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IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND

vs. Indictment No. 199103042-46

ADNAN SYED,

Defendant.

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

Baltimore, Maryland

February 9, 2000

BEFORE:

HONORABLE WANDA KEYES HEARD, Associate Judge

APPEARANCES:

For the State:

KEVIN URICK, ESQ.,
KATHLEEN MURPHY, ESQ.

For the Defendant:

CRISTINA GUTIERREZ, ESQ.

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PROCEEDINGS

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

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

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

MR. URICK: Yes.

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

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

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

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

MR. URICK: No, Your Honor.

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

MR. URICK: Can we approach?

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

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

THE COURT: Okay.

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

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

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

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

MR. URICK: Abe Waranowitz, the witness.

THE COURT: Said to you this morning?

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

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

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

THE COURT: State's 44?

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

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

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

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evidence and that it was incorrect information that was stated.

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

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

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

MS. GUTIERREZ: Yes.

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

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

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

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

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

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

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large courtroom and the jurors have already said that they can't often understand the attorneys unless they speak up. I think that we have a courtroom where if we all just, you know keep our voices raised out there and whisper at the bench we'd be able to handle that.

So, for the reasons indicated I don't believe there's been any unfairness, I don't believe there's been any misunderstanding by the jury that was being said with regard to evidence or what rulings I'm making relative to those evidentiary issues are just that. And so for that reason the State's motion is denied. I don't believe there's any prejudice that's been placed against the State at this juncture. With regard to any other issues before I bring the jury out?

MS. GUTIERREZ: Judge, I do have, as the Court -- as the Court knows I arranged to get a Defense copy of the videotape yesterday and I reviewed most parts of that videotape for particularly reason regarding the Court's ruling and when I did I observed two separate things that concern me.

The first of which was that at some point we were up at the bench and waiting for something and the jury was sitting there and the Court allowed the jury, encouraged the jury to get up and walk or get water. And at least three jurors walked over to the water

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fountain by the clerk and went and obtained paper cups. The water fountain which has the bottled water on top of it is what people use. Lodged right next to it (inaudible) another water fountain that you would bend down. And I earlier observed (inaudible) --

THE COURT: Is there something behind the water cooler?

MS. GUTIERREZ: That behind the water fountain is where the guards place the handcuffs. I believe that would be, you know, not have the handcuffs visible in an attempt to hide them, but once one gets to the water fountain the handcuffs are readily visible if one looks.

Additionally, at the end of the day when we were trying to sort out time and the Court was trying to settle out and ultimately arrived in asking everyone to be here at 8:30. In front of the jury, the Court I believe inadvertently, certainly had a little discussion with the guard about can you get him here at 8:30 and the jury was still in the room because you were trying to figure out what time to tell them and, you know --

THE COURT: Are you making a motion?

MS. GUTIERREZ: Well, I am, Judge, but for certain relief and I guess, I don't want to make it

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worse, I don't want to draw any more attention. I don't know and you couldn't tell from the tape whether the jurors actually looked down. I just knew because I had observed them there. That once you're there you can see them on the ground and they're plainly visible, the handcuffs.

I guess my request for relief would be to gently advise the jury, you know you may have observed yesterday that I made a comment that clearly indicated Mr. Syed was in custody and again, you know I'm entitled to keep that out, but at this juncture I'm not asking for relief. What's done is done and whatever inferences they made are made. What I'm concerned about is that they get correct information. My belief is that if you bring it out and say it so that they don't think something otherwards, do you know? And just to advise them, you know the fact that he may have been incarcerated pending this trial is not something that you're allowed to hold against him to consider as evidence, whatever because my belief is that jurors will strive to live up to their duty and although I don't want to underscore it I think that if the Court just mentions it without even saying why you think they might, but to remind them, you know. The fact that he's incarcerated and what inadvertently is not something

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that you could consider against him.

THE COURT: I'd be happy to do that. Actually, I recalled my remark and if --

MS. GUTIERREZ: It didn't occur to me, I mean I remember hearing it, but it never occurred to me until I looked at the tape last night.

THE COURT: If it's all right, I could say that you might have observed that the Defendant has been occupied by someone from the institution each day. You're not to consider that as anything relative to anything, that is he is considered innocent until proven guilty and his status pretrial is not of anything for your concern. Does the State have any objection to that?

MR. URICK: State would oppose any comment on this subject. We think that it would be incorrect to address it. They clearly can that he's -- that the guard is present. I don't think they have any more information now then they had previously.

THE COURT: In light of the fact the Defense has requested this curative instruction I'm inclined to give the curative instructions for the reason that the Defense has requested it. And I would note that arguably the Court concedes that it did make the remark and perhaps that would assist and ask or inquire first.

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Officer Gilmore, are they in fact your shackles?
OFFICER GILMORE: Yes, they are, Your Honor.
THE COURT: All right.
OFFICER GILMORE: To sit on them all day long it kind of tough.
THE COURT: I understand.
OFFICER GILMORE: I could wear them on my side, but then the shackles would be visible on my side rather than having them out of sight.
THE COURT: Is there anywhere else we could place them that would be convenient to you?
OFFICER GILMORE: The problem with me putting them in my pocket is when I come -- when someone comes to relieve me I have to take them out and give them to the other officer which is more of a deal.
THE COURT: All right. Could we --
MS. GUTIERREZ: Well, Judge I guess I'm not requesting that you move them. In light of the fact that the Court is going to say something --
THE COURT: Okay. Very well.
MS. GUTIERREZ: To the jury, I think that, you know they're just they're as unobtrusive as possible, if they see them they see them.
THE COURT: Fine.
MS. GUTIERREZ: I will note that of all the

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days that was the only day the jurors got up from their seats and walked somewhere else in the courtroom.
THE COURT: And under the circumstances we had delayed them, it was warm.
MS. GUTIERREZ: Yes.
THE COURT: And I actually observed a number of people actually seek the water including you.
MS. GUTIERREZ: Yes.
THE COURT: So, we will leave them where they were and I will provide the Defense -- the jurors with the curative instruction. Is there anything else?
MS. GUTIERREZ: Yes, Judge. In -- again, in light of my review of the tape yesterday particularly as to the part where the Court and it was late in the day, the Court essentially made a finding that the State's use of the expert was misleading. And having reviewed carefully the Court's instructions and the Court's assertion that of course it was going to give us great leeway in light of that to cross examine. That's really, frankly why I was reviewing the tape, that because of what was going on I had not taken great notes although I did write, you know the State's use of the expert is misleading, but that's the portion of the tape my intent was to review last. In light of what I believe is a finding by the Court and not withstanding

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the Court's offer to sort of let us with greater leeway then would normally occur including, you know, telling us we could ask the exact same questions and make the exact same inferences of this witness in our cross. Judge I seriously believe that that is not sufficient to make up for the misleading nature of Mr. Waranowitz's testimony and we would request relief.
Number one, I would move to have the entire testimony of Mr. Waranowitz stricken and the jury so advised that it is stricken. That notwithstanding everything they heard you have stricken it and that they should disregard it and pay no attention and in that instruction advise the jury, you know that it is unusual to do so, that it is being done so without that testimony having been afforded an opportunity to cross examine.
And further, I would move that the Court advise the jury that the Court has found that the use of this person as an expert was misleading in that that is the basis for striking this witness' testimony. Having reviewed that and as a result of reviewing that literally going back to listening and watch the entire videotape.
Notwithstanding the Court's efforts which were numerous to advise the jury, you know, when things

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shifted and this expert was attempted to be led somewhere else and limiting or qualifying that person to the jury and did that on numerous occasions, you know, for the very reason that led the Court to find and to alter the Court's position and understand that of course there had to some remedy. The State chooses to put on a witness intending to mislead, we believe that the remedy of just expanding out right to cross examine thereby attacking that testimony is not sufficient. They shouldn't be allowed to mislead the jury. They shouldn't be allowed to attempt to mislead the jury and all the efforts of the Court to blunt the impact of that we believe altogether are not.
And I will tell you, Judge I thought very long and hard about this as the Court must be aware, as a Defense lawyer I would never willingly give up any opportunity to cross examine an adverse witness. But I believe allowing this witness' testimony to stand in light of the misleading nature of it is so violated of due process that the remedy the Court has fashioned by allowing broader cross examination and ordinarily I would have does nothing to blunt the misleading nature of where the State was allowed to go with this witness. And the only remedy is to strike the witness' entire testimony and advise the jury of why the Court has done

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so.
THE COURT: Does the State wish to be heard?
MR. URICK: Yes, Your Honor we have a counter motion.
THE COURT: No, I would like to hear you respond to that motion first.
MR. URICK: I will proffer to the Court that when we went to Mr. Waranowitz -- when we were talking to him we said, we've got cell phone records and we have statements that this AT&T wireless phone were in these locations and these calls were received were made. Is it possible to test the system to see if it is possible for the system to respond in those places in these manners and that was the test to check out the cell phone records and the statements to see if it can be shown that this -- that the system can respond in this way. He explained to use you can never say from a cell phone record the spot where something was, you can never prove that. You can only show through the fact that it initiated a call through a cell site, that it was in that coverage area for that cell site. But you can go to specific locations and see if it's possible for the system to respond as the cell phone records do. That was his test, that was the purpose of it.
THE COURT: Do you believe that the test that

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you presented to this jury was indicative of what you were trying to prove?
MR. URICK: Yes, I do. We asked -- we told him what we wanted to show and we left it up to him as to how to do it based on his knowledge of the system. He went out and he did that and this shows that this is -- that the system in fact can respond in this manner.
THE COURT: You would agree that there are some flaws in his tests though.
MR. URICK: I don't believe they are flaws because I think he showed enough knowledge of the system and of the different phones, specifically Nokia and Erickson that we should be allowed to say, would a properly functioning Nokia phone be capable of responding to the system in this way and would it be recorded in this way. We think based on his expertise and training he can. Ms. Gutierrez would have a full right to talk about the different functions of different brand phones in relation to the test because that goes to the weight to which it should be give, not to it's admissibility. The admissibility is that it is helpful to the finder of fact in evaluating the information.
THE COURT: Mr. Urick, why isn't it irrelevant what a particular phone, an Erickson did on

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a particular day when the witness has shown through your questions that there are variables that would affect the performance of the phone which effectively makes your test totally irrelevant. If the weather was different, if there were leaves on the trees, if the model of the phone was different. I mean doesn't in fact everything you've presented make the test null and void and irrelevant to this proceeding? You didn't indicate that you did it with the same -- ran the test on a day when the weather conditions were identical to the date that you allege that the body was buried. That the weather conditions were such that there was no ice on the trees, there were no leaves on the trees, that there was no snow on the ground, that the temperature was about the same, that the equipment that was used to test was the same.
Your testimony that you've presented has not indicated any of the factors that your own witness say affects the performance and thereby doesn't the test itself become misleading to a jury, to give the impression that the phone that was the subject of this case performed in the same way. I mean granted, the weight of the testimony must be made, a weighing must be made by the jury, but my question is aren't we bordering on irrelevant versus relevant because the

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weight is so tenuous here that it might not even way anything at all?
MR. URICK: The State respectfully disagrees, Your Honor. What we were showing is that yes, it is possible for this system to respond in the way that the cell phone records indicate it in fact did. We are showing the possibility that it did. This is corroborative of other testimony, hence it has great relevance, it goes into corroboration.
THE COURT: So you're saying no matter how weak or tenuous this might be that it is yet -- it is only one item to be weighed in the context with other items that it occurred in the fashion that you've presented?
MR. URICK: Yes, it is corroborative, therefore it is irrelevant.
THE COURT: That is with Wild's testimony that the phone did ring while they were at certain places to corroborate the fact that he was in fact in the areas that you've indicated.
MR. URICK: Yes.
THE COURT: I see.
MR. URICK: And that that particular phone would in fact register the particular records that it did as to the cell site that the call was initiated to

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Hence it is corroborative and it's relevant. The degree to which it is would be weight.
THE COURT: I understand. And that's your response to that -- the motion of the Defense at this -- at this point with regard to striking all of Abe Waranowitz's testimony?
MR. URICK: Yeah, and I believe he could adequately explain the degree to which it is a justifiable test for that situation.
THE COURT: With regard to the Defense motion I won't strike Abe Waranowitz's testimony. However, I'm going to instruct the jury and I'd ask that both the State and the Defense fashion an instruction to be used at the close of the case when I provide them the instruction as to how an expert's testimony shall be viewed. And so I'd ask that Counsel make a note that I'll be looking for an instruction to be submitted along with the other instructions specifically with regard to Abe Waranowitz's testimony. I don't know if there will be any other instructions that may have been provided, but I will also indicate and reiterate that the Defense because of the tenuous nature of the test that was run, I'm still am going to give you great latitude on cross with regard to bringing out those issues that would affect the reliability of the tests

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that was run and would aid the jury in making the weighing that Counsel has just indicated, will have to be done with regard to the value if any, that the jury may find with regard to Mr. Waranowitz's testimony regarding his test.
However, I find that Mr. Waranowitz's testimony in other aspects with regard to his expertise in the knowledge of the network system was indeed extremely helpful and I do find that that information was of the quality that expert testimony is normally rendered in a proceeding and I do not find that there was any error made in accepting him as an expert. I also find that in fact, the fact that he is an expert he was able to help us sift through the value that or the problems that may have existed with regard to the test that was run.
So with that in mind, keep in mind I will be looking for an instruction relative to how Mr. Waranowitz's expert testimony and that test should be viewed. Mr. Urick, you said you had some other issue or motion.
MR. URICK: Yes, I would based on my previous proffer to the Court move that I'd be allowed to ask him based on your experience and understanding of the system would a properly functioning Nokia phone be able

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to interact with the system in the same way.
THE COURT: Okay. In light of the questions of the Court yesterday, Ms. Gutierrez, do you have any objection to that question?
MS. GUTIERREZ: Yes, Your Honor.
THE COURT: All right. I will allow him to answer that question only as it relates to -- you'll have to lay the foundation that the Court sort o went into out of the presence of the jury, his knowledge he testified during that period that he had tested Nokias and other phones in the past, that they performed in certain ways, that it had to do with the model of the phone. You lay that foundation and then I will let you ask the question you just posed. You do not lay that foundation for his basis of knowledge, the question will be sustained.
MR. URICK: Thank you. I would ask that the item that I provided the Court be marked as State's Exhibit One for the motion of 2/9 and that it be incorporated into the Court file.
THE COURT: Which -- which item is that?
MR. URICK: The fax, Your Honor and receipt.
THE COURT: You're asking that the fax and receipt be marked for identification purposes?
MR. URICK: As far as an exhibit for the

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motion, the motion exhibit.
THE COURT: You're welcome to submit it as an exhibit for the motion and why don't we give it a different sticky number apart from -- why don't we make it Exhibit 100. You're not going to have a 100, are you?
MR. URICK: I doubt it.
THE COURT: Why don't we make it Exhibit 200 to make sure, absolutely, positively and put on there motion for mistrial, I think that was part of your evidence.
(State's Exhibit No. 200 was received into evidence.)

And for the record the Court does recall that Ms. Gutierrez did qualify that she was not sure if someone in her office may have received this is as part of the stack, but that she did not have an independent recollection of having seen it. That was my recollection of what Ms. Gutierrez said at the bench. Ms. Gutierrez.
MS. GUTIERREZ: Well, the only difference, Judge is I stated affirmatively, not that I didn't recall that it could have been --
THE COURT: That it could have been part of a

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pile.
MS. GUTIERREZ: Well, it may well have been part of not receipt by my office as part of the literally thousands of documents in the State's attorneys mandated review, but as particularly as related to what's been marked and introduced as State's Exhibit 44 and 45 that, you know I note that there's nothing on either of them that either identifies what they are, when they were made, for what purpose. Waranowitz's or AT&T's does not appear and that, you know I had not seen them, I had not received them. I did not mean and I don't believe what I said yesterday in anyway intimated, well maybe there was this possibility that someone else from my office at some point received something that wasn't brought to my attention. I'm not stating that.
THE COURT: Very well.
MS. GUTIERREZ: I'm not inferring that or intimating that.
THE COURT: Very well. We could go back and forth about what may or may not have existed. I think the record is clear on this issue. The Court's position is that the mistrial request is denied. I do not find that there is sufficient information that would warrant a mistrial and so, therefore it is

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denied. And I understand that this item will now be part of the record. It is marked as Exhibit 200 for the support of the Defense -- of the State's motion for mistrial. Any further?
MR. URICK: I don't believe you ruled on my alternative motion in limine that Ms. Gutierrez be instructed not to make comments in front of the jury.
THE COURT: I did rule on that, actually. I said, that no, I was not going to give a particular instruction in limine, but that rather I'd ask both Counsel that when you're at the bench that you keep your voices down, that you're out in the open air, that you be reminded that the jury can hear what you're saying. I'm not going to specifically instruct anyone to that degree and that I will reiterate as often as I can when I hear Counsel speaking that what you all are saying is not evidence. I will continue to do that as I've done so far in the trial and I will continue to do that. At this time I would just ask both Counsel just try your case, it's the only thing I ask you to do. The jury knows what the evidence is going to be. They're going to be instructed that they should consider only the questions and the answers of the witness -- excuse me, the answers of the witness that testify and sworn that the evidence are those items

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that are evidentiary stickers that are placed into the file and that those things are the things will take back and they'll be able to consider them. At this point, I'm going to ask if Counsel is here on my docket.
(Court hears other matters, case resumes as follows:)
THE COURT: All right. If we could have the jury come out.
MS. GUTIERREZ: Are we going to bring the one juror.
THE COURT: I'm sorry.
MS. GUTIERREZ: Are you going to bring the one juror?
THE COURT: Yes. You said juror number two, right.
MR. URICK: Mr. Waranowitz is out in the hallway. Should he wait there?
THE COURT: He should wait there until we deal with the issue with the juror and we will make sure the juror -- Juror number two if you would step up please. We've received your note, good morning. Perhaps you should come all the way up here. Just come all the way up and they can hear you, there's a microphone here. I just need to ask you a few

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questions. Step back so that Ms. Gutierrez can get -- just turn. Can you turn your body on an angle? There you go. You've indicated that you need an extra hour for -- to take care of something at your job.
JUROR: Yes.
THE COURT: If we were to break for lunch say around eleven and allow you to do -- or 11:30 and allow you to go from 11:30 to say 1:30, would that allow you to --
JUROR: Yes.
THE COURT: Do what you need to do?
JUROR: Yes. Yes, I just need to get over to the Community College of Baltimore.
THE COURT: The Community College of Baltimore?
JUROR: Yes, ma'am. And talk to my supervisor and sign some -- because if you don't sign your time sheets for two weeks --
THE COURT: You will not get paid?
JUROR: No, you won't get paid and you won't have a job.
THE COURT: All right. Now, --
JUROR: I'm a contractual worker.
THE COURT: All right. And I understand that you noted that you need to do this. If you are able to

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do this would this then satisfy your concerns?
JUROR: Yes.
THE COURT: All right. And there's nothing about your job or your home situation that's interfering with your ability to pay attention or allow you to be -- continue to be fair and impartial?
JUROR: No. One of my co-workers called me last night.
THE COURT: One of your co-workers alerted you to the fact that you needed to get up there.
JUROR: That I needed to get up there, yeah.
THE COURT: All right. Ms. Gutierrez, are you satisfied? Mr. Urick, are you satisfied?
MR. URICK: Very much so. Thank you, Your Honor.
THE COURT: Very well, sir. At 11:30 we will break, I have the rest of my docket that I'm going to deal with and so, we'll allow you to do that and we'll bring the jury back at 1:30.
JUROR: All right.
THE COURT: Very well.. Also at 1:30 you'll hear me tell you, the jurors what they can do to get paid and you should do that as well.
JUROR: Thank you.
THE COURT: You may take your seat. There's

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no reason you should leave. Yes.
UNKNOWN: (inaudible)
THE COURT: At 12:30. I understand, but I can make arrangements for him to be paid at 1:30, I was told as well. Thank you. Put that in the file, and if we could bring the remaining jurors.
MR. URICK: Yeah, just ask the witness to come in. It's okay for the witness to come in?
THE COURT: Whatever you'd like, Mr. Urick at this point.
MR. URICK: Thank you, Your Honor.
THE COURT: Obviously you've directed them and that's what -- she's gone so, she'll do whatever you've told her to do.
MR. URICK: I apologize if I was presumptuous.
THE COURT: That's all right. I just wanted to have the jury together as much as possible. Sir, you make take the witness stand.
MR. WARANOWITZ: Thank you, Your Honor.
(The jury returned to the courtroom.)
THE COURT: Good morning, ladies and gentlemen.
JURY: Good morning.
THE COURT: I thank you for being here

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promptly this morning. I was advised that you all were here promptly at 8:30. We have dealt with some matters this morning and I want to let you know that we're going to proceed with this case. Before we get started I need to bring to your attention that at close of the day yesterday I made some reference to the fact, asking the correctional officers to transport the Defendant and you may have noticed that through the course of the trial that he is, the Defendant has been escorted by someone from Corrections. Please be advised that that means nothing. The pretrial status of the Defendant whether he's incarcerated or not is not relevant to this case in anyway and should not be considered by you in any way whatsoever with regard to the facts, circumstances, evidence or anything regarding this case.
An individual as I indicated to you at the outset charged with the Defense is innocent until proven guilty: The State priors that burden at all times, so therefore his pretrial status should have no relevance or bearing on you whatsoever during the course of this trial or your deliberations. At this time we're going to continue with the testimony of Mr. Waranowitz and at this time the State I believe has a few questions.
MS. GUTIERREZ: We would just have a

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continuing objection to any further questions asked.
THE COURT: Yes, and as we proceed I'd ask that Counsel be advised that -- of my previous ruling with regard to this witness, ask that those preliminary foundation questions be made if you intend to go in the area that we've previously discussed.
MR. URICK: Thank you, Your Honor. At this time I'll continue with what I was going to do when we were breaking yesterday. If the witness may get off the stand and approach.
THE COURT: Yes, and Mr. Urick, I must remind you, you must keep your voice up. The jurors have indicated they can not hear you. I know the mic is far away from you, but I think that part of the problems that so are the easels. So, if you could keep your voice up so that your voice can be heard it would be greatly appreciated.
MR. URICK: I will do that. Thank you, Your Honor.
THE COURT: Mr. Waranowitz, please step over to the easel.
EXAMINATION
BY MR. URICK: I'd ask him to approach what's been marked for identification as State's Exhibit 33.
(State's Exhibit 33 was marked for

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

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The map then would be 33, correct? What did you say, 33?
MR. URICK: Thirty-three.
THE COURT: Thirty-three A and then the overlay will be 33B. Any objection from the Defense with regard to 33A, the map?
MS. GUTIERREZ: No, Your Honor.
THE COURT: And with regard to 33B, the overlay?
MS. GUTIERREZ: Yes. For all the previous listed stated, correct.
THE COURT: The overlay and the map will be accepted as evidence at this time.
(State's Exhibit No. 33A & 33B, previously marked for identification, will be received into evidence.)
BY MR. URICK:
Q Mr. Waranowitz, do you have a Nokia phone?
MR. WARANOWITZ:
A No, not currently.
Q Have you ever had a Nokia phone?
A Yes, I have.
Q And what -- what cellular phone system did you use that phone with?

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A AT&T Wireless Services.
Q How did you obtain that phone?
A It was given to me by the company.
Q And did you have occasion to use that phone while you were in the Baltimore/Metropolitan area?
A Yes.
Q And have you had occasion to receive billing information on that phone as a result of the calls you may have received or made in the Baltimore/Metropolitan region?
A Yes.
Q Now, in the course of your for the AT&T Wireless Corporation, have you had occasion to test the performance of Nokia phones on the AT&T wireless network in the Baltimore region?
MS. GUTIERREZ: Objection.
THE COURT: Overruled. You may answer it. And your objection is noted for the record. You may continue.
MR. WARANOWITZ: Yes.
BY MR. URICK:
Q What sorts of tests do you perform on Nokia phones?
MS. GUTIERREZ: Objection.
THE COURT: Overruled. At this point the

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

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monitored?
A Hundreds of thousands.
Q And what sorts of factors have you found effect the performance of the Nokia phones on the AT&T Wireless network?
A If a found was dropped it will have problems, physically dropped on the floor and broken, we found a few of those. But we have not found any significant problems with the Nokia 6160.
Q What sort of factors might effect their performance though?
A Poor antennas, problems with the batteries.
Q How would these problems be appearing?
A When we monitor the network that phone number or rather that phone shows up in our statistics with high dropped calls. And what I mean by dropped call is the call gets disconnected in the middle of a call.
Q And would the customer be aware of that factor?
A Sometimes, yes.
Q What other effects on performance might these factors have?
A Voice quality. If you have a poor antenna your phone is going to see the site at a lower signal strength which distorts the phone quality, the voice

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quality. It makes it sound warbley.
Q Are there any variables in performance over different makes of Nokia phones?
A Yes.
Q And what performance -- what -- how might these factors effect performance?
A Different makes of different Nokia phones appear to perform differently. I have not tested anything other then a Nokia 6160.
Q And what effects might these have on -- in terms of relating to the network?
A Our network performance shows higher dropped calls if we have a lot of dropped calls -- if we have a lot of poor performing phones.
MR. URICK: At this time would offer the witness for his expertise in the performance of Nokia phones on the AT&T wireless network.
MS. GUTIERREZ: Objection.
THE COURT: Counsel, may I see you at the bench. Sorry.
(Counsel approached the bench and following ensued:)
THE COURT: Can you proffer what the purpose of offering him as an expert at this point with regard to any additional questions you intend to ask?

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MR. URICK: I thought you wanted me to do that before I asked the question so that I could get --
THE COURT: Which questions are they?
MR. URICK: Based on your expertise and training would a properly functioning Nokia phone respond to the system in the manner that these records indicate.
THE COURT: Okay. You're going to make an objection to that question, are you not?
MS. GUTIERREZ: Yes, for all the previous articulate reasons and I would state --
THE COURT: Before you go any farther, Ms. Gutierrez I just have a question and this may be dispositive of this whole issue. The phone that was tested by this witness, the one that he has indicated that he has expertise one is a Nokia 6160. Is that the same model of the phone that the Defendant had?
THE COURT: His expertise is not as to all phones. He's already indicated that different phones perform different ways and the only Nokia he's an expert on and has tested is the Nokia 6160.
MR. URICK: That's what this is.
THE COURT: A Nokia 6160?
MR. URICK: Yes.
THE COURT: Very well. And you're going to

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ask then that he be qualified. If you re-ask the question for his expertise I will overrule the objection for the -- you can leave it apart, I don't think it matters because you don't have it on, but for the purposes of this objection as asked the objection is sustained. You can rephrase your question and offer him as an expert with regard to the 6160 and it will be overruled.
MR. URICK: Thank you.
THE COURT: And I would also note he did reiterate each time you asked the question specifically model 6160, yes the Nokia, 6160 which is why my -- I'm not willing to find him as an expert as to all Nokia phones because frankly I have no idea how many there are and he's already said the performance varies from phone to phone.
MR. URICK: Thank you very much.
THE COURT: All right.
MS. GUTIERREZ: Well, Judge --
THE COURT: One moment. Something we want to place on the record.
MS. GUTIERREZ: Yes, Judge because I'm now unclear. Is he now being offered as an expert in that particular model as to how it would perform because he is only testified as to what he does with it. He

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

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

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

THE COURT: Or specifically this phone.

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

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

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

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

THE COURT: In the performance of the --

MR. URICK: In the Baltimore/Metropolitan area.

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

MR. URICK: Yes.

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

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

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

MR. URICK: Thank you, Your Honor. At

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

THE COURT: Yes, you may.

BY MR. URICK:

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

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

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

THE COURT: All right. Very well.

BY MR. URICK:

Q Have yo had a chance to examine the exhibit?

MR. WARANOWITZ:

A Yes, I have...

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

A This is a Nokia 6160 phone.

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

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

A Yes.

MS. GUTIERREZ: Objection.

THE COURT: Overruled.

BY MR. URICK:

Q And what is that opinion?

MR. WARANOWITZ:

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

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

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

BY MR. URICK:

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

MR. WARANOWITZ:

A Yes.

MR. URICK: Witness with the Defense.

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THE COURT: You may proceed, Ms. Gutierrez.
MS. GUTIERREZ: Thank you, Your Honor.
CROSS EXAMINATION
BY MS. GUTIERREZ:
Q Mr. Waranowitz, would you step down off the witness stand?
THE COURT: Yes, you may follow her lead.
BY MS. GUTIERREZ:
Q Now, this Exhibit 33A and B, both the map and the colored overlay are exhibits that you prepared, correct?
MR. WARANOWITZ:
A Yes.
Q The underlaying map was from geological survey map service?
A Yes.
Q And that map indicates in many places the names of roads, does it not? And directions of roads?
A Yes.
Q And names of neighborhoods?
A Yes.
Q And you didn't put any of that on there, that's already on there, correct?
A That is correct.
Q Now, the overlay is prepared on a clear see

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through sheet of transparent plastic, is it not?
A Yes.
Q And the areas where that transparent plastic is colored is what you did, correct?
A Yes.
Q And there are various colors on there, are they not?
A Yes.
Q And sometimes the colors are repeated?
A Yes.
Q And the repeats in fact appear all over the map?
A Correct.
Q And there's no independent, significance to the colors, are there?
A There are not unique colors, unique cell sites, yes.
Q For instance, the blue doesn't mean something special because it's blue, does it?
A Correct.
Q Or what you called orange here in the middle doesn't have some special significance because it's orange, right?
A Right.
Q Now, you showed us again, if you could just

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step back for a minute, sir and discussed yesterday State's Exhibit 43B as a demonstration that you prepared to show us how the coverage area sites, the A, B and C sites that emanate from a cell site should appear, correct?
A Yes.
Q And you drew this, correct?
A Yes.
Q This doesn't appear somewhere naturally, you drew it?
A Correct.
Q All right. And what you've described -- and this is how ideally a cell site coverage area should appear, correct?
A Yes, it's symbolic of that.
Q It's symbolic of that. Now, if you would step back and look at, you have listed one, two, three, four, five, six, seven cell site numbers on this cover overlay, have you not?
A Yes.
Q And you drew in those cell site numbers, did you not?
A I drew in the numbers.
Q And you're the one that determined what would be the outlines of any particular color, did you not?

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A No, that was generated by the computer.
Q So, and the computer generated those outlines based on information about the boundaries of the specific sector that emanates from a specific cell site, correct?
A Could you (inaudible)
Q The computer didn't decide what the coverage sites should look like, did it?
A Yes, it did.
Q The computer didn't decide what the boundaries of the coverage area was, did it?
A Yes, it did.
Q The computer merely generated what information was in it, correct?
A Yes.
Q The computer doesn't decide that here all cell sites ideally should look like the neat little circles that you've drawn, does it?
A Where I drew these at?
Q Yes, Mr. Waranowitz. On your drawing which you made which was computer assisted. You indicated that ideally the A, B and C sectors are exactly alike just in different locations, did you not?
A Yes.
Q The area that they cover is exactly the same

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for each three sectors, is it not?
A Yes.
Q There's not a single one on your Exhibit 33B that looks like your ideal model, does it?
A No.
Q There's not a single one that has nice, neat little circles that express the coverage area, is there?
A No.
Q There's not a single one in which the coverage areas A, B and Ca are the same, is there?
A No.
Q You described for instance, for Mr. Urick in great detail the 653 has an A, B and C, did you not?
A Yes, I did.
Q And the A, B and C are the little purple area here right or brownish purple, right?
A 653A.
Q 653A. But I'm pointing to the right place, am I not?
A Yes.
Q And another sector and I don't remember if it's B and C is what you've described as the larger orange area, isn't that correct?
A That would be L653C.

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Q 63C and that B was what I would call purple right there to the right of it, is it not?
A Yes.
Q And you would agree, sir, that the area defined by the computer as B is far more then three times the area defined by what you've defined as A, would you not?
A That is correct.
Q And in fact, if you look at any of these there's not a single coverage sector that is the same as A, B and C as any cell site, is it?
A I'm sorry. Could you rephrase that last question?
Q You didn't understand it?
A Please ask me again.
Q Okay. Now, sir, you prepared this, did you not?
A Yes.
Q And are you the one that taped it together so that the overlay goes over the map?
A Yes.
Q And so you're the one that determined that the overlay should not match the top line of the map, is that correct? You determined where to put the outline, didn't you?

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THE COURT: Ms. Gutierrez, well, Ms. Gutierrez, you've asked the question, let the witness answer the question. Mr. Waranowitz, can you answer the first question? Did you decide that the map should -- the overlay should go up above the map area or not?
MR. WARANOWITZ: The maps are slightly different size and the location is to we printed this out. I printed out both the overlay and the underlay at the same scale and eventually rose up in-between. So, where the overlay matches the map underneath it covers the areas in question.
THE COURT: Okay.
BY MS. GUTIERREZ:
Q Now, on the overlay --
THE COURT: One moment, Ms. Gutierrez. but the question is, that you see how the overlay is moved up to the top of the map?
MR. WARANOWITZ: Yes, I understand that the difference between them.
THE COURT: There's about -- is that about an inch above?
MR. WARANOWITZ: Yes.
THE COURT: And that's the correct placement of the overlay?
MR. WARANOWITZ: Yes.

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THE COURT: Very well. Your next question, Ms. Gutierrez.
BY MS. GUTIERREZ:
Q Now, the overlay, sir, has no definitions that define any of the roads, does it?
MR. WARANOWITZ:
A No, it does not.
Q It just has a series of lines, correct?
A Correct.
Q And those lines, sir, you put them there?
A No, they're part of the computer program.
Q The overlay has no logo on it that should be matched up to something underneath of it, does it?
A Just the road maps.
Q Just the roads that were generated by the computer, is that correct?
A Yes.
Q And that was generated by information fed into that computer by whom?
A The software is created by LCC.
Q So, it's software that exists in the computer, correct?
A Yes.
Q All right. Not something that your records created, is that correct?

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A Correct.
Q Not something that you yourself put in the computer at any given time?
A Correct.
Q But this overlay is suppose to represent, not the ideal cell site coverage, but the actual cell site coverage, correct?
A Yes.
Q And the overlay in no way looks anywhere close to your ideal cell site coverage, does it?
A No.
Q You can take back your seat. Now, Mr. Waranowitz, before we go any further, let me ask you a question that really concerned me that Mr. Urick didn't bother to ask. You referred to -- you were asked to do this test, were you not?
A Yes.
Q You were asked by him were you not?
A Yes.
Q Okay. And you met with him, didn't you?
A Yes, I did.
Q And the information you received before doing anything you got from him, did you not?
A Yes.
Q You got a list of addresses, did you not?

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

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Q And it isn't something you have anything to do with putting in information into to generate, is it?
A Correct.
Q That's done by somebody else, is it not?
A Yes.
Q And much of that is done by computers, is it not?
A I don't know.
Q You think all those entries are entered in by hand?
A I don't know.
Q You don't know. Mr. Waranowitz, the reason the billing information on a wireless includes information such as the time of the call and the duration of the call has to do with the way wireless phones are billed differently than land based phones, does it not?
A Correct.
Q Often time a cellular customer is billed for the minute of use, are they not?
A I don't know how they bill for minutes of use.
Q Well, sir, you testified all day yesterday and today that you're familiar because you in fact, are and AT&T wireless customer, did you not?

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A Yes.
Q And does that information appear on your bills?
A Yes.
Q The duration of the call?
THE COURT: Is that a question, Ms. Gutierrez?
MS. GUTIERREZ: Yes, ma'am.
THE COURT: Is the duration of the call appear on your bill, Mr. Waranowitz?
MR. WARANOWITZ: It would, yes.
BY MS. GUTIERREZ:
Q Okay. And you're familiar with that because you've seen it in your own bill.
MR. WARANOWITZ:
A Yes.
Q And now you don't pay by the minute of use for your own phone?
A No, I don't.
Q Your company pays for it, right?
A That is correct.
Q So, you're not concerned with verifying accuracy of any information that might appear on your bill, are you?
A No.

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Q You don't have to check your bill to see if they counted up your minutes of use correctly?
A No, I don't do that.
Q You don't have to carefully check the accuracy of any information regarding the time of the call, do you?
A No.
Q You wouldn't be concerned for billing purposes if there appeared because some computer somewhere or some person somewhere made a mistake in entry as to that information, are you?
A No, I don't handle billing.
Q I didn't ask you that, sir. I'm asking you about your own phone bill.
A No.
Q You don't enter any information that generates your own phone bill, do you?
A No, I do not.
Q No, and because you don't pay for it like the rest of us because it's provided by your company, you're not concerned in regard to how much you pay, whether or not that information is accurate or not, are you?
A No.
MS. GUTIERREZ: Can I have State's Exhibit

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34?
MR. URICK: I believe that's the exhibit over here.
THE COURT: Actually, it's the chart, but there is a I believe a blank copy of that.
MS. GUTIERREZ: I thought that there was a record.
THE COURT: No, I don't believe that it was ever generated.
BY MS. GUTIERREZ:
Q I would like you to step off, sir and come look at 34.
THE COURT: You may.
BY MS. GUTIERREZ:
Q You were asked to review this yesterday, were you not?
MR. WARANOWITZ:
A Yes.
Q And before yesterday you've reviewed this before, have you not?
A Yes.
Q You are familiar with the information in it, were you not?
A Yes.
Q In regard to the columns in the far right

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side, sir, you were asked to identify whether or not those numbers correctly stated cell sites?
A I recognize the cell site.
Q Okay. And because you've looked at it before, correct?
A Yes.
Q And you knew that every single entry in that column was a cell site with which you were familiar?
A Correct.
Q Did you not? Now, the address column, sir, you didn't fill that in, did you?
A No, I did not.
Q And, sir, we spoke a minute ago about you were provided addresses by Mr. Urick, do you recall that?
A Yes.
Q One of the addresses that you were provided was 1208 Macado Road, Street whatever, was it not?
A Yes.
Q Now, 1208 Macado doesn't appear in this column, does it?
A No, it does not.
Q No, and 1208 Macado is not the address of a cell site, is it?
A No.

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Q And the address of a cell site as you've explained to us is the address of the owner of the property, correct?
A Correct.
Q So, now the address -- the photos that you were asked to look at were the antennas on top of the building that defined as what you and we people you worked with called the Social Security building, correct?
A Yes.
Q Are you familiar with that complex that actually fronts on Security Boulevard?
A I'm familiar with the complex.
Q Are you aware that there's a complex, a Social Security buildings?
A Yes.
Q And that in fact, the name of that set of buildings is the Social Security Administration headquarters.
A I'm aware.
Q And are you aware that at that complex there are eleven separate buildings as part of the headquarters of the Social Security Administration?
A No, I wasn't aware of that.
Q And that all of those buildings are owned by

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

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

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A Correct.
Q And are you aware of the street address of that mall?
A No, I am not.
Q No, and Security Square Mall doesn't appear here, does it?
A No, it does not.
Q And the 4703 Gateway Terrace address that you were both told about and taken to, were you not?
A I'm sorry, say again.
Q The 4703 Gateway Terrace, the address that Mr. Urick questioned you about extensively just moments ago, do you recall that?
A Yes.
Q And that doesn't appear in this column, does it?
A No, it does not.
Q And the Lincoln Park, what you referred to burial site, does that have an address?
A No, it does not.
Q And incidentally you went there, did you not?
A I was taken there, yes.
Q You were taken there by Mr. Urick?
A I was taken by Ms. Murphy.
Q Okay. And you were shown a location,

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correct?
A Yes.
Q And you were told information about that location, were you not?
A A little bit, yes.
Q And that location, sir, was located a good distance from the road, was it not?
A No, it was right off the road.
Q Right off the road. Could you tell us the distance off the road that you were shown and told a body had been buried?
A I was told that the body was buried behind the concrete barriers.
Q And you saw those concrete barriers, did you not?
A Yes, I did.
Q Were you actually taken into the wood and shown an exact spot and told this is where a body was buried?
A No.
Q So, you were just taken up to the area that surrounded by concrete barriers?
A Yes.
Q We call them Jersey walls or the construction industry calls them Jersey walls, are you aware of

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that?
A Yes, Jersey walls.
Q Okay. And you were taken there and then you said the body was buried behind here, correct?
A Correct.
Q And you weren't taken over those concrete barriers, were you?
A No, I was not.
Q There wasn't any ready way to get over the concrete barriers without climbing over them, was there?
A No, I don't remember.
Q You weren't taken to a place, were you?
A I'm sorry.
Q You weren't taken to a place, were you?
A I was taken to that location.
Q Where the Jersey walls are.
A Yes.
Q And the Jersey walls are located immediately adjacent to the road, are they not?
A Yes.
Q And that's where you were then said, what was said to you was that the body was buried beyond here, is that correct?
A That is my understanding.

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Q And, sir, did you explore the terrain beyond the Jersey walls?
AA No, I did not.
Q You could have if you wanted to, couldn't you have?
A Yes.
Q Nobody stopped you from exploring, did they?
A No.
Q And were you taken anywhere from that place that led you to the edge of stream?
A No.
Q Or were you told that a stream meandered back there behind the Jersey wall?
A No.
Q And the body wasn't there when you did this, was it?
A No, it was not.
Q This part of this test that you tell us about you conducted in the fall, did you not?
A Yes.
Q The exact date?
A I don't remember the exact date.
Q And you didn't write it down?
A I wrote it down somewhere, I don't remember the date.

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Q But you don't remember the date, sir. Your definition of fall, sir, includes October?
A Yes.
Q And November?
A Yes.
Q And parts of December?
A I'm not sure.
THE COURT: I'm sorry, I couldn't hear you.
MR. WARANOWITZ: I'm not sure.
BY MS. GUTIERREZ:
Q But it could, could it not?
MR. WARANOWITZ:
A It might be.
Q And parts of September, correct?
A Yes.
Q And your test could have occurred because you don't recall sometime at the end of September?
A I don't remember the exact date.
Q Well, my question, sir, could it occur sometime at the end of September?
A Yes.
Q Any day in October?
A Yes.
Q Any day in November?
A Yes.

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Q And perhaps, but not necessarily a day in early December, is that correct?
A It's possible.
Q And that right now you don't recall the date this test occurred?
A No, I do not recall the date the test occurred.
Q And you may have written it down, but you didn't bring any of that material with you?
A No.
Q And on the day whenever it was during any of the those four months, sir, were you always accompanied by Ms. Murphy or Mr. Urick?
A I'm sorry, could you ask that again?
Q On whatever day it may have been sometime during the month of September, October, November or December that you conducted the test about which you've testified, sir, were you always accompanied?
A By Ms. Murphy.
Q By Ms. Murphy. So, any address that you were asked to conduct a test on was given to you by her?
A Yes.
Q And --
THE COURT: Ms. Gutierrez, may the witness return to the witness stand?

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MS. GUTIERREZ: I'm just going to finish these. I have a couple more addresses.
THE COURT: With regard to the Exhibit 34?
BY MS. GUTIERREZ: Yes.
Q In regard to the address column, sir, you were also given an address of Briar Cliff Road, were you not?
MR. WARANOWITZ:
A I don't recall that address.
Q Well, did you speak to Mr. Murphy -- Ms. Murphy and Mr. Urick after you conducted the test?
A Yes.
Q And did you give them a report of your findings?
A No.
Q You didn't report your findings to them?
A I verbally gave Ms. Murphy my readings as we conducted the test.
Q Okay. So, you don't consider that to be a report?
A (inaudible) reports.
Q And --
THE COURT: Ms. Gutierrez, I'm going to ask the witness -- you may return to the witness stand and at which time you need him to return to the --

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MS. GUTIERREZ: Okay. Thank you, Judge.
THE COURT: To the exhibit then we'll have him do that.
BY MS. GUTIERREZ:
Q Would you be surprised, sir --
THE COURT: Ms. Gutierrez, if you could return to the trial table or --
MS. GUTIERREZ: Well, I need to focus on this. Thank you.
THE COURT: All right. If you're going to use that exhibit.
BY MS. GUTIERREZ:
Q Would you surprised, sir, that Ms. Murphy or Mr. Urick reported to me what the results of your findings were in regard to specific addresses?
MR. WARANOWITZ:
A I am not surprised.
Q And if they did so you of course would have expected them to be accurate as to the addresses, correct?
A Yes.
Q And that wouldn't be a surprise to you, would it?
A No.
Q You'd expect them to accurately tell me what

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addresses they asked you to test about, would you not?
A Yes.
Q And if Briar Cliff Road were in the list that they told me about that would not be a surprise to you, would it?
A I'm sorry, could you ask that again?
Q If Briar Cliff Road, the address you don't remember appeared in their list to me about the addresses they asked you to test that would not be a surprise to you, would it?
A If that address was given to me.
Q You just can't remember whether it was, can you?
A I don't remember exactly where it was.
Q If it appeared in their list it would be fair to say that it was among the addresses that they gave you, would it not?
A Yes.
Q And Briar Cliff Road, any number on Briar Cliff Road doesn't appear in this column, does it?
A No, it does not.
Q Best Buy, whatever it's address or location is, that also doesn't appear as an address, does it?
A No.
Q I70, Interstate 70 Park and Ride doesn't

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appear on the address column anywhere, does it?
A No.
Q And Crosby, if that's a street, road or lane; whatever at Interstate 695, it doesn't appear anywhere in this address list, does it?
A No.
Q Route 40 and Cooks Lane up to Forest Park doesn't appear on this, does it?
A No.
Q And West Hill doesn't appear, does it?
A No.
Q And Forest Park/Park and Ride, it's nowhere in this column, isn't it?
A No.
Q It's not the address of a cell site, is it?
A No, it is not.
Q Forest Park, four blocks east, whatever direction that may be of Security Boulevard is not an address that appears here, is it?
A No, it is not.
Q And Gelston Park, west of Rolling Road doesn't appear in this column, does it?
A No.
Q And Woodlawn High School doesn't appear in this column, is it?

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A No.
Q The address of Woodlawn High School doesn't appear in this column, does it?
A No.
Q You are aware, sir, that Woodlawn High School is around the corner from the headquarters of the Social Security Administration, are you not?
A Yes.
Q And you're aware, sir, based on your own report that Woodlawn High School in your words would trigger 65L, 651A, are you not?
A Correct.
Q And L651A is written on this exhibit tat you prepared in the middle of three differing areas outlined in different colors, are you not?
A Correct.
Q And the high school is the pink A, B or C?
A The pink would be C.
Q And the orange, would that be a correct designation of that color?
A That would be sector A.
Q That would be A and the purple and I note a different color purple then what you described as purple 653, that would be B?
A That would be sector B, correct.

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Q And it would be fair to say, sir, that those areas by those three colors all cover different sizes of geography, would it not?
A Yes.
Q And you would expect, Sir, Woodlawn High School to be within one of those boundaries, would you not?
A Correct.
Q And because it would trigger that cell site, you'd expect it to be there, correct?
A Yes.
Q As 651A appears on this map, does it not?
A Yes.
Q And the address in the column listed as addresses for 651A is 1500 Woodlawn Drive, is it not?
A Correct.
Q And that's the cell site that you've indicated to us that you triggered for the antenna on top of the Social Security building, would it not?
A Yes.
Q And you are aware, Sir, that the building faces Security Boulevard, are you not?
A Yes.
Q And you aware, Sir, that Security Boulevard is a separate and distinct street then Rolling Road?

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A Correct.
Q Now, Sir, you were asked a lot of questions about these maps that you say, again your computer generated State's Exhibit 44 and 45?
A Yes.
Q And one of them, I don't recall which, Sir, perhaps if you look at my copy you could tell us, designates Rolling Road, does it not?
A Rolling Road is not written on this map.
Q Well, you, Sir, testified about Rolling Road though, didn't you?
A I know that that road is Rolling Road.
Q And you know that from your own knowledge, right?
A Yes.
Q But the map you forwarded doesn't say Rolling Road on it, does it?
A No.
Q So, if we aren't you we wouldn't know that Rolling Road appears on that map, would we?
A If you were familiar with the area you would know.
Q If we were familiar with the area and the streets without their names being printed, correct?
A Correct.

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Q You also were asked about a place that appears on one of these maps that you refer to as Gelston Park, do you recall that?
A Yes.
Q Now, Gelston Park doesn't appear, it's not printed on either of these maps, is it?
A It is not printed on these maps, no.
Q And you didn't print it in to designate it perhaps for people who weren't familiar with that location, did you?
A No, I did not note that in.
Q And there's -- your name doesn't appear on this, does it?
A No, my name is not on there.
Q And there's nothing on either of these maps that in fact designate all of the things that the map shows, is there?
A I'm sorry. Could you ask the question again?
Q No. I won't bother. Gelston Park, Mr. Waranowitz also doesn't appear in the address list, does it?
A No, it does not.
Q Now, let me get this straight. The cell site is a location where the antenna actually exists, correct?

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A Correct.
Q So, and what you called the site is that which emanates the signal, correct?
A Yes.
Q The only importance of it, why it needs a name is because it emanates or receives a signal, isn't it?
A Yes.
Q And the addresses you defined that as in this column is the address of essentially the property, the real estate on which the antenna is located, is that correct?
A Yes, that is my understanding.
Q But a cover -- well, it's not your understanding --
MR. URICK: Objection.
BY MS. GUTIERREZ:
Q You've testified to it about as an expert, have you not?
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q The coverage area is an area larger than the cell site, is it not?
MR. WARANOWITZ:
A Yes.

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Q Whether that cell site is a separate tower or placed on an existing structure, correct?
A Yes.
Q The coverage area in regard to 651 would include all the purple area, right?
A Yes.
Q All the orange area, right?
A Yes.
Q And all the pink area, correct?
A Correct.
Q And you would agree that that area is a considerable larger geographical location than the simple address of the cell site, would you not?
A Correct.
Q And the column marked address is only for the purpose of the designating the address of the real estate on which the cell site as listed is located, correct?
A Correct.
Q And in no way indicates that that address is the coverage area for what that cell site ideally is designed to cover?
A Correct.
Q Now, you were asked yesterday, Mr. Waranowitz and you indicated, well this network went up two or

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three years ago, correct?
A Yes.
Q Okay. Was there something hard about that questions?
MR. URICK: Objection.
THE COURT: Sustained.
BY MR. GUTIERREZ:
Q Is there any reason you hesitated to answer?
MR. WARANOWITZ:
A I was listening for more of the question.
Q But there's no dispute that the network is relatively new, isn't that correct?
A That is correct.
Q And you told us that you were in on it from the beginning, correct?
A From -- from before it was launched, yes.
Q Okay. And by launched you mean started, right?
A Yes.
Q Launched meant it was operational, correct?
A Correct.
Q Meaning people with phones who were subscribers could use the network to make sure their phone calls got to where ever it was they were calling, correct?

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A Yes.
Q That's the meaning of the word launching the network, correct?
A Correct.
Q And you were involved in the design, correct?
A Yes.
Q You weren't the only one, correct?
A Correct.
Q And you would agree because you told us yesterday that even today 25% of your time is connected to design, correct?
A Correct.
Q And the design involves a process about which you told us selecting your cell sites are, correct?
A Yes.
Q And in the two or three years from the first time that cell sites were selected some of them have been replaced, have they not?
A There have been a few, yes.
Q And that's because whether you designed those cell sites to be the optimum of cell sites, in some cases it turns out that your design was wrong in that regard, did it not?
A That would not indicate that my design was
wrong.

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Q Your design, sir, was correct from the beginning?
A I'm sorry, was that a question?
Q Yes, it was.
A The network is a changing entity in terms of capacity and coverage. We design for what we need at the time.
Q By coverage, sir, you're using that term in the same way to describe the coverage that is expected to be gotten from the cell site signal, is it not?
A Yes.
Q And by coverage, you're using that term in the same way as we describe to encompass the actual geographical location of the A, B and C sectors, correct?
A Correct.
Q All right. And, sir, you weren't normally on that design that sector, were you?
A No, I worked with team of engineers.
Q Engineers like you, correct?
A Yes.
Q All right. Now, sir, one of the things that you described doing yesterday was troubleshooting, did you not?
A Yes.

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Q And troubleshooting was because there would be a constant, daily borage of complaints from customers, correct?
A There are complaints from customers, correct.
Q That's a daily event, is it not?
A Yes, yes.
Q Even now, is it not?
A Yes.
Q And the complaints from customers would be connected with whether or not they could get their calls through, correct?
A Yes.
Q And to this thing that you call dropped calls, correct?
A Yes.
Q And whether or not they could hear calls being made to them?
A Yes.
Q Sufficiently to participate in the conversation, correct?
A Correct.
Q Now you, sir, testified that AT&T doesn't require a subscriber to use an AT&T phone, correct?
A Correct.
Q A subscriber can use any phone they want, can

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they not?
A Not necessarily.
Q Not necessarily. They have to meet certain requirements, do they not?
A Yes.
Q It has to be a phone of sufficient quality, does it not?
A It would have to have sufficient -- it would have to have the same capability to talk to our network.
Q Well, to talk to your network really boils down to triggering a signal in your cell towers or have that cell tower being able to send a signal to it, does it not?
A Correct.
Q All right. And there are many phones varying in defection that meet that capacity, are there not?
A Yes.
Q Some are manufactured by Motorola, correct?
A Yes.
Q Some are manufactured by Erickson, right?
A Yes.
Q Some are sold by AT&T under other names of the -- not manufactured by AT&T?
A Yes.

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Q Some are manufactured by a company by the name of Nokia, isn't that correct?
A Yes.
Q And Nokia phones just like all other phones come in varying quality, do they not?
A Yes.
Q And they are varying types of phones, are they not?
A Yes.
Q Some are cheaper, some are more expensive?
A Yes.
Q Some have more features then others?
A Correct.
Q And that may run throughout a lot of the phones produced and manufactured by the same manufacturer --
A Correct.
Q Would it not? And AT&T doesn't forbid it's subscribers from employing any phone as long as it can receive the signal, correct?
A Correct.
Q Even if the receipt to that signal might be less strong than another phone, is that correct?
A Yes.
Q And I imagine, sir, based on what you've told

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us that the receipt of signals among phones on your network still varies, correct?
A Yes, it does.
Q And I'm sure, sir, that you and the we that you refer to, your colleagues have an opinion as to what is the best phone to be used in your network, do you not?
A Yes.
Q And what phone is that?
A That would be the Nokia 6160.
Q The 6160. The same phone that your company issues to your engineers, correct?
A Yes.
Q Although you currently use a Motorola, correct?
A Yes.
Q And, sir, in the testing that you do, sir, you're still dealing with complaints of dropped calls, are you not?
A Correct.
Q And some of those dropped call complaints come from customers that are utilizing a Nokia phone, are they not?
A Yes.
Q A Nokia 6160?

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A Yes.
Q Because you can, sir, from your statistical monitoring always determine what phone the customer is using, can you not?
A Yes.
Q Yes, and that is because your computer has the capability to distinguish the signals, correct?
A Correct.
Q Now lets talk about this test that you do, sir. Well, let me make sure, I forgot. So, are we clear that in your experience in your own network on whatever phones you've had experience with, phones perform at different levels.
A Correct.
Q Correct? That's a truism, is it not?
A Could you rephrase that?
Q Well, by saying phones perform at different levels the only performance the phones have to do is receive or send the call, correct?
A No.
Q Well, they have to be able to be heard, correct?
A Yes.
Q And if they're unable to see as the term you've used it, a signal their performance would be

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deemed low, would it not?
A Yes.
Q And if they were unable to receive a signal sent to them, their performance would be deemed low, would it not?
A Yes.
Q And if a signal were sent from a cell site to a poor performing phone the owner of which because of the poor performance could not hear, the signal relay would still be tripped, would it not?
A No, it may not be.
Q But it might be?
A It can be.
Q It can be. And that again would depend on the quality of the signal, correct?
A Yes.
Q And the quality of the phone for which the signal is wasn't handled, correct?
A Yes.
Q Now, that phones perform differently there is an ideal performance for cell phones, is there not?
A Cell phones should perform within certain specifications.
Q Okay. And within those specifications relates to the quality of the radio sound, does it not?

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A Yes.
Q And the ability to make a connection if one chooses to dial a number on the cell phone seeing communication with another number?
A Yes.
Q Whether that number be a land line or another cell phone, correct?
A Correct.
Q And the ability of the phone connection to remain open for however long the use wants it, correct?
A Yes.
Q And for nothing to interfere with the call, correct?
A Correct.
Q And the quality of sound in whatever connection for however long to be sufficient that each party can plainly hear each other.
A Yes.
Q And that there be no interference, correct?
A Correct.
Q But even though the ideal is to meet that standard of performance you would agree that because phones differ all phones don't always perform up to the ideal, correct?
A Correct.

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

A Yes.

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

A An origination test.

Q Okay. And that test occure as a scientific test?

A What do mean by scientific?

Q Well, is there a protocol for it?

A Yes.

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

A Yes, there are.

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

A There can be more to it.

Q Well, it includes that, does it not?

A Yes.

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

A Yes.

Q And when one is doing this origination test

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

A No.

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

A I dialed a code, yes.

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

A Yes.

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

A Yes.

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

A Yes.

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

A Yes.

Q And an actual number, correct?

A Yes.

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

A Yes.

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

A Yes.

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

A Yes.

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

A I'm sorry, could you rephrase that?

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

A No.

Q Anywhere, right?

A No.

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

A Correct.

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

A No.

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

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A I was asked to do that, yes.
Q Okay.
A The process is different.
Q And you, sir, you didn't decide what it was, did you? Your test. Did you make up this test?
A No, I did not make it up.
Q You, sir, consulted with the manual that outlines how this test should be performed, is that correct?
A No, I did not consult with a manual.
Q No, you didn't. And did you consult with anyone else?
A No.
Q And, sir, you of course were made aware that the phone -- you reviewed the billing records of this phone, did you not?
A Yes.
Q And that's how a list of the cell sites appear, is it not?
A Yes.
Q Because the cell sites appear on the record, correct?
A They appear on the billing records I was provided, yes.
Q Okay. And you looked at them before doing

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this test, did you not?
A Yes.
Q And you, sir -- you were aware, sir, that the cell phone to the records you were using still existed, were you not?
A I'm sorry, could you say that again?
Q You were aware at the time you reviewed the records of the specific cell phone that the cell phone attached -- to which that number was attached still existed, were you not?
A I was not aware if that phone was still in use.
Q Did you ask?
A No, I did not.
Q And this phone, 6160 Nokia is a different phone than your Erickson, right?
A Yes.
Q And your experience you believe that they perform comparably, right?
A Yes.
Q In an ideal way, correct?
A In the real world they perform comparably.
Q And by comparably that doesn't mean exactly the same, does it?
A No, it does not.

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Q And, sir, this phone isn't activated, is it?
A I don't know.
Q As far as looking at it, it appears to be capable of functioning in an ideal way, does it not?
A Would do mean by that?
Q By looking at it you can tell it's capacity for functioning, can you not?
A I can not tell.
Q Well, you just told us that based on your experience a phone such as this would perform comparably to the phone you used at whatever day you used it to perform what you call, your origination test.
A Yes.
Q Did Ms. Murphy advise you that this phone was available?
A No.
Q And if it's not functioning, sir, it would be a very simple matter to activate it, would it not?
A Yes.
Q And you, sir, you can't tell by looking whether or not it was dropped anywhere?
A No, I can not.
Q By anyone, can you?
A No.

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Q Whether it was dropped during manufacture?
A No.
Q Or packaging?
A No.
Q Or shipping?
A Nope.
Q Or prior to sale while it sat in the store?
A No.
Q You've never examined this phone to see if it's capable of functioning, have you?
A No, I have not.
Q Or how it acts once it's turned on, if it could be turned on, have you?
A No, I have not tested it.
Q You could have, couldn't you?
A I was not aware that I could.
Q Well, you could have though physically, could you have not?
A I could do that, yes.
Q And you could have back then, could you have not?
A I could have.
Q Back then, whatever day it was this phone call, you knew all that you told us about different phones might act differently, did you not?

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A Yes.
Q That's not knew knowledge you've gained since the time you did this test, is it?
A No, it's not.
Q And you designed the test based on what Ms. Murphy told you, correct?
A Yes.
Q You designed the test yourself, correct?
A Yes.
Q And you of course advised them that, well, we better use the same phone since phones perform differently, did you not?
A No, I did not.
Q So, you of course asked where was the phone attached to the number, the records of which you were asked to review, did you not?
A I did not ask.
Q You didn't, exactly. You didn't even suggest that?
A No, I did not.
Q And the phone you tested, this origination test to which you looked at not a manual, but the how you did it was an Erickson phone, was it not?
A Yes it was.
Q Your own Erickson phone, was it not?

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

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Q Correct, on -- is there a do north on this map?
A Yes.
Q Is north to the top?
A That is correct.
Q So, the pink would be the western edge of the map, correct?
A Correct.
Q All right. And the other cell site that it could trigger would be L698A, is that correct?
A That is correct.
Q So, your report to them said, well if I went and used a cell phone at this address you told me about either it would put a signal over here, correct?
A Correct.
Q Or a signal over here, correct?
A Correct.
Q And, in fact, as to each address they gave you, you reported similarly that it would trigger two different cell sites, one or the other, correct?
A Correct.
Q And this was after you did the test, correct?
A No, that was during the test.
Q During the test as you reported them to her, correct?

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A Correct.
Q And during the test as you were reporting ongoing results, Ms. Murphy didn't say, oh, that's not good enough, did she?
A She did not say anything like that.
Q Nothing like that, right? She didn't suggest to you other things that you could do, did she?
A No.
Q She didn't suggest to you that there should be or that you should find a way to report to her that a certain address would only trigger one cell site, did she?
A No, I explained --
Q As to --
MS. MURPHY: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q As to Rolling -- so, you explained it to her, your results?
MR. WARANOWITZ:
A Yes.
Q As they went along.
A Yes.
Q And you recall that in your reporting, would you not?

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A Yes.
Q And you explained it to her in great deal, did you not?
A I explained my results.
Q And you explained to her more then the simple reporting of a cell phone at Rolling Road at I70 triggers cell site L651C or L698A, did you not?
A Yes.
Q Your conversation was more then that with Ms. Murphy, was it not?
A Yes.
Q You answered any questions she had, did you not?
A Yes.
Q And that was part of your reporting and you explaining the test as it went along?
A Yes.
Q And you so reported and explained to her after each single address, did you not?
A I reported it at the address.
Q Now, sir, your map that you tell us you carefully prepared doesn't indicate where Rolling Road at I70 exists, does it?
A No, it does not.
Q There's not a place that flags it either on

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33A, the underlying map, right?
A No.
Q And certainly not on the overlay?
A No.
Q And on the map, the address 1208 Macado isn't flagged either?
A Correct?
Q Nor is Security Square Mall?
A Correct.
Q And nor is 4703 Gateway Terrace?
A Correct.
Q Or --
A Oh, I put Gateway Terrace on there a few minutes ago.
Q You put that on yesterday or this morning.
A This morning.
Q This morning. It wasn't on the map in it of itself?
A No.
Q On either A?
A No.
Q Or B?
A No, it was not.
Q And Briar Cliff Road, without an address, that's not indicated on A or B either?

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A No.
Q Or Best Buy, whatever it may be located?
A Nope.
Q And Crosby, where ever that is?
A No.
Q And I70 Park and Ride?
A No.
Q Cooks Lane up to Forest Park?
A No.
Q And Forest Park, four blocks east of Security Boulevard?
A No.
Q Nor put Gelston Park?
A I put Gelston Park on this morning.
Q You put it on.
A That's correct.
Q It didn't appear independently on the 33A map that you said you, yourself drew up?
A No, it did not.
Q And it doesn't appear on the overlay?
A No.
Q Or Woodlawn High School doesn't appear on the map?
A I'm not sure where that is.
Q You didn't make an independent designation

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where it was before you testified, did you?
A Well, I know where it is.
Q That's not my question, sir. This isn't a quiz.
MR. URICK: Objection.
THE COURT: Ms. Gutierrez.
BY MS. GUTIERREZ:
Q Did you put a designation of where Woodlawn High School was --
MR. WARANOWITZ:
A No.
Q On the underlaying map?
A No.
Q Did you put such a designation on the overlaying --
A No.
Q You also prepared?
A No.
Q Were you ever asked to do so before today?
A No, I was not.
Q No. If I may have a moment, Your Honor.
THE COURT: Certainly.
MR. WARANOWITZ: Can we take a break, Your Honor?
THE COURT: Pardon.

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

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MS. GUTIERREZ: I'm a terrible estimate of time.
THE COURT: I have Counsel that would like to do a postponement and --
MS. GUTIERREZ: It's just that because of this witness I know that I'm not rushing with it. So, I --
THE COURT: No. You're not asked to.
MS. GUTIERREZ: I don't think I'm going to be finished by then.
THE COURT: By 11:30?
MS. GUTIERREZ: No, I don't.
THE COURT: Okay. All right.
MS. GUTIERREZ: So, if you want to --
THE COURT: To take the postponement request?
MS. GUTIERREZ: That's fine.
THE COURT: Do you have a question, issue?
MR. URICK: She wanted to know that means we're going to take a brief break? She would like one.
THE COURT: Yes. We all can take a brief break.
MS. GUTIERREZ: Okay.
THE COURT: And I'll have Counsel -- and I'll have Counsel bring up -- all right.
(Counsel returned to the trial tables and

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

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

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

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lunch.
THE COURT: Perhaps we ought to ask him that rather than just arbitrarily make a decision. Would note that from 12:30 to two o'clock this Court sits part of a three judge panel with Judge Quarles and Judge Cannon to review other cases involving sentencing. So, I am not available although the rest of you will be at lunch I will be part of a three judge panel from 12:30 to two o'clock and so we can take a longer lunch break, but we'd have to accommodate this Court in that fashion. That's why I suggested --
MS. GUTIERREZ: Judge, my only concern -- I'd object to further questioning the jury. Mr. Urick again, knew this ahead of time, we didn't know. There was ample opportunity. We've already brought it to this juror's attention. I think that we are rightfully concerned and not make more of it then there is and to put the juror at ease as to whatever concerns the juror may have. We've had a conversation with him, we've inquired, we've asked and we gave him a specific alternative.
Now, in light of what's happened in this trial is not being able to move expectations all the time because I think that they're unreasonable to try to presume what will happen. You know, I'd object to any

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further questioning of the juror. We've already given the juror a way out and, you know, reasonably I think it is likely that if we come back at 1:30 or two that we would finish this witness in time for him to get his plane, but frankly, Judge that was a decision that they made last Thursday when they chose not to calla witness who had these constraints knowing that they were calling a witness who would take forever and they made that. You know at some point they've got to live with it and I would object to any further interference in regard to this juror who is now counted on and as to what it is he can do.
THE COURT: Mr. Urick, Ms. Murphy and Ms. Gutierrez, this Court has attempted, I think I've bent over backwards to accommodate you both with your personal schedules, with the Court's schedules, with the witness's schedules and I would ask in the future where you are aware of some scheduling difficulty and the Court makes a special effort to accommodate someone, whether that be your witness, a juror or anyone else that you provide the Court with all the information you have available, so that when I make a decision I don't have to continually change it. That would have been helpful this morning when I was talking to the juror I even asked, do you have any other

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questions, but in light of that I'm going to ask that the juror be -- the jury be brought back in and I will speak to juror number two whether it differs to him whether we break at 11:30 to 1:30 or 12:30 to 2:30.
(The jury returned to the courtroom.)
THE COURT: Juror number two, if you would just step up here for just one moment. Will the rest of the jurors please have a seat as you come in. With the regard to the scheduling issue we just have one question for you. Does it matter if you break at -- if we break at 11:30 versus 12:30?
JUROR: No.
THE COURT: Okay. Very well, you may have a seat with everyone else. We are going to continue.
MR. URICK: Can I ask the Deputy to bring the witness in at this time?
THE COURT: Yes.
MR. URICK: Can you ask Mr. Waranowitz to step back in?
THE COURT: Thank you. One moment. All right. You may proceed, MS. Gutierrez.
BY MS. GUTIERREZ:
Q Yes, Mr. Waranowitz, we were talking about what has been referred to as the burial site, do you recall that?

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MR. WARANOWITZ:
A Yes.
Q And that's where you were taken to the area right off the road that a concrete Jersey wall barriers, correct?
A Yes.
Q And, sir, you recall also that you told us this morning that because of the things that might effect the strength of the signal and as to how is was sent or received that winter is generally a better time to make a call than summer, correct?
A Correct.
Q And that seasonal difference, sir, you attributed to that in winter trees that have leaves on them that fall are likely not to have leaves on them, correct?
A Correct.
Q And so, therefore the leaves couldn't be interference, correct?
A Correct.
Q Now, sir, when you went to that place and again, to make sure, you were on the road side of the Jersey wall barriers, correct?
A Yes.
Q And you were asked to conduct an origination

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test, were you not?
A Yes.
Q And your origination test was essentially causing a call to be made, correct?
A A test call.
Q A test call, right?
A Yes.
Q But a call, right?
A Yes.
Q Meaning a call to be that would emanate from your phone that you were using to conduct that test to have a call go out from your phone to seek whatever signal it would seek, correct?
A Correct.
Q Now, sir, have you ever driven through Lincoln Park before?
A Yes, I have.
Q And, sir, you are familiar with the road that goes through there, are you not?
A I am familiar with the coverage on the road, yes.
Q No, sir. That wasn't my question.
A I am familiar with the road.
Q I didn't ask you about the coverage zone, I asked you, were you familiar with the road.

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A Yes.
Q And what's the name of the road?
A I'd have to look it up.
Q So, sir, whatever familiarity you have with the road you don't recall its name?
A That is correct.
Q That road, however familiar you are with it, runs the breath of Lincoln Park throughout Baltimore City, does it not?
A I think so, yes.
Q And, sir, are you aware of the difficulty any cell phone user has regardless of phone, regardless of network of actually speaking on the phone while one is in Lincoln Park?
A Yes.
Q And are you aware of the difficulty any cell phone user, regardless of the phone, regardless of what network is utilized, has in receiving a phone call if they at the time are in Lincoln Park?
A I'm sorry, could you rephrase that?
Q You are aware, are you not, of the difficulty any cell phone user no matter what cell phone is used in actually or what network is utilized in actually receiving a call while one is in Lincoln Park?
A I don't know about other networks.

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Q You only know about your network?
A Yes.
Q And you are familiar with the difficulty that your network has for its users, are you not?
A Yes.
Q And that's not a surprise to you, is it?
A No, it is not.
Q Because the terrain in Lincoln Park is difficult, is it not?
A Yes, it is.
Q It's difficult in fall?
A Yes.
Q It's difficult in summer?
A Yes.
Q In spring?
A Yes.
Q And, in fact, it's difficult in winter, is it not?
A Yes, it is.
Q The terrain in Lincoln Park goes to terrain that is much, much higher than the terrain of the road who's name you don't remember, is it not?
A Yes.
Q And there's a major stream or waterway that runs through Lincoln Park, is there not?

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A Yes.
Q And you're aware that the banks of the waterway because the terrain is uneven is often times below what we call street level, referring to the level of the street who's name you don't remember?
A Yes.
Q And none of that information is a surprise to you, is it?
A No.
Q And notwithstanding that, your network has been launched now for maybe up to three years. Lincoln Park as a coverage area, it's always been difficult, has it not?
A That is true.
Q All year long?
A Yes.
Q Regardless of what phones people use?
A Yes.
Q And that that difficulty has persisted whether the phone being used is the one making the call or the phone being used is the one receiving the call, isn't that correct?
A Yes.
Q And, sir, that existed back in fall when you conducted your origination test, did it not?

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A Yes.

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

A Between what time frame?

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

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

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

A Yes.

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

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

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

A No.

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

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A No, I did not.

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

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

Q Was the date of the phone calls?

A Yes.

Q That's what you were told?

A Yes.

Q And by Ms. Murphy?

A Either Ms. Murphy or Mr. Urick.

Q You accepted that information, did you not?

A Yes.

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

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

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

A Yes.

Q Not a -- your phone?

A Correct.

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

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A Right.

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

A Yes.

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

A From an independent, I mean from another source?

Q From any source, sir?

A No.

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

A No, I did not?

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

A No.

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

A No.

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

A I don't know where their source was.

Q And did you hear that name?

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A I have heard the name.

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

A Yes.

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

A No.

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

A Yes.

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

A Yes.

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

A That's my understanding, yes.

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

A Yes.

Q And only from that information?

A Yes.

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

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Baltimore area map book, is it not?
A Yes.
Q It in fact, contains this same cover as the one you are looking at, does it not?
A Yes it does.
Q And it's page are also the same?
A I don't know.
Q You carry that book with you?
A Yes, I do.
Q As part of your job?
A Yes.
Q Were you able to locate places with which you might not be familiar?
A Yes.
Q And you use it often, do you not?
A Yes.
Q And you're aware that you're not the only person that might carry map book with them, are you not?
MR. URICK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q Is that map book issued to you by AT&T?
MR. URICK: Objection.
THE COURT: Sustained.

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BY MS. GUTIERREZ:
Q The apartment complex -- you are familiar with the road, Security Boulevard, are you not?
MR. WARANOWITZ:
A Yes.
Q And you are familiar that the road by the name of Windsor Mill Road does not intersect the Security Boulevard, are you not?
A Yes.
Q You are aware that Windsor Mill Road runs at a distance in a parallel fashion to Security Boulevard, are you not?
A I don't know the extents of Windsor Mill off hand.
Q Windsor Mill Road is not the name of the road that you were on off of which your Jersey Wall barriers are, is it?
A No, I was down in Lincoln Park.
Q Down in Lincoln Park and from what you know of Windsor Mill Road it's up above Lincoln Park, is it not?
A Yes it is.
Q At least on that end of it, correct?
A It is higher, yes.
Q And you are aware that north Forest Park is a

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road that is connected at one end to Security Boulevard and at another end it continues to go through the intersection at Windsor Mill Park, are you not?
A I think so.
Q And so it runs perpendicular to Security Boulevard?
A Yes.
Q And perpendicular to Windsor Mill Road?
A Yes.
Q And you are aware that north Forest Park Avenue does not run through Lincoln Park, are you not?
A I'd have to check on that.
Q You'd have to check you own maps?
A Yes.
Q And could you now?
A Forest Park Avenue does not appear to run through Lincoln Park.
Q And that's according to your knowledge, correct?
A Yes.
Q A map upon which you rely almost on a daily basis?
MR. URICK: Objection.
THE COURT: Well, Mr. Urick, you didn't object to him using the map, so why don't we have the

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

MR. WARANOWITZ: I believe it was.

THE COURT: Very well. Thank you very much.

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

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

BY MS. GUTIERREZ: Thank you, Your Honor.

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

MR. WARANOWITZ:

A Yes.

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

A Yes.

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Q And that it is located on Woodlawn Drive?

A I'd have to verify that.

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

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

MS. GUTIERREZ: Objection.

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

BY MS. GUTIERREZ: Thank you.

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

MR. WARANOWITZ:

A Woodlawn Drive?

Q Yes, sir.

A Woodlawn High School?

Q Yes, sir.

A I've located it.

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

A It appears to be, yes.

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

A Yes.

Q The same map upon which you rely, correct?

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A Yes.

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

A What road was that?

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

A Right, Dogwood intersects Woodlawn Drive.

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

A Yes.

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

A Yes.

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

A Yes.

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

A I believe so, yes.

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

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MR. URICK: Objection.

THE COURT: Overruled.

MR. WARANOWITZ: It is not far.

BY MS. GUTIERREZ:

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

MR. WARANOWITZ:

A I was taken to Woodlawn High School.

Q And did you do an origination test there?

A Yes.

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

A Yes.

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

A Yes.

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

A It was either 651A or 651C.

Q 651A, would that be the orange?

A Yes.

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

A Correct.

Q Is that correct?

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A Correct.
Q Either one or the other, right?
A Yes.
Q And, sir, the address on that cell phone tower, the same cell phone tower would be the same whether it was orange, right?
A Yes.
Q Or pink, right?
A Yes.
Q The cell phone tower's address is -- what you are referring to now is your copy of this blown up version of State's Exhibit 34, is it not?
A Yes.
Q And the cell phone, cell site address is 1500 Woodlawn Drive, is it not?
A Yes.
Q And that same address is whether or not the call was made by a cell phone in 651A, right?
A Yes.
Q Or whether or not it was made in 651C, is that correct?
A Yes.
Q And if it were made in A on your map which you prepared it includes more than one designated neighborhood, does it not?

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A I'm sorry, could you rephrase that?
Q On your map which you prepared, if it were originated from 651A, A is the orange?
A Yes.
Q All right. If the cell phone was located in 651, that area would include several different neighborhoods, would it not?
A Neighborhoods, yes.
Q Yes. And those neighborhoods would include several different defined subdivisions and listings of different neighborhoods, would it not?
MR. URICK: Objection.
THE COURT: Do you whether that would include several different neighborhoods in that area or not?
MR. WARANOWITZ: Yes it would.
BY MS. GUTIERREZ:
Q And that would also be true --
THE COURT: Overruled.
BY MS. GUTIERREZ:
Q If the cell phone, your Erickson cell phone were used to make a call if it had been located anywhere in 651C, that's the pink, right?
MR. WARANOWITZ:
A Right.
Q And that whole area, that pink also includes

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several different neighborhoods, does it not?
A Yes.
Q Those being residential, correct?
A Residential and commercial.
Q And commercial, but does include residential, correct?
A Yes.
Q And includes a broader geographical range then does A, does it not?
A The coverage does go off the map.
Q So, in regard to what you call coverage, again, you are referring to the coverage that one would expect in an ideal situation to include an area much larger than just the location of this cell site, correct?
A Yes.
Q And the coverage area, although this be the ideal that you drew for us to help you explain, in reality doesn't look like this, does it?
MR. URICK: Objection.
THE COURT: Overruled.
MR. WARANOWITZ: It doesn't look like that, no.
BY MS. GUTIERREZ:
Q Now, sir, in regard to the apartment building

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that's located near the intersection of Windsor Mill Road and Forest Park Avenue, you call that apartment complex?
MR. WARANOWITZ:
A No, we call that Govins Manor.
Q Okay. You recalled that one, correct?
A Yes.
Q The cell site are antennas on top of the apartment complex, correct?
A Yes.
Q And the apartment complex contains more than one building, does it not?
A I don't recall.
Q But the antenna is on top, is it not?
A Yes.
Q And, sir, do you recall how high, how many stories the apartment complex is?
A I don't recall.
Q You didn't make a notation of that, did you?
A No.
Q And, sir, the apartment complex upon which your site antennas are covers almost, in addition to other areas, almost the entirety of the western edge of Lincoln Park, does it not?
A Correct.

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Q Now that coverage area would exist whether or not it actually covers, would it not?
A I understand your question.
Q Well, you and your company designate what under ideal circumstances that cell site, wherever it may be, should cover in three directions, correct?
A We design within consideration of the terrain. We do not design to an ideal diagram that I demonstrated here.
Q And so the original design of the network would have expected that that was the best location for the site to cover, would it not?
A Yes.
Q And notwithstanding that hopeful expectation, actual coverage, meaning receipt and sending of calls throughout Lincoln Park still remains difficult, does it not?
A Yes it does.
Q And that's because of the terrain, correct?
A Yes.
Q And that's in spite of your expectation that a tower on an apartment building of some undetermined height would provide adequate coverage for an area that you knew to designated as Lincoln Park, correct?
A Well, we do take into consideration the

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limitations of a cell site system.
Q Sir, my question was not withstanding your expectation in the design of your network, that you were selecting the optimum site for your cell tower to receive and send cellular signals seen, to be seen by all manner of cellular phones that the coverage area designated was expected to cover what you so designated. The difficulties in sending and receiving phone calls throughout the coverage area that includes the designated parts of Lincoln Park continue to problematical, do they not?
MR. URICK: Objection.
THE COURT: Sustained. You do not have to answer that question and Counsel, if you would like to restate it and phrase it, not in a compound fashion and in a different tone the Court might consider it.
MS. GUTIERREZ: I appreciate that offer, Judge, but I will pass.
THE COURT: Very well.
BY MS. GUTIERREZ:
Q Mr. Waranowitz, in regard to whatever validity your test has, all it involved was your attempt to calls to be made, lets take the Jersey wall area. A call to be made from a particular location, correct?

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MR. WARANOWITZ:
A Yes.
Q And then your test included notating what cell site tower or cell site it triggered when you made that call?
A Yes.
Q And that was on your Erickson phone, correct?
A Yes.
Q Under circumstances of terrain or weather or leaves that you didn't investigate.
A Yes, with an explanation.
Q Okay. You just showed up at the location you were shown to, right?
MR. URICK: Objection.
THE COURT: Objection to the last question or to the previous witness not being able to complete his answer to the last -- the previous question.
MR. URICK: Not being able to complete his answer.
THE COURT: All right. First, Mr. Waranowitz, you said yes with an explanation. Can you complete your explanation?
MR. WARANOWITZ: Yes.
THE COURT: Go right ahead.
MR. WARANOWITZ: We do not take weather into

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consideration in our network design.
BY MS. GUTIERREZ:
Q So the answer to my question is yes, you didn't do anything to match any conditions to any date, correct?
MR. WARANOWITZ:
A No, I did not.
Q And you didn't even attempt to do so, did you?
A No, with an explanation.
Q And you didn't make --
MR. URICK: Objection.
THE COURT: Well, Mr. Waranowitz, one moment, Counsel. What is your explanation?
MR. WARANOWITZ: The 689B is the strongest and in most cases the only site that gets in that area regardless of where you are located. Only 689B gets into that burial area strong enough to make a phone call.
THE COURT: I'm sorry, I didn't hear the end of that.
MR. WARANOWITZ: Strong enough to make a phone call.
THE COURT: Strong enough to make a phone call. Very well, your next question.

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BY MS. GUTIERREZ:
Q So, if you can't reach that cell site you're not able to make a cell phone call, right?
MR. WARANOWITZ:
A That is correct.
Q And, sir, as you've told us before, different phone perform differently, correct?
A Yes.
Q And part of what that perform differently in, is related to what you have referred to is the ability of the phone to see the signal, correct?
A Yes.
Q The seeing of the signal refers to the signal that emanates from the tower, correct?
A Yes.
Q And that varying phones of varying quality would be able to see or not see the phone, correct?
A Correct.
Q And the difference in phones might mean that at sometimes a certain phone might see a signal, correct?
A Yes.
Q At other times that phone might not see the same signal it was able to see at some other designated time?

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A Time probably wouldn't be a factor.
Q Because time isn't a factor you, of course, made no effort to conduct your test when the alleged calls that you were conducting this test to make an opinion actually occurred, did you?
A I'm sorry, could you say that again?
Q You didn't attempt to construct your test according to the times that your own phones records indicated certain calls were made, did you?
A My phone records?
THE COURT: Mr. Waranowitz, if you can't answer a question say, I do not understand the question, I'm sorry, I can't answer the question and then Counsel will rephrase the question, okay? At this point I assume you can't answer the question?
MR. WARANOWITZ: I don't understand the question.
THE COURT: You don't understand the question. Very well, your next question.
BY MS. GUTIERREZ:
Q When you reviewed the phone records of the certain cellular phone, did you not?
MR. WARANOWITZ:
A Yes.
Q And you understood that those phone records

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belonged to an AT&T wireless customer, did you not?
A Yes.
Q Can I see the file? I think they're 31. Yes. Thank you. May I approach the witness?
THE COURT: Yes, you may.
BY MS. GUTIERREZ:
Q I'm going to show you what's already been marked as State's Exhibit 31. Those are the phone records that you reviewed, are they not?
MR. WARANOWITZ:
A They appear to be, yes.
Q And those phone records are produced for the company you work for, right?
A Yes.
Q And they indicate there the phone records for a certain cell phone number, do they not?
A Yes.
Q And they indicate that that phone is billed to an account number with the name Balial Alned, does it not?
A This does show that.
Q Okay. And the phone number to which these records refer is listed as area code, 443-253-9023, does it not?
A Yes it does.

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Q And attached to those pages, sir, are three pages on which are listed: dates, times, duration of call, are there not?
A Yes.
Q And you expect based on your experience for those records to be accurate, do you not?
A Yes.
Q And you're aware of these records as part of the way to do your so called, origination test, were you not?
A Yes.
Q And were you asked to conform your test in any way to the times in which calls were alleged to have been made?
A Time.
Q Do you not understand that question, sir?
A Please rephrase it.
Q Were you asked by anyone to conform your test, i.e., the structure, your test in a way that conformed to the information concerning actual calls that were made?
A No, I was not.
Q And you didn't do so, did you?
A No.
Q And you were not asked to structure your test

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

A No.

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

A No.

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

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

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

A Yes.

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

A Yes.

Q Not a Nokia phone, correct?

A Yes.

Q Of any model, correct?

A Yes.

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

A Yes.

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

A No, it can not.

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

A Yes.

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

A It did.

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

A Correct.

Q On whatever day you did something with your

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cell phone, correct?

A Yes.

Q You can't tell us what another cell phone did on any date, can you?

A I can tell some information.

Q You can tell us what you would expect a cell phone to do if it was in a certain place, correct?

A Yes.

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

A No.

Q Whether some other cell phone that was a Motorola was involved, correct?

A I'm sorry, say that question again.

Q Whether or not the cell phone involved was a Motorola, correct?

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

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

A Yes.

Q And based on what your cell phone did or does you'd expect all other similar Ericksons to act the same way, right?

A Yes.

Q If they were in the same place, correct?

A Correct.

Q But notwithstanding, notwithstanding your

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

A Yes.

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

A Yes.

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

A Yes.

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

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

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

A Yes.

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

A Yes.

Q But it may not, correct?

A Yes.

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

A Yes.

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

A Yes.

Q Or the southern most portion?

A Yes.

Q Correct? Or the middle?

A Yes.

Q Or the western most edge?

A Yes.

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

A Yes.

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

A Yes.

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

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A No.
Q Did you hesitate (inaudible)?
A Yes, I did.
Q But your answer is no, isn't it?
A My answer in no, I can not tell where a cell site -- a cell phone is when it originates a call based on the billing records.
Q And your test can't tell us where the cell phone was physically when the call from the line was made?
A No, it can not.
Q And it can only tell us that where ever it was, when it made this call that it triggered the signal that you've located as cell site L651C, correct?
A Correct.
Q And 651C would be the purple blob on the right hand side --
A No.
Q Of 651?
A No.
Q It would be the pink?
A Correct.
Q Okay. B is the purple, right?
A Yes.
Q So that that cell phone, that was utilized in

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describing call one could have been anywhere, correct?

A Yes.

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

A Yes.

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

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

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

A Yes.

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

A Correct.

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

A No, it can not.

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

A Correct.

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

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A Correct.

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

A Yes.

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

A No, I have not examined that particular phone.

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

A No, I did not.

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

A Yes.

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

A Yes.

Q And that includes how it sees signals, correct?

A Yes.

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

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outside of what one it expects it to perform, correct?
A Yes.
Q And some phones, although it may come from the same manufacturer's batch and model number, some phones might see a signal and other phones might not, correct?
A Correct.
Q And if a phone doesn't see a signal then it doesn't trigger, correct?
A Correct.
Q And whether a phone is a good performance phone or a bad performance phone doesn't add to your ability to tell where it was when it sent out a signal, does it?
A No.
Q And your test can't help us with that, can it? Can it?
A I disagree.
Q Sir, your test -- lets deal with 651, correct? And lets us assume for the purpose of this question, that the cell tower is located in the middle of the bottom circle of the five, okay? Can you assume that?
A Yes.
Q All right. If a cell phone is physically

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located in it's entirety, somewhere inside the geographical area outlined and what appears in the hot pink. That's L5 -- 651C, right?
A Yes.
Q You would expect that cell phone to trigger that signal inside the five, correct?
A Correct.
Q And for your records to be able to tell us that, correct?
A Yes.
Q But your records, based on receipt of the signal can't tell us exactly where the cell phone was when it made that, can it?
A No, it can not.
Q And it can't tell us, for instance, if it's a good performance phone, correct?
A No.
MR. URICK: Objection.
BY MS. GUTIERREZ:
Q Or a bad performance phone, correct?
MR. WARANOWITZ:
A No.
Q And from your expertise, what the records can tell us is that you would expect the phone that made the call, that triggered the signal inside the five to

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be located somewhere with it appears pink, right?
A Yes.
Q But no way can it tell us exactly where it was, can it?
A No.
Q Or give us an address to name the place where the cell phone was, correct?
MR. URICK: Objection.
THE COURT: This question has been asked and answered and Mr. Waranowitz I'll let you answer it one more time and your answer to that question is, it can't give you an address of where the phone was, can it?
MR. WARANOWITZ: No, it can not give you an address of where the phone was.
THE COURT: Very well. Your next question.
BY MS. GUTIERREZ:
Q On any day, right?
MR. WARANOWITZ:
A On any day.
Q Now, sir, when you made the origination test you said you caused a phone call to be made, correct?
A Yes.
Q You didn't have to dial the phone numbers into the phone correct?
A I dialed a code.

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

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answer a yes or no and you don't have to say with an explanation, just answer the question would be fine.
MR. WARANOWITZ: Yes, ma'am.
THE COURT: You may now provide your answer.
MR. WARANOWITZ: The phone number that you are dialling on a cell phone does not effect what cell site you originate on, whether it's long distance, local or your voice mail. It does not effect how you access that cell site.
BY MS. GUTIERREZ:
Q Well, sir, so the answer to my question is no, you weren't asked to dial these numbers?
MR. WARANOWITZ:
A No, I was not asked to dial those numbers.
Q And you didn't, did you?
A No.
Q You didn't dial call number one to that number, did you?
A No, it was not necessary.
Q And you didn't dial -- I didn't ask you that, sir.
THE COURT: Ms. Gutierrez.
BY MS. GUTIERREZ:
Q Did you dial --
THE COURT: Ms. Gutierrez, one moment. Your

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answer, sir, was, I was not asked to do that, is that what you said?
MR. WARANOWITZ: That is correct. I was not asked to do that and it is not necessary to do that.
BY MS. GUTIERREZ:
Q It's not necessary to conduct your origination test, correct?
THE COURT: Do you understand the question?
MR. WARANOWITZ: Could you ask that again please?
BY MS. GUTIERREZ:
Q You answered it wasn't necessary to dial the number I asked you if you dialed correct, right?
MR. WARANOWITZ:
A Right.
Q And your answer was you didn't dial it, right?
A No.
Q Well, did you dial it or didn't you?
A No, I did not dial it.
Q All right. And then you said you needed to explain why not, correct?
A Yes.
Q And you said it wasn't necessary, right?
A It was not necessary to dial those specific

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phone numbers.
Q So, your answer to my question is, yes. You then said, it wasn't necessary, right?
MR. URICK: Objection.
THE COURT: The objection is sustained. Mr. Waranowitz, we're sitting here, why don't you tell us why it wasn't necessary.
MR. WARANOWITZ: I just did.
THE COURT: No, tell us why it wasn't necessary for you not to dial the numbers. Ms. Gutierrez is asking you that question, if you could just answer it.
MR. WARANOWITZ: It is not necessary to dial those phone numbers because they do not effect what cell site you originate on.
THE COURT: All right. Very well. Next question.
BY MS. GUTIERREZ:
Q So, the only impact would have been to your origination test, right?
MR. WARANOWITZ:
A Impact?
Q Of dialing or not dialing the numbers would have been to your origination test, correct?
A I'm sorry, I don't understand.

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Q Mr. Waranowitz, lets go back to the triangular --
MR. URICK: Objection.
BY MS. GUTIERREZ:
Q Up here on cell site 651, correct?
THE COURT: The objection is overruled. The witness has indicated he does not understand Counsel's question, so Counsel may clarify the question and Mr. Waranowitz, if you would follow her direction and again, if you don't understand her question, just say, I do not understand the question.
MR. WARANOWITZ: Yes, Your Honor.
THE COURT: All right. Very well.
BY MS. GUTIERREZ:
Q The test that you performed, you performed it you told us in may different locations, correct?
MR. WARANOWITZ:
A Yes.
Q And the test that you performed was the same at every location, was it not?
A Yes.
Q And it was always performed under your phone, correct?
A Yes.
Q Your Erickson phone, correct?

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A Yes.
Q Not a Nokia, correct?
A Correct.
Q Not a Nokia of this certain model, correct?
A Correct.
Q And the purpose when you performed that test was to determine when you performed the test on the day that you did so, what if any cell site it would signal, correct?
A Yes.
Q It was the only purpose of your test, correct?
A Yes.
Q Now, you never dialed the number, 869-9498 --
MR. URICK: Objection.
BY MS. GUTIERREZ:
Q Did you?
THE COURT: Overruled.
MR. WARANOWITZ: No, I did not dial that number.
BY MS. GUTIERREZ:
Q And you weren't asked to do so, were you?
MR. WARANOWITZ:
A No, I was not asked to do so.
Q By anyone?

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A By anyone.
Q But when you didn't dial 340-7374, did you?
A No.
Q And if you would look at your sheet, you didn't dial the phone number listed in four, did you?
MR. URICK: Objection.
MR. WARANOWITZ: No.
THE COURT: Overruled.
BY MS. GUTIERREZ:
Q Or in five?
MR. WARANOWITZ:
A No.
Q Or in six?
A No.
Q Or in seven?
A No.
Q Or in eight?
A No.
Q Or in nine?
A No.
QQ Or in twelve?
A No.
Q Thirteen?
A No.
Q Seventeen?

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A No.
Q Eighteen?
A No.
Q Twenty-two?
A No.
Q Twenty-three, twenty-four, twenty-five?
A No.
Q Twenty-six?
A No.
Q Thirty?
A No.
Q Thirty-one through thirty-four?
A No.
Q You were never asked to dial any of those numbers, correct?
A Correct.
Q And you did not do so, correct?
A Correct.
Q And you didn't dial any of your calls at any of the locations you were taken by Ms. Murphy at any of the specific times listed in call time, were you?
A No.
Q No. After you completed all of the tests at the locations that don't appear on the chart, after you completed them you had reported all of your findings to

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

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

MS. GUTIERREZ: The courtroom will be locked again?

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

MS. GUTIERREZ: Thank you.

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

(The jury was excused from the courtroom.)

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

MR. WARANOWITZ: Yes.

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

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

MR. WARANOWITZ: Yes, Your Honor.

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

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

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

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

That has nothing to do with you, but I'd ask that common courtesy be afforded the witness and I'd ask that of all witnesses that come into this Court. However, you have absolute right to cross examine the witness and I'd ask that you continue to do that, but I would just ask that you be mindful of those things and I would ask that all of us be mindful of common courtesy. Not only with the witnesses, with the jurors and with each other, and with that this Court will stand in recess until 2:15.

BAILIFF: All rise.

(Lunch recess.)

(Jury not present upon reconvening.)

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

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

THE COURT: Certainly, please come up. Is

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this something we need to discuss with your client?

(Counsel approached the bench and the following ensued:)

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

THE COURT: Is it a scheduling matter?

MS. GUTIERREZ: Sort of.

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

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

THE COURT: Are you okay?

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

THE COURT: Okay.

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

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so I would like to do is to finish cross of this witness which I don't think will take long, let them do whatever redirect and then ask the Court to take a short break. I would like to walk up to my office --

THE COURT: That's fine.

MS. GUTIERREZ: And test my blood sugar and see if there's anything I can do, my medication is up there and see if I can clear it up.

THE COURT: That will be fine. I have no -- you have no problem with that, do you?

MR. URICK: No.

THE COURT: And I would tell you that if you want depending on what is going on we can stop.

MS. GUTIERREZ: Yes, I know, but I'm not -- I just don't know and it's early enough that if I walk up it may pass and I'll be fine.

THE COURT: Fine.

MR. URICK: Shouldn't we have the Defendant present?

THE COURT: I really would like the Defendant here.

MS. GUTIERREZ: Okay. All right.

THE COURT: When it is scheduled --

MS. GUTIERREZ: We can do it afterwards or something.

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THE COURT: To the witnesses or something.

MR. URICK: What are your plans for Friday with the juror who wants to go on the weekend trip?

THE COURT: Well, today is?

MR. URICK: Wednesday.

MS. GUTIERREZ: Wednesday.

MR. URICK: Tomorrow is Thursday.

THE COURT: Tomorrow is Thursday, we're not going to finish by tomorrow. So, why don't you guys think about --

MS. GUTIERREZ: I need to talk to my client -

THE COURT: Yeah, talk to him.

MS. GUTIERREZ: but I don't think he'll have any objection to that.

THE COURT: And the choice would be, we continue through Friday or we stop and we continue on Monday.

MS. GUTIERREZ: Right.

THE COURT: Just --

MR. URICK: We have --

THE COURT: You guys think about what you want to do. Actually, he's here. So, why don't we just bring him up.

MS. GUTIERREZ: Mr. Syed, come up for a minute.

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THE COURT: Mr. Syed, we were discussing scheduling for Friday. We have a juror that has indicated that they had a vacation planned and they would be departing a 6:00 a.m. on Friday. We --

MS. GUTIERREZ: It's juror number twelve, is it?

THE COURT: I thought it was six.

MR. URICK: I think six.

MS. GUTIERREZ: Okay.

THE COURT: And that juror doesn't -- has planned to leave at 6:00 a.m. on Friday and we weren't sure whether we were going to have to sit on Friday depending upon how the case progressed. What Counsel and I are now about to discuss, we were waiting for you, is what the State and the Defense's pleasure is.

The choices are as follows: we can continue on Friday which would mean that juror number six would be struck from the panel by agreement, alternate number would take that seat because we can't take testimony with a missing juror and juror number six would be excused or we can stop the testimony altogether on Friday and resume with the testimony on Monday when all the jurors that are currently in the panel will be present.

So, those are the choices. You can talk to your

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attorney and indicate your feeling one way or another. Have you already discussed this and are prepared to tell me what your choice is?

MR. URICK: I think we have a slight preference not to sit Friday.

MS. MURPHY: Our witnesses need to go to work.

MR. URICK: And also being in Felony narcotics, I've got so much other work, another day out of Court would give me a chance to get caught up.

THE COURT: Well, maybe we can do something by agreement. It would be nice if we could do it by agreement then that way --

MR. URICK: We're not going to disagree one way or the other. We would prefer Friday.

THE COURT: Okay. Whichever --

MS. GUTIERREZ: Judge, we would like to delay the decision making until the jury comes out and we an picture --

THE COURT: Who?

MS. GUTIERREZ: Right, who's who and --

THE COURT: Okay.

MS. GUTIERREZ: And then so if we could come up at the end of this witness we could then give you our answer --

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

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BY MS. GUTIERREZ:
Q Mr. Waranowitz, just to clarify, you indicated that you reported your findings based on what you called your origination test as they occurred to Ms. Murphy?
MR. WARANOWITZ:
A Yes.
Q Is that correct? And your findings could be categorized essentially as a statement that a certain address would trigger a certain site, is that not correct?
A No.
Q Well, sir, did you report your findings to Ms. Murphy in regard to all of the addresses that she pointed out and she took you to as to whether or not they trigger a site or sites?
A Yes.
Q So, you reported that information, correct?
A Yes.
Q And that information would fairly be characterized if it were written as if a cell phone at Rolling Road at I70 triggers cell site L651C or L698A, is that correct?
A Yes.
Q Okay. And in fact, on many of the addresses,

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1208 Macado again, you listed two separate cell sites, did you not?
A Yes.
Q And as for the Security Mall site, sir?
A Yes.
Q You also listed two separate cell sites?
A I believe I did, yes.
Q And, sir, you were in what specific location at Security Mall?
A We drove around the mall.
Q Around the mall?
A Yes.
Q Not inside the mall?
A Correct.
Q So the phone call that you caused to be originated was made from outside the mall?
A Yes.
Q And, sir, after you reported these findings to Ms. Murphy you didn't then generate on top of that a written report, did you?
A No.
Q No, and you've generated no written report, did you?
A No, I did not.
Q And there's no information generated by your

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

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THE COURT: One moment, I'm sorry.
MR. WARANOWITZ: I reviewed her notes, I'm sorry, Your Honor.
THE COURT: You said, I reviewed her notes and --
MR. WARANOWITZ: I reviewed her notes and they were consistent with what I say that date.
BY MS. GUTIERREZ:
Q Did you review her notes as she took them?
MR. WARANOWITZ:
A No, I did not.
Q You reviewed them after you were all done, correct?
A Yes.
Q I gather to say you went to visit a number of addresses, did you not?
A Yes.
Q Thirteen in fact, isn't that correct?
A Yes.
Q And that took you a little while, didn't it?
A Yes.
Q And you reviewed her notes after you finished visiting and performing your origination test at those locations, correct?
A Yes.

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Q And at that time you recalled that her notes appeared to be accurate, correct?
A Yes.
Q Now, sir, you don't know the cell site names and numbers off the top of your head ordinarily, do you?
A No, I do not have them memorized.
Q And you don't know their addresses, do you?
A No, I do not work with addresses on a daily basis.
Q So, the answer to my question is no?
A No.
Q And, sir, yesterday when you were asked you were given a list of addresses and identities of all cell sites in the network, were you not?
A Yes.
Q When you were asked questions about the location you merely looked them up, did you not?
A Yes.
Q They didn't refresh your lost memory off where those cell sites were, was it?
A No, I know where the cell sites are from experience.
Q From experience of having tested them before, correct?

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A Yes.
Q But you never tested any of these addresses before, did you?
A No.
Q You weren't asked ever before by Ms. Murphy or anyone to go to that specific list of thirteen locations, were you?
A I'm sorry. Ask that question again.
Q You were never asked before by Ms. Murphy or by anyone to go to that list of thirteen locations, were you?
A No.
Q Nor to perform tests?
A No.
Q And that none of the thirteen locations did you, yourself take notes?
A No, I did not.
Q You relied on her to take notes, right?
A Yes.
Q And then later after you were all done all thirteen locations you checked her notes for accuracy, correct?
A Yes.
Q All right. Now, Crosby on your list you listed as also triggering two separate cell sites, did

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you not?
A I believe so.
Q And Crosby, is that a name of a building or a street perhaps?
A Crosby I believe is a street that crosses 695.
Q And I70 Park and Ride you listed as triggering two separate cell sites depending upon where you were at that location, correct?
A Yes.
Q And Route 40 at Cooks Lane up to Forest Park triggered, in fact, depending again on where you were on one of those roads, three separate cell sites, did it not?
A I'd have to review the notes.
Q Okay. You don't recall that off hand?
A I don't recall off hand exactly.
Q Okay. And, sir, it would be fair to say that a location triggering three cell sites, not two cell sites was unusual even from your list of thirteen properties, wasn't it?
A It is not unusual.
Q No, but now, sir, in regard to Gelston Park, again, you indicated to Ms. Murphy that that location would trigger three separate cell sites, did you not?

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A I recall two cell sites.
Q Two cell sites. And, sir, as to the only other location was Woodlawn High School, correct?
A I don't remember if there are more at this point.
Q Well, sir, do you recall that Ms. Murphy listed thirteen locations that you reported to her orally on?
A Yes.
Q And are you aware that of the list I just read you, that Woodlawn would be the thirteenth location?
A Woodlawn High School?
Q Yes, sir.
A Yes.
Q And, sir, that's the Woodlawn High School that we discussed and you looked up on your map book, correct?
A Yes.
Q And that was a place that Ms. Murphy took you, correct?
A Yes.
Q On that day, that you don't recall when it was?
A Yes.

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Q Now, sir, this morning and we discussed again that, of course, on the test that you did, you knew where you were when you were doing the test, right?
A Yes.
Q And you knew where the cell phone was physically located that you caused to originate a phone call, correct?
A Yes, the test phone call.
Q That what you did was punch in a code as you said, correct?
A Yes.
Q Not a phone number, correct?
A Not a standard phone number.
Q And in any event, not a phone number on State's Exhibit 34, correct?
A Yes.
Q And you knew the location of the cell phone that would processing the signal, whatever code you entered into it, were it was, right?
A Yes.
Q It was in your hand, right?
A Yes.
Q And your hand was next to the physical presence of Ms. Murphy, was it not?
A Yes.

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Q On each occasion that you visited these thirteen locations, correct?
A Yes.
Q But you know that because you were there, right?
A Yes.
Q You knew who had that cell phone in their hand, did you not?
A Which cell phone?
Q Cell phone you were using, sir.
A Yes.
Q Okay. There isn't any other cell phone that we don't know about, is there?
A No.
MR. URICK: Objection.
BY MS. GUTIERREZ:
Q There isn't a hidden cell phone here, is there?
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q You didn't conduct the test on any other cell phone then your own Erickson that you used at the time, correct?
MR. WARANOWITZ:
A Yes.

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Q And, sir, at the time you conducted this test you were an engineer for AT&T, were you not?
A Yes.
Q You were using an Erickson phone, correct?
A Yes.
Q Although you told us that AT&T had issued its engineers Nokias, correct?
A Yes.
Q You chose the Erickson phone for the test that you were going to administer at Ms. Murphy's directions, did you not?
A Yes.
Q She didn't chose it for you, did she?
A No she did not.
Q And you never substituted another phone for any of these tests, did you?
A No.
Q No, sir, you were asked by Mr. Murphy this morning that based on your experience with Nokias in your business, whether or not a Nokia would perform competently, comparably to the Erickson, correct?
A Yes.
Q And you answered that you thought so, that was your opinion, right?
A Yes.

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Q And by comparably you meant that they'd perform exactly the same?
A They perform almost exactly the same.
Q And, sir, is that your opinion as to every Erickson and every Nokia?
A Generally.
Q Generally, ideally, right?
A Yes.
Q What you'd expect them to perform, correct?
A Yes.
Q But it's fair to say based on your earlier statements that phones perform in a different fashion, do they not?
A Yes.
Q And it would be fair to say that among Nokias on any model number, some are very good performers, are they not?
A I am familiar with the Nokia 6160.
Q Only as to the 6160. Out of the thousands of Nokia 6160 some are good performers, are they not?
A Yes.
Q Some exceed expectations, do they not?
A Yes.
Q And some are mediocre performers, are they not?

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A Yes.
Q And some are poor performers, are they not?
A Yes.
Q You couldn't tell which category any Nokia 6160 fell into by looking at it, could you?
A No.
Q You'd have to test that individual phone to know what type of performer it was, would you not?
A Yes.
Q To find out whether it met expectations and performed as it was expected to do, correct?
A Yes.
Q Or whether it fell below that line and performed poorly.
A Yes.
Q Isn't that correct? And part of performance in the differences of phones are that some phones are able to see some signals and other phones can not, isn't that correct?
A Some phones would be able to see signals at different levels then other phones.
Q And the level at which a phone sees a signal you would characterize in terms of strength or weakness, would you not?
A Yes.

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Q And the readings one gets from phones that are translated to the computer records are related to the phones seeing a signal or not, are they not?
A I'm sorry, could you ask that again?
Q A phone either sees a signal or it does not, correct?
A Yes.
Q And the seeing part of the signal is the ability to recognize and communicate with the signal, correct?
A Yes.
Q So, two phones that are side by side in equate distance from a signal being sent from the cell phone tower, one could read it and one could not, correct?
A Yes.
Q And one of them could read one signal that's actually closer to both phones, correct?
A Yes.
Q And one phone couldn't read that signal that's closest, correct?
A Yes.
Q In fact, for some reason one phone could see a signal that's further away but not see a signal that's closer, could it not?

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A No.
Q Well, sir, the ability to see a signal is part of what you would call its performance, correct?
A Yes.
Q Now, sir, in regard to the same thing that we're talking about, your test you can only tell us that that phone was in your hand because you did it, right?
A Yes.
Q And you were there, right?
A Yes.
Q And Ms. Murphy was there and saw you did it, right?
A Yes.
Q In regard to the AT&T records, the billing records, do you recall those billing records that I showed this morning?
A Yes.
Q They print out the existence of a call, do they not?
A Yes.
Q They print out the number the call was made?
A Yes.
Q And the records are set up so that it is clear that it is the cell phone whose bill it is that

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is suppose to have made those calls, correct?
A Yes.
Q Okay. And they also print out the time the calls were made?
A Yes.
Q And the duration of the call?
A Yes.
Q And the cell site it triggered, correct?
A Yes.
Q Okay. Those billing records can never tell you who had the cell phone in their hand when they made the call the computer registers, can they?
A That is true.
Q And they never attempt to do so, do they?
A No.
Q And all the records from your company or anywhere else regarding testing a phone, the records don't reveal who had the phone, do they?
A No.
Q Or who dialed the numbers?
A No.
Q Nor who they were next to, if anyone?
A No.
Q And they can't tell us the location of whoever it was that may have caused a phone call to be

made --
A No.
Q From that particular phone, correct?
A Correct.
Q Just like your testing on your phone, that day that you don't remember, you can only tell us what your phone did according to you, right?
A Correct.
Q And the records also can't tell us, they record, cell phone records record when, if I own a cell phone and somebody calls me on my telephone, I don't ask them to call me, but they call me anyway, I pay for that, don't I?
A I think so.
Q If I'm charged by the minute of use, right?
A I think so.
Q Even if I don't know the person and it's a wrong number, they reach me on my cell phone and I have to talk to them for thirty seconds to figure out they dialed the wrong number, I still get billed for that thirty seconds, do I not?
A Yes.
Q Even though I don't know the person who originated the call on another unknown phone, correct?
A Yes.

Q And their's bill may bill them if they called me on their cell phone too, might they not?
A Yes.
Q And that would be even if my cell phone network billed me, correct?
A I believe so.
Q But my cell phone record can only bill the number that dialed my number, correct?
A I don't know.
Q Well, my cell phone records would list the number just like it listed in the records you reviewed this morning, would it not?
MR. URICK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q Now, sir, those records, whatever it is they list, can never tell me who actually dialed the number, can it?
MR. URICK: Objection.
THE COURT: Sustained. This has been asked and answered at least twice.
BY MS. GUTIERREZ:
Q Sir, if I looked at my records and it designated a call, if I recalled making that call then I would know I made it, correct?

MR. URICK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q Sir, if I didn't recall making the call and I enquired of your network to tell me who made the call from my cell phone it couldn't tell me that, could it?
MR. URICK: Objection.
THE COURT: Sustained. We've asked and answered this line of questioning, please move on.
BY MS. GUTIERREZ:
Q Sir, many phones of many makes and models have memory capability, do they not?
MR. WARANOWITZ:
A Yes.
Q That record within the phone itself, a list of numbers that's called, does it now?
A Yes.
Q And that would include Erickson phones that have memory capability, correct?
A Yes.
Q And Motorola phones that have memory capability, correct?
A Yes.
Q And Nokia phones that have memory capability, correct?

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A Yes.
Q If the phone has memory capability if can print up or display the identity of numbers that have either called that phone or been called by that phone, can it not?
A In most cases, yes.
Q But that's the limit of what it can tell you, isn't that correct?
A Yes.
Q It can't tell you who placed the calls, can it?
MR. URICK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q As to the memory capability, sir, can it?
MR. URICK: Objection.
THE COURT: Overruled. As the memory capabilities of the phone can it tell you who made the call?
MR. WARANOWITZ: No, it can not.
BY MS. GUTIERREZ:
Q And it can not tell you as to the memory capability the identity of who received the call, can it?
MR. WARANOWITZ:

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A No it can not.
Q Given what you've described as your familiarity with Nokia phones, sir, I'm going to show you what's in evidence. Can you tell us if that phone has memory capability?
A I've had a Nokia 6160 and it has memory capability.
Q Your Nokia 6160 has memory capabilities, is that correct?
A The Nokia that I -- the Nokia 6160s that I have used all have memory capability.
Q Well, sir, I'm asking you, can you look at this particular 6160 and tell us if it has memory.
MR. URICK: Objection.
THE COURT: Overruled. Can you tell if this particular exhibit, whether it has memory or not?
MR. WARANOWITZ: I can not do that because the battery is dead.
BY MS. GUTIERREZ:
Q Were you never asked to examine its memory capabilities which you believe it would have?
MR. WARANOWITZ:
A I'm sorry. Could you ask that question again?
Q Were you personally ever asked by anyone to

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examine the memory of this phone?
A Before now, no.
Q And you, of course, did not, did you?
A I did not.
MS. GUTIERREZ: Nothing further.
THE COURT: Anything further from the State?
MR. URICK: Extremely briefly, Your Honor.

REDIRECT EXAMINATION
BY MR. URICK:
Q Lets cut to the chase here.
MS. GUTIERREZ: Objection.
THE COURT: Mr. Urick, without the added commentary you make ask your first question.
BY MR. URICK:
Q Cell phone records are computer records maintained by the AT&T Wireless Corporation, are they not?
MR. WARANOWITZ:
A Yes.
Q They show that a particular number on a particular date either dial up or received a call, is that correct?
A Correct.
Q That that call went through a particular cell

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

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

RECROSS EXAMINATION
BY MS. GUTIERREZ:
Q With regard to, the question you were asked about Lincoln Park, sir.
MR. WARANOWITZ:
A Yes.
Q The cell site that you say would be triggered if one were in Lincoln Park and made a phone call, isn't in Lincoln Park, is it?
A It is not.
Q It isn't even near a street that goes through Lincoln Park, is it?
A No it is not.
Q And the cell site that you say was triggered, would be triggered from any number of places in the coverage area, correct?

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A Yes.
Q If the cell site were functioning properly, correct?
A Correct.
Q And if the cell phone were operating at a good level, correct?
A Correct.
Q And that could literally thousands of location inside a sector, one of three sectors serviced for coverage by that cell site, correct?
A Correct.
Q There is no cell site tower inside of Lincoln Park, is there?
A No there is not.
Q And there's no building upon which an antenna that becomes a cell site is erected that is inside Lincoln Park, is there?
A No.
Q And there's no water tower pr other structure to which an antenna or antennas are attached, is there?
A No.
Q So all you can tell us about Lincoln Park is that you were taken to a location inside there by MS. Murphy, correct?
A Yes.

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Q And shown and told that this is where a body was buried, correct?
A Correct.
Q And you barely had to go inside the area bounded by the Jersey walls, correct?
A I did not go behind the Jersey walls.
Q Okay. And you didn't go outside of them in anyway?
A No.
Q And you caused a phone called to be originated by punching a code, right?
A Yes.
Q So, as to that date, the date which you do not currently remember, you can tell us what your phone did, correct?
A Yes.
Q But because it wasn't a billable call you have no record of that phone call, correct?
A No, I do not.
Q Of the cell site it triggered?
A No, I do not.
Q Of the duration of the call?
A No, I do not.
Q Of the time that you made that call, correct?
A No, I do not.

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Q But you can tell us about it because you did it, right?
A Yes.
Q And you told Ms. Murphy about what we did, correct?
A Yes.
Q And you relied on her to write down your information as you told it, correct?
A Yes.
Q You never wrote down your own information, correct?
A Correct.
Q And you never generated any documentation that would show that what you told us?
MR. URICK: Objection.
THE COURT: I'm sorry, I didn't hear the end of that question.
MS. GUTIERREZ: You never doc -- you never generated any documentation to that effect, that which you told us, did you?
THE COURT: Overruled.
MR. WARANOWITZ: Correct.
THE COURT: And the answer is correct.
BY MS. GUTIERREZ:
Q And, sir, if you had generated the

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

MR. WARANOWITZ:

A Can you ask that again?

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

A Correct.

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

A Correct.

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

A Correct.

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

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

A Yes.

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

A Yes.

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

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

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

A I don't recall.

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

A No.

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

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

Q Okay. Because that's outside of your

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expertise, right?

A In this situation I would not.

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

A Yes.

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

A Yes.

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

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

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

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

Q And, sir, --

A That neighborhood.

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

A We have customer complaint records, yes.

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

MR. URICK: Objection.

THE COURT: Overruled.

MR. WARANOWITZ: Yes.

BY MS. GUTIERREZ:

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

MR. WARANOWITZ:

A No.

Q And did you do so?

A No.

THE COURT: Nothing.

MS. GUTIERREZ: No.

THE COURT: Very well. Anything further?

MR. URICK: No, thank you.

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

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

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

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MR. WARANOWITZ: It is Court's.
THE COURT: Court's exhibit because I asked that it be marked and I'd asked that it be noted and now the Defense is asking that it moved in, so you can make it Defense number -- what would be the Defense next number?
MS. GUTIERREZ: I think it's one, Judge, but I'm not.
THE COURT: Defense one.
(Defendant's Two was received into evidence.)
MS. GUTIERREZ: Another --
THE COURT: I'm not sure whether or not it is.
MS. GUTIERREZ: I think this is the first one.
THE COURT: You are excused at this time. Thank you very much, sir.
THE CLERK: The medical (inaudible)?
MS. GUTIERREZ: Oh, yeah, so this would be Two, yes.
THE COURT: Defense Two. All right. Are we need in those charts to remain where they are?
MR. URICK: No, I believe that can be put back.

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

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

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

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

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

MR. URICK: No objection to alternate one.

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

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

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

MR. URICK: Not today.

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

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strike that.

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

(The jury was excused from the courtroom.)

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

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

(Brief recess.)

(Jury not present upon reconvening.)

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

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

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

MS. GUTIERREZ: That's correct.

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

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

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

MS. GUTIERREZ: I explained that to him.

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

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morning at 9:30, do you understand?

MR. WILES: Yes, Judge.

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

MR. WILES: Thank you.

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

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

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

MR. URICK: Okay.

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

MR. URICK: Thank you, Your Honor.

(The jury returned to the courtroom.)

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

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

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

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

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

(The jury was excused from the courtroom.)

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

JUROR: Yes, Friday morning.

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

JUROR: Okay.

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

JUROR: Okay.

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

JUROR: Yes it does.

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

JUROR: Okay.

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

JUROR: Okay.

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

JUROR: Okay. Well, thank you.

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

JUROR: Okay.

THE COURT: All right.

JUROR: All right. Well, thank you.

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

JUROR: Oh, okay.

THE COURT: Leave my pads.

JUROR: Okay.

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

JUROR: Sure.

THE COURT: Very well. Thank you again.

JUROR: All right. Thank you.

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

JUROR: Okay.

THE COURT: Thank you.

JUROR: All right.

THE COURT: Have a good evening.

JUROR: All right. Thank you.

THE COURT: Be careful, be careful and Ms. Connelly will go with juror number six. With that said I will see you all then tomorrow morning at 9:30. I will as I said start this case first because I expect that there's going to be some problem getting all the

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attorneys together and the other matter.
So, while they're getting themselves together we certainly could start with some testimony and I believe we will be picking up with the cross examination of Mr. Wiles, is that not correct?
MS. GUTIERREZ: Yes, Your Honor.
THE COURT: Very well. I'll see you all tomorrow morning at 9:30. This Court stands in recess until 9:30 tomorrow morning.
BAILIFF: All rise.
(The trial was recessed for the day.)

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CERTIFICATE

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

I do hereby certify that the aforegoing 217 pages constitute the official transcript as transcribed by me from said videotaped proceedings in a complete and accurate manner.

In Witness Whereof, I have hereunto subscribed my name this 26th day of September, 2000.

CHRISTOPHER W. METCALF. CVR
Official Court Reporter

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