Correct.  
 15 Q Correct? That's a truism, is it not?  
 16 A Could you rephrase that?  
 17 Q Well, by saying phones perform at different  
 18 levels the only performance the phones have to do is  
 19 receive or send the call, correct?  
 20 A No.  
 21 Q Well, they have to be able to be heard,  
 22 correct?  
 23 A Yes.  
 24 Q And if they're unable to see as the term  
 25 you've used it, a signal their performance would be

1 deemed low, would it not?  
 2 A Yes.  
 3 Q And if they were unable to receive a signal  
 4 sent to them, their performance would be deemed low,  
 5 would it not?  
 6 A Yes.  
 7 Q And if a signal were sent from a cell site to  
 8 a poor performing phone the owner of which because of  
 9 the poor performance could not hear, the signal relay  
 10 would still be tripped, would it not?  
 11 A No, it may not be.  
 12 Q But it might be?  
 13 A It can be.  
 14 Q It can be. And that again would depend on  
 15 the quality of the signal, correct?  
 16 A Yes.  
 17 Q And the quality of the phone for which the  
 18 signal is wasn't handled, correct?  
 19 A Yes.  
 20 Q Now, that phones perform differently there is  
 21 an ideal performance for cell phones, is there not?  
 22 A Cell phones should perform within certain  
 23 specifications.  
 24 Q Okay. And within those specifications  
 25 relates to the quality of the radio sound, does it not?

1 A Yes.  
 2 Q And the ability to make a connection if one  
 3 chooses to dial a number on the cell phone seeing  
 4 communication with another number?  
 5 A Yes.  
 6 Q Whether that number be a land line or another  
 7 cell phone, correct?  
 8 A Correct.  
 9 Q And the ability of the phone connection to  
 10 remain open for however long the use wants it, correct?  
 11 A Yes.  
 12 Q And for nothing to interfere with the call,  
 13 correct?  
 14 A Correct.  
 15 Q And the quality of sound in whatever  
 16 connection for however long to be sufficient that each  
 17 party can plainly hear each other.  
 18 A Yes.  
 19 Q And that there be no interference, correct?  
 20 A Correct.  
 21 Q But even though the ideal is to meet that  
 22 standard of performance you would agree that because  
 23 phones differ all phones don't always perform up to the  
 24 ideal, correct?  
 25 A Correct.

1 this test, did you not?  
 2 A Yes.  
 3 Q And you, sir -- you were aware, sir, that the  
 4 cell phone to the records you were using still existed,  
 5 were you not?  
 6 A I'm sorry, could you say that again?  
 7 Q You were aware at the time you reviewed the  
 8 records of the specific cell phone that the cell phone  
 9 attached -- to which that number was attached still  
 10 existed, were you not?  
 11 A I was not aware if that phone was still in  
 12 use.  
 13 Q Did you ask?  
 14 A No, I did not.  
 15 Q And this phone, 6160 Nokia is a different  
 16 phone than your Erickson, right?  
 17 A Yes.  
 18 Q And your experience you believe that they  
 19 perform comparably, right?  
 20 A Yes.  
 21 Q In an ideal way, correct?  
 22 A In the real world they perform comparably.  
 23 Q And by comparably that doesn't mean exactly  
 24 the same, does it?  
 25 A No, it does not.

1 Q And, sir, this phone isn't activated, is it?  
 2 A I don't know.  
 3 Q As far as looking at it, it appears to be  
 4 capable of functioning in an ideal way, does it not?  
 5 A Would do mean by that?  
 6 Q By looking at it you can tell it's capacity  
 7 for functioning, can you not?  
 8 A I can not tell.  
 9 Q Well, you just told us that based on your  
 10 experience a phone such as this would perform  
 11 comparably to the phone you used at whatever day you  
 12 used it to perform what you call, your origination  
 13 test.  
 14 A Yes.  
 15 Q Did Ms. Murphy advise you that this phone was  
 16 available?  
 17 A No.  
 18 Q And if it's not functioning, sir, it would be  
 19 a very simple matter to activate it, would it not?  
 20 A Yes.  
 21 Q And you, sir, you can't tell by looking  
 22 whether or not it was dropped anywhere?  
 23 A No, I can not.  
 24 Q By anyone, can you?  
 25 A No.

1 Q Whether it was dropped during manufacture?  
 2 A No.  
 3 Q Or packaging?  
 4 A No.  
 5 Q Or shipping?  
 6 A Nope.  
 7 Q Or prior to sale while it sat in the store?  
 8 A No.  
 9 Q You've never examined this phone to see if  
 10 it's capable of functioning, have you?  
 11 A No, I have not.  
 12 Q Or how it acts once it's turned on, if it  
 13 could be turned on, have you?  
 14 A No, I have not tested it.  
 15 Q You could have, couldn't you?  
 16 A I was not aware that I could.  
 17 Q Well, you could have though physically, could  
 18 you have not?  
 19 A I could do that, yes.  
 20 Q And you could have back then, could you have  
 21 not?  
 22 A I could have.  
 23 Q Back then, whatever day it was this phone  
 24 call, you knew all that you told us about different  
 25 phones might act differently, did you not?

1 A Yes.  
 2 Q That's not new knowledge you've gained since  
 3 the time you did this test, is it?  
 4 A No, it's not.  
 5 Q And you designed the test based on what Ms.  
 6 Murphy told you, correct?  
 7 A Yes.  
 8 Q You designed the test yourself, correct?  
 9 A Yes.  
 10 Q And you of course advised them that, well, we  
 11 better use the same phone since phones perform  
 12 differently, did you not?  
 13 A No, I did not.  
 14 Q So, you of course asked where was the phone  
 15 attached to the number, the records of which you were  
 16 asked to review, did you not?  
 17 A I did not ask.  
 18 Q You didn't, exactly. You didn't even suggest  
 19 that?  
 20 A No, I did not.  
 21 Q And the phone you tested, this origination  
 22 test to which you looked at not a manual, but the how  
 23 you did it was an Erickson phone, was it not?  
 24 A Yes it was.  
 25 Q Your own Erickson phone, was it not?

1 A It was one of our test phones.  
2 Q And the addresses from which you tested your  
3 Erickson phone did not include an address listed as a  
4 cell site, did it?  
5 A Not that I know of.  
6 Q And you, of course didn't go to any place  
7 that Ms. Murphy didn't tell you to go, did you?  
8 A No.  
9 Q But when you reported the results of your  
10 test to her or Mr. Urick you essentially gave the  
11 information that at the addresses that you were asked  
12 to check, that a cell phone at any specific address  
13 would trigger two different cell sites, did you not?  
14 A There are two different possibilities, but  
15 they would not trigger the same cell site at the same  
16 time.  
17 Q Sir, I only asked you, did you report to them  
18 that a cell phone used for instance, at Rolling Road  
19 and I70, an address provided to you by Ms. Murphy  
20 triggers, with an S at the end of it, cell site L651C  
21 or L698A, is that correct?  
22 A That is correct.  
23 Q And, sir, you would agree that 69 --651C and  
24 that's the pink?  
25 A Correct.

1 A Correct.  
2 Q And during the test as you were reporting  
3 ongoing results, Ms. Murphy didn't say, oh, that's not  
4 good enough, did she?  
5 A She did not say anything like that.  
6 Q Nothing like that, right? She didn't suggest  
7 to you other things that you could do, did she?  
8 A No.  
9 Q She didn't suggest to you that there should  
10 be or that you should find a way to report to her that  
11 a certain address would only trigger one cell site, did  
12 she?  
13 A No, I explained --  
14 Q As to --  
15 MS. MURPHY: Objection.  
16 THE COURT: Sustained.  
17 BY MS. GUTIERREZ:  
18 Q As to Rolling -- so, you explained it to her,  
19 your results?  
20 MR. WARANOWITZ:  
21 A Yes.  
22 Q As they went along.  
23 A Yes.  
24 Q And you recall that in your reporting, would  
25 you not?

1 Q Correct, on -- is there a do north on this  
2 map?  
3 A Yes.  
4 Q Is north to the top?  
5 A That is correct.  
6 Q So, the pink would be the western edge of the  
7 map, correct?  
8 A Correct.  
9 Q All right. And the other cell site that it  
10 could trigger would be L698A, is that correct?  
11 A That is correct.  
12 Q So, your report to them said, well if I went  
13 and used a cell phone at this address you told me about  
14 either it would put a signal over here, correct?  
15 A Correct.  
16 Q Or a signal over here, correct?  
17 A Correct.  
18 Q And, in fact, as to each address they gave  
19 you, you reported similarly that it would trigger two  
20 different cell sites, one or the other, correct?  
21 A Correct.  
22 Q And this was after you did the test, correct?  
23 A No, that was during the test.  
24 Q During the test as you reported them to her,  
25 correct?

1 A Yes.  
2 Q And you explained it to her in great deal,  
3 did you not?  
4 A I explained my results.  
5 Q And you explained to her more then the simple  
6 reporting of a cell phone at Rolling Road at I70  
7 triggers cell site L651C or L698A, did you not?  
8 A Yes.  
9 Q Your conversation was more then that with Ms.  
10 Murphy, was it not?  
11 A Yes.  
12 Q You answered any questions she had, did you  
13 not?  
14 A Yes.  
15 Q And that was part of your reporting and you  
16 explaining the test as it went along?  
17 A Yes.  
18 Q And you so reported and explained to her  
19 after each single address, did you not?  
20 A I reported it at the address.  
21 Q Now, sir, your map that you tell us you  
22 carefully prepared doesn't indicate where Rolling Road  
23 at I70 exists, does it?  
24 A No, it does not.  
25 Q There's not a place that flags it either on

1 33A, the underlying map, right?  
 2 A No.  
 3 Q And certainly not on the overlay?  
 4 A No.  
 5 Q And on the map, the address 1208 Macado isn't  
 6 flagged either?  
 7 A Correct?  
 8 Q Nor is Security Square Mall?  
 9 A Correct.  
 10 Q And nor is 4703 Gateway Terrace?  
 11 A Correct.  
 12 Q Or --  
 13 A Oh, I put Gateway Terrace on there a few  
 14 minutes ago.  
 15 Q You put that on yesterday or this morning.  
 16 A This morning.  
 17 Q This morning. It wasn't on the map in it of  
 18 itself?  
 19 A No.  
 20 Q On either A?  
 21 A No.  
 22 Q Or B?  
 23 A No, it was not.  
 24 Q And Briar Cliff Road, without an address,  
 25 that's not indicated on A or B either?

1 where it was before you testified, did you?  
 2 A Well, I know where it is.  
 3 Q That's not my question, sir. This isn't a  
 4 quiz.  
 5 MR. URICK: Objection.  
 6 THE COURT: Ms. Gutierrez.  
 7 BY MS. GUTIERREZ:  
 8 Q Did you put a designation of where Woodlawn  
 9 High School was --  
 10 MR. WARANOWITZ:  
 11 A No.  
 12 Q On the underlying map?  
 13 A No.  
 14 Q Did you put such a designation on the  
 15 overlaying --  
 16 A No.  
 17 Q You also prepared?  
 18 A No.  
 19 Q Were you ever asked to do so before today?  
 20 A No, I was not.  
 21 Q No. If I may have a moment, Your Honor.  
 22 THE COURT: Certainly.  
 23 MR. WARANOWITZ: Can we take a break, Your  
 24 Honor?  
 25 THE COURT: Pardon.

1 A No.  
 2 Q Or Best Buy, whatever it may be located?  
 3 A Nope.  
 4 Q And Crosby, where ever that is?  
 5 A No.  
 6 Q And I70 Park and Ride?  
 7 A No.  
 8 Q Cooks Lane up to Forest Park?  
 9 A No.  
 10 Q And Forest Park, four blocks east of Security  
 11 Boulevard?  
 12 A No.  
 13 Q Nor put Gelston Park?  
 14 A I put Gelston Park on this morning.  
 15 Q You put it on.  
 16 A That's correct.  
 17 Q It didn't appear independently on the 33A  
 18 map that you said you, yourself drew up?  
 19 A No, it did not.  
 20 Q And it doesn't appear on the overlay?  
 21 A No.  
 22 Q Or Woodlawn High School doesn't appear on the  
 23 map?  
 24 A I'm not sure where that is.  
 25 Q You didn't make an independent designation

1 MR. WARANOWITZ: Can we take a break?  
 2 THE COURT: We are going to take a break. I  
 3 may be able to finish with you. Can you give me ten  
 4 minutes?  
 5 MR. WARANOWITZ: I can wait.  
 6 THE COURT: Is that --  
 7 MR. WARANOWITZ: Thank you, Your Honor.  
 8 THE COURT: Ms. Gutierrez, do you expect to  
 9 be any longer then about ten minutes?  
 10 MS. GUTIERREZ: I do, Judge. I'll try to  
 11 shorten it, but I do need more time.  
 12 THE COURT: That's all right. Can you come  
 13 up for scheduling purposes?  
 14 (Counsel approached the bench and following  
 15 ensued:)  
 16 THE COURT: Mr. Waranowitz, Mr. Waranowitz,  
 17 you may step down and wait in the hall. What I'm  
 18 trying to engage is whether or not we would finish with  
 19 this witness on or by like 11:30, 11:20?  
 20 MS. GUTIERREZ: I don't know, Judge.  
 21 THE COURT: Okay.  
 22 MS. GUTIERREZ: I know I'm long winded. I'm  
 23 not fast.  
 24 THE COURT: No, I'm not trying to rush you.  
 25 I'm just trying to get --



1 MS. GUTIERREZ: I'm a terrible estimate of  
2 time.  
3 THE COURT: I have Counsel that would like to  
4 do a postponement and --  
5 MS. GUTIERREZ: It's just that because of  
6 this witness I know that I'm not rushing with it. So,  
7 I --  
8 THE COURT: No. You're not asked to.  
9 MS. GUTIERREZ: I don't think I'm going to be  
10 finished by then.  
11 THE COURT: By 11:30?  
12 MS. GUTIERREZ: No, I don't.  
13 THE COURT: Okay. All right.  
14 MS. GUTIERREZ: So, if you want to --  
15 THE COURT: To take the postponement request?  
16 MS. GUTIERREZ: That's fine.  
17 THE COURT: Do you have a question, issue?  
18 MR. URICK: She wanted to know that means  
19 we're going to take a brief break? She would like one.  
20 THE COURT: Yes. We all can take a brief  
21 break.  
22 MS. GUTIERREZ: Okay.  
23 THE COURT: And I'll have Counsel -- and I'll  
24 have Counsel bring up -- all right.  
25 (Counsel returned to the trial tables and

1 him here because we're not going to take a break that  
2 long. Counsel, if you would like to take a recess or  
3 step back, use the facilities please do so. I'm going  
4 to remain on -- actually, I'm going to take a brief  
5 break myself, but I'm going to ask that as soon as  
6 Danny Marcus and Lynn Stewart, the attorneys in that  
7 other case arrive and the Defendant who's being brought  
8 up arrives we will proceed. Ms. Connelly, will you let  
9 me know when Mr. Marcus and Ms. Stewart as well as the  
10 Defendant in the other matter arrive so that we can do  
11 this postponement request. The Court stands in recess.  
12 THE CLERK: All rise.  
13 (Brief recess.)  
14 (Case hears other matters, case resumes as  
15 follows:)  
16 (Jury not present upon reconvening.)  
17 THE COURT: Mr. Urick, Ms. Murphy and Ms.  
18 Gutierrez, if you'll step back up, we can resume the  
19 Syed case with a few more questions and then I will  
20 send the jurors to lunch allowing juror number two to  
21 take care of the business he's indicated he must  
22 acquire. I would note that we would be resuming at  
23 about 1:30. You're frowning.  
24 MR. URICK: If I may inquire. Did the Court  
25 anticipate finishing this witness before breaking for

1 the following ensued:)  
2 THE COURT: Ladies and gentlemen, we're going  
3 to take a brief recess. Allow you to use the  
4 facilities and then we'll bring you back and continue  
5 with this witness. I'm going to ask at this time that  
6 you leave your note pads face down, that you leave them  
7 there because we're going to come back and resume and  
8 continue with testimony for just a brief time after the  
9 break. Scheduling wise there has been a request by one  
10 of the jurors to do some things with his job, so  
11 therefore, what we're going to do is take a little  
12 longer lunch break then we would normally do to allow  
13 that juror to be accommodated, but I'm going to ask  
14 that you do come back with a few moments and at that  
15 time we'll give a better guesstimate as how the morning  
16 will go.  
17 At this time will you go with the Deputy Sheriff  
18 Church who will walk you around to the jury room, he is  
19 at the door. Do not discuss the testimony you've heard  
20 this morning or any other day during the trial. Do not  
21 discuss it amongst yourselves or with anyone, you have  
22 not heard the entire case yet. You can go with Deputy  
23 Chief -- Deputy Church at this time.  
24 (The jury was excused from the courtroom.)  
25 THE COURT: Mr. Gilmore, you're free to leave

1 lunch?  
2 THE COURT: No. You have a juror as you  
3 heard that needs more then the hour lunch break in  
4 order to take care of his business. What I had  
5 suggested when we spoke to juror number two is that  
6 we'd break at 11:30 so then he would have from 11:30 to  
7 12:30 and 12:30 to 1:30 to take care of his business.  
8 Are you suggesting that we break at another time?  
9 MR. URICK: Yes, I would request that Mr.  
10 Waranowitz was able to revise his flight plans for  
11 today, but that he would have to take a 3:30 flight  
12 this afternoon. We would request that he'd be allowed  
13 to finish his finish his testimony so that he could get  
14 to the airport on time.  
15 THE COURT: And how do you propose that I  
16 accommodate your juror number two?  
17 MR. URICK: Just move it up into the  
18 afternoon because the BC -- University -- Baltimore  
19 City College is open to 4:30. If he goes there before  
20 the lunch break or after lunch break he can still at  
21 either time --  
22 THE COURT: Do you know that?  
23 MR. URICK: I know he didn't specify a  
24 particular time that he had to be there. He just said  
25 he had to be there around -- he just needed time around

1 lunch.

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

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

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

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

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

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

5 (The jury returned to the courtroom.)

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

12 JUROR: No.

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

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

17 THE COURT: Yes.

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

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

22 BY MS. GUTIERREZ:

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

1 MR. WARANOWITZ:

2 A Yes.

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

6 A Yes.

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

12 A Correct.

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

17 A Correct.

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

20 A Correct.

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

24 A Yes.

25 Q And you were asked to conduct an origination

1 test, were you not?  
 2 A Yes.  
 3 Q And your origination test was essentially  
 4 causing a call to be made, correct?  
 5 A A test call.  
 6 Q A test call, right?  
 7 A Yes.  
 8 Q But a call, right?  
 9 A Yes.  
 10 Q Meaning a call to be that would emanate from  
 11 your phone that you were using to conduct that test to  
 12 have a call go out from your phone to seek whatever  
 13 signal it would seek, correct?  
 14 A Correct.  
 15 Q Now, sir, have you ever driven through  
 16 Lincoln Park before?  
 17 A Yes, I have.  
 18 Q And, sir, you are familiar with the road that  
 19 goes through there, are you not?  
 20 A I am familiar with the coverage on the road,  
 21 yes.  
 22 Q No, sir. That wasn't my question.  
 23 A I am familiar with the road.  
 24 Q I didn't ask you about the coverage zone, I  
 25 asked you, were you familiar with the road.

1 A Yes.  
 2 Q And what's the name of the road?  
 3 A I'd have to look it up.  
 4 Q So, sir, whatever familiarity you have with  
 5 the road you don't recall its name?  
 6 A That is correct.  
 7 Q That road, however familiar you are with it,  
 8 runs the breath of Lincoln Park throughout Baltimore  
 9 City, does it not?  
 10 A I think so, yes.  
 11 Q And, sir, are you aware of the difficulty any  
 12 cell phone user has regardless of phone, regardless of  
 13 network of actually speaking on the phone while one is  
 14 in Lincoln Park?  
 15 A Yes.  
 16 Q And are you aware of the difficulty any cell  
 17 phone user, regardless of the phone, regardless of what  
 18 network is utilized, has in receiving a phone call if  
 19 they at the time are in Lincoln Park?  
 20 A I'm sorry, could you rephrase that?  
 21 Q You are aware, are you not, of the difficulty  
 22 any cell phone user no matter what cell phone is used  
 23 in actually or what network is utilized in actually  
 24 receiving a call while one is in Lincoln Park?  
 25 A I don't know about other networks.

1 Q You only know about your network?  
 2 A Yes.  
 3 Q And you are familiar with the difficulty that  
 4 your network has for its users, are you not?  
 5 A Yes.  
 6 Q And that's not a surprise to you, is it?  
 7 A No, it is not.  
 8 Q Because the terrain in Lincoln Park is  
 9 difficult, is it not?  
 10 A Yes, it is.  
 11 Q It's difficult in fall?  
 12 A Yes.  
 13 Q It's difficult in summer?  
 14 A Yes.  
 15 Q In spring?  
 16 A Yes.  
 17 Q And, in fact, it's difficult in winter, is it  
 18 not?  
 19 A Yes, it is.  
 20 Q The terrain in Lincoln Park goes to terrain  
 21 that is much, much higher than the terrain of the road  
 22 who's name you don't remember, is it not?  
 23 A Yes.  
 24 Q And there's a major stream or waterway that  
 25 runs through Lincoln Park, is there not?

1 A Yes.  
 2 Q And you're aware that the banks of the  
 3 waterway because the terrain is uneven is often times  
 4 below what we call street level, referring to the level  
 5 of the street who's name you don't remember?  
 6 A Yes.  
 7 Q And none of that information is a surprise to  
 8 you, is it?  
 9 A No.  
 10 Q And notwithstanding that, your network has  
 11 been launched now for maybe up to three years. Lincoln  
 12 Park as a coverage area, it's always been difficult,  
 13 has it not?  
 14 A That is true.  
 15 Q All year long?  
 16 A Yes.  
 17 Q Regardless of what phones people use?  
 18 A Yes.  
 19 Q And that that difficulty has persisted  
 20 whether the phone being used is the one making the call  
 21 or the phone being used is the one receiving the call,  
 22 isn't that correct?  
 23 A Yes.  
 24 Q And, sir, that existed back in fall when you  
 25 conducted your origination test, did it not?



1 Q After you conducted your test you reported to  
2 Ms. Murphy that a cell phone dialing out from that  
3 location, meaning what you were pointed out to be the  
4 burial site, would trigger either one site or another  
5 site, were you not?  
6 A I thought it was only one site at the burial.  
7 Q And that burial site, cell site number that  
8 you've indicated was 689B, correct?  
9 A Correct.  
10 Q And 689B sits where?  
11 A It sits on the building called Govins Manor.  
12 Q That's an apartment complex, is it not?  
13 A I think it is.  
14 Q And that apartment complex I believe as  
15 you've discussed before, is up near the intersection of  
16 Windsor Mill Road and Forest Park Avenue, is it not?  
17 A Let me verify that please.  
18 Q May I note for the record, sir, that you are  
19 looking through a map book, is that correct?  
20 A Yes it is.  
21 Q And that map book covers what geographical  
22 area?  
23 A The greater Baltimore area.  
24 Q Sir, I'm going to show you what's been marked  
25 into evidence as State's Exhibit 17. That is a greater

1 BY MS. GUTIERREZ:  
2 Q The apartment complex -- you are familiar  
3 with the road, Security Boulevard, are you not?  
4 MR. WARANOWITZ:  
5 A Yes.  
6 Q And you are familiar that the road by the  
7 name of Windsor Mill Road does not intersect the  
8 Security Boulevard, are you not?  
9 A Yes.  
10 Q You are aware that Windsor Mill Road runs at  
11 a distance in a parallel fashion to Security Boulevard,  
12 are you not?  
13 A I don't know the extents of Windsor Mill off  
14 hand.  
15 Q Windsor Mill Road is not the name of the road  
16 that you were on off of which your Jersey Wall barriers  
17 are, is it?  
18 A No, I was down in Lincoln Park.  
19 Q Down in Lincoln Park and from what you know  
20 of Windsor Mill Road it's up above Lincoln Park, is it  
21 not?  
22 A Yes it is.  
23 Q At least on that end of it, correct?  
24 A It is higher, yes.  
25 Q And you are aware that north Forest Park is a

1 Baltimore area map book, is it not?  
2 A Yes.  
3 Q It in fact, contains this same cover as the  
4 one you are looking at, does it not?  
5 A Yes it does.  
6 Q And it's page are also the same?  
7 A I don't know.  
8 Q You carry that book with you?  
9 A Yes, I do.  
10 Q As part of your job?  
11 A Yes.  
12 Q Were you able to locate places with which you  
13 might not be familiar?  
14 A Yes.  
15 Q And you use it often, do you not?  
16 A Yes.  
17 Q And you're aware that you're not the only  
18 person that might carry map book with them, are you  
19 not?  
20 MR. URICK: Objection.  
21 THE COURT: Sustained.  
22 BY MS. GUTIERREZ:  
23 Q Is that map book issued to you by AT&T?  
24 MR. URICK: Objection.  
25 THE COURT: Sustained.

1 road that is connected at one end to Security Boulevard  
2 and at another end it continues to go through the  
3 intersection at Windsor Mill Park, are you not?  
4 A I think so.  
5 Q And so it runs perpendicular to Security  
6 Boulevard?  
7 A Yes.  
8 Q And perpendicular to Windsor Mill Road?  
9 A Yes.  
10 Q And you are aware that north Forest Park  
11 Avenue does not run through Lincoln Park, are you not?  
12 A I'd have to check on that.  
13 Q You'd have to check you own maps?  
14 A Yes.  
15 Q And could you now?  
16 A Forest Park Avenue does not appear to run  
17 through Lincoln Park.  
18 Q And that's according to your knowledge,  
19 correct?  
20 A Yes.  
21 Q A map upon which you rely almost on a daily  
22 basis?  
23 MR. URICK: Objection.  
24 THE COURT: Well, Mr. Urick, you didn't  
25 object to him using the map, so why don't we have the

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

7 MR. WARANOWITZ: I believe it was.

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

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

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

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

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

21 MR. WARANOWITZ:

22 A Yes.

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

25 A Yes.

1 A Yes.

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

6 A What road was that?

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

8 A Right, Dogwood intersects Woodlawn Drive.

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

11 A Yes.

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

16 A Yes.

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

19 A Yes.

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

23 A I believe so, yes.

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

1 Q And that it is located on Woodlawn Drive?

2 A I'd have to verify that.

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

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

7 MS. GUTIERREZ: Objection.

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

11 BY MS. GUTIERREZ: Thank you.

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

14 MR. WARANOWITZ:

15 A Woodlawn Drive?

16 Q Yes, sir.

17 A Woodlawn High School?

18 Q Yes, sir.

19 A I've located it.

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

22 A It appears to be, yes.

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

24 A Yes.

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

1 MR. URICK: Objection.

2 THE COURT: Overruled.

3 MR. WARANOWITZ: It is not far.

4 BY MS. GUTIERREZ:

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

7 MR. WARANOWITZ:

8 A I was taken to Woodlawn High School.

9 Q And did you do an origination test there?

10 A Yes.

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

13 A Yes.

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

16 A Yes.

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

20 A It was either 651A or 651C.

21 Q 651A, would that be the orange?

22 A Yes.

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

24 A Correct.

25 Q Is that correct?



1 A Correct.  
 2 Q Either one or the other, right?  
 3 A Yes.  
 4 Q And, sir, the address on that cell phone  
 5 tower, the same cell phone tower would be the same  
 6 whether it was orange, right?  
 7 A Yes.  
 8 Q Or pink, right?  
 9 A Yes.  
 10 Q The cell phone tower's address is -- what you  
 11 are referring to now is your copy of this blown up  
 12 version of State's Exhibit 34, is it not?  
 13 A Yes.  
 14 Q And the cell phone, cell site address is 1500  
 15 Woodlawn Drive, is it not?  
 16 A Yes.  
 17 Q And that same address is whether or not the  
 18 call was made by a cell phone in 651A, right?  
 19 A Yes.  
 20 Q Or whether or not it was made in 651C, is  
 21 that correct?  
 22 A Yes.  
 23 Q And if it were made in A on your map which  
 24 you prepared it includes more than one designated  
 25 neighborhood, does it not?

1 A I'm sorry, could you rephrase that?  
 2 Q On your map which you prepared, if it were  
 3 originated from 651A, A is the orange?  
 4 A Yes.  
 5 Q All right. If the cell phone was located in  
 6 651, that area would include several different  
 7 neighborhoods, would it not?  
 8 A Neighborhoods, yes.  
 9 Q Yes. And those neighborhoods would include  
 10 several different defined subdivisions and listings of  
 11 different neighborhoods, would it not?  
 12 MR. URICK: Objection.  
 13 THE COURT: Do you whether that would include  
 14 several different neighborhoods in that area or not?  
 15 MR. WARANOWITZ: Yes it would.  
 16 BY MS. GUTIERREZ:  
 17 Q And that would also be true --  
 18 THE COURT: Overruled.  
 19 BY MS. GUTIERREZ:  
 20 Q If the cell phone, your Erickson cell phone  
 21 were used to make a call if it had been located  
 22 anywhere in 651C, that's the pink, right?  
 23 MR. WARANOWITZ:  
 24 A Right.  
 25 Q And that whole area, that pink also includes

1 several different neighborhoods, does it not?  
 2 A Yes.  
 3 Q Those being residential, correct?  
 4 A Residential and commercial.  
 5 Q And commercial, but does include residential,  
 6 correct?  
 7 A Yes.  
 8 Q And includes a broader geographical range  
 9 then does A, does it not?  
 10 A The coverage does go off the map.  
 11 Q So, in regard to what you call coverage,  
 12 again, you are referring to the coverage that one would  
 13 expect in an ideal situation to include an area much  
 14 larger than just the location of this cell site,  
 15 correct?  
 16 A Yes.  
 17 Q And the coverage area, although this be the  
 18 ideal that you drew for us to help you explain, in  
 19 reality doesn't look like this, does it?  
 20 MR. URICK: Objection.  
 21 THE COURT: Overruled.  
 22 MR. WARANOWITZ: It doesn't look like that,  
 23 no.  
 24 BY MS. GUTIERREZ:  
 25 Q Now, sir, in regard to the apartment building

1 that's located near the intersection of Windsor Mill  
 2 Road and Forest Park Avenue, you call that apartment  
 3 complex?  
 4 MR. WARANOWITZ:  
 5 A No, we call that Govins Manor.  
 6 Q Okay. You recalled that one, correct?  
 7 A Yes.  
 8 Q The cell site are antennas on top of the  
 9 apartment complex, correct?  
 10 A Yes.  
 11 Q And the apartment complex contains more than  
 12 one building, does it not?  
 13 A I don't recall.  
 14 Q But the antenna is on top, is it not?  
 15 A Yes.  
 16 Q And, sir, do you recall how high, how many  
 17 stories the apartment complex is?  
 18 A I don't recall.  
 19 Q You didn't make a notation of that, did you?  
 20 A No.  
 21 Q And, sir, the apartment complex upon which  
 22 your site antennas are covers almost, in addition to  
 23 other areas, almost the entirety of the western edge of  
 24 Lincoln Park, does it not?  
 25 A Correct.

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

3 A I understand your question.

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

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

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

13 A Yes.

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

18 A Yes it does.

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

20 A Yes.

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

25 A Well, we do take into consideration the

1 limitations of a cell site system.

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

12 MR. URICK: Objection.

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

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

19 THE COURT: Very well.

20 BY MS. GUTIERREZ:

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

1 MR. WARANOWITZ:

2 A Yes.

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

6 A Yes.

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

8 A Yes.

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

11 A Yes, with an explanation.

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

14 MR. URICK: Objection.

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

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

20 THE COURT: All right. First, Mr.

21 Waranowitz, you said yes with an explanation. Can you  
22 complete your explanation?

23 MR. WARANOWITZ: Yes.

24 THE COURT: Go right ahead.

25 MR. WARANOWITZ: We do not take weather into

1 consideration in our network design.

2 BY MS. GUTIERREZ:

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

6 MR. WARANOWITZ:

7 A No, I did not.

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

10 A No, with an explanation.

11 Q And you didn't make --

12 MR. URICK: Objection.

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

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

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

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

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



1 BY MS. GUTIERREZ:  
2 Q So, if you can't reach that cell site you're  
3 not able to make a cell phone call, right?  
4 MR. WARANOWITZ:  
5 A That is correct.  
6 Q And, sir, as you've told us before, different  
7 phone perform differently, correct?  
8 A Yes.  
9 Q And part of what that perform differently in,  
10 is related to what you have referred to is the ability  
11 of the phone to see the signal, correct?  
12 A Yes.  
13 Q The seeing of the signal refers to the signal  
14 that emanates from the tower, correct?  
15 A Yes.  
16 Q And that varying phones of varying quality  
17 would be able to see or not see the phone, correct?  
18 A Correct.  
19 Q And the difference in phones might mean that  
20 at sometimes a certain phone might see a signal,  
21 correct?  
22 A Yes.  
23 Q At other times that phone might not see the  
24 same signal it was able to see at some other designated  
25 time?

1 A Time probably wouldn't be a factor.  
2 Q Because time isn't a factor you, of course,  
3 made no effort to conduct your test when the alleged  
4 calls that you were conducting this test to make an  
5 opinion actually occurred, did you?  
6 A I'm sorry, could you say that again?  
7 Q You didn't attempt to construct your test  
8 according to the times that your own phones records  
9 indicated certain calls were made, did you?  
10 A My phone records?  
11 THE COURT: Mr. Waranowitz, if you can't  
12 answer a question say, I do not understand the  
13 question, I'm sorry, I can't answer the question and  
14 then Counsel will rephrase the question, okay? At this  
15 point I assume you can't answer the question?  
16 MR. WARANOWITZ: I don't understand the  
17 question.  
18 THE COURT: You don't understand the  
19 question. Very well, your next question.  
20 BY MS. GUTIERREZ:  
21 Q When you reviewed the phone records of the  
22 certain cellular phone, did you not?  
23 MR. WARANOWITZ:  
24 A Yes.  
25 Q And you understood that those phone records

1 belonged to an AT&T wireless customer, did you not?  
2 A Yes.  
3 Q Can I see the file? I think they're 31.  
4 Yes. Thank you. May I approach the witness?  
5 THE COURT: Yes, you may.  
6 BY MS. GUTIERREZ:  
7 Q I'm going to show you what's already been  
8 marked as State's Exhibit 31. Those are the phone  
9 records that you reviewed, are they not?  
10 MR. WARANOWITZ:  
11 A They appear to be, yes.  
12 Q And those phone records are produced for the  
13 company you work for, right?  
14 A Yes.  
15 Q And they indicate there the phone records for  
16 a certain cell phone number, do they not?  
17 A Yes.  
18 Q And they indicate that that phone is billed  
19 to an account number with the name Balial Alned, does  
20 it not?  
21 A This does show that.  
22 Q Okay. And the phone number to which these  
23 records refer is listed as area code, 443-253-9023,  
24 does it not?  
25 A Yes it does.

1 Q And attached to those pages, sir, are three  
2 pages on which are listed: dates, times, duration of  
3 call, are there not?  
4 A Yes.  
5 Q And you expect based on your experience for  
6 those records to be accurate, do you not?  
7 A Yes.  
8 Q And you're aware of these records as part of  
9 the way to do your so called, origination test, were  
10 you not?  
11 A Yes.  
12 Q And were you asked to conform your test in  
13 any way to the times in which calls were alleged to  
14 have been made?  
15 A Time.  
16 Q Do you not understand that question, sir?  
17 A Please rephrase it.  
18 Q Were you asked by anyone to conform your  
19 test, i.e., the structure, your test in a way that  
20 conformed to the information concerning actual calls  
21 that were made?  
22 A No, I was not.  
23 Q And you didn't do so, did you?  
24 A No.  
25 Q And you were not asked to structure your test

1 outside of what one it expects it to perform, correct?  
 2 A Yes.  
 3 Q And some phones, although it may come from  
 4 the same manufacturer's batch and model number, some  
 5 phones might see a signal and other phones might not,  
 6 correct?  
 7 A Correct.  
 8 Q And if a phone doesn't see a signal then it  
 9 doesn't trigger, correct?  
 10 A Correct.  
 11 Q And whether a phone is a good performance  
 12 phone or a bad performance phone doesn't add to your  
 13 ability to tell where it was when it sent out a signal,  
 14 does it?  
 15 A No.  
 16 Q And your test can't help us with that, can  
 17 it? Can it?  
 18 A I disagree.  
 19 Q Sir, your test -- lets deal with 651,  
 20 correct? And lets us assume for the purpose of this  
 21 question, that the cell tower is located in the middle  
 22 of the bottom circle of the five, okay? Can you assume  
 23 that?  
 24 A Yes.  
 25 Q All right. If a cell phone is physically

1 located in it's entirety, somewhere inside the  
 2 geographical area outlined and what appears in the hot  
 3 pink. That's L5 -- 651C, right?  
 4 A Yes.  
 5 Q You would expect that cell phone to trigger  
 6 that signal inside the five, correct?  
 7 A Correct.  
 8 Q And for your records to be able to tell us  
 9 that, correct?  
 10 A Yes.  
 11 Q But your records, based on receipt of the  
 12 signal can't tell us exactly where the cell phone was  
 13 when it made that, can it?  
 14 A No, it can not.  
 15 Q And it can't tell us, for instance, if it's a  
 16 good performance phone, correct?  
 17 A No.  
 18 MR. URICK: Objection.  
 19 BY MS. GUTIERREZ:  
 20 Q Or a bad performance phone, correct?  
 21 MR. WARANOWITZ:  
 22 A No.  
 23 Q And from your expertise, what the records can  
 24 tell us is that you would expect the phone that made  
 25 the call, that triggered the signal inside the five to

1 be located somewhere with it appears pink, right?  
 2 A Yes.  
 3 Q But no way can it tell us exactly where it  
 4 was, can it?  
 5 A No.  
 6 Q Or give us an address to name the place where  
 7 the cell phone was, correct?  
 8 MR. URICK: Objection.  
 9 THE COURT: This question has been asked and  
 10 answered and Mr. Waranowitz I'll let you answer it one  
 11 more time and your answer to that question is, it can't  
 12 give you an address of where the phone was, can it?  
 13 MR. WARANOWITZ: No, it can not give you an  
 14 address of where the phone was.  
 15 THE COURT: Very well. Your next question.  
 16 BY MS. GUTIERREZ:  
 17 Q On any day, right?  
 18 MR. WARANOWITZ:  
 19 A On any day.  
 20 Q Now, sir, when you made the origination test  
 21 you said you caused a phone call to be made, correct?  
 22 A Yes.  
 23 Q You didn't have to dial the phone numbers  
 24 into the phone correct?  
 25 A I dialed a code.

1 Q You dialed a code which is not the phone  
 2 number, correct?  
 3 A It could be considered a phone number.  
 4 Q Okay. But it wasn't the phone number that  
 5 you were dialing, right?  
 6 A It does the same thing a phone number does.  
 7 Q It does the same thing meaning it triggers  
 8 the signal at the cell site, correct?  
 9 A Yes.  
 10 Q But you weren't asked when you did your  
 11 origination test to actually dial the same numbers that  
 12 you knew to have been dialed back on January 13th,  
 13 1999?  
 14 MR. URICK: Objection.  
 15 BY MS. GUTIERREZ:  
 16 Q Were you?  
 17 THE COURT: Overruled.  
 18 MR. WARANOWITZ: No, with an explanation.  
 19 BY MS. GUTIERREZ:  
 20 Q Well, my question only asked for a yes or  
 21 not.  
 22 MR. URICK: Objection.  
 23 THE COURT: Overruled or sustained. I'm  
 24 going to allow the witness to explain his answer and if  
 25 you would explain your answer. You do not have to

1 answer a yes or no and you don't have to say with an  
2 explanation, just answer the question would be fine.  
3 MR. WARANOWITZ: Yes, ma'am.  
4 THE COURT: You may now provide your answer.  
5 MR. WARANOWITZ: The phone number that you  
6 are dialling on a cell phone does not effect what cell  
7 site you originate on, whether it's long distance.  
8 local or your voice mail. It does not effect how you  
9 access that cell site.  
10 BY MS. GUTIERREZ:  
11 Q Well, sir, so the answer to my question is  
12 no, you weren't asked to dial these numbers?  
13 MR. WARANOWITZ:  
14 A No, I was not asked to dial those numbers.  
15 Q And you didn't, did you?  
16 A No.  
17 Q You didn't dial call number one to that  
18 number, did you?  
19 A No, it was not necessary.  
20 Q And you didn't dial -- I didn't ask you that,  
21 sir.  
22 THE COURT: Ms. Gutierrez.  
23 BY MS. GUTIERREZ:  
24 Q Did you dial --  
25 THE COURT: Ms. Gutierrez, one moment. Your

1 answer, sir, was, I was not asked to do that, is that  
2 what you said?  
3 MR. WARANOWITZ: That is correct. I was not  
4 asked to do that and it is not necessary to do that.  
5 BY MS. GUTIERREZ:  
6 Q It's not necessary to conduct your  
7 origination test, correct?  
8 THE COURT: Do you understand the question?  
9 MR. WARANOWITZ: Could you ask that again  
10 please?  
11 BY MS. GUTIERREZ:  
12 Q You answered it wasn't necessary to dial the  
13 number I asked you if you dialed correct, right?  
14 MR. WARANOWITZ:  
15 A Right.  
16 Q And your answer was you didn't dial it,  
17 right?  
18 A No.  
19 Q Well, did you dial it or didn't you?  
20 A No, I did not dial it.  
21 Q All right. And then you said you needed to  
22 explain why not, correct?  
23 A Yes.  
24 Q And you said it wasn't necessary, right?  
25 A It was not necessary to dial those specific

1 phone numbers.  
2 Q So, your answer to my question is, yes. You  
3 then said, it wasn't necessary, right?  
4 MR. URICK: Objection.  
5 THE COURT: The objection is sustained. Mr.  
6 Waranowitz, we're sitting here, why don't you tell us  
7 why it wasn't necessary.  
8 MR. WARANOWITZ: I just did.  
9 THE COURT: No, tell us why it wasn't  
10 necessary for you not to dial the numbers. Ms.  
11 Gutierrez is asking you that question, if you could  
12 just answer it.  
13 MR. WARANOWITZ: It is not necessary to dial  
14 those phone numbers because they do not effect what  
15 cell site you originate on.  
16 THE COURT: All right. Very well. Next  
17 question.  
18 BY MS. GUTIERREZ:  
19 Q So, the only impact would have been to your  
20 origination test, right?  
21 MR. WARANOWITZ:  
22 A Impact?  
23 Q Of dialing or not dialing the numbers would  
24 have been to your origination test, correct?  
25 A I'm sorry, I don't understand.

1 Q Mr. Waranowitz, lets go back to the  
2 triangular --  
3 MR. URICK: Objection.  
4 BY MS. GUTIERREZ:  
5 Q Up here on cell site 651, correct?  
6 THE COURT: The objection is overruled. The  
7 witness has indicated he does not understand Counsel's  
8 question, so Counsel may clarify the question and Mr.  
9 Waranowitz, if you would follow her direction and  
10 again, if you don't understand her question, just say,  
11 I do not understand the question.  
12 MR. WARANOWITZ: Yes, Your Honor.  
13 THE COURT: All right. Very well.  
14 BY MS. GUTIERREZ:  
15 Q The test that you performed, you performed it  
16 you told us in may different locations, correct?  
17 MR. WARANOWITZ:  
18 A Yes.  
19 Q And the test that you performed was the same  
20 at every location, was it not?  
21 A Yes.  
22 Q And it was always performed under your phone,  
23 correct?  
24 A Yes.  
25 Q Your Erickson phone, correct?

1 A Yes.  
 2 Q Not a Nokia, correct?  
 3 A Correct.  
 4 Q Not a Nokia of this certain model, correct?  
 5 A Correct.  
 6 Q And the purpose when you performed that test  
 7 was to determine when you performed the test on the day  
 8 that you did so, what if any cell site it would signal,  
 9 correct?  
 10 A Yes.  
 11 Q It was the only purpose of your test,  
 12 correct?  
 13 A Yes.  
 14 Q Now, you never dialed the number, 869-9498 --  
 15 MR. URICK: Objection.  
 16 BY MS. GUTIERREZ:  
 17 Q Did you?  
 18 THE COURT: Overruled.  
 19 MR. WARANOWITZ: No, I did not dial that  
 20 number.  
 21 BY MS. GUTIERREZ:  
 22 Q And you weren't asked to do so, were you?  
 23 MR. WARANOWITZ:  
 24 A No, I was not asked to do so.  
 25 Q By anyone?

1 A By anyone.  
 2 Q But when you didn't dial 340-7374, did you?  
 3 A No.  
 4 Q And if you would look at your sheet, you  
 5 didn't dial the phone number listed in four, did you?  
 6 MR. URICK: Objection.  
 7 MR. WARANOWITZ: No.  
 8 THE COURT: Overruled.  
 9 BY MS. GUTIERREZ:  
 10 Q Or in five?  
 11 MR. WARANOWITZ:  
 12 A No.  
 13 Q Or in six?  
 14 A No.  
 15 Q Or in seven?  
 16 A No.  
 17 Q Or in eight?  
 18 A No.  
 19 Q Or in nine?  
 20 A No.  
 21 QQ Or in twelve?  
 22 A No.  
 23 Q Thirteen?  
 24 A No.  
 25 Q Seventeen.

1 A No.  
 2 Q Eighteen?  
 3 A No.  
 4 Q Twenty-two?  
 5 A No.  
 6 Q Twenty-three, twenty-four, twenty-five?  
 7 A No.  
 8 Q Twenty-six?  
 9 A No.  
 10 Q Thirty?  
 11 A No.  
 12 Q Thirty-one through thirty-four?  
 13 A No.  
 14 Q You were never asked to dial any of those  
 15 numbers, correct?  
 16 A Correct.  
 17 Q And you did not do so, correct?  
 18 A Correct.  
 19 Q And you didn't dial any of your calls at any  
 20 of the locations you were taken by Ms. Murphy at any of  
 21 the specific times listed in call time, were you?  
 22 A No.  
 23 Q No. After you completed all of the tests at  
 24 the locations that don't appear on the chart, after you  
 25 completed them you had reported all of your findings to

1 Ms. Murphy because she was there in the car with you,  
 2 right?  
 3 A I reported them as I saw them, yes.  
 4 Q Okay. So, as you went along, you gave her  
 5 the heads up, right?  
 6 A Yes.  
 7 Q And at no time during that day, at any time  
 8 did you tell Ms. Murphy, I did this test, Ms. Murphy,  
 9 and I can tell you --  
 10 THE COURT: Ms. Gutierrez, at this point  
 11 we're going to interrupt because I note that it is now  
 12 12:30. I'm going to take a lunch and recess at this  
 13 time and you will come back after lunch and continue  
 14 with this questioning. Ladies and gentlemen, we have a  
 15 number of things that are going to be taken place at  
 16 lunch time. This Court will be tied up at lunch time  
 17 as well.  
 18 So, we're going to recess from this time until  
 19 2:15 at which time we will return with the continued  
 20 questioning of this witness. Ladies and gentlemen, as  
 21 you go out please leave your note pads face down.  
 22 Please do not discuss the testimony of this witness or  
 23 anyone else, amongst yourselves or with anyone. Your  
 24 note pads will be locked away by the Clerk and returned  
 25 to your chairs after the lunch and recess. Please go



1 with Deputy Church and he will take you back to the  
2 jury room. I'm sorry. Yes, you may go over to the  
3 jury assembly room any time now -- between now and  
4 1:30, they are ready for you. Any time between now and  
5 1:30 you may go to jury assembly and be paid. They're  
6 expecting you to come over any time between now and  
7 1:30. It's up to you. You can go first or not, it's  
8 up to you.

9 MS. GUTIERREZ: The courtroom will be locked  
10 again?

11 THE COURT: The courtroom will be locked  
12 during the recess.

13 MS. GUTIERREZ: Thank you.

14 THE COURT: If Counsel will wait one moment  
15 until all of out jurors leave.

16 (The jury was excused from the courtroom.)

17 THE COURT: Mr. Waranowitz, I understand you  
18 have made changes or adjustments to your travel  
19 schedule?

20 MR. WARANOWITZ: Yes.

21 THE COURT: To depart at 3:30. I need to  
22 advise you I have no idea what time you're going to  
23 finish. I do not want you to be mislead in anyway that  
24 I know or am aware of what time you will be done.  
25 Counsel has the right to ask you questions and I can't

1 anticipate or expect what that will entail.  
2 Unfortunately, from 12:30 to two o'clock at least, this  
3 Court is tied up in a sentencing hearing involving  
4 three other judges. I am already late, I am going  
5 directly there. We will resume promptly at 2:15 at  
6 which time we will continue with the questions of Ms.  
7 Gutierrez. Also let me advise you during the break,  
8 you may not discuss your testimony with either the  
9 State's attorneys or the Defense. They should have no  
10 conversations with you regarding your testimony and you  
11 should have no conversations with anyone else. You are  
12 a sequestered witness, do you understand?

13 MR. WARANOWITZ: Yes, Your Honor.

14 THE COURT: Very well. This Court then  
15 stands in recess until 2:15.

16 MR. URICK: Your Honor, before we go off the  
17 record we would just like to note for the record that  
18 Ms. Gutierrez pounded very heavily on Ms. Murphy's  
19 chair at their last questioning in her questioning and  
20 there was no reason for that display towards Ms.  
21 Murphy.

22 THE COURT: Ms. Gutierrez, I'm going to ask  
23 that you not pound on any chairs whether it be your  
24 chair or anyone else's chair. I would also ask that  
25 you will have an absolute right to conduct cross

1 examination, but I'd ask that you adjust your tone with  
2 this witness. This witness is a witness subpoenaed by  
3 the State. He is not here of his own accord, he is  
4 already as you know, being inconvenienced as to his  
5 work or personal schedule.

6 That has nothing to do with you, but I'd ask that  
7 common courtesy be afforded the witness and I'd ask  
8 that of all witnesses that come into this Court.

9 However, you have absolute right to cross examine the  
10 witness and I'd ask that you continue to do that, but I  
11 would just ask that you be mindful of those things and  
12 I would ask that all of us be mindful of common  
13 courtesy. Not only with the witnesses, with the jurors  
14 and with each other, and with that this Court will  
15 stand in recess until 2:15.

16 BAILIFF: All rise.

17 (Lunch recess.)

18 (Jury not present upon reconvening.)

19 THE COURT: We have called for the Defendant  
20 to be brought up, he should be here shortly. Ms.  
21 Gutierrez, your client should be here shortly. Once he  
22 is settled in we will have the jury brought back.

23 MS. GUTIERREZ: Judge, can we approach the  
24 bench?

25 THE COURT: Certainly, please come up. Is

1 this something we need to discuss with your client?

2 (Counsel approached the bench and the  
3 following ensued:)

4 MS. GUTIERREZ: No, I don't think so.

5 THE COURT: Is it a scheduling matter?

6 MS. GUTIERREZ: Sort of.

7 THE COURT: You're sure you don't need your  
8 client here?

9 MS. GUTIERREZ: I don't need my client here.  
10 Judge, the rest of my cross is not going to be that  
11 long on this witness. Over the break I went and I ate  
12 lunch, I don't know if the Court's aware, I'm a  
13 diabetic?

14 THE COURT: Are you okay?

15 MS. GUTIERREZ: Well, I'm not sure. I don't  
16 -- I had lunch, things seemed to be fine. I was going  
17 to say something to the Court anyway because yesterday  
18 eating so late is something that throws me off --

19 THE COURT: Okay.

20 MS. GUTIERREZ: And I should have stopped and  
21 I didn't, I felt fine, but often times I just have bad  
22 reactions a day or so later. I was fine, I left, we  
23 walked back and by the time I got in the building I was  
24 overwhelmed and had to vomit. I didn't feel like  
25 walking up to my office where my blood sugar tester is,

1 so I would like to do is to finish cross of this  
2 witness which I don't think will take long, let them do  
3 whatever redirect and then ask the Court to take a  
4 short break. I would like to walk up to my office --  
5 THE COURT: That's fine.  
6 MS. GUTIERREZ: And test my blood sugar and  
7 see if there's anything I can do, my medication is up  
8 there and see if I can clear it up.  
9 THE COURT: That will be fine. I have no --  
10 you have no problem with that, do you?  
11 MR. URICK: No.  
12 THE COURT: And I would tell you that if you  
13 want depending on what is going on we can stop.  
14 MS. GUTIERREZ: Yes, I know, but I'm not -- I  
15 just don't know and it's early enough that if I walk up  
16 it may pass and I'll be fine.  
17 THE COURT: Fine.  
18 MR. URICK: Shouldn't we have the Defendant  
19 present?  
20 THE COURT: I really would like the Defendant  
21 here.  
22 MS. GUTIERREZ: Okay. All right.  
23 THE COURT: When it is scheduled --  
24 MS. GUTIERREZ: We can do it afterwards or  
25 something.

1 THE COURT: To the witnesses or something.  
2 MR. URICK: What are your plans for Friday  
3 with the juror who wants to go on the weekend trip?  
4 THE COURT: Well, today is?  
5 MR. URICK: Wednesday.  
6 MS. GUTIERREZ: Wednesday.  
7 MR. URICK: Tomorrow is Thursday.  
8 THE COURT: Tomorrow is Thursday, we're not  
9 going to finish by tomorrow. So, why don't you guys  
10 think about --  
11 MS. GUTIERREZ: I need to talk to my client -  
12 THE COURT: Yeah, talk to him.  
13 MS. GUTIERREZ: but I don't think he'll have  
14 any objection to that.  
15 THE COURT: And the choice would be, we  
16 continue through Friday or we stop and we continue on  
17 Monday.  
18 MS. GUTIERREZ: Right.  
19 THE COURT: Just --  
20 MR. URICK: We have --  
21 THE COURT: You guys think about what you  
22 want to do. Actually, he's here. So, why don't we  
23 just bring him up.  
24 MS. GUTIERREZ: Mr. Syed, come up for a  
25 minute.

1 THE COURT: Mr. Syed, we were discussing  
2 scheduling for Friday. We have a juror that has  
3 indicated that they had a vacation planned and they  
4 would be departing a 6:00 a.m. on Friday. We --  
5 MS. GUTIERREZ: It's juror number twelve, is  
6 it?  
7 THE COURT: I thought it was six.  
8 MR. URICK: I think six.  
9 MS. GUTIERREZ: Okay.  
10 THE COURT: And that juror doesn't -- has  
11 planned to leave at 6:00 a.m. on Friday and we weren't  
12 sure whether we were going to have to sit on Friday  
13 depending upon how the case progressed. What Counsel  
14 and I are now about to discuss, we were waiting for  
15 you, is what the State and the Defense's pleasure is.  
16 The choices are as follows: we can continue on  
17 Friday which would mean that juror number six would be  
18 struck from the panel by agreement, alternate number  
19 would take that seat because we can't take testimony  
20 with a missing juror and juror number six would be  
21 excused or we can stop the testimony altogether on  
22 Friday and resume with the testimony on Monday when all  
23 the jurors that are currently in the panel will be  
24 present.  
25 So, those are the choices. You can talk to your

1 attorney and indicate your feeling one way or another.  
2 Have you already discussed this and are prepared to  
3 tell me what your choice is?  
4 MR. URICK: I think we have a slight  
5 preference not to sit Friday.  
6 MS. MURPHY: Our witnesses need to go to  
7 work.  
8 MR. URICK: And also being in Felony  
9 narcotics, I've got so much other work, another day out  
10 of Court would give me a chance to get caught up.  
11 THE COURT: Well, maybe we can do something  
12 by agreement. It would be nice if we could do it by  
13 agreement then that way --  
14 MR. URICK: We're not going to disagree one  
15 way or the other. We would prefer Friday.  
16 THE COURT: Okay. Whichever --  
17 MS. GUTIERREZ: Judge, we would like to delay  
18 the decision making until the jury comes out and we an  
19 picture --  
20 THE COURT: Who?  
21 MS. GUTIERREZ: Right, who's who and --  
22 THE COURT: Okay.  
23 MS. GUTIERREZ: And then so if we could come  
24 up at the end of this witness we could then give you  
25 our answer --

1 THE COURT: Very well.  
 2 MS. GUTIERREZ: In regard to that.  
 3 THE COURT: That will be fine. We'll start  
 4 as soon as we can have the jury brought back. Thank  
 5 you.  
 6 (Counsel and Defendant returned to the trial  
 7 tables and the following ensued:)  
 8 MR. URICK: Should we ask the witness to step  
 9 back in at this time?  
 10 THE COURT: Yes, please. And I'll have --  
 11 Deputy Church, if you could have the witness, Mr.  
 12 Waranowitz come back in the courtroom.  
 13 (A bell sounded.)  
 14 THE COURT: That's probably the jury telling  
 15 us that they're ready.  
 16 (The jury returned to the courtroom.)  
 17 THE COURT: Please be seated everyone. Ms.  
 18 Gutierrez, you may continue.  
 19 MS. GUTIERREZ: Yes, Your Honor.  
 20 THE COURT: And if I may just, for the  
 21 record, just indicate your name, sir.  
 22 MR. WARANOWITZ: My name is Abraham John  
 23 Waranowitz.  
 24 THE COURT: I'm reminding you you're still  
 25 under oath from this morning. You may continue.

1 BY MS. GUTIERREZ:  
 2 Q Mr. Waranowitz, just to clarify, you  
 3 indicated that you reported your findings based on what  
 4 you called your origination test as they occurred to  
 5 Ms. Murphy?  
 6 MR. WARANOWITZ:  
 7 A Yes.  
 8 Q Is that correct? And your findings could be  
 9 categorized essentially as a statement that a certain  
 10 address would trigger a certain site, is that not  
 11 correct?  
 12 A No.  
 13 Q Well, sir, did you report your findings to  
 14 Ms. Murphy in regard to all of the addresses that she  
 15 pointed out and she took you to as to whether or not  
 16 they trigger a site or sites?  
 17 A Yes.  
 18 Q So, you reported that information, correct?  
 19 A Yes.  
 20 Q And that information would fairly be  
 21 characterized if it were written as if a cell phone at  
 22 Rolling Road at 170 triggers cell site L651C or L698A,  
 23 is that correct?  
 24 A Yes.  
 25 Q Okay. And in fact, on many of the addresses,

1 1208 Macado again, you listed two separate cell sites,  
 2 did you not?  
 3 A Yes.  
 4 Q And as for the Security Mall site, sir?  
 5 A Yes.  
 6 Q You also listed two separate cell sites?  
 7 A I believe I did, yes.  
 8 Q And, sir, you were in what specific location  
 9 at Security Mall?  
 10 A We drove around the mall.  
 11 Q Around the mall?  
 12 A Yes.  
 13 Q Not inside the mall?  
 14 A Correct.  
 15 Q So the phone call that you caused to be  
 16 originated was made from outside the mall?  
 17 A Yes.  
 18 Q And, sir, after you reported these findings  
 19 to Ms. Murphy you didn't then generate on top of that a  
 20 written report, did you?  
 21 A No.  
 22 Q No, and you've generated no written report,  
 23 did you?  
 24 A No, I did not.  
 25 Q And there's no information generated by your

1 company, such as would be generated when a real sell  
 2 phone user using any type of phone would make such a  
 3 call and the computer would record it and then at  
 4 billing print out the length of the call that your --  
 5 the time the call was made and the cell site that it  
 6 triggered?  
 7 A The test calls are not billable.  
 8 Q Okay. So, the answer to my question then,  
 9 sir, is no.  
 10 A No.  
 11 Q And in regard to the Briar Cliff Road  
 12 address, again you indicated to Ms. Murphy that that  
 13 also triggered two sites, is that correct?  
 14 A I'd like to see the report on that.  
 15 Q Well, sir, you didn't write a report, did  
 16 you?  
 17 A No, I did not.  
 18 Q And did you take notes?  
 19 A No, Ms. Murphy took notes for me.  
 20 Q Ms. Murphy took notes. You took no notes of  
 21 your own origination test, correct?  
 22 A Correct.  
 23 Q And did you check her notes for accuracy?  
 24 A I reviewed her notes and it was consistent.  
 25 Q And were they --



1 THE COURT: One moment, I'm sorry.

2 MR. WARANOWITZ: I reviewed her notes, I'm  
3 sorry, Your Honor.

4 THE COURT: You said, I reviewed her notes  
5 and --

6 MR. WARANOWITZ: I reviewed her notes and  
7 they were consistent with what I say that date.

8 BY MS. GUTIERREZ:

9 Q Did you review her notes as she took them?

10 MR. WARANOWITZ:

11 A No, I did not.

12 Q You reviewed them after you were all done,  
13 correct?

14 A Yes.

15 Q I gather to say you went to visit a number of  
16 addresses, did you not?

17 A Yes.

18 Q Thirteen in fact, isn't that correct?

19 A Yes.

20 Q And that took you a little while, didn't it?

21 A Yes.

22 Q And you reviewed her notes after you finished  
23 visiting and performing your origination test at those  
24 locations, correct?

25 A Yes.

1 Q And at that time you recalled that her notes  
2 appeared to be accurate, correct?

3 A Yes.

4 Q Now, sir, you don't know the cell site names  
5 and numbers off the top of your head ordinarily, do  
6 you?

7 A No, I do not have them memorized.

8 Q And you don't know their addresses, do you?

9 A No, I do not work with addresses on a daily  
10 basis.

11 Q So, the answer to my question is no?

12 A No.

13 Q And, sir, yesterday when you were asked you  
14 were given a list of addresses and identities of all  
15 cell sites in the network, were you not?

16 A Yes.

17 Q When you were asked questions about the  
18 location you merely looked them up, did you not?

19 A Yes.

20 Q They didn't refresh your lost memory off  
21 where those cell sites were, was it?

22 A No, I know where the cell sites are from  
23 experience.

24 Q From experience of having tested them before,  
25 correct?

1 A Yes.

2 Q But you never tested any of these addresses  
3 before, did you?

4 A No.

5 Q You weren't asked ever before by Ms. Murphy  
6 or anyone to go to that specific list of thirteen  
7 locations, were you?

8 A I'm sorry. Ask that question again.

9 Q You were never asked before by Ms. Murphy or  
10 by anyone to go to that list of thirteen locations,  
11 were you?

12 A No.

13 Q Nor to perform tests?

14 A No.

15 Q And that none of the thirteen locations did  
16 you, yourself take notes?

17 A No, I did not.

18 Q You relied on her to take notes, right?

19 A Yes.

20 Q And then later after you were all done all  
21 thirteen locations you checked her notes for accuracy,  
22 correct?

23 A Yes.

24 Q All right. Now, Crosby on your list you  
25 listed as also triggering two separate cell sites, did

1 you not?

2 A I believe so.

3 Q And Crosby, is that a name of a building or a  
4 street perhaps?

5 A Crosby I believe is a street that crosses  
6 695.

7 Q And I70 Park and Ride you listed as  
8 triggering two separate cell sites depending upon where  
9 you were at that location, correct?

10 A Yes.

11 Q And Route 40 at Cooks Lane up to Forest Park  
12 triggered, in fact, depending again on where you were  
13 on one of those roads, three separate cell sites, did  
14 it not?

15 A I'd have to review the notes.

16 Q Okay. You don't recall that off hand?

17 A I don't recall off hand exactly.

18 Q Okay. And, sir, it would be fair to say that  
19 a location triggering three cell sites, not two cell  
20 sites was unusual even from your list of thirteen  
21 properties, wasn't it?

22 A It is not unusual.

23 Q No, but now, sir, in regard to Gelston Park,  
24 again, you indicated to Ms. Murphy that that location  
25 would trigger three separate cell sites, did you not?



1 A I recall two cell sites.  
 2 Q Two cell sites. And, sir, as to the only  
 3 other location was Woodlawn High School, correct?  
 4 A I don't remember if there are more at this  
 5 point.  
 6 Q Well, sir, do you recall that Ms. Murphy  
 7 listed thirteen locations that you reported to her  
 8 orally on?  
 9 A Yes.  
 10 Q And are you aware that of the list I just  
 11 read you, that Woodlawn would be the thirteenth  
 12 location?  
 13 A Woodlawn High School?  
 14 Q Yes, sir.  
 15 A Yes.  
 16 Q And, sir, that's the Woodlawn High School  
 17 that we discussed and you looked up on your map book,  
 18 correct?  
 19 A Yes.  
 20 Q And that was a place that Ms. Murphy took  
 21 you, correct?  
 22 A Yes.  
 23 Q On that day, that you don't recall when it  
 24 was?  
 25 A Yes.

1 Q Now, sir, this morning and we discussed again  
 2 that, of course, on the test that you did, you knew  
 3 where you were when you were doing the test, right?  
 4 A Yes.  
 5 Q And you knew where the cell phone was  
 6 physically located that you caused to originate a phone  
 7 call, correct?  
 8 A Yes, the test phone call.  
 9 Q That what you did was punch in a code as you  
 10 said, correct?  
 11 A Yes.  
 12 Q Not a phone number, correct?  
 13 A Not a standard phone number.  
 14 Q And in any event, not a phone number on  
 15 State's Exhibit 34, correct?  
 16 A Yes.  
 17 Q And you knew the location of the cell phone  
 18 that would processing the signal, whatever code you  
 19 entered into it, were it was, right?  
 20 A Yes.  
 21 Q It was in your hand, right?  
 22 A Yes.  
 23 Q And your hand was next to the physical  
 24 presence of Ms. Murphy, was it not?  
 25 A Yes.

1 Q On each occasion that you visited these  
 2 thirteen locations, correct?  
 3 A Yes.  
 4 Q But you know that because you were there,  
 5 right?  
 6 A Yes.  
 7 Q You knew who had that cell phone in their  
 8 hand, did you not?  
 9 A Which cell phone?  
 10 Q Cell phone you were using, sir.  
 11 A Yes.  
 12 Q Okay. There isn't any other cell phone that  
 13 we don't know about, is there?  
 14 A No.  
 15 MR. URICK: Objection.  
 16 BY MS. GUTIERREZ:  
 17 Q There isn't a hidden cell phone here, is  
 18 there?  
 19 THE COURT: Sustained.  
 20 BY MS. GUTIERREZ:  
 21 Q You didn't conduct the test on any other cell  
 22 phone then your own Erickson that you used at the time.  
 23 correct?  
 24 MR. WARANOWITZ:  
 25 A Yes.

1 Q And, sir, at the time you conducted this test  
 2 you were an engineer for AT&T, were you not?  
 3 A Yes.  
 4 Q You were using an Erickson phone, correct?  
 5 A Yes.  
 6 Q Although you told us that AT&T had issued its  
 7 engineers Nokias, correct?  
 8 A Yes.  
 9 Q You chose the Erickson phone for the test  
 10 that you were going to administer at Ms. Murphy's  
 11 directions, did you not?  
 12 A Yes.  
 13 Q She didn't chose it for you, did she?  
 14 A No she did not.  
 15 Q And you never substituted another phone for  
 16 any of these tests, did you?  
 17 A No.  
 18 Q No, sir, you were asked by Mr. Murphy this  
 19 morning that based on your experience with Nokias in  
 20 your business, whether or not a Nokia would perform  
 21 competently, comparably to the Erickson, correct?  
 22 A Yes.  
 23 Q And you answered that you thought so, that  
 24 was your opinion, right?  
 25 A Yes.

1 Q And by comparably you meant that they'd  
2 perform exactly the same?  
3 A They perform almost exactly the same.  
4 Q And, sir, is that your opinion as to every  
5 Erickson and every Nokia?  
6 A Generally.  
7 Q Generally, ideally, right?  
8 A Yes.  
9 Q What you'd expect them to perform, correct?  
10 A Yes.  
11 Q But it's fair to say based on your earlier  
12 statements that phones perform in a different fashion,  
13 do they not?  
14 A Yes.  
15 Q And it would be fair to say that among Nokias  
16 on any model number, some are very good performers, are  
17 they not?  
18 A I am familiar with the Nokia 6160.  
19 Q Only as to the 6160. Out of the thousands of  
20 Nokia 6160 some are good performers, are they not?  
21 A Yes.  
22 Q Some exceed expectations, do they not?  
23 A Yes.  
24 Q And some are mediocre performers, are they  
25 not?

1 A Yes.  
2 Q And some are poor performers, are they not?  
3 A Yes.  
4 Q You couldn't tell which category any Nokia  
5 6160 fell into by looking at it, could you?  
6 A No.  
7 Q You'd have to test that individual phone to  
8 know what type of performer it was, would you not?  
9 A Yes.  
10 Q To find out whether it met expectations and  
11 performed as it was expected to do, correct?  
12 A Yes.  
13 Q Or whether it fell below that line and  
14 performed poorly.  
15 A Yes.  
16 Q Isn't that correct? And part of performance  
17 in the differences of phones are that some phones are  
18 able to see some signals and other phones can not,  
19 isn't that correct?  
20 A Some phones would be able to see signals at  
21 different levels than other phones.  
22 Q And the level at which a phone sees a signal  
23 you would characterize in terms of strength or  
24 weakness, would you not?  
25 A Yes.

1 Q And the readings one gets from phones that  
2 are translated to the computer records are related to  
3 the phones seeing a signal or not, are they not?  
4 A I'm sorry, could you ask that again?  
5 Q A phone either sees a signal or it does not,  
6 correct?  
7 A Yes.  
8 Q And the seeing part of the signal is the  
9 ability to recognize and communicate with the signal,  
10 correct?  
11 A Yes.  
12 Q So, two phones that are side by side in  
13 equate distance from a signal being sent from the cell  
14 phone tower, one could read it and one could not,  
15 correct?  
16 A Yes.  
17 Q And one of them could read one signal that's  
18 actually closer to both phones, correct?  
19 A Yes.  
20 Q And one phone couldn't read that signal  
21 that's closest, correct?  
22 A Yes.  
23 Q In fact, for some reason one phone could see  
24 a signal that's further away but not see a signal  
25 that's closer, could it not?

1 A No.  
2 Q Well, sir, the ability to see a signal is  
3 part of what you would call its performance, correct?  
4 A Yes.  
5 Q Now, sir, in regard to the same thing that  
6 we're talking about, your test you can only tell us  
7 that that phone was in your hand because you did it,  
8 right?  
9 A Yes.  
10 Q And you were there, right?  
11 A Yes.  
12 Q And Ms. Murphy was there and saw you did it,  
13 right?  
14 A Yes.  
15 Q In regard to the AT&T records, the billing  
16 records, do you recall those billing records that I  
17 showed this morning?  
18 A Yes.  
19 Q They print out the existence of a call, do  
20 they not?  
21 A Yes.  
22 Q They print out the number the call was made?  
23 A Yes.  
24 Q And the records are set up so that it is  
25 clear that it is the cell phone whose bill it is that

1 is suppose to have made those calls, correct?  
 2 A Yes.  
 3 Q Okay. And they also print out the time the  
 4 calls were made?  
 5 A Yes.  
 6 Q And the duration of the call?  
 7 A Yes.  
 8 Q And the cell site it triggered, correct?  
 9 A Yes.  
 10 Q Okay. Those billing records can never tell  
 11 you who had the cell phone in their hand when they made  
 12 the call the computer registers, can they?  
 13 A That is true.  
 14 Q And they never attempt to do so, do they?  
 15 A No.  
 16 Q And all the records from your company or  
 17 anywhere else regarding testing a phone, the records  
 18 don't reveal who had the phone, do they?  
 19 A No.  
 20 Q Or who dialed the numbers?  
 21 A No.  
 22 Q Nor who they were next to, if anyone?  
 23 A No.  
 24 Q And they can't tell us the location of  
 25 whoever it was that may have caused a phone call to be

1 made --  
 2 A No.  
 3 Q From that particular phone, correct?  
 4 A Correct.  
 5 Q Just like your testing on your phone, that  
 6 day that you don't remember, you can only tell us what  
 7 your phone did according to you, right?  
 8 A Correct.  
 9 Q And the records also can't tell us, they  
 10 record, cell phone records record when, if I own a cell  
 11 phone and somebody calls me on my telephone, I don't  
 12 ask them to call me, but they call me anyway, I pay for  
 13 that, don't I?  
 14 A I think so.  
 15 Q If I'm charged by the minute of use, right?  
 16 A I think so.  
 17 Q Even if I don't know the person and it's a  
 18 wrong number, they reach me on my cell phone and I have  
 19 to talk to them for thirty seconds to figure out they  
 20 dialed the wrong number, I still get billed for that  
 21 thirty seconds, do I not?  
 22 A Yes.  
 23 Q Even though I don't know the person who  
 24 originated the call on another unknown phone, correct?  
 25 A Yes.

1 Q And their's bill may bill them if they called  
 2 me on their cell phone too, might they not?  
 3 A Yes.  
 4 Q And that would be even if my cell phone  
 5 network billed me, correct?  
 6 A I believe so.  
 7 Q But my cell phone record can only bill the  
 8 number that dialed my number, correct?  
 9 A I don't know.  
 10 Q Well, my cell phone records would list the  
 11 number just like it listed in the records you reviewed  
 12 this morning, would it not?  
 13 MR. URICK: Objection.  
 14 THE COURT: Sustained.  
 15 BY MS. GUTIERREZ:  
 16 Q Now, sir, those records, whatever it is they  
 17 list, can never tell me who actually dialed the number,  
 18 can it?  
 19 MR. URICK: Objection.  
 20 THE COURT: Sustained. This has been asked  
 21 and answered at least twice.  
 22 BY MS. GUTIERREZ:  
 23 Q Sir, if I looked at my records and it  
 24 designated a call, if I recalled making that call then  
 25 I would know I made it, correct?

1 MR. URICK: Objection.  
 2 THE COURT: Sustained.  
 3 BY MS. GUTIERREZ:  
 4 Q Sir, if I didn't recall making the call and I  
 5 enquired of your network to tell me who made the call  
 6 from my cell phone it couldn't tell me that, could it?  
 7 MR. URICK: Objection.  
 8 THE COURT: Sustained. We've asked and  
 9 answered this line of questioning, please move on.  
 10 BY MS. GUTIERREZ:  
 11 Q Sir, many phones of many makes and models  
 12 have memory capability, do they not?  
 13 MR. WARANOWITZ:  
 14 A Yes.  
 15 Q That record within the phone itself, a list  
 16 of numbers that's called, does it now?  
 17 A Yes.  
 18 Q And that would include Erickson phones that  
 19 have memory capability, correct?  
 20 A Yes.  
 21 Q And Motorola phones that have memory  
 22 capability, correct?  
 23 A Yes.  
 24 Q And Nokia phones that have memory capability,  
 25 correct?

1 A Yes.  
 2 Q If the phone has memory capability if can  
 3 print up or display the identity of numbers that have  
 4 either called that phone or been called by that phone,  
 5 can it not?  
 6 A In most cases, yes.  
 7 Q But that's the limit of what it can tell you,  
 8 isn't that correct?  
 9 A Yes.  
 10 Q It can't tell you who placed the calls, can  
 11 it?  
 12 MR. URICK: Objection.  
 13 THE COURT: Sustained.  
 14 BY MS. GUTIERREZ:  
 15 Q As to the memory capability, sir, can it?  
 16 MR. URICK: Objection.  
 17 THE COURT: Overruled. As the memory  
 18 capabilities of the phone can it tell you who made the  
 19 call?  
 20 MR. WARANOWITZ: No, it can not.  
 21 BY MS. GUTIERREZ:  
 22 Q And it can not tell you as to the memory  
 23 capability the identity of who received the call, can  
 24 it?  
 25 MR. WARANOWITZ:

1 A No it can not.  
 2 Q Given what you've described as your  
 3 familiarity with Nokia phones, sir, I'm going to show  
 4 you what's in evidence. Can you tell us if that phone  
 5 has memory capability?  
 6 A I've had a Nokia 6160 and it has memory  
 7 capability.  
 8 Q Your Nokia 6160 has memory capabilities, is  
 9 that correct?  
 10 A The Nokia that I -- the Nokia 6160s that I  
 11 have used all have memory capability.  
 12 Q Well, sir, I'm asking you, can you look at  
 13 this particular 6160 and tell us if it has memory.  
 14 MR. URICK: Objection.  
 15 THE COURT: Overruled. Can you tell if this  
 16 particular exhibit, whether it has memory or not?  
 17 MR. WARANOWITZ: I can not do that because  
 18 the battery is dead.  
 19 BY MS. GUTIERREZ:  
 20 Q Were you never asked to examine its memory  
 21 capabilities which you believe it would have?  
 22 MR. WARANOWITZ:  
 23 A I'm sorry. Could you ask that question  
 24 again?  
 25 Q Were you personally ever asked by anyone to

1 examine the memory of this phone?  
 2 A Before now, no.  
 3 Q And you, of course, did not, did you?  
 4 A I did not.  
 5 MS. GUTIERREZ: Nothing further.  
 6 THE COURT: Anything further from the State?  
 7 MR. URICK: Extremely briefly, Your Honor.  
 8  
 9 REDIRECT EXAMINATION  
 10 BY MR. URICK:  
 11 Q Lets cut to the chase here.  
 12 MS. GUTIERREZ: Objection.  
 13 THE COURT: Mr. Urick, without the added  
 14 commentary you make ask your first question.  
 15 BY MR. URICK:  
 16 Q Cell phone records are computer records  
 17 maintained by the AT&T Wireless Corporation, are they  
 18 not?  
 19 MR. WARANOWITZ:  
 20 A Yes.  
 21 Q They show that a particular number on a  
 22 particular date either dial up or received a call, is  
 23 that correct?  
 24 A Correct.  
 25 Q That that call went through a particular cell

1 site tower or structure, correct?  
 2 A Correct.  
 3 Q And in order for that to have occurred the  
 4 phone had to be somewhere within the coverage area for  
 5 that particular cell site sector?  
 6 A Correct.  
 7 Q And if somebody, drawing your attention now  
 8 to my ten and eleven, what is now in evidence as  
 9 State's 34. If somebody were in Lincoln Park with an  
 10 AT&T wireless subscriber phone and two calls those  
 11 calls would be recorded in the computer records,  
 12 correct?  
 13 A Correct.  
 14 Q And the would indicate the cell site for  
 15 Lincoln Park, which L689C, is that correct?  
 16 A Correct.  
 17 Q Can I see State's 31 please. Now, Ms.  
 18 Gutierrez showed you the business records for the cell  
 19 phone, showed to you the account billing date. I'd  
 20 like you to look on there and see if you can see a  
 21 listing for the service user.  
 22 A Next to the text service user I see Adrian M.  
 23 Syed.  
 24 Q And does there -- that record indicate when  
 25 the order was placed or the service was started?



1 A I see an order date of January 1st -- January  
2 11th, 1999.  
3 Q Thank you. If I may have the Court's  
4 indulgence for just second.  
5 THE COURT: Certainly.  
6 MR. URICK: No further questions. Thank you.  
7 THE COURT: Anything further, Ms. Gutierrez?  
8 MS. GUTIERREZ: Yes, Your Honor.

RE CROSS EXAMINATION

11 BY MS. GUTIERREZ:  
12 Q With regard to, the question you were asked  
13 about Lincoln Park, sir.  
14 MR. WARANOWITZ:  
15 A Yes.  
16 Q The cell site that you say would be triggered  
17 if one were in Lincoln Park and made a phone call,  
18 isn't in Lincoln Park, is it?  
19 A It is not.  
20 Q It isn't even near a street that goes through  
21 Lincoln Park, is it?  
22 A No it is not.  
23 Q And the cell site that you say was triggered,  
24 would be triggered from any number of places in the  
25 coverage area, correct?

1 A Yes.  
2 Q If the cell site were functioning properly,  
3 correct?  
4 A Correct.  
5 Q And if the cell phone were operating at a  
6 good level, correct?  
7 A Correct.  
8 Q And that could literally thousands of  
9 location inside a sector, one of three sectors serviced  
10 for coverage by that cell site, correct?  
11 A Correct.  
12 Q There is no cell site tower inside of Lincoln  
13 Park, is there?  
14 A No there is not.  
15 Q And there's no building upon which an antenna  
16 that becomes a cell site is erected that is inside  
17 Lincoln Park, is there?  
18 A No.  
19 Q And there's no water tower or other structure  
20 to which an antenna or antennas are attached, is there?  
21 A No.  
22 Q So all you can tell us about Lincoln Park is  
23 that you were taken to a location inside there by MS.  
24 Murphy, correct?  
25 A Yes.

1 Q And shown and told that this is where a body  
2 was buried, correct?  
3 A Correct.  
4 Q And you barely had to go inside the area  
5 bounded by the Jersey walls, correct?  
6 A I did not go behind the Jersey walls.  
7 Q Okay. And you didn't go outside of them in  
8 anyway?  
9 A No.  
10 Q And you caused a phone call to be  
11 originated by punching a code, right?  
12 A Yes.  
13 Q So, as to that date, the date which you do  
14 not currently remember, you can tell us what your phone  
15 did, correct?  
16 A Yes.  
17 Q But because it wasn't a billable call you  
18 have no record of that phone call, correct?  
19 A No, I do not.  
20 Q Of the cell site it triggered?  
21 A No, I do not.  
22 Q Of the duration of the call?  
23 A No, I do not.  
24 Q Of the time that you made that call, correct?  
25 A No, I do not.

1 Q But you can tell us about it because you did  
2 it, right?  
3 A Yes.  
4 Q And you told Ms. Murphy about what we did,  
5 correct?  
6 A Yes.  
7 Q And you relied on her to write down your  
8 information as you told it, correct?  
9 A Yes.  
10 Q You never wrote down your own information,  
11 correct?  
12 A Correct.  
13 Q And you never generated any documentation  
14 that would show that what you told us?  
15 MR. URICK: Objection.  
16 THE COURT: I'm sorry, I didn't hear the end  
17 of that question.  
18 MS. GUTIERREZ: You never doc -- you never  
19 generated any documentation to that effect, that which  
20 you told us, did you?  
21 THE COURT: Overruled.  
22 MR. WARANOWITZ: Correct.  
23 THE COURT: And the answer is correct.  
24 BY MS. GUTIERREZ:  
25 Q And, sir, if you had generated the

1 documentation that would have been generated if it were  
2 a billable call being made by the subscriber it still  
3 would not have indicated on that documentation who  
4 physically you were, would it of?

5 MR. WARANOWITZ:

6 A Can you ask that again?

7 Q If, sir, you were making a billable call as a  
8 subscriber standing where you said you were when you  
9 were directed to stand by Ms. Murphy and if because you  
10 were a subscriber and because you were making a  
11 billable call, the call generated records in your  
12 network, those records would not have documented where  
13 you were standing when Ms. Murphy directed you, would  
14 they have?

15 A Correct.

16 Q There wouldn't have been a line or a separate  
17 piece of paper that got spit of the computer that said,  
18 this subscriber was standing in this location, would it  
19 have?

20 A Correct.

21 Q All it would have done is indicated that a  
22 certain cell site was triggered, correct?

23 A Correct.

24 Q And based on your expectation for your  
25 network that would indicate to you that it was probable

1 expertise, right?

2 A In this situation I would not.

3 Q Well, sir, you said that one of the things  
4 that you continue to do within three years after the  
5 launch of this network is troubleshoot, isn't that  
6 correct?

7 A Yes.

8 Q And that involves answering and trying to  
9 figure out when you get customer complaints, isn't that  
10 correct?

11 A Yes.

12 Q And all of the time that you're doing this  
13 since the launch of this network you have received,  
14 have you not, troubleshooting complaints involving  
15 customers who's ordinary location would be in one of  
16 the catchment areas near or next to Govins Manor, would  
17 it not?

18 A I'm sorry, can you say that louder.

19 Q Sir, all of the complaints that you have  
20 troubleshooted in the three years since the launch of  
21 the network, that would include complaints from  
22 customers whose primary location, specifically, their  
23 place of residence included being within the catchment  
24 area of the same cell site on top of the Govins Manor  
25 apartment building, would it not?

1 that the cell phone, at least, was within the coverage  
2 area designated, is that correct?

3 A Yes.

4 Q And the coverage area for the cell site that  
5 you tell us was generated by your making a call from  
6 Lincoln Park is located near the intersection of Forest  
7 Park Avenue and Windsor Mill Road, is it not?

8 A Yes.

9 Q And it includes at least three separate  
10 apartment complexes that border Govins Manor, does it  
11 not?

12 A I don't know how many buildings there are.

13 Q You're aware several buildings do border it,  
14 are you not?

15 A I don't recall.

16 Q And you of course didn't investigate, did  
17 you?

18 A No.

19 Q You would agree that if there were apartment  
20 buildings that border Govins Manor, that that would  
21 involve a significant amount of people in close  
22 proximity to that cell site, would you not?

23 A I don't normally take apartment buildings and  
24 population densities into my design.

25 Q Okay. Because that's outside of your

1 A I don't recall any specific customer  
2 complaints from --

3 Q And, sir, --

4 A That neighborhood.

5 Q Well, sir, your records keep track of that,  
6 do they not?

7 A We have customer complaint records, yes.

8 Q And so if there were customers that had made  
9 complaints about your networks performance, your  
10 company records would be looked at, would they not?

11 MR. URICK: Objection.

12 THE COURT: Overruled.

13 MR. WARANOWITZ: Yes.

14 BY MS. GUTIERREZ:

15 Q And, sir, in regard to your preparation for  
16 this cases's testimony were you asked to see how  
17 trouble free or troubled that cell site location was?

18 MR. WARANOWITZ:

19 A No.

20 Q And did you do so?

21 A No.

22 THE COURT: Nothing.

23 MS. GUTIERREZ: No.

24 THE COURT: Very well. Anything further?

25 MR. URICK: No, thank you.

Page 201

1 THE COURT: May this witness be excused at  
2 this time, Mr. Urick?  
3 MR. URICK: At this time.  
4 MS. GUTIERREZ: Yes, Your Honor.  
5 THE COURT: And released from the summons of  
6 subpoenas?  
7 MR. URICK: Not from the State, Your Honor.  
8 THE COURT: Not for the State?  
9 MR. URICK: No.  
10 THE COURT: And for Ms. Gutierrez?  
11 MS. GUTIERREZ: I don't believe I issued a  
12 subpoena, I'm not sure. If I did, yes he's released.  
13 THE COURT: All right. So, you may need to  
14 call him again, is that what you're saying?  
15 MR. URICK: Yeah, I just -- I don't know what  
16 I might -- if anything in rebuttal, so I don't want to  
17 release this witness.  
18 THE COURT: Very well. I must advise you,  
19 sir, that you may not discuss your testimony with  
20 anyone. You must leave this courtroom at this time,  
21 you are a sequestered witness and based on what Mr.  
22 Urick is saying you may be called again. So, since the  
23 State would be calling you, please keep in contact with  
24 the State's attorney's office to find out when you'll  
25 be called. May he be released today? Will you need

Page 202

1 him back today?  
2 MR. URICK: No, no.  
3 THE COURT: So, he can be released today?  
4 MR. URICK: Yeah. May I speak to him for  
5 just a moment as he walks out?  
6 THE COURT: You're going to let him know in  
7 terms of scheduling?  
8 MR. URICK: Yeah.  
9 THE COURT: Very well, you may speak to Mr.  
10 Urick with regard to any scheduling. Thank you very  
11 much, sir.  
12 MR. WARANOWITZ: Thank you, Your Honor.  
13 THE COURT: Yes.  
14 MR. WARANOWITZ: Does the Court need  
15 information (inaudible)  
16 THE COURT: Those items that have been marked  
17 must remain.  
18 MR. WARANOWITZ: Should I mark the pages in  
19 here that I looked at?  
20 THE COURT: Yes.  
21 MS. GUTIERREZ: Your Honor, I'm going to  
22 object to the witness now marking the exhibit.  
23 THE COURT: No, these were the exhibits that  
24 were already marked. He's just showing the clerk which  
25 page it was that he opened and I ask that he do that

Page 203

1 because that's the page that you had him reference.  
2 MS. GUTIERREZ: Well, I object to that. That  
3 marking was not made at the time of questioning. I'd  
4 object.  
5 THE COURT: No, I'm not asking that any  
6 markings be made on the map, but it is going to be  
7 marked as an exhibit at my request and the page that  
8 was referenced by the witness at the time the witness  
9 testified will be noted for the record and I'm asking  
10 the clerk to do that.  
11 MS. GUTIERREZ: I'm not clear, Judge, if I  
12 did not do so I would move that exhibit into evidence.  
13 THE COURT: Any objection to that Court's  
14 exhibit being made part of the evidence?  
15 MR. URICK: No.  
16 THE COURT: Very well. Let it be admitted.  
17 All right. And, sir, you may then go.  
18 MR. WARANOWITZ: Pages 32, 33 and 34.  
19 THE COURT: Very well.  
20 MR. WARANOWITZ: Let me make sure.  
21 THE COURT: For the record the witness is  
22 flipping through to make sure there are no personal  
23 papers belonging to him contained in the book.  
24 MR. WARANOWITZ: Is this the Defense?  
25 THE COURT: The was the Court's.

Page 204

1 MR. WARANOWITZ: It is Court's.  
2 THE COURT: Court's exhibit because I asked  
3 that it be marked and I'd asked that it be noted and  
4 now the Defense is asking that it moved in, so you can  
5 make it Defense number -- what would be the Defense  
6 next number?  
7 MS. GUTIERREZ: I think it's one, Judge, but  
8 I'm not.  
9 THE COURT: Defense one.  
10 (Defendant's Two was received  
11 into evidence.)  
12 MS. GUTIERREZ: Another --  
13 THE COURT: I'm not sure whether or not it  
14 is.  
15 MS. GUTIERREZ: I think this is the first  
16 one.  
17 THE COURT: You are excused at this time.  
18 Thank you very much, sir.  
19 THE CLERK: The medical (inaudible)?  
20 MS. GUTIERREZ: Oh, yeah, so this would be  
21 Two, yes.  
22 THE COURT: Defense Two. All right. Are we  
23 need in those charts to remain where they are?  
24 MR. URICK: No, I believe that can be put  
25 back.

1 THE COURT: Can you slide them along to the  
2 side as I had asked before and as you do that your next  
3 witness, is that witness in the hallway?  
4 MR. URICK: Yes.  
5 THE COURT: And that is?  
6 MR. URICK: Mr. Wiles.  
7 THE COURT: Can you ask that Mr. Wiles,  
8 Deputy Church, have Mr. Wiles come into the courtroom  
9 please.  
10 MS. GUTIERREZ: Defense, may we approach?  
11 THE COURT: Certainly. Why don't we give  
12 Counsel an opportunity to move some of these items.  
13 Just have a seat for a moment, sir. Thank you,  
14 Counsel, for your assistance in moving those items.  
15 All right.  
16 (Counsel and Defendant approached the bench  
17 and following ensued:)  
18 MS. GUTIERREZ: Judge, I don't know if I  
19 misunderstood --  
20 THE COURT: One second, one second. You were  
21 going to let me know if we needed to take a break.  
22 MS. GUTIERREZ: Yes, I thought I made it  
23 clear that I knew that I needed a break.  
24 THE COURT: Okay.  
25 MS. GUTIERREZ: And that I would like to take

1 it now and then walk up to my office and go test my  
2 blood sugar and then see how I'm doing.  
3 THE COURT: We can do it, that's fine.  
4 MS. GUTIERREZ: Okay. I thought that I was  
5 misunderstood.  
6 THE COURT: I just wanted to make sure that  
7 we at least made the transition to the next witness,  
8 then I can advise this witness --  
9 MS. GUTIERREZ: Right.  
10 THE COURT: What he is to do and then we can  
11 at that point advise the jury and take our afternoon  
12 break.  
13 MS. GUTIERREZ: Okay.  
14 THE COURT: All right. And we'll do that at  
15 this time.  
16 MR. URICK: What about the other matter for  
17 Friday? We were going to get a --  
18 THE COURT: Yeah, what's your feeling?  
19 MS. GUTIERREZ: I think that it is Mr. Syed's  
20 preference that he doesn't want to take a break in  
21 trial.  
22 THE COURT: Okay.  
23 MS. GUTIERREZ: And since there are four  
24 alternates, all of whom have clearly been paying  
25 attention, he certainly doesn't want to inconvenience

1 that juror particularly since she let us know ahead of  
2 time and he doesn't want to take a break given just how  
3 long this case is taking particularly in light of what  
4 he brought to my attention if we recall we told this --  
5 the jury panel that it was likely to take two weeks and  
6 we're way beyond that. Not through anybody's fault but  
7 that that's part of his concern to give up another day  
8 for this panel when we're clearly going to go into the  
9 middle of next week which would be the fourth calendar  
10 week, although we haven't sat continuously throughout  
11 that time. So, his preference would be to allow this  
12 juror to go and replace her with an alternate.  
13 THE COURT: I must say that we did have some  
14 snow days so it effected --  
15 MS. GUTIERREZ: Yes, oh, I know.  
16 THE COURT: Our ability to proceed. Does the  
17 State have any objection?  
18 MR. URICK: We said we wouldn't object one  
19 way or the other, we stated our preference but we have  
20 no objection to the other way as well.  
21 THE COURT: In order to accommodate the  
22 witness --  
23 MS. GUTIERREZ: We have no objection to doing  
24 it now, it doesn't seem to make sense to have her --  
25 THE COURT: Juror --

1 MS. GUTIERREZ: Right, to make her come back  
2 if she's not going to, you know, participate in  
3 deliberations. It seems a waste to make her come back,  
4 so we have no objection to substituting her now.  
5 THE COURT: I'll ask her as we get ready to  
6 take the break to remain.  
7 MS. GUTIERREZ: Okay. That's fine.  
8 THE COURT: Or would you like me to do it at  
9 the end of the day?  
10 MR. URICK: She probably --  
11 THE COURT: Be easier to do it at the end of  
12 the day since she's already here.  
13 MS. GUTIERREZ: Well, I guess my sense is,  
14 Judge, that if she's going to go then we should let her  
15 go rather than make her sit when we're the ones that  
16 know the truth that it matters her not that she sits.  
17 We should just let her go.  
18 THE COURT: And your position would be that  
19 juror number -- alternate number one would replace her  
20 as juror number, six, correct?  
21 MS. GUTIERREZ: Yes, well accept, Judge, not  
22 to waive our previous objection if you recall --  
23 THE COURT: To the voir dire selection  
24 process.  
25 MS. GUTIERREZ: Right, that it would have



1 been a juror number alternate four that would have sat  
2 in that -- so, whatever that is. Not waiving that  
3 objection subject to that previous objection.

4 MR. URICK: No objection to alternate one.

5 THE COURT: Okay. Very well. We'll take a  
6 break and instruct the jury accordingly.

7 (Counsel and Defendant returned to the trial  
8 tables and the following ensued:)

9 THE COURT: Ladies and gentlemen, at the  
10 request of Counsel, we are going to take a break. What  
11 we are going to do at this time is ask that you return  
12 to the jury room. Mr. Wiles, when we return I'm going  
13 to ask that you come back and take the stand and you'll  
14 be sworn in again and we will resume with your  
15 testimony. Ladies and gentlemen, as you go back to the  
16 jury room, first of all, if you could pass up the --  
17 will we need Exhibit Number 34 any more?

18 MR. URICK: Not today.

19 THE COURT: I think they've moved it into  
20 evidence, have they not -- have you not? Okay. I will  
21 ask that we pass that form up please. And, Mr. Clerk,  
22 will you take that please from the witnesses, from the  
23 jurors. No, pass it this way, pass it, yes, to this  
24 side. Thank you. Thank you. And secure those please.  
25 And also, I'm going to ask that as you go out, if --

1 strike that.

2 I'll ask that you all go out, do not discuss the  
3 testimony of any of the witnesses, do not discuss it  
4 amongst yourselves or with anyone else. Leave your  
5 note pads face down on the chair, no one will read them  
6 and go with -- one moment. All right. Ladies and  
7 gentlemen, I'm going to ask that you go -- is Ms.  
8 Connelly still here? All right. Deputy Church is  
9 going to wall you to the jury room. Will you please go  
10 with him at this time. Mr. Wiles, will you please  
11 remain.

12 (The jury was excused from the courtroom.)

13 THE COURT: Okay. I'm going to ask Mr. Wiles  
14 if you'll remain standing for just a few moments.  
15 Counsel, you may be seated. Deputy Church, please  
16 come. Mr. Wiles, will you go with Deputy Church  
17 please? All right. This Court will stand in recess  
18 until Ms. Gutierrez returns.

19 BAILIFF: All rise. This Court will stand in  
20 recess.

21 (Brief recess.)

22 (Jury not present upon reconvening.)

23 THE COURT: As soon as the Defendant gets  
24 here we will resume. Mr. Church, would you have Mr.  
25 Wiles at least come in the courtroom so I can speak to

1 him at the same time I speak to everyone else. Mr.  
2 Wiles, just have a seat in the back there, just have a  
3 seat in the back.

4 Ms. Gutierrez, you want to take a moment and  
5 explain to your client. You can take them off, take  
6 off the -- okay. All right. If we could bring the  
7 jury panel back at this time. Mr. Urick, I was  
8 speaking to Ms. Gutierrez briefly at the break with  
9 regard to whether or not she felt as though she could  
10 proceed. It's four o'clock and she's asked that we  
11 recess for the day, she's not feeling well, is that  
12 correct, Ms. Gutierrez?

13 MS. GUTIERREZ: That's correct.

14 THE COURT: And I have no objection to that.  
15 You don't have any objection to that, do you?

16 MR. URICK: All the accommodation has been  
17 for the State so far, I would not presume to object.

18 THE COURT: Very well. And, Mr. Wiles, --

19 MS. GUTIERREZ: I explained that to him.

20 THE COURT: Very well. Mr. Wiles, you're  
21 going to be directed to return to this courtroom at  
22 9:30 tomorrow morning because Counsel is not feeling  
23 well, we're going to recess. I'm going to instruct the  
24 jury as to such, but I'm letting you know at this time  
25 that you should return to this courtroom tomorrow

1 morning at 9:30, do you understand?

2 MR. WILES: Yes, Judge.

3 THE COURT: And you're free to go at this  
4 time, if you would like.

5 MR. WILES: Thank you.

6 THE COURT: Now, when the jury comes in, what  
7 I propose to do is to tell them the same thing and ask  
8 juror number six to remain.

9 MR. URICK: And then just tomorrow morning  
10 seat alternate one?

11 THE COURT: Yes, I'll seat them in the  
12 morning. It just makes more sense and less confusion.

13 MR. URICK: Okay.

14 THE COURT: Counsel, if you like to remain  
15 seated that's all right with me. Mr. Eric Syed, you  
16 may remain seated if you'd like. Mr. Urick, Ms.  
17 Murphy, you may also be seated.

18 MR. URICK: Thank you, Your Honor.

19 (The jury returned to the courtroom.)

20 THE COURT: Ladies and gentlemen, good  
21 afternoon once again. We've had some problems this  
22 afternoon and those problems are going to require that  
23 we recess for the day. If you look at the schedule  
24 originally we were suppose to go to 4:30 today and so,  
25 we're going to take care of those problems, we're going

1 to resolve those and we've decided it's best that we  
2 proceed in the morning. I do have a docket but the  
3 first case on my docket has a whole lot of lawyers and  
4 as I know and my experience that sometimes it's  
5 difficult to get all lawyers together at the same time.

6 So, why we wait for them to get themselves  
7 together we're going to start this case at 9:30.  
8 Tomorrow morning, you'll go then to the Jury  
9 Commissioner's office between nine and 9:30 and then  
10 you'll report to the jury room here and we'll get  
11 started with this case at 9:30 and then as I've  
12 indicated we will resume -- I may have to pause in the  
13 morning to resolve my other docket matters but we will  
14 have already started this case up once again. I'm  
15 going to ask that you go home tonight, leave your note  
16 pads face down as I've said, I instructed you before at  
17 lunch time and all other times, do not discuss your  
18 testimony, the testimony you've heard with anyone else.  
19 I'd also tell you that the Court appreciates your  
20 patience and diligence in coming each day on time and  
21 waiting patiently as we handle those matters that need  
22 to be handled outside of your presence.

23 I'd ask you to not discuss this case or with  
24 anyone at home or with your friends or anyone else  
25 either amongst yourselves or if anyone tries to talk to

1 you about the case that you remember to inform the  
2 clerk upon your return the next day and I hope you all  
3 have safe journey home. I'm going to ask juror number  
4 six to remain please. Thank you very much. You all  
5 may go at this time.

6 (The jury was excused from the courtroom.)

7 THE COURT: Juror six, you may step up and  
8 you may bring your pad with you. I understand that you  
9 have a trip on Friday, is that correct?

10 JUROR: Yes, Friday morning.

11 THE COURT: Okay. If you could just turn a  
12 little bit to the side. What I need to advise you is  
13 that I've had discussions with Counsel and it is our  
14 wish that we proceed with the trial on Friday.

15 JUROR: Okay.

16 THE COURT: That is we're not going to skip  
17 Friday. For that reason rather than wait until  
18 Thursday to tell you this we're going to excuse you  
19 from the trial at this time.

20 JUROR: Okay.

21 THE COURT: It's by agreement of Counsel so  
22 that you will not miss this trip that you've already  
23 paid for. I understand it leaves at 6:00 a.m., is that  
24 correct?

25 JUROR: Yes it does.

1 THE COURT: So you are now excused and  
2 relieved from jury duty. I also want you to know that  
3 I greatly appreciate the time and attention that you've  
4 devoted to this trial and I also need to advise you  
5 that if you pass the jurors in any way you can not  
6 discuss what you would have done. I think by the time  
7 you reach the jury room they'll be gone. Ms. Connelly  
8 will escort you to make sure that you don't have any  
9 conversations --

10 JUROR: Okay.

11 THE COURT: Or that they don't have any  
12 conversations with you.

13 JUROR: Okay.

14 THE COURT: And you're free to go with my  
15 thanks.

16 JUROR: Okay. Well, thank you.

17 THE COURT: If you need anything for your  
18 employer please let my chambers know, we'll be happy to  
19 provide that to you and here's my card again just in  
20 case you need something to verify. Can you give that  
21 back. Let me make sure there's nothing on the back of  
22 it. It just has my room numbers.

23 JUROR: Okay.

24 THE COURT: All right.

25 JUROR: All right. Well, thank you.

1 THE COURT: Very well. Thank you very much.  
2 And you can take your notes with you if you'd like.

3 JUROR: Oh, okay.

4 THE COURT: Leave my pads.

5 JUROR: Okay.

6 THE COURT: So, we can use it for the next  
7 juror, jury.

8 JUROR: Sure.

9 THE COURT: Very well. Thank you again.

10 JUROR: All right. Thank you.

11 THE COURT: Also sometimes Counsel wishes to  
12 talk to a juror that's been excused. You're welcome to  
13 talk to them if you would like to or if you don't want  
14 to you don't have to because at this point you're free  
15 to go.

16 JUROR: Okay.

17 THE COURT: Thank you.

18 JUROR: All right.

19 THE COURT: Have a good evening.

20 JUROR: All right. Thank you.

21 THE COURT: Be careful, be careful and Ms.

22 Connelly will go with juror number six. With that said  
23 I will see you all then tomorrow morning at 9:30. I  
24 will as I said start this case first because I expect  
25 that there's going to be some problem getting all the

CONTENTS

PAGE

STATE'S WITNESSES

EXAMINATION BY

ABE WARANOWITZ	DIRECT-MR. URICK	32
	CROSS-MS. GUTIERREZ	45
	REDIRECT-MR. URICK	191
	RECROSS-MS. GUTIERREZ	193

STATE'S EXHIBITS FOR IDENTIFICATION IN EVIDENCE

NO. 200, FAX & RECEIPT	23
NO. 33, MAP & OVERLAY	32 34

DEFENDANT'S EXHIBITS FOR IDENTIFICATION IN EVIDENCE

NO. 2	204
-------	-----

i

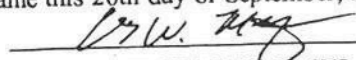
1 attorneys together and the other matter.  
2 So, while they're getting themselves together we  
3 certainly could start with some testimony and I believe  
4 we will be picking up with the cross examination of Mr.  
5 Wiles, is that not correct?  
6 MS. GUTIERREZ: Yes, Your Honor.  
7 THE COURT: Very well. I'll see you all  
8 tomorrow morning at 9:30. This Court stands in recess  
9 until 9:30 tomorrow morning.  
10 BAILIFF: All rise.  
11 (The trial was recessed for the day.)  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE

This is to certify that the proceedings in  
the matter of State of Maryland vs. Adnan Syed,  
199103042-46, held on February 9th, 2000, were recorded  
by means of videotape.

I do hereby certify that the foregoing  
217 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 26th day of September, 2000.

  
CHRISTOPHER W. METCALF, CVR  
Official Court Reporter

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

