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 8, 2000

BEFORE:

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

APPEARANCES:

For the State:

KEVIN URICK, ESQ.,
KATHLEEN MURPHY, ESQ

For the Defendant:

CRISTINA GUTIERREZ, ESQ

RECORDED BY: VIDEOTAPE

TRANSCRIBED BY:

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

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PROCEEDINGS

(12:22 p.m.)

THE COURT: .Does that help?

MS. GUTIERREZ: Well yes, but I think there is an angle to it the spectators can at least get a glimpse of that and if that means that this has to stay over there and then be moved when they need it. They're obviously not going to be able to use both at the same time.

THE COURT: Ms. Gutierrez, there's one other problem is that your client can't see the board. °If your client moves, so does the correctional officer and that means that he needs to have a seat or somewhere he can stand and that's going to cause a problem as well.

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

THE COURT: But, if it's pushed back he can. If you push that back -- yeah, see. Syed would be able to see the board. I know it's very difficult. You know, we're in a bigger courtroom, we have more space, but it's -- and still we have problems.

MS. GUTIERREZ: And it creates more problems.

THE COURT: So, that's the best I can do. The only other thing I can suggest is that we talk about what's on the diagram the best we can. Mr.

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

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

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

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

MS. GUTIERREZ: That would mean that --

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

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

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

(The jury returned to the courtroom.)

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

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

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

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

MR. URICK: Thank you. Good afternoon, Your

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Honor. This is State of Maryland versus Adnan Syed, cases 199103042-46. Kevin Urick and Kathleen Murphy for the State.

MS. GUTIERREZ: Good morning, Your Honor. Cristina Gutierrez on behalf of Mr. Syed.

THE COURT: Very well. Mr. Urick, I know that on the last date of this case on Friday we had Mr. Wilds on the witness stand, but I understand that you are going to call a witness out of order at this time and then resume with Mr. Wild's testimony after that, is that correct?

MR. URICK: That's correct.

THE COURT: And that is with agreement of Ms. Gutierrez, is that correct?

MS. GUTIERREZ: Yes it is

THE COURT: Very well. That witness that you're going to call out of order at this time is?

MR. URICK: Abe Waranowitz

THE CLERK: Raise your right hand please.

ABRAHAM JOHN WARANOWITZ,

a witness produced on call of the State, having first been duly sworn, was examined and testified as follows:

THE CLERK: You may be seated. Please keep your voice up, state your name for the record.

MR. WARANOWITZ: My name is Abraham John

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Waranowitz.

THE CLERK: Spell your last name.

MR. WARANOWITZ: W-A-R-A-N-O-W-I-T-Z.

THE CLERK: State your business address for the record.

MR. WARANOWITZ: 11710 Beltsville Drive, Beltsville, Maryland, 20705. AT&T Wireless Services.

THE COURT: Mr. Urick, before you begin would you mind, do you by any chance have any blank or extra forms, the cell record sheets?

MR. URICK: Yes, I do. One for the Court?

THE COURT: Actually, how may do you have that are extras?

MR. URICK: We have a whole pile.

THE COURT: You have a whole pile. Ms. Gutierrez, would you like to utilize those in any fashion outside of just the Court?

MS. GUTIERREZ: No, Your Honor.

THE COURT: Well, I know that there are individuals that might want to see what's going on.

MS. GUTIERREZ: Good suggestion, Judge, yes.

THE COURT: But if you wouldn't mind giving Ms. Gutierrez a couple extra ones. Ladies and gentlemen, as you know there are a number of people that are interested in this case and unfortunately

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although this is a bigger courtroom it doesn't afford individuals to see what it is that you are seeing and so I'm allowing the State and the Defense to hand out a copy of what you've been writing on so that they can follow along as we proceed.

The Court is interested in seeing that individuals that are interested in seeing proceedings can do that and so that's just to accommodate those individuals. Thank you very much, Mr. Urick for your cooperation. Ms. Gutierrez, I think this may assist you in making sure that individuals are able to see what's going on.

MS. GUTIERREZ: Thank you, Your Honor.

THE COURT: Very well. At this time you may proceed with this witness.

MR. URICK: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. URICK:

Q Good afternoon.

MR. WARANOWITZ:

A Good afternoon.

Q I'm going to ask you to keep your voice up so that the entire jury can hear you. I know there's a tendency sometimes for voices to drop in here it's a big room and they can fade out. Where are you employed?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. WARANOWITZ:

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

Q Produced by other companies?

A No.

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

A Not that I'm aware of.

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

THE COURT: Any questions just on voir dire?

VOIR DIRE

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BY MS. GUTIERREZ:

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

MR. WARANOWITZ:

A Correct.

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

A They are different, correct.

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

A Correct.

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

A No, that would not be correct.

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

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

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

A Correct.

Q Either in the design of it?

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A Correct.

Q The building of it?

A Correct.

Q Or the troubleshooting?

A Correct.

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

A Yes.

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

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

MS. GUTIERREZ: Objection.

BY MR. URICK:

Q How many hours of training have you had?

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

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

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

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

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

MR. URICK: Yes.

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

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

THE COURT: All right. And at this junction the Court is inclined to sustain the objection unless there's some additional questions that Counsel believes might assist the Court in hearing more about his background, but at this point I don't think I've heard enough. I'm not satisfied.

MR. URICK: If I may have the Court's permission to continue?

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THE COURT: You may.

BY MR. URICK:

Q How many hours of specific training have you had from AT&T?

MR. WARANOWITZ:

A I don't know an exact hour, amount of hours.

Q How many would you estimate, ballpark figure.

MS. GUTIERREZ: Objection.

THE COURT: Overruled.

MR. WARANOWITZ: I would guess at least a months worth, eight hours a day, five days a week.

BY MR. URICK:

Q And what did that training consist of?

MR. WARANOWITZ:

A It consisted of a variety of classes from AT&T Wireless Services involving cell phone technology. Also classes provided by Erickson. Erickson creates the equipment and the phones that we use, plus training on how to use test equipment that we use to test and optimize the network with and training for design tools, engineering cad, that kind of thing.

Q Now, in relation to the Baltimore region what specific duties have you performed?

A I have worked on the actual launch of this network, we were launched about two or three years ago,

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so we designed the network from the ground up from scratch. We decided where to put cell sites on what buildings, water tanks and towers. We tested them, we drove them. In other words, what I mean by drive I mean testing them and we optimized them for performance.

MS. GUTIERREZ: I'm sorry. I can't hear the witness.

THE COURT: Can you repeat your last answer? You optimized them for performance?

MR. WARANOWITZ: Yes. We try to minimize the amount of problems that there are in the network.

BY MR. URICK:

Q And how did you go about doing that?

MR. WARANOWITZ:

A Typically we use the test equipment and the training that we received.

Q And about how many -- how much time would you have spent in the actual design of the network in the Baltimore region?

A About 25% of my daily time goes into the design of the network.

Q And have you been responsible for the design of the actual cell phone towers themselves?

A Yes.

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Q And have you determined the optimal or best location to place those cell phone towers in the Baltimore region?

A Yes.

Q And did you supervise their construction?

A Construction?

Q Once they were put up did you test them --

A Yes.

Q For their performance?

A Yes.

Q And did you -- and you are familiar with the coverage area for each of these cell sites?

A Yes.

Q And much of this information would not be stuff that people outside AT&T Wireless would know?

A That's correct.

MS. GUTIERREZ: Objection.

THE COURT: Overruled.

MR. URICK:

Q You may answer the question.

MR. WARANOWITZ:

A Yes.

THE COURT: Any other questions, Mr. Urick?

MR. URICK: If I may have the Court's indulgence --

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

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questions on the issue of whether or not this witness is an expert on the functioning of AT&T Wireless phone cellular network and design and functioning in the Baltimore Metropolitan area.
VOIR DIRE EXAMINATION
BY MS. GUTIERREZ:
Q Mr. Waranowitz, one -- must one who is a subscriber to this network use equipment owned and sold by AT&T?
MR. WARANOWITZ.
A I'm sorry, could you ask that question again?
Q Must a subscriber to this network use equipment that is owned and sold by AT&T?
A Do you mean cell phones?
Q Is that equipment sold by AT&T?
A It is sold by AT&T.
Q Must a subscriber use it equipment whatever it might be sold by AT&T?
A No.
Q No. So, anyone utilizing this network could use for instance cell phones designed, tested, operated an sold by some other entity than AT&T?
A Correct?
Q Is that correct?
A Yes, that is correct.

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

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THE COURT: Okay.
MS. GUTIERREZ: I'm going through his list of --
THE COURT: Expertise.
MS. GUTIERREZ: Yes.
THE COURT: Okay.
BY MS. GUTIERREZ:
Q Isn't that correct? And you were asked by Mr. Urick are you familiar with the coverage area of the cell sites of AT&T, is that correct?
MR. WARANOWITZ:
A Within the Baltimore/Washington market, yes.
Q Is that correct?
A Yes.
Q All right. And by the coverage area you understood Mr. Urick to mean the designated geographical area that's suppose to be covered by the tower?
A Yes.
Q And by coverage you mean to include what geographical area would be included if that cell tower signal were signaled by someone trying to make a cell phone or wireless call to an area within what you call coverage area, isn't that correct?
A I'm sorry, could you ask that again?

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Q By coverage area you understood that to mean the geographical area that is suppose to be covered, that is the area that the cell site tower, the cell tower would broadcast the wireless call based on the design of the system, that's what you mean by coverage, is it not?
A Yes.
Q Each cell tower is suppose to cleanly broadcast a signal?
A Ideally, yes.
Q Okay. Ideally, by ideally you mean that doesn't always occur?
A That is correct.
Q And the coverage area of the cell sites only includes the cell towers owned and operated by AT&T?
A Correct.
Q And not any other cell tower?
A Correct.
Q Every other network has it's own tower, does it not?
A That is correct.
Q For mean so broadcasting the signals on it's network, correct?
A Correct. Yes.
Q Okay. And every other network would have

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

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day, five days a week would be forty times four would be 160.
Q And how is it that you arrived at that estimate, sir?
A I've taken many classes from Erickson ranging from a week to two or three days each.
Q Now, Erickson --
THE COURT: Wait a minute. A week to --
MR. WARANOWITZ: Anywhere from two or three days to a week in duration plus classes from AT&T Wireless Services.
BY MS. GUTIERREZ:
Q So, actually most of your class work has been from Erickson?
MR. WARANOWITZ:
A Yes, through AT&T, yes.
Q My question is most of your class work has been as you just testified through Erickson?
A Training, yes.
Q All right. And Erickson is not AT&T, is it?
A No it is not.
Q Erickson is a separate corporation, is it not?
A Yes.
Q And Erickson doesn't own part of AT&T, does

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it?
A I don't know.
Q Erickson produces equipment separate from AT&T, does it not?
A Yes.
Q Erickson produces equipment that is utilized by networks other than AT&T, does it not?
A Yes.
Q And, sir again my question to you is how is it that you estimated at least a month of hours?
A AT&T has provided me at least one month of hours worth of training.
Q Well, one month worth is a very specific answer, would you agree?
A I am estimating.
Q And in a month -- and this is the first time that you've been asked this question, is it not?
A I have not counted up my hours, that is correct.
Q And so your estimate is based on your current recollection?
A Yes.
Q All right. Now, sir in regard to Erickson you said Erickson provided you with two to three days and sometimes up to a week of training, is that

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correct?
A Yes.
Q How many times?
A Five or six times.
Q Five or six times. Of those five or six times how many was two or three days a week and how many were longer?
A Most of them were two or three day classes. I don't remember the exact details.
Q You don't remember the exact number Now, in regard to the classes that you've testified and you were asked about that you attended and that were provided from AT&T how many of those days of a month that you've now estimated for us would be those?
A I can recall one class that lasted three days.
Q One time and that was three days for eight hours?
A Yes.
Q Exactly.
A Yes.
Q And this month estimate that you've given, sir that would be five days a week?
A Yes.
Q Eight hours a day?

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A Yes.
Q Okay. And that would of course exclude lunch time, would it not?
A It's an estimate, yes.
Q And so the answer is yes, it would exclude lunch time?
A Yes.
Q And it would exclude your travel time both to and from?
A Yes.
Q And this of course would be a month in which you worked every single day of the month out of the five working days a week, correct?
A Yes.
Q That of course would exclude vacation time you took?
A Yes.
Q Or any personal leave time?
A Yes.
Q Or any sick time?
A Yes.
Q Or any other time?
A Yes.
Q And although you've never been asked to estimate or gather that information you are able to

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

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

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

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

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

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

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MR. URICK: Actually, it's in through I think it's 31 or 33, the Defendant's cell phone records and that was entered by way of stipulation.
THE COURT: May I see the exhibit?
MR. URICK: This is a duplicate of it.
THE COURT: I think we've got sort of --
MS. GUTIERREZ: You'll note that that --
THE COURT: Ms. Gutierrez's objection and motion in limine is not to what the record says. Her objection is to your witness interpreting the meaning behind what is clearly indicated on the face of the exhibit and that is when there's an item needed as a number incoming duration and then L651C. The witness can talk about these L651 tower and this a tower and what the tower did and what these records from AT&T mean. But he can not testify as to what the Nokia phone did or did not do in rendering an opinion because he is not qualified to render an opinion ass to what the Nokia did. Other than to validate that AT&T Erickson's equipment registered this information and he can't render an opinion as to what that means or to assure the jury that there is some absolute that can be drawn from the numbers that are appearing on here as it relates Nokia equipment. He can talk absolutes as it relates to Erickson equipment, but he can't talk about

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and she's objecting to his saying what the Nokia's limitations are and receiving signals, how they receive the signals, what they do with the signal because he's not qualified to do so and I'm going to sustain her objection as to that part of his testimony if that's what you're going to ask him to do. Do you understand?
MR. URICK: I may ask the Court to revisit this if I can lay a foundation.
THE COURT: Correct.
MR. URICK: Thank you.
THE COURT: I will -- if for some reason you believe that he can do that then I will allow him to do that if he has the expertise, but as we stand right now he is an expert with regard to Erickson equipment. Not Motorola, not Nokia, not anything else and he is an expert who has already testified that he can testify as to the network design and functioning of AT&T wireless communication and Erickson equipment
MR. URICK: Thank you.
THE COURT: All right. Does that clarify?
MS. GUTIERREZ: That does, Judge except --
THE COURT: The motion in limine is granted -
MS. GUTIERREZ: Yes. And I would strenuously object to the State's continual ability once they lose a motion to continue to revisit it like well, now we've

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thought better. There wasn't any disclosure of this person as expert in Erickson. I understand I've lost on that point, but now we're in the middle, they chose to do it, they took the Court's hints and chose to do it in a specific way.
Now, that they've lost a motion like to continually to allow them, oh, well wait a minute we can qualify him as another expert. Again, there's no disclosure, there has to be some finality that the Defendant should be able to count on, it's not fair otherwise.
THE COURT: I understand your concerns, Ms. Gutierrez. The only thing that I can tell you is that had I not received as part of this file some indication by way of stipulation that this testimony would be admissible through the stipulation --
MS. GUTIERREZ: But, Judge the stipulation has nothing to do with the witness. He would not have been the correct person to bring in these records anyway, he's not a custodian. We stipulated because a custodian could clearly get in records from AT&T Wireless. That is entirely different then allowing a person who's not the custodian, who isn't qualified to testify to these things, hasn't been offered, hasn't been disclosed to now try to take these things

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somewhere else. Those are two entirely different things. We don't challenge that we stipulated to that. They mean whatever they mean. If it was important to have those records explained, that was their job, that's their burden, they sought the stipulation that we agreed to. We should not now be nailed to things we didn't stipulate to on which there was no disclosure given that now they want to rethink the issue of whether or not they should have sought a stipulation on it.
THE COURT: I understand your objection. For the record I find that the stipulation allows them to bring in this witness. I find that the witness has been disclosed to you. I find and I found that he would be permitted to testify in the fashion that I indicated as an expertise through the information that's been provided to this Court. I do not believe that this is a surprise witness, I do not believe that you did not know what it was that they were going to ask him to testify --
MS. GUTIERREZ: We never maintained otherwise. It's just a surprise that they're trying to declare him as an expert in a nonexistent expertise.
THE COURT: And I understand your concern, but as I have done with you and I will continue to do

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

MR. URICK: Thank you.

THE COURT: Anything further?

MS. GUTIERREZ: No, Your Honor.

THE COURT: Anything further?

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

THE COURT: Well, where is --

MS. GUTIERREZ: Well, no lets find.

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

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

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

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lunch.

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

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

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

MS. GUTIERREZ: It was asked about.

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

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

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

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

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

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

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

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

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

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

MR. WARANOWITZ: Waranowitz.

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

MR. WARANOWITZ: Okay.

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

MR. WARANOWITZ: Thank you very much.

THE COURT: Thank you very much.

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

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

MR. URICK: (inaudible).

THE COURT: Yeah, but at this time during the

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

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

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

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A Well, I don't know much about the actual account set up, but from what I understand --
MS. GUTIERREZ: Objection.
THE COURT: Sustained.
BY MR. URICK:
Q In the Baltimore region must an AT&T subscriber use the AT&T network?
MR. WARANOWITZ:
A I'm sorry, could you say that again?
Q In the Baltimore Metropolitan region must an AT&T subscriber use the AT&T network?
MS. GUTIERREZ: Objection.
THE COURT: Overruled. If you can answer it.
MR. WARANOWITZ: No, they must not. They do not have to.
BY MR. URICK:
Q How does it come about that they do?
MR. WARANOWITZ:
A If they --
MS. GUTIERREZ: Objection.
THE COURT: Sustained. He just said they don't have to. If you could rephrase your question.
BY MR. URICK:
Q Under what circumstances might they use it?
MS. GUTIERREZ: Objection.

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

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

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

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THE COURT: One moment. What's the exhibit number?
MR. URICK: This is for identification State's Exhibit 43.
(State's Exhibit No. 43 was marked for identification.)
Should I -- should I make A, B and C for each individual page?
THE COURT: Yes, please do.
MR. URICK: That would be 43C.
THE COURT: Okay. With regard to Exhibit 43C. All right. Very well. Thank you.
BY MR. URICK:
Q The L designation again is?
MR. WARANOWITZ:
A The Baltimore switch.
MS. GUTIERREZ: Mr. Urick, could I ask you to step on the other side?
BY MR. URICK:
Q And 651 is what?
MR. WARANOWITZ:
A This is what we call a Social Security building.
Q And please describe how the cell tower or cell site was constructed on this building?

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A On top of the building is the radio equipment cabinet, that is the cell site. Then there are antenna cables going to the small vertical dark lines that you see on the roof.
Q Indicating where I have the red pointing right now?
A Correct.
Q Now, I'm going to show you what's marked for identification as 43B. What is this diagram?
A This diagram represents a typical cell site in the AT&T Wireless Network. Actually each cell site is comprised of three sides. We have an A, B and C side to it, each points in an unique direction. Thirty degrees, 150 degrees and 270 degrees based off of true north.
Q And is the division of the A, B and C always based on the true north division?
A Yes.
Q Now, --
THE COURT: Mr. Urick, there are clips above you. If you look you can hold that page up.
MR. URICK: Thank you.
THE COURT: All right.
BY MR. URICK:
Q Who prepared this particular diagram for 43

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degrees?
MR. WARANOWITZ:
A I did.
Q And does it fairly and accurately depict the manner in which a typical AT&T cell site is divided up into A, B and C sections?
A Yes, it does.
MR. URICK: I would move at this time into evidence State's Exhibit 43B.
THE COURT: Any objection, Ms. Gutierrez?
MS. GUTIERREZ: Well, I would object based on relevancy. Since this exhibit only establishes what a typical site is.
THE COURT: All right. I'll allow it. It may be admitted as an aid to the description and also as a representation of a description of how each cell site is divided.
(State's Exhibit No. 43B, previously marked for identification, was received into evidence.)
THE COURT: You may proceed.
BY MR. URICK:
Q I now show you what is marked for identification as State's Exhibit 43D. Can you identify that exhibit?

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MR. WARANOWITZ:
A Yes. It is a photo of L653.
Q And where is L653 located?
A It's located south of Route 40 near Cooks Lane.
MS. GUTIERREZ: Near where?
MR. WARANOWITZ: Cooks Lane. I think the address is Athol Avenue.
BY MR. URICK:
Q And on this -- this particular cell site is set up as what?
MR. WARANOWITZ:
A I'm sorry. Could you rephrase that?
Q This particular cell site is what? Physically it's what sort of structure?
A A tower.
Q And it's got three sort of cross sections. What are each of these?
A Each set is a set of cellular antennas.
THE COURT: I'm sorry each set is what?
MR. WARANOWITZ: Each set is a set of cellular antennas.
THE COURT: Cellular antennas?
MR. WARANOWITZ: Yes.
THE COURT: Okay.

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BY MR. URICK:
Q Now, what's been marked for identification as State's Exhibit 43E. Can you identify this picture?
MR. WARANOWITZ:
A That is L654.
Q And where is that located?
A It is located near Route 40 and the beltway 695 on the western side.
Q And physically this structure is what?
A A water tank.
Q And what are the upright structures on the top?
A Those would be AT&T wireless antennas.
Q I'm now showing you what's marked for identification as State's Exhibit 43F. Can you identify that structure?
A L689.
Q And where is that located?
A Can I look at the map? I don't remember the exact streets. We call it Govins Manor. It is located off of Windsor Mill Road just north of Lincoln Park.
Q And what is this structure on top of it? Well, what type of structure is this?
A It is an apartment building I believe.
Q And what's this on top?

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A That is our -- those are our antennas.
Q And what parts of Baltimore City are covered by this cell site?
A Lincoln Park to the south, to the west the roads getting close to Social Security and then to the north.
Q I'm now showing you what's marked for identification as 43G. Can you identify that?
A That is L698.
Q And where is that located?
A It's located near Route 40 and Rolling Road.
Q Now, at this time I'm showing you what's been marked for identification purposes as State's Exhibit 33.

(State's Exhibit No. 33 was marked for identification.)

Q Can you identify that exhibit?
A This is a -- this is a coverage map of our cellular network.
Q Who created this map?
A I created it.
Q How is it created?
A It is done using a computer aided design tool.
Q And does it show the computer records of AT&T

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for these cell site areas?
A Yes.
Q And is the coverage area generated from those computer records?
A Yes, it is.
Q And is part of the regular business of AT&T to maintain such records of cell site coverage?
A Yes.
Q And is it necessary for the business of AT&T Wireless to have this information?
A Yes, it is.
Q Does this particular map fairly and accurately represent the computer records of the coverage areas for these individual sites?
A It is accurate enough to do our job, yes.
Q Now, it's divided into --

MS. GUTIERREZ: I'm sorry. I couldn't hear the witness's answer.

MR. WARANOWITZ: It is accurate enough to do our job.

MS. GUTIERREZ: Enough to do?

MR. WARANOWITZ: Our job.

BY MR. URICK:

Q Now, underneath it -- please describe what is the underlay?

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

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Q So, taking State's Exhibit 43B which is now in evidence, the green up there would correspond with the A?
A Yes.
Q So, that would be designated as what?
A Sector A.
Q And how would it be printed up?
A What do you mean?
Q To designate it in the computer records.
A We call it L689A. A for sector A.
Q Now, the sort of brownish area here, that would correspond to what?
A L689B.
Q That would correspond to the B sector on the State's 43B, is that correct?
A Correct.
Q And the are to the left, sort of purplish area, that would be designated as what?
A L689C.
Q Again, I assume that would be the one sort of to the west of the cell site, is that correct?
A Correct.
Q And for -- may I approach the witness at this time, Your Honor?

THE COURT: Yes, you may.

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

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

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

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Q And --
MS. GUTIERREZ: I'd like a copy to follow the testimony, Mr. Urick.
MR. URICK: Your investigator picked up copies.
MS. GUTIERREZ: I don't have a copy of it. I haven't seen it. I'd like a copy.
THE COURT: Counsel, may I see you at the bench? Ms. Gutierrez, Mr. Syed, Mr. Urick.
(Counsel and Defendant approached the bench and following ensued:)
THE COURT: Okay. Is there a problem?
MR. URICK: We've provided copies of this previously to the Defense and she's saying no.
THE COURT: Well, first of all I would like to know what it is you have.
MR. URICK: They're marked for identification --
THE COURT: May I see what you have?
MR. URICK: They're marked for identification State's 44 and 45.
THE COURT: Okay. This is a map. This is the map that the witness is going to testify from?
MR. URICK: Yeah, he created it.
THE COURT: Forty four and 45. Okay. I note

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that there are markings on it. All right. And you're saying you do not have another copy of this?
MR. URICK: Not with us, but we've previously provided it to the Defense.
THE COURT: Okay. But is there -- when you say not with us, is somebody that you -- is your office in this building?
MR. URICK: I can go make a copy if the Court would --
THE COURT: Okay. I would make a copy myself, but this appears to be in color copy. Those items on here are in color. Will they have some significance to the testimony of this witness?
MR. URICK: I have no -- I don't believe so.
THE COURT: The circles are color coded.
MR. URICK: I think that's just -- that they printed out that way to differentiate it so it can be visible, so it does have the significance.
THE COURT: Well, differentiate for the purposes of this witness testifying or differentiate it for the purposes of his just looking pretty? In other words, is he going to use the colors in his testimony?
MR. URICK: I think only to identify the geographic areas on the map that are important.
THE COURT: I'll ask the question again. Are

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the colors significant so that if I have a black and white copy made of this that Ms. Gutierrez is not going to be able to follow the testimony or do you need a color copy made?
MR. URICK: I do not believe there will be a problem following a black and white copy of this.
THE COURT: Okay. But the testimony is not relative to the colors?
MR. URICK: If it is it can also be designated by the line of numbers that follow.
THE COURT: By the numbers that are on there.
MR. URICK: That are following the line.
THE COURT: All right. Then -- so that Counsel can have something in front of her, I'd ask that you make copies.
MS. GUTIERREZ: Thank you, Judge. But I'd like the record to reflect what Mr. Urick just told me is that my investigator picked up these copies. They have never been provided to me, the arrangements to get discovery were very explicit. An investigator never picked up anything from Mr. Urick as a result of him notifying us that he had information for us either I or one of my law clerks, specifically Mr. Lewis or Mr. Perthemis were the only people allowed to pick them up. He never mailed them, he never delivered them to us.

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One of us had to go pick up upon his designation. These have never been provided, I do not have an investigator in my office, I hire outside investigators who do not such tasks as going to a prosecutor's office to pick up anything. I've not seen these.
THE COURT: You've never see these?
MS. GUTIERREZ: No.
THE COURT: Have you been provided with the report?
MS. GUTIERREZ: No, Judge. That was the whole, you know the illusion this morning. The only thing is that we got designation of Abe Waranowitz and we got a half a page designation of a list of cell sites that would be triggered at a certain address. We sent numerous requests in writing for any report, for any maps, for any documents that this witness used. We got no response other than saying we've given all that we;re going to give, period.
THE COURT: Ms. Gutierrez, if you would pause right here. Ms. Murphy or Mr. Urick.
MR. URICK: Ms. Murphy ---
THE COURT: Show me what you gave to the Defense in discovery relative to this witness?
MS. MURPHY: Your Honor, I was present --
THE COURT: No, no. My question is show me.

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MS. MURPHY: I need to give you some background. I was present in the conference room of my office when Ms. Gutierrez, her investigator, Mr. Dru Davis and her associate who's present today all came to my office and photocopied numerous exhibits and they were also given an opportunity to view these and photocopy them if they wanted to, I don't know if they did.
THE COURT: Can you --
MS. MURPHY: I specifically recall, Your Honor that Mr. Davis examined these because he specifically asked me what these numbers meant and I told him I could not explain that, that they would have to ask the expert.
THE COURT: Okay. The person that came to your office was whom?
MS. MURPHY: Ms. Gutierrez, Mr. Dru Davis, her investigator and her associate, I don't remember his name, who is present today.
THE COURT: They came to your office?
MS. GUTIERREZ: He's my law clerk.
MS. MURPHY: Yes. And --
THE COURT: When did they come to your office?
MS. MURPHY: Oh, this was back --

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

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

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

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

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

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

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

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

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

THE COURT: This meaning --

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

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

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

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

MS. GUTIERREZ: Underneath.

THE COURT: Underneath.

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

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

MR. URICK: Correct.

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

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

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

THE COURT: Okay.

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

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

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

THE COURT: Okay. And the materials --

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

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

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

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

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

MR. URICK: Part of it, yes.

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

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

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

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

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

MR. URICK: Yes.

THE COURT: Very well. Your objection is

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

MR. URICK: Thank you.

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

MS. GUTIERREZ: May I have a continuing objection?

THE COURT: Yes, you may.

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

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

MR. URICK: Thank you.

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

MR. WARANOWITZ: I understand.

THE COURT: All right. Very well. You may

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proceed.

BY MR. URICK:

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

MR. WARANOWITZ:

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

Q Did we ask you to go to Gelston Park?

A Yes.

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

A Yes.

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

THE COURT: Yes, you may approach.

BY MR. URICK:

Q With this laser pen you just press down.

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

BY MR. URICK:

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

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site covering from 698, is that correct?

MR. WARANOWITZ:

A Yes.

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

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

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

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

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

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

Q Have you seen that before?

A Yes.

Q What is that?

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

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

A This was generated from an Erickson test

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phone while driving around in this neighborhood.
Q Was this generated the day we had you doing the test?
A Yes, it was.
Q And what system did it use to generate this data from? What is the global tracking satellite?
MS. GUTIERREZ: Objection.
THE COURT: Overruled. You may tell us what the global tracking satellite is.
MR. WARANOWITZ: GPS?
MR. URICK: Yes.
MR. WARANOWITZ: Global positioning system.
BY MR. URICK:
Q Please explain what that is.
MR. WARANOWITZ:
A I can't answer that.
Q How do you use it?
A We use it to specify -- we used it to find out where we are when we're driving around.
Q Is that map generated from that data?
A Yes.
THE COURT: I'm going to sustain the objection in that Ms. Gutierrez objected to his description of the satellite and is it your testimony that you don't know what the satellite is, is that

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

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

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

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

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been identified.
THE COURT: May I see the exhibit please? Mr. Clerk, would you pass it to me please? Thank you. Mr. Waranowitz, I notice there are other colored markings on that, have you identified those for the record?
MR. WARANOWITZ: No.
THE COURT: I notice there are a series of numbers that go vertical across the top of the page, from top to bottom. Have you identified those numbers either? Just yes or no.
MR. WARANOWITZ: Yes.
THE COURT: Okay. And the numbers that go across the middle of the page?
MS. GUTIERREZ: Objection.

THE COURT: I understand, Counsel. My -- my problem is --
MS. GUTIERREZ: I do understand, but I'm --
THE COURT: You're noting the objection for the record.
MS. GUTIERREZ: Thank you.
THE COURT: Have those numbers been identified by you?
MR. WARANOWITZ: Yes.

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THE COURT: You identified them today? No, look at me. Did you identify them today?
MR. WARANOWITZ: I've identified the frequencies on here, yes.
THE COURT: Okay. I didn't ask you about frequencies, I asked you about numbers. Did you identify the numbers?
MR. WARANOWITZ: Yes.
THE COURT: Okay. Very well. With regard to the objection as this juncture it's sustained. There are items on that exhibit that have not been identified. The witness has not been asked to identify them and therefore this item is not in evidence. The witness has not been asked to identify them and therefore this item is not in evidence yet.
BY MR. URICK:
Q The colored markings, are those handwritten in?
MR. WARANOWITZ:
A No, they are computer drawn.
Q And what do they signify?
A They signify the signal strength that the phone sees at that position.
Q And how does it signify it?
A The different colors indicate different

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

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A There's a hill in the middle of that circle.
Q And those numbers follow Rolling Road and then the path followed around the surf of the hill, correct?
A Yes.
MR. URICK: Would offer the exhibit at this time.
MS. GUTIERREZ: Same objection.
THE COURT: Overruled at this time. Let the exhibit be admitted. I believe that's Exhibit Number 44.
(State's Exhibit No. 44, previously marked for identification, was received into evidence.)
BY MR. URICK:
Q If you could pass it to the Clerk at this time I would appreciate it. Now, I'd like you to look at what's been marked for identification as State's Exhibit 34. Now, have I shown you this exhibit before?
MR. WARANOWITZ:
A Yes.
Q Now, in the far right are a list of addresses. Have you had a chance to examine the exhibit to check those addresses against the cell sites that are listed in the column to directly left from the

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computer generated business records of the Defendant?
A Yes.
Q And are those addresses accurate for those cell sites?
A Yes.
Q Now, when you were at Gelston Park you said you used an Erickson phone. Does the brand of the phone make any difference in terms of the functioning of the network?
MS. GUTIERREZ: Objection.
THE COURT: Sustained.
BY MR. URICK:
Q Now, when you are at Gelston Park I'd like you to look on the copy of the exhibit that I gave you, look at lines 20 and 21. Is that cell site and cell site address designation 654C 824 Dorchester consistent with your test at your location you were at there?
MR. WARANOWITZ:
A Yes.
MS. GUTIERREZ: Objection. He testified and he tested to determine an address. They either exist or they don't, so the question is improper to suggest that it's consist --
THE COURT: You don't -- that's fine. It's going to be sustained and, Counsel at this point, Mr.

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Urick with regard to this witness, if you're going to discuss tests you're going to have to tell us what it is that you're talking about. At this point I don't know what kind of test was conducted and I don't know anything that your Exhibit Number 34 has an relevance regarding any tests. So, if you would clarify it and we'd appreciate it and at this point Ms. Gutierrez's objection is sustained.
BY MR. URICK:
Q It took you to Gelston -- a location at Gelston Park?
MR. WARANOWITZ:
A Yes.
Q What test did you perform there?
A I originated a phone call.
Q And did that origination go through a cell site?
A Yes.
Q And what was that cell site?
A L654C.
Q The address for that cell site is located is what?
A On Dorchester Road.
Q Now, following that we took you secondly to -- well, my next question would be we took you to

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Christie Vincent's address at the 4700 block of Gateway Terrace. Can you find that location on that map?
A Yes.
Q Could you please find that?
THE COURT: Ladies and gentlemen, if you can not see what is being done please raise your hand. All right. Ladies and gentlemen of the jury can not see. Okay. You're pointing to a location on the map. Counsel, all right. You may proceed.
MR. URICK: At this time with the Court's permission I'm going to approach and show the witness what's been marked for identification as State's Exhibit 45.
(State's Exhibit No. 45 was marked for identification.)
THE COURT: Yes you may. Exhibit 45.
BY MR. URICK:
Q Can you identify that?
MR. WARANOWITZ:
A Yes.
Q And what is that?
A This is another drawing or computer generated graphic of the drove that I did on the day of the test.
Q And the geographical location that that map represents is what?

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

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

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

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

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

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

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Q Why?
A Because the cell tower provides the coverage in that area.
Q Now, based on your knowledge of the AT&T wireless network system, does the particular model or manufacturer of a cell phone, brand of a cell phone have any affect on the functioning of the network?
MS. GUTIERREZ: Objection.
THE COURT: I'm going to sustain it, but you can reword it.
BY MR. URICK:
Q What affect if any does a brand of a cell phone -- what if any affect does a brands of cell phones have on the functioning of the AT&T wireless network.
MS. GUTIERREZ: Objection.
THE COURT: Overruled. If you know.
MR. WARANOWITZ: It depends on the quality of the phone.
BY MR. URICK:
Q How might that affect it?
MS. GUTIERREZ: Objection.
THE COURT: Overruled. And again, if you know?
MR. WARANOWITZ: For performance.

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BY MR. URICK:
Q And how so?
MS. GUTIERREZ: Objection.
THE COURT: At this point I'm going to sustain and, Mr. Urick unless you are prepared to lay a foundation for this witness's basis of knowledge as to other equipment other than Erickson phones and how they relate to your question this entire line of questioning will be sustained.
BY MR. URICK:
Q Your AT&T wireless cell phone is what brand?
MR. WARANOWITZ:
A I use a Motorola phone.
Q Have you used other cell phones with the network?
A Yes.
MS. GUTIERREZ: Objection.
THE COURT: Overruled.
BY MR. URICK:
Q What other cell phones have you used?
MR. WARANOWITZ:
A Erickson.
MS. GUTIERREZ: May I continue my objection?
THE COURT: Yes, you may.
MR. WARANOWITZ: Erickson, Nokia.

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BY MR. URICK:
Q Are you -- in your experience -- well, how have you used those phones?
MS. GUTIERREZ: Objection.
THE COURT: Question is too general, it's sustained.
BY MR. URICK:
Q Are you familiar -- do you have any knowledge of the technology that's used in those phones?
THE COURT: In what phones?
MR. URICK: The Erickson, Nokia and Motorola.
THE COURT: Overruled. Do you, yes or no?
MR. WARANOWITZ: Could you rephrase the question please?
BY MR. URICK:
Q Do you have any knowledge as to the radio technology that's used by the Nokia, the Erickson, the Motorola phones?
MS. GUTIERREZ: Objection.
THE COURT: Overruled. Yes or no? Do you or don't you?
MR. WARANOWITZ: I have limited knowledge, yes.
BY MR. URICK:
Q If an owner of any of those three types of

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phones had an adequately performing phone would it have made any difference in the functioning of the AT&T network as you described for an Erickson phone?
MS. GUTIERREZ: Objection.
THE COURT: The objection is sustained and you may not answer that question.
MR. URICK: May I have the Court's indulgence?
THE COURT: Yes, you may.
BY MR. URICK:
Q Are you familiar with the performance of the Motorola, the Erickson and the Nokia cell phones?
MS. GUTIERREZ: Objection.
THE COURT: Overruled. Yes or no?
MR. WARANOWITZ: Yes.
BY MR. URICK:
Q Is there any difference in the performance of those three?
MS. GUTIERREZ: Objection. You may answer.
MR. WARANOWITZ: Yes.
BY MR. URICK:
Q What is the difference?
MS. GUTIERREZ: Objection.
THE COURT: Sustained.
MR. WARANOWITZ: There are --

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

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BY MR. URICK:
Q What sorts of tests have you run of those phones?
MS. GUTIERREZ: Objection.
THE COURT: Sustained.
BY MR. URICK:
Q What if any training have you had in that type of telephone?
MS. GUTIERREZ: Objection.
THE COURT: The Nokia telephone?
MR. URICK: Yes.
THE COURT: You may answer that question. What type of training have you had with regard to Nokia telephones?
MR. WARANOWITZ: None.
THE COURT: None. I'm sorry, I couldn't hear you.
MR. WARANOWITZ: None.
THE COURT: Very well.
BY MR. URICK:
Q What sort of experience have you had in on the job testing and use of those phones?
MS. GUTIERREZ: Objection.
THE COURT: Overruled. What kind of on the job training have you had?

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MR. WARANOWITZ: I use them for my personal phone.
BY MR. URICK:
Q Have you --
MS. GUTIERREZ: Objection, move to strike.
THE COURT: No, he can answer that he uses it for his personal phone.
MS. GUTIERREZ: That doesn't qualify as on the job training.
THE COURT: Well, the answer stands and the jury can consider it for what it's worth that he has a personal phone that's a Nokia. Your next question.
BY MR. URICK:
Q How does that personal phone relate to your job?
MS. GUTIERREZ: Objection.
THE COURT: Overruled. Does it relate to your job?
MR. WARANOWITZ: Yes, it does.
BY MR. URICK:
Q How?
MR. WARANOWITZ:
A AT&T gave engineers Nokia phones to use for personal and for business related.
Q And have you had occasion to use the testing

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abilities of the AT&T network to test the performance of Nokia phones?
MS. GUTIERREZ: The testing abilities?
THE COURT: I could not hear the question. If you could repeat it.
BY MR. URICK:
Q Have you had occasion to test the performance of Nokia phones on the AT&T network?
MS. GUTIERREZ: Objection.
THE COURT: Overruled. Have you had an occasion to test the Nokia phones on the AT&T system?
MR. WARANOWITZ: Yes.
MR. URICK: At this time would offer the witness for his expertise in the Nokia phone on the AT&T network.
THE COURT: To generally or the performance of the Nokia telephone on the AT&T system?
MR. URICK: The performance.
THE COURT: Any voir dire on this witness's expertise?
MS. GUTIERREZ: No, voir dire, Judge. I'd like to be heard on it.
THE COURT: All right.
MS. GUTIERREZ: I don't have any further voir dire.

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

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

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THE COURT: Didn't you just testify that different phones perform differently on the AT&T system. That was his testimony.
MR. URICK: I don't believe it was testimony as to the difference in terms of the frequency or signal that would be picked up and used at a given location.
THE COURT: Does this witness know the answer to that question or are you guessing.
MR. URICK: I would have not asked him -- that is a question I'd like to ask him.
THE COURT: Which means, Mr. Urick that you're guessing because he's testified clearly on your question that those different phones perform differently.
MR. URICK: But he's not been allowed to explain what he meant by that.
THE COURT: That's true. Ms. Gutierrez.
MS. GUTIERREZ: The only thing that I want to make sure that the record reflects. We're not talking about tests in the plural, we're not talking about tests meaning some scientific protocol that's been followed to achieve a certain result. The test is making a phone call or causing a phone call to be made, it's that simple. There isn't any mystery here, there

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isn't any magic to it. That's what he did and he's clearly said the performance, i.e., the ability of the phone to make a call and be heard and the ability of the phone to receive a call and be heard is different. There isn't any magic about interpreting that.
THE COURT: Different depending on the type of phone.
MS. GUTIERREZ: Yes.
THE COURT: He said that. And so to the extent that Ms. Gutierrez is objection as to this witness as being able to talk about the Nokia for which he has said he has no training other than his own personal use of the phone the objection is sustained. And I'm not going to allow the witness to go into anything further, he is not an expert, he has a Nokia phone like any other person and he did not use the Nokia phone when he was conducting the test for which the State wishes to offer him as evidence his testimony. And he has testified that the different phones perform differently on the system, that's what he said.
MR. URICK: But he wasn't allowed to explain what he meant by that.
THE COURT: All right. Why don't you all step back.

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MR. URICK: Thank you.
(Counsel and Defendant returned to the trial tables and the following ensued:)
THE COURT: Ladies and gentlemen, we're going to ask that you go with Ms. Connelly around to the jury room and I'd ask that you leave your note pads face down. I ask that you not discuss the testimony that you've heard so far with anyone either amongst yourselves or anyone else and I will see you back in this courtroom in a very few minutes.
(The jury was excused from the courtroom.)
THE COURT: All right. Mr. Urick, if you would like to voir dire this witness on the issue of whether or not he knows the difference in the performance rate of these phones feel free to do so.
MS. GUTIERREZ: My continuing objection.
THE COURT: I understand, Ms. Gutierrez.
BY MR. URICK:
Q What radio technology does cell phones use?
MS. GUTIERREZ: We can't hear the question.
BY MR. URICK:
Q What radio technology do cell phones use?
MS. GUTIERREZ: Objection.
THE COURT: Do you know what radio technology?

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MR. WARANOWITZ: Yes.
BY MR. URICK:
Q And what is that technology?
MR. WARANOWITZ:
A We call it TDMA.
Q And what education have you had in that technology?
A AT&T wireless training and Erickson training.
Q And your educational degree was in what again?
A Electrical engineering.
Q And what if any classes did you have in radio technology in that program?
A Electromagnetic eave propagation.
Q Have long have you been employed by the AT&T network?
A Four years.
Q What tests are -- what performance tests are run on cell phones on that network?
MS. GUTIERREZ: Objection.
THE COURT: Overruled. If you know.
MR. WARANOWITZ: Signal strength, dropped calls, bit error rate.
MS. GUTIERREZ: Can't hear the witness.
MR. WARANOWITZ: There are three areas that

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we test for. One is signal strength, one is bit error rate and one is dropped calls.
MS. GUTIERREZ: I still can't hear the witness. I didn't get the second.
MR. WARANOWITZ: Bit error rate.
MS. GUTIERREZ: Bit error?
THE COURT: Spell it.
MR. WARANOWITZ: Bit, error, E-R-R-O-R, R-A-T-E. Bit error rate.
BY MR. URICK:
Q Have you personally conducted those types of tests on cell phones on the network?
MR. WARANOWITZ:
A Yes.
Q Have you performed those sorts of tests on Nokia phones?
A Yes.
Q What is the business purpose of performing those sorts of tests?
A To identify and locate bad phones.
Q Bad to mean by that?
A Malfunctioning.
Q And how often do you run tests like that on Nokia phones?
A Daily.

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

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Erickson phone on the AT&T network?
MS. GUTIERREZ: Objection. No basis established.
THE COURT: Well, that's the whole point, Ms. Gutierrez. I'm trying to determine whether he has a basis of knowledge for which he can testify. Do you know --
MR. WARANOWITZ: Yes.
THE COURT: The difference between the Erickson and the Nokia?
MR. WARANOWITZ: Yes. They use the same standards to communicate with our network.
THE COURT: You said they use the same standards. Are they or do those two phones perform differently on your network?
MR. WARANOWITZ: They perform differently, but they use the same standards, yes.
THE COURT: Okay. They perform differently.
MR. WARANOWITZ: Yes.
THE COURT: So, if you were to originate a call in one place on a Nokia the ratings, the frequency and those results that you have tallied for the State would differ if you used a Nokia phone versus an Erickson phone, is that correct?
MR. WARANOWITZ: Sometimes, yes.

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THE COURT: Okay. Depending on where you were, isn't that right?
MR. WARANOWITZ: No.
THE COURT: Depending on what?
MR. WARANOWITZ: Depending on the quality of the phone.
THE COURT: Depending on the quality of the phone. So, you would need to need know not only the maker of the phone or the manufacturer of the phone, but you would have to know the serial number or -- what do call it. The --
MR. WARANOWITZ: The serial number.
THE COURT: Is it the serial number?
MR. WARANOWITZ: Yes.
THE COURT: The serial number of the phone to compare it to a like model in another manufacturer.
MR. WARANOWITZ: Correct.
MR. URICK: If I could follow up on his response. You said --
MS. GUTIERREZ: Objection.
THE COURT: Overruled. At this point I'm going to allow the State to ask whatever questions it would like and then I'm going to allow the Defense to ask whatever questions it would like in light of the Court's questions. You may proceed, Mr. Urick.

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BY MR. URICK:
Q Now, you said it depended on the quality of the phone. Will you explain what you meant by that?
MR. WARANOWITZ:
A We have seen -- I have seen in my experience a couple of poor performing phones.
Q Does the brand of the phone have any relationship to that? That is could an Erickson be as likely to be poor performing as a Nokia?
A Yes.
MR. URICK: No further questions.
THE COURT: Ms. Gutierrez?
MS. GUTIERREZ: I have no other questions.
THE COURT: Now, Counsel -- sir, I'm going to ask you to step out in the hallway for just a moment. I'd ask that you not discuss your testimony with anyone.
Now, Counsel first of all, Mr. Urick with regard to your testing of this particular scenario, Ms. Gutierrez's objection is sustained. He will not be able to talk about the results of any test and draw any conclusions. If you want to continue to march him through the different places on that map where he originated calls with his Erickson I will continue to advise the jury that as it relates to the Erickson

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phone he used they can consider the responses or the cell site information for what it's worth.
Ms. Gutierrez, on cross you will have open leeway with regard to this witness on the relevance if any with of this whole test that was conducted by the State. You will also have the ability if you choose to ask the questions that the Court asked during this voir fire to qualify this expert because I find that the use of this expert by the State is misleading and I also find that this expert has expertise with regard to other phones including the Nokia and Motorola and Erickson. But the issue that I believe needs to be addressed in order for clarification with this jury is that the model of the phone is relevant and this witness did not conduct a test with the model.
And so to the extent that the State is misleading the jury at this point, the Defense is going to have a lot of leeway. Do you understand me, Ms. Gutierrez?
MS. GUTIERREZ: Certainly do, Judge.
THE COURT: And the State needs to be advised that the Court is not happy at all with the way in which this witness is being utilized. It is not happy with the attempt to mislead because that's precisely what you have done. You have mislead this jury and to the extent that this Court can clarify as long as he's

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being questioned by the State I will do so to ensure that that jury is not in anyway mislead about the test that was conducted by this witness or the results therein. And the Defense will have wide leeway and I also will ask at this juncture, Ms. Gutierrez if at any point in time during your questioning you decide you want to qualify him as an expert to use him in anyway you believe is appropriate, feel free to do so.
MS. GUTIERREZ: Thank you, Judge.
THE COURT: Very well. I'm going to ask that the witness return. Is there any question, Mr. Urick about what I've just said?
MR. URICK: No, thank you, Your Honor.
THE COURT: Any question, Ms. Gutierrez?
MS. GUTIERREZ: No, Judge, but could I have a bathroom break?
THE COURT: You may have a bathroom break before we bring the witness back in.
MR. URICK: Your Honor, if I may remind the Court the purpose of bringing this witness in today was because he's unavailable tomorrow through Saturday.
THE COURT: I understand that, but what can I say. We are doing the best we can today and Ms. Connelly, will you please have my secretary call to Annapolis and advice Judge Harrington that I will not

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be able to meet my obligations in Annapolis and you may continue.
MS. GUTIERREZ: Well, Judge based on your schedule I've made plans for this evening which I normally don't do with my children and others because I counted on being able to leave by five.
THE COURT: Well, we will end by five. We will stop by five, but please advise Ms. -- Judge Harrington that I will not be available. And, Ms. Gutierrez if you would while you're out you may go around to Judge Gordy's secretary if you need to make a phone call with regard to children, please feel free to do that as well. Harrington, H-A-R-R-I-N-G-T-O-N. Can you call her back, ask her if Judge Harrington would e-mail me any information. Ms. Gutierrez, do you still have scheduling difficulties?
MS. GUTIERREZ: Well, Judge as long as I can leave by five I can get to where --
THE COURT: All right. Very well. Also before the jury comes back I received to questions from my law clerk handed to her by the jury and they both say please ask the State's lawyer to speak louder and clearer and also can they speak louder and clearer. Please, we are having a hard time hearing. So, I'm going to ask Counsel, if you lean forward I know the

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

(The jury returned to the courtroom.)

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

BY MR. URICK: Thank you, Your Honor.

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

MS. GUTIERREZ: Objection.

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

BY MR. URICK:

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

THE COURT: You may answer the question.

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

BY MR. URICK:

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

MR. WARANOWITZ:

A In this case it is terrain and trees.

Q And how do trees affect it?

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

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

A Yes.

Q And what affect would that have?

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

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

MS. GUTIERREZ: Is 34 the --

THE COURT: The chart.

MS. GUTIERREZ: The chart.

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THE COURT: Yes. Any objection?

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

THE COURT: Thirty one?

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

THE COURT: That is the cell phone records. 30?

MS. GUTIERREZ: It's three pages.

THE COURT: Yes.

MS. GUTIERREZ: I think that's 31.

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

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

THE COURT: What number is that anyway?

MS. GUTIERREZ: It's 31.

THE COURT: It is 31?

MS. GUTIERREZ: Yes.

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

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

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to 34 as it is. The objection --

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

MS. GUTIERREZ: Right.

THE COURT: With the addresses as the last column.

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

THE COURT: Without addresses.

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

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

BY MR. URICK:

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

MR. WARANOWITZ:

A Yes, I did.

Q And are those accurate addresses for those cell sites?

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

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

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

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

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addresses of the cell sites in the Baltimore Metropolitan region?
MS. GUTIERREZ: Objection.
THE COURT: Overruled. Are you familiar with them, yes or no?
MR. WARANOWITZ: No.
MS. GUTIERREZ: May we approach the bench?
THE COURT: Do you have an objection to the exhibit?
MS. GUTIERREZ: Yes, I do.
THE COURT: What is the exhibit number.
MR. URICK: For identification.
MS. GUTIERREZ: Forty six.
MR. URICK: Forty --
MS. MURPHY: Thirty two.
MR. URICK: I'm sorry, I've marked it wrong. That should be for identification State's 32.
(State's Exhibit No. 32 was marked for identification.)
THE COURT: Thirty two, and if you'd bring it up please so the Court can see it.
(Counsel approached the bench and following ensued:)
THE COURT: And the objection?
MS. GUTIERREZ: Well, Judge it's an unmarked

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

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

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

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pursuant to the court order when this -- when Ms. Gutierrez was cross examining the previous witness, that you moved it into evidence because --
THE COURT: I moved into evidence the cell sites.
MR. URICK: The addresses.
THE COURT: Not -- no, the cell site, not the address, the cell site not the address. She referred to each one I believe only by cell site number.
MS. GUTIERREZ: Who's the she?
THE COURT: Ms. Gutierrez. If I may have one moment.
MR. URICK: She also read off the addresses and you moved that in at the time.
THE COURT: Give me one moment, one moment. She did not do it as to all. She did it as to --
MS. GUTIERREZ: I missed -- during what witness?
THE COURT: One moment. During Jay Wild's testimony.
MS. GUTIERREZ: Right, right.
THE COURT: The remember of lines, Ms. Gutierrez that at the time you made the inquiry as to the cell site --
MS. GUTIERREZ: Right.

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

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

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A It is in our database for AT&T Wireless, yes.
MS. GUTIERREZ: Objection.
THE COURT: Overruled.
BY MR. URICK:
Q And is it the normal part -- is that data put in that database by people who have personal knowledge of that information at the time that it's put into the database or by people who have that information?
MS. GUTIERREZ: Objection. Objection.
THE COURT: Sustained. Do you know how this information is placed in this document?
MR. WARANOWITZ: Yes, I do.
THE COURT: You do?
MR. WARANOWITZ: Yes.
THE COURT: You may answer the question.
MR. WARANOWITZ: This information is put in place or put in the database by what we call site acquisition coordinators. They are the people that look for cell sites.
BY MR. URICK:
Q And is this information collected as part of the normal business of the AT&T Wireless Corporation?
MS. GUTIERREZ: Objection.
THE COURT: Overruled.
MR. WARANOWITZ: Yes.

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BY MR. URICK:
Q And is it necessary for the functioning of the AT&T Wireless Corporation that this data be kept?
MR. WARANOWITZ:
A Yes.
MR. URICK: I'd offer the business records, State's Exhibit 32.
MS. GUTIERREZ: Objection.
THE COURT: One moment. The objection is sustained.
BY MR. URICK:
Q Do you use those records?
MS. GUTIERREZ: Objection.
THE COURT: Overruled.
MR. WARANOWITZ: I use the cell site name and the cell site -- I don't use the street address often.
BY MR. URICK:
Q Are you familiar with that information though?
MR. WARANOWITZ:
A Yes.
Q Now, if you look at State's -- your copy of State's Exhibit 34. Now, if you look at line 3, do you recall the address for cell site L698B?
MS. GUTIERREZ: Objection.

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THE COURT: Overruled.
MR. WARANOWITZ: Can you rephrase the question please?
BY MR. URICK:
Q Do you remember the street address for cell site L698B?
MR. WARANOWITZ:
A No.
Q Would examining State's Exhibit 32 for identification help your refresh your recollection?
A Yes.
Q Please examine it at this time.
MS. GUTIERREZ: I would note my continuing objection based on --
THE COURT: I understand.
MS. GUTIERREZ: Previous --
THE COURT: And just for the record, the witness may use this exhibit to refresh his recollection and respond to the addresses that Counsel is inquiring about. The exhibit is not admitted as evidence, however.
BY MR. URICK:
Q Have you had a chance to look at the document?
MR. WARANOWITZ:

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

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A It is located on Walker Road near UMBC.
Q And do you remember the address for L654?
A It would be Dorchester Road.
Q Do you remember the specific street address? You may look at the document to refresh your memory.
A 824.
Q Do you remember the street address for L652? Look down at line 30 and 31, 30 pardon me, 29 and 30.
A 714 Poplar.
MS. GUTIERREZ: Again, for the record the witness is referring to the list.
THE COURT: Referring to Exhibit Number, I believe it's 15, is that right? The exhibit number, sir is?
MR. WARANOWITZ: Thirty two and --
THE COURT: The one in your left hand, the exhibit number at the bottom?
MR. WARANOWITZ: Thirty two.
THE COURT: Forty two.
MR. WARANOWITZ: Thirty two.
THE COURT: Thirty two. All right. Very well.
BY MR. URICK:
Q Do you remember the street address for L688?
MR. WARANOWITZ:

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A This cite has no street address. It is located at the intersection of 29 and 70.
Q And do you recall the street address for L654?
A That would be the 824 Dorchester Water Tank.
Q And do you recall the street address for L602?
A We call that Central Savings.
THE COURT: I'm sorry, I can't hear you.
MR. WARANOWITZ: We call that Central Savings and it is located on 201 North Charles Street.
BY MR. URICK:
Q Now, these street addresses are what?
MR. WARANOWITZ:
A These street addresses are where the owner of the property that we rent space for, for the cell site resides.
Q And you have placed what at these street addresses?
A Cell sites.
Q And the information in the final column for the address for each of those then, that is the address for the particular cell site that's listed in the column just before it --
MS. GUTIERREZ: Objection. Form of the

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question.
THE COURT: Overruled.
MR. WARANOWITZ: Please restate the question.
MR. URICK: The -- you've got the cell site in the second to last column and then the address and the address is the -- the address is for the cell site in the column before it.
MR. WARANOWITZ:
A Yes.
MR. URICK: Would offer into evidence State's Exhibit 34.
THE COURT: Any objection at this time?
MS. GUTIERREZ: If I may have a minute, Your Honor.
THE COURT: Certainly.
MS. GUTIERREZ: Yes, Your Honor we would object on the same basis.
THE COURT: With regard to the addresses?
MS. GUTIERREZ: Yes.
THE COURT: Very well. The objection will be admitted.
MR. URICK: I'd like to give the exhibit to the Clerk at this time to mark it into evidence.
THE COURT: Very well.
(State's Exhibit No. 34, previously

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

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

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

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

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

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they loose.

THE COURT: Please keep your voice down.

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

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

MS. GUTIERREZ: I didn't, Judge.

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

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

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

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

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

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

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

MR. URICK: Thank you.

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

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

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

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8:30 in the morning.

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

THE CLERK: Yes.

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

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

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

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

THE CLERK: All rise.

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

CERTIFICATE

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

I do hereby certify that the aforegoing 153 pages constitute the official transcript as transcribed by me from said videotaped proceedings in a complete and accurate manner.

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

CHRISTOPHER W. METCALF, CVR
Official Court Reporter

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

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