

1 questions on the issue of whether or not this witness
2 is an expert on the functioning of AT&T Wireless phone
3 cellular network and design and functioning in the
4 Baltimore Metropolitan area.

5 VOIR DIRE EXAMINATION

6 BY MS. GUTIERREZ:

7 Q Mr. Waranowitz, one -- must one who is a
8 subscriber to this network use equipment owned and sold
9 by AT&T?

10 MR. WARANOWITZ:

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

12 Q Must a subscriber to this network use
13 equipment that is owned and sold by AT&T?

14 A Do you mean cell phones?

15 Q Is that equipment sold by AT&T?

16 A It is sold by AT&T.

17 Q Must a subscriber use it equipment whatever
18 it might be sold by AT&T?

19 A No.

20 Q No. So, anyone utilizing this network could
21 use for instance cell phones designed, tested, operated
22 an sold by some other entity than AT&T?

23 A Correct?

24 Q Is that correct?

25 A Yes, that is correct.

1 Q There is no way that a subscriber is required
2 to by an AT&T phone, is there?

3 A No.

4 Q And you said that 25% of your time was
5 devoted to the design of system?

6 A Correct.

7 Q And that still continues up to today, does it
8 not?

9 A Yes.

10 Q And design on the system is a continual
11 effort, is it not?

12 A Yes, it is.

13 Q The best optimal locations for towers as
14 you've testified while once may exist in one location
15 they alternately change and there would be another best
16 optimal location, isn't that correct?

17 A Yes.

18 Q By coverage areas you are referring to the
19 amount, the physical amount, the geographical amount of
20 area that a cell tower is suppose to cover, is that
21 correct?

22 A Yes.

23 THE COURT: One moment. Ms. Gutierrez, are
24 you still on voir dire?

25 MS. GUTIERREZ: Yes.

1 THE COURT: Okay.

2 MS. GUTIERREZ: I'm going through his list of

3 --

4 THE COURT: Expertise.

5 MS. GUTIERREZ: Yes.

6 THE COURT: Okay.

7 BY MS. GUTIERREZ:

8 Q Isn't that correct? And you were asked by
9 Mr. Urick are you familiar with the coverage area of
10 the cell sites of AT&T, is that correct?

11 MR. WARANOWITZ:

12 A Within the Baltimore/Washington market, yes.

13 Q Is that correct?

14 A Yes.

15 Q All right. And by the coverage area you
16 understood Mr. Urick to mean the designated
17 geographical area that's suppose to be covered by the
18 tower?

19 A Yes.

20 Q And by coverage you mean to include what
21 geographical area would be included if that cell tower
22 signal were signaled by someone trying to make a cell
23 phone or wireless call to an area within what you call
24 coverage area, isn't that correct?

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

1 Q By coverage area you understood that to mean
2 the geographical area that is suppose to be covered,
3 that is the area that the cell site tower, the cell
4 tower would broadcast the wireless call based on the
5 design of the system, that's what you mean by coverage,
6 is it not?

7 A Yes.

8 Q Each cell tower is suppose to cleanly
9 broadcast a signal?

10 A Ideally, yes.

11 Q Okay. Ideally, by ideally you mean that
12 doesn't always occur?

13 A That is correct.

14 Q And the coverage area of the cell sites only
15 includes the cell towers owned and operated by AT&T?

16 A Correct.

17 Q And not any other cell tower?

18 A Correct.

19 Q Every other network has it's own tower, does
20 it not?

21 A That is correct.

22 Q For mean so broadcasting the signals on it's
23 network, correct?

24 A Correct. Yes.

25 Q Okay. And every other network would have

1 different coverage areas for it's network, would it
2 not?

3 A Yes.

4 Q Although those areas might well overlap or
5 even be the same as AT&T's?

6 A Yes.

7 THE COURT: Ms. Gutierrez, at this point I'm
8 going to interrupt you. The Court finds that the
9 questions you're asking although appropriate are more
10 in a sense of asking him of his opinion and for that
11 reason I find that it's exceeding the voir dire and so
12 at this point if you have any more questions about his
13 background, training and expertise or education I'd be
14 happy to allow those questions because I would like to
15 render my opinion and instruct the jury as to how I
16 find this witness testimony with Mr. Urick's motion
17 that he be qualified as an expert.

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

19 Q Mr. Waranowitz, you were asked by Mr. Urick
20 in his voir dire and you estimated that you had spent
21 at least a month of hours, correct?

22 MR. WARANOWITZ:

23 A Yes.

24 Q How many hours is that?

25 A Eight days a week, five days, eight hours a

1 day, five days a week would be forty times four would
2 be 160.

3 Q And how is it that you arrived at that
4 estimate, sir?

5 A I've taken many classes from Erickson ranging
6 from a week to two or three days each.

7 Q Now, Erickson --

8 THE COURT: Wait a minute. A week to --

9 MR. WARANOWITZ: Anywhere from two or three
10 days to a week in duration plus classes from AT&T
11 Wireless Services.

12 BY MS. GUTIERREZ:

13 Q So, actually most of your class work has been
14 from Erickson?

15 MR. WARANOWITZ:

16 A Yes, through AT&T, yes.

17 Q My question is most of your class work has
18 been as you just testified through Erickson?

19 A Training, yes.

20 Q All right. And Erickson is not AT&T, is it?

21 A No it is not.

22 Q Erickson is a separate corporation, is it
23 not?

24 A Yes.

25 Q And Erickson doesn't own part of AT&T, does

1 it?

2 A I don't know.

3 Q Erickson produces equipment separate from
4 AT&T, does it not?

5 A Yes.

6 Q Erickson produces equipment that is utilized
7 by networks other than AT&T, does it not?

8 A Yes.

9 Q And, sir again my question to you is how is
10 it that you estimated at least a month of hours?

11 A AT&T has provided me at least one month of
12 hours worth of training.

13 Q Well, one month worth is a very specific
14 answer, would you agree?

15 A I am estimating.

16 Q And in a month -- and this is the first time
17 that you've been asked this question, is it not?

18 A I have not counted up my hours, that is
19 correct.

20 Q And so your estimate is based on your current
21 recollection?

22 A Yes.

23 Q All right. Now, sir in regard to Erickson
24 you said Erickson provided you with two to three days
25 and sometimes up to a week of training, is that

1 correct?

2 A Yes.

3 Q How many times?

4 A Five or six times.

5 Q Five or six times. Of those five or six
6 times how many was two or three days a week and how
7 many were longer?

8 A Most of them were two or three day classes.
9 I don't remember the exact details.

10 Q You don't remember the exact number. Now, in
11 regard to the classes that you've testified and you
12 were asked about that you attended and that were
13 provided from AT&T how many of those days of a month
14 that you've now estimated for us would be those?

15 A I can recall one class that lasted three
16 days.

17 Q One time and that was three days for eight
18 hours?

19 A Yes.

20 Q Exactly.

21 A Yes.

22 Q And this month estimate that you've given,
23 sir that would be five days a week?

24 A Yes.

25 Q Eight hours a day?

1 A Yes.

2 Q Okay. And that would of course exclude lunch
3 time, would it not?

4 A It's an estimate, yes.

5 Q And so the answer is yes, it would exclude
6 lunch time?

7 A Yes.

8 Q And it would exclude your travel time both to
9 and from?

10 A Yes.

11 Q And this of course would be a month in which
12 you worked every single day of the month out of the
13 five working days a week, correct?

14 A Yes.

15 Q That of course would exclude vacation time
16 you took?

17 A Yes.

18 Q Or any personal leave time?

19 A Yes.

20 Q Or any sick time?

21 A Yes.

22 Q Or any other time?

23 A Yes.

24 Q And although you've never been asked to
25 estimate or gather that information you are able to

1 estimate it this morning?

2 A Yes.

3 Q But the bulk of the classes that you took
4 that were in any way involved in cell phone technology
5 as you've told us or equipment used or testing out the
6 lines of the network were the bulk of those classes
7 provided by Erickson?

8 A They were provided through AT&T by Erickson.

9 Q By Erickson meaning Erickson a company
10 separate in part?

11 A Yes.

12 Q Taught by Erickson personnel?

13 A Yes.

14 Q And Erickson doesn't operate a cell phone
15 network on it's own, does it?

16 A I don't know that.

17 MS. GUTIERREZ: I have no further questions
18 on the voir dire, Judge. I would renew my objection as
19 to the establishment of a network as to whether or not
20 any of these questions certainly don't establish any
21 expertise in specific AT&T technology and I renew and
22 ask the Court to apply all other objections that I've
23 made including the disclosure objection.

24 THE COURT: First with regard to the
25 disclosure objection, I'm overruling that objection.

1 With regard to the expertise objection the Court will
2 accept this witness as an expert in AT&T wireless
3 network design and function with the limitation that
4 this witness has expertise with regard to Erickson
5 equipment unless any further expertise is shown by this
6 Court that will be the limitation.

7 MS. GUTIERREZ: I want to make sure I
8 understood the limitation.

9 THE COURT: Erickson equipment.

10 MS. GUTIERREZ: Okay.

11 THE COURT: I didn't hear about Motorola or
12 any other type of equipment. This witness has not been
13 qualified as such so to the extent that the witness has
14 clearly indicated that limitation that will be the
15 limitation that the witness will be able to testify.
16 And, Counsel in cross if you want to go into it any
17 further you'll be free to do that.

18 MS. GUTIERREZ: Thank you.

19 THE COURT: So that at the conclusion if I
20 need to direct the witness and the jury into how to
21 receive this expert's testimony I can do so. Mr.
22 Urick, I am going to tell you that it is now one
23 o'clock. I know I promised Ms. Gutierrez, is this
24 going to cause you a problem with any other matter if
25 we go a little longer?

1 MS. GUTIERREZ: No, Your Honor. There's no
2 phone conference today.

3 THE COURT: All right.

4 MS. GUTIERREZ: Because I was off yesterday.

5 THE COURT: Very well. Are you going to have
6 a problem if we go any further? Like for the next half
7 an hour?

8 MR. URICK: No, we wouldn't have a problem.

9 THE COURT: Any members of the jury by show
10 of hands are going to have any problems if we proceed
11 for the next thirty minutes and then take a break for
12 lunch from 1:30 to 2:30. Anybody have a problem, if
13 you do please raise your hand. All right, then we will
14 proceed.

15 BY MR. URICK:

16 Q Mr. Waranowitz, --

17 THE COURT: I know my staff may have a
18 problem, but you will get to eat 1:30 to 2:30. You may
19 proceed.

20 BY MR. URICK:

21 Q What Erickson equipment is used in the AT&T
22 network?

23 MR. WARANOWITZ:

24 A Well, we have Erickson radio based stations,
25 that is the actual cell site, the radios, equipment and

1 it's connection to the Erickson switch which is a big
2 computer through which all the phone calls go.

3 Q And what if any other equipment is
4 incorporated into the system?

5 A There are Erickson cell phones, cabling,
6 antennas, that kind of thing.

7 Q Does AT&T itself produce any of the
8 technology that goes into the network?

9 A None that I'm aware of in our current
10 network.

11 Q Do you purchase technology from any other
12 companies?

13 A Other markets, other cities use other
14 equipment, yes.

15 Q This time I would like you to explain what
16 the network is, how it operates? I believe you have
17 some demonstrative exhibits. I think for
18 identification purposes I'm going to ask at this time
19 that they be marked for identification as State's
20 Exhibit 43.

21 MS. GUTIERREZ: Your Honor, I'm going to
22 object to the motion in limine and ask to approach the
23 bench?

24 THE COURT: Yes, I'll see you at the bench
25 and may I also see the exhibits that you want to mark

1 for identification purposes at this time. I need your
2 assistance, Ms. Connelly.

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

5 MS. GUTIERREZ: Judge, giving the limitation
6 on this witnesses' expertise although they're not going
7 to show that to him now and obviously he can testify as
8 to anything within that expertise level the cell phone
9 listed on State's Exhibit 34 is manufactured by someone
10 other than AT&T and other than Erickson.

11 And so we would object to any questioning
12 regarding the cell phone and as to how it performed or
13 whatever it did. As this is not an expert in that
14 equipment we obviously don't know the source of whether
15 there were cell phones or others as to the dialed
16 number column on State's Exhibit 34, but as to the cell
17 phone, 253-9023 I would move in limine to preclude
18 asking this question related to that cell phone and
19 it's alleged performance. The cell phone i.e., since
20 the purpose of State's Exhibit 34 is to establish the
21 cell site and locations and their exact addresses.

22 THE COURT: Thirty four or forty three?

23 MS. GUTIERREZ: I think it's on 34.

24 MR. MURPHY: Thirty four.

25 MS. GUTIERREZ: I've never seen --

1 THE COURT: Thirty four is this one?

2 MS. GUTIERREZ: Yes.

3 THE COURT: Okay.

4 MS. GUTIERREZ: The purpose of that exhibit
5 is to establish that the cell phone about which this
6 witness has no expertise that the cell phone did
7 something and operated in a certain way. Now,
8 obviously given the number the expertise I'm not moving
9 -- he can certainly testify as to that network, those
10 towers, what if anything they should do, but I'm moving
11 in limine to prevent any questioning to attempt to draw
12 that expertise out to include --

13 THE COURT: The operation of this phone.

14 MS. GUTIERREZ: As this phone as to what it
15 would do on his network since he's not been qualified
16 in regard to a Nokia phone which is a separate
17 production corporation other than Erickson and other
18 than AT&T.

19 MR. URICK: The cell phone information is
20 already in evidence through State's Exhibit 34 and I
21 believe we can through his explanation qualify him to
22 be able to testify to when we want to.

23 THE COURT: Wait a minute, back up. The cell
24 phone information is already in evidence through
25 Exhibit Number 34?

1 MR. URICK: Actually, it's in through I think
2 it's 31 or 33, the Defendant's cell phone records and
3 that was entered by way of stipulation.

4 THE COURT: May I see the exhibit?

5 MR. URICK: This is a duplicate of it.

6 THE COURT: I think we've got sort of --

7 MS. GUTIERREZ: You'll note that that --

8 THE COURT: Ms. Gutierrez's objection and
9 motion in limine is not to what the record says. Her
10 objection is to your witness interpreting the meaning
11 behind what is clearly indicated on the face of the
12 exhibit and that is when there's an item needed as a
13 number incoming duration and then L651C. The witness
14 can talk about these L651 tower and this a tower and
15 what the tower did and what these records from AT&T
16 mean. But he can not testify as to what the Nokia
17 phone did or did not do in rendering an opinion because
18 he is not qualified to render an opinion as to what
19 the Nokia did. Other than to validate that AT&T
20 Erickson's equipment registered this information and he
21 can't render an opinion as to what that means or to
22 assure the jury that there is some absolute that can be
23 drawn from the numbers that are appearing on here as it
24 relates Nokia equipment. He can talk absolutes as it
25 relates to Erickson equipment, but he can't talk about

1 and she's objecting to his saying what the Nokia's
2 limitations are and receiving signals, how they receive
3 the signals, what they do with the signal because he's
4 not qualified to do so and I'm going to sustain her
5 objection as to that part of his testimony if that's
6 what you're going to ask him to do. Do you understand?

7 MR. URICK: I may ask the Court to revisit
8 this if I can lay a foundation.

9 THE COURT: Correct.

10 MR. URICK: Thank you.

11 THE COURT: I will -- if for some reason you
12 believe that he can do that then I will allow him to do
13 that if he has the expertise, but as we stand right now
14 he is an expert with regard to Erickson equipment. Not
15 Motorola, not Nokia, not anything else and he is an
16 expert who has already testified that he can testify as
17 to the network design and functioning of AT&T wireless
18 communication and Erickson equipment.

19 MR. URICK: Thank you.

20 THE COURT: All right. Does that clarify?

21 MS. GUTIERREZ: That does, Judge except --

22 THE COURT: The motion in limine is granted -

23 MS. GUTIERREZ: Yes. And I would strenuously
24 object to the State's continual ability once they lose
25 a motion to continue to revisit it like well, now we've

1 thought better. There wasn't any disclosure of this
2 person as expert in Erickson. I understand I've lost
3 on that point, but now we're in the middle, they chose
4 to do it, they took the Court's hints and chose to do
5 it in a specific way.

6 Now, that they've lost a motion like to
7 continually to allow them, oh, well wait a minute we
8 can qualify him as another expert. Again, there's no
9 disclosure, there has to be some finality that the
10 Defendant should be able to count on, it's not fair
11 otherwise.

12 THE COURT: I understand your concerns, Ms.
13 Gutierrez. The only thing that I can tell you is that
14 had I not received as part of this file some indication
15 by way of stipulation that this testimony would be
16 admissible through the stipulation --

17 MS. GUTIERREZ: But, Judge the stipulation
18 has nothing to do with the witness. He would not have
19 been the correct person to bring in these records
20 anyway, he's not a custodian. We stipulated because a
21 custodian could clearly get in records from AT&T
22 Wireless. That is entirely different then allowing a
23 person who's not the custodian, who isn't qualified to
24 testify to these things, hasn't been offered, hasn't
25 been disclosed to now try to take these things

1 somewhere else. Those are two entirely different
2 things. We don't challenge that we stipulated to that.
3 They mean whatever they mean. If it was important to
4 have those records explained, that was their job,
5 that's their burden, they sought the stipulation that
6 we agreed to. We should not now be nailed to things we
7 didn't stipulate to on which there was no disclosure
8 given that now they want to rethink the issue of
9 whether or not they should have sought a stipulation on
10 it.

11 THE COURT: I understand your objection. For
12 the record I find that the stipulation allows them to
13 bring in this witness. I find that the witness has
14 been disclosed to you. I find and I found that he
15 would be permitted to testify in the fashion that I
16 indicated as an expertise through the information
17 that's been provided to this Court. I do not believe
18 that this is a surprise witness, I do not believe that
19 you did not know what it was that they were going to
20 ask him to testify --

21 MS. GUTIERREZ: We never maintained
22 otherwise. It's just a surprise that they're trying to
23 declare him as an expert in a nonexistent expertise.

24 THE COURT: And I understand your concern,
25 but as I have done with you and I will continue to do

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

10 MR. URICK: Thank you.

11 THE COURT: Anything further?

12 MS. GUTIERREZ: No, Your Honor.

13 THE COURT: Anything further?

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

16 THE COURT: Well, where is --

17 MS. GUTIERREZ: Well, no lets find.

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

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

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

1 lunch.

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

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

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

8 MS. GUTIERREZ: It was asked about.

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

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

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

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

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

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

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

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

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

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

5 MR. WARANOWITZ: Waranowitz.

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

10 MR. WARANOWITZ: Okay.

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

18 MR. WARANOWITZ: Thank you very much.

19 THE COURT: Thank you very much.

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

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

24 MR. URICK: (inaudible).

25 THE COURT: Yeah, but at this time during the

1 break just return that to Mr. White, that way we know
2 where they are and then you're welcome to retrieve
3 those at the time we return. Anything further?

4 MS. GUTIERREZ: Will the courtroom be locked?
5 Can I leave my stuff?

6 THE COURT: I don't know what Ms. Judge
7 Gordy's preference is. If you're going to leave things
8 here we will see that the courtroom is locked. Is that
9 what you want to do?

10 MS. GUTIERREZ: I would like to, yes.

11 THE COURT: All right. Well then, do you
12 know how this courtroom is locked? By what means?

13 THE CLERK: I'll find out.

14 THE COURT: Mr. White, do you have things
15 that you needed to leave as well?

16 MR. WHITE: Yes.

17 THE COURT: All right. We will lock the
18 courtroom then.

19 MR. URICK: What time again are we resuming?

20 MS. GUTIERREZ: 2:15.

21 MR. URICK: Thank you.

22 THE COURT: Court stands in recess then until
23 2:15.

24 THE CLERK: All rise.

25 (At 1:15, a luncheon recess was taken.)

1 THE COURT: Ladies and gentlemen, my law
2 clerk informs me that the juror number 11 and juror
3 number 3 are missing. Until they arrive we can not
4 bring --

5 MS. GUTIERREZ: (inaudible) for seeking a
6 bigger courtroom.

7 THE COURT: That's true.

8 MS. GUTIERREZ: They get lost.

9 THE COURT: But until they arrive, we will
10 not chance bringing Mr. Syed up. As soon as they
11 arrive you'll let me know and then I just ask, direct
12 you to call and when Mr. Syed has arrived we can
13 proceed. All right? I'm going to recess until I'm
14 advised that all the jurors are here. Court stands in
15 recess.

16 THE CLERK: All rise.

17 (Brief recess)

18 THE CLERK: All rise. Circuit Court
19 Baltimore City, Part Nine is now in session. The
20 honorable Wanda K. Heard presiding.

21 THE COURT: You may be seated. We'll resume
22 with the testimony. For the record please state your
23 name, Mr. -- yeah.

24 MR. WARANOWITZ: Abraham John Waranowitz.

25 THE COURT: Waranowitz. Mr. Waranowitz and

1 Mr. Urick, you may continue.

2 MR. URICK: Thank you, Your Honor.

3 BY MR. URICK:

4 Q Good afternoon, Mr. Waranowitz. What is
5 analog radio technology in simple terms?

6 MR. WARANOWITZ:

7 A Analog radio technology is, in terms of cell
8 phones?

9 Q Yes.

10 A Okay. Analog is one of the first generation
11 types of cell phone in use. It uses a technology
12 similar to FM radio that you would find in your homes
13 and in your cars.

14 Q What is digital radio technology?

15 A Digital takes a computerized version of your
16 voice and sends digital bits over the airwaves instead
17 of -- instead of analog voice like an FM radio would.

18 Q And does the AT&T Wireless network
19 incorporate both of these radio technologies?

20 A In some markets, yes.

21 Q Does it in the Baltimore market?

22 A No, it's pure digital.

23 Q Now, when a person becomes a subscriber to
24 the AT&T network, how is he or she granted access to
25 the network?

1 A Well, I don't know much about the actual
2 account set up, but from what I understand --

3 MS. GUTIERREZ: Objection.

4 THE COURT: Sustained.

5 BY MR. URICK:

6 Q In the Baltimore region must an AT&T
7 subscriber use the AT&T network?

8 MR. WARANOWITZ:

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

10 Q In the Baltimore Metropolitan region must an
11 AT&T subscriber use the AT&T network?

12 MS. GUTIERREZ: Objection.

13 THE COURT: Overruled. If you can answer it.

14 MR. WARANOWITZ: No, they must not. They do
15 not have to.

16 BY MR. URICK:

17 Q How does it come about that they do?

18 MR. WARANOWITZ:

19 A If they --

20 MS. GUTIERREZ: Objection.

21 THE COURT: Sustained. He just said they
22 don't have to. If you could rephrase your question.

23 BY MR. URICK:

24 Q Under what circumstances might they use it?

25 MS. GUTIERREZ: Objection.

1 THE COURT: Overruled.

2 MR. WARANOWITZ: If they have an AT&T digital
3 phone they will find our network and they will be able
4 to communicate with it.

5 BY MR. URICK:

6 Q And is that use reported in the AT&T computer
7 records?

8 MR. WARANOWITZ:

9 A Yes, it is.

10 Q Now, I would like you if you could in simple
11 terms explain how the network functions? And if it's
12 helpful using your explanatory diagrams feel free with
13 the Court's permission to step down and come over to
14 the diagrams.

15 THE COURT: You may walk over to the diagrams
16 if you need it to assist you.

17 MR. WARANOWITZ: Okay.

18 THE COURT: Or you may remain where you are
19 seated, it's up to you.

20 MR. WARANOWITZ: Thank you. There are three
21 basic parts to the network. The phone which we're all
22 familiar with --

23 MS. GUTIERREZ: Objection.

24 THE COURT: Okay. Sir, you can't assume that
25 everyone is familiar with anything.

1 MR. WARANOWITZ: I understand.

2 THE COURT: So, if you are going to tell us
3 something, just tell us and then if there's a question
4 either Mr. Urick or Ms. Gutierrez will ask you. If you
5 have an objection, Ms. Gutierrez to the form of Mr.
6 Urick's last question --

7 MS. GUTIERREZ: Yes.

8 THE COURT: Sustained as to the form of the
9 last question. You're going to have to be more
10 specific and not open ended with regard to this witness
11 at this time.

12 BY MR. URICK:

13 Q What are the principal components of the AT&T
14 Wireless Network?

15 MR. WARANOWITZ:

16 A There are three parts. There are the phones,
17 the cell sites and the switch.

18 Q How do they interact?

19 A The phone talks to the cell sites over the
20 airwaves using FM radio technology, digital. The cell
21 sites talk to the switch using what we call a T-1,
22 which is a computer line. Your voice when you talk
23 into the phone gets computerized, sent over the
24 airwaves to the cell site and then sent directly to the
25 switch. From the switch it gets sent to the other

1 parts of the phone network in America. If you're
2 talking to another AT&T customer you would stay within
3 the switch and be sent their phone. If you're talking
4 to land line then our switch will talk to the land line
5 system.

6 Q Describe a cell site? What is mean by that?

7 A A cell site is the radio interface to our
8 phone network. It consists of antennas which are
9 usually on top of buildings, water tanks or towers.

10 Q Why is an antenna put up on a tower?

11 A We need the height so we can see all the
12 phones in a certain coverage area.

13 Q What is meant by a coverage area?

14 A Coverage are is where the signal is strong
15 enough to send and receive phone calls.

16 Q And would the coverage area for a given cell
17 site be dependant upon the design of the cell tower?

18 A Yes.

19 Q Do you have any examples of cell towers with
20 you?

21 A There are some photos in that exhibit.

22 Q For the record I have the first photograph
23 which has the designation L651 at the bottom right.
24 Can you explain what does L refer to?

25 A L refers to our Baltimore switch.

1 THE COURT: One moment. What's the exhibit
2 number?

3 MR. URICK: This is for identification
4 State's Exhibit 43.

5 (State's Exhibit No. 43 was
6 marked for identification.)

7 Should I -- should I make A, B and C for each
8 individual page?

9 THE COURT: Yes, please do.

10 MR. URICK: That would be 43C.

11 THE COURT: Okay. With regard to Exhibit
12 43C. All right. Very well. Thank you.

13 BY MR. URICK:

14 Q The L designation again is?

15 MR. WARANOWITZ:

16 A The Baltimore switch.

17 MS. GUTIERREZ: Mr. Urick, could I ask you to
18 step on the other side?

19 BY MR. URICK:

20 Q And 651 is what?

21 MR. WARANOWITZ:

22 A This is what we call a Social Security
23 building.

24 Q And please describe how the cell tower or
25 cell site was constructed on this building?

1 A On top of the building is the radio equipment
2 cabinet, that is the cell site. Then there are antenna
3 cables going to the small vertical dark lines that you
4 see on the roof.

5 Q Indicating where I have the red pointing
6 right now?

7 A Correct.

8 Q Now, I'm going to show you what's marked for
9 identification as 43B. What is this diagram?

10 A This diagram represents a typical cell site
11 in the AT&T Wireless Network. Actually each cell site
12 is comprised of three sides. We have an A, B and C
13 side to it, each points in an unique direction. Thirty
14 degrees, 150 degrees and 270 degrees based off of true
15 north.

16 Q And is the division of the A, B and C always
17 based on the true north division?

18 A Yes.

19 Q Now, --

20 THE COURT: Mr. Urick, there are clips above
21 you. If you look you can hold that page up.

22 MR. URICK: Thank you.

23 THE COURT: All right.

24 BY MR. URICK:

25 Q Who prepared this particular diagram for 43

1 degrees?

2 MR. WARANOWITZ:

3 A I did.

4 Q And does it fairly and accurately depict the
5 manner in which a typical AT&T cell site is divided up
6 into A, B and C sections?

7 A Yes, it does.

8 MR. URICK: I would move at this time into
9 evidence State's Exhibit 43B.

10 THE COURT: Any objection, Ms. Gutierrez?

11 MS. GUTIERREZ: Well, I would object based on
12 relevancy. Since this exhibit only establishes what a
13 typical site is.

14 THE COURT: All right. I'll allow it. It
15 may be admitted as an aid to the description and also
16 as a representation of a description of how each cell
17 site is divided.

18 (State's Exhibit No. 43B, previously
19 marked for identification, was received
20 into evidence.)

21 THE COURT: You may proceed.

22 BY MR. URICK:

23 Q I now show you what is marked for
24 identification as State's Exhibit 43D. Can you
25 identify that exhibit?

1 MR. WARANOWITZ:

2 A Yes. It is a photo of L653.

3 Q And where is L653 located?

4 A It's located south of Route 40 near Cooks
5 Lane.

6 MS. GUTIERREZ: Near where?

7 MR. WARANOWITZ: Cooks Lane. I think the
8 address is Athol Avenue.

9 BY MR. URICK:

10 Q And on this -- this particular cell site is
11 set up as what?

12 MR. WARANOWITZ:

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

14 Q This particular cell site is what?
15 Physically it's what sort of structure?

16 A A tower.

17 Q And it's got three sort of cross sections.
18 What are each of these?

19 A Each set is a set of cellular antennas.

20 THE COURT: I'm sorry each set is what?

21 MR. WARANOWITZ: Each set is a set of
22 cellular antennas.

23 THE COURT: Cellular antennas?

24 MR. WARANOWITZ: Yes.

25 THE COURT: Okay.

1 BY MR. URICK:

2 Q Now, what's been marked for identification as
3 State's Exhibit 43E. Can you identify this picture?

4 MR. WARANOWITZ:

5 A That is L654.

6 Q And where is that located?

7 A It is located near Route 40 and the beltway
8 695 on the western side.

9 Q And physically this structure is what?

10 A A water tank.

11 Q And what are the upright structures on the
12 top?

13 A Those would be AT&T wireless antennas.

14 Q I'm now showing you what's marked for
15 identification as State's Exhibit 43F. Can you
16 identify that structure?

17 A L689.

18 Q And where is that located?

19 A Can I look at the map? I don't remember the
20 exact streets. We call it Govins Manor. It is located
21 off of Windsor Mill Road just north of Lincoln Park.

22 Q And what is this structure on top of it?

23 Well, what type of structure is this?

24 A It is an apartment building I believe.

25 Q And what's this on top?

1 A That is our -- those are our antennas.

2 Q And what parts of Baltimore City are covered
3 by this cell site?

4 A Lincoln Park to the south, to the west the
5 roads getting close to Social Security and then to the
6 north.

7 Q I'm now showing you what's marked for
8 identification as 43G. Can you identify that?

9 A That is L698.

10 Q And where is that located?

11 A It's located near Route 40 and Rolling Road.

12 Q Now, at this time I'm showing you what's been
13 marked for identification purposes as State's Exhibit
14 33.

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

17 Q Can you identify that exhibit?

18 A This is a -- this is a coverage map of our
19 cellular network.

20 Q Who created this map?

21 A I created it.

22 Q How is it created?

23 A It is done using a computer aided design
24 tool.

25 Q And does it show the computer records of AT&T

1 for these cell site areas?

2 A Yes.

3 Q And is the coverage area generated from those
4 computer records?

5 A Yes, it is.

6 Q And is part of the regular business of AT&T
7 to maintain such records of cell site coverage?

8 A Yes.

9 Q And is it necessary for the business of AT&T
10 Wireless to have this information?

11 A Yes, it is.

12 Q Does this particular map fairly and
13 accurately represent the computer records of the
14 coverage areas for these individual sites?

15 A It is accurate enough to do our job, yes.

16 Q Now, it's divided into --

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

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

21 MS. GUTIERREZ: Enough to do?

22 MR. WARANOWITZ: Our job.

23 BY MR. URICK:

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

1 MR. WARANOWITZ:

2 A Underneath is a USGS map that I printed out
3 enlarged. It depicts roads, terrains and building.

4 Q And does the overlay line up with the US
5 geological map underneath?

6 A Yes.

7 Q Now, just focus on one. There's a number
8 here 689. What is that?

9 A That is our cell site, L689 also known as
10 Govins Manor.

11 Q And that would represent the cell site that's
12 pictured in State's Exhibit for identification 43?

13 A No, it's the one above.

14 Q I'm sorry. I'm looking at the wrong one.
15 Forty three F, is that correct?

16 A Yes.

17 Q Now, that number is surrounded by three
18 covered areas. There's sort of a pale green on the
19 top, a brown below and then sort of a purplish on the
20 left.

21 A Correct.

22 Q What are those three colored areas?

23 A Each of those colored areas represents A, B
24 and C of the diagram that I -- that I exhibited
25 earlier.

1 Q So, taking State's Exhibit 43B which is now
2 in evidence, the green up there would correspond with
3 the A?

4 A Yes.

5 Q So, that would be designated as what?

6 A Sector A.

7 Q And how would it be printed up?

8 A What do you mean?

9 Q To designate it in the computer records.

10 A We call it L689A. A for sector A.

11 Q Now, the sort of brownish area here, that
12 would correspond to what?

13 A L689B.

14 Q That would correspond to the B sector on the
15 State's 43B, is that correct?

16 A Correct.

17 Q And the are to the left, sort of purplish
18 area, that would be designated as what?

19 A L689C.

20 Q Again, I assume that would be the one sort of
21 to the west of the cell site, is that correct?

22 A Correct.

23 Q And for -- may I approach the witness at this
24 time, Your Honor?

25 THE COURT: Yes, you may.

1 BY MR. URICK:

2 Q I give you a copy of what's been marked for
3 identification as State's 40 -- 34.

4 (State's Exhibit No. 34 was marked
5 for identification.)

6 Q For each of these numbers on the map, 651,
7 698, 654, 653, 607, would the colored areas around them
8 similarly correspond to the --

9 MR. WARANOWITZ:

10 A Yes.

11 Q A, B and C designations sort of perfect?

12 A Yes.

13 Q Ideal setting. When you have a coverage,
14 when you determine a coverage area, what factors
15 influence coverage?

16 A Buildings, terrain and sometimes trees.

17 Q Now, when you have a cell site that's got the
18 three antenna on it back in January of 1999 -- does
19 technology -- when a cell phone initiates a call what
20 determines which sector transmits that call into the
21 system?

22 A The phone determines which sector it
23 originates a call on.

24 Q How so?

25 A It picks the strongest signal that it sees

1 and then it talks to that cell site. After that you
2 can make a phone call.

3 Q Now, say you're in this sector, this would be
4 the B sector, is that correct?

5 A Yes.

6 Q In January of 1999 did technology exist such
7 that in the B cell antenna was occupied with another
8 call it would switch the call to the C or A side?

9 A No.

10 Q Does that technology exist today?

11 A No, we do not have that enabled.

12 Q So -- now, if you're in a particular cell
13 site, you say the factors that determine coverage again
14 are?

15 A Signal strength, the strongest signal,
16 terrain.

17 Q And the radio waves are operated on line of
18 sight.

19 THE COURT: I'm sorry. The radio waves?

20 MR. URICK: Operate on line of sight.

21 MR. WARANOWITZ: To an extent, yes.

22 BY MR. URICK:

23 Q What is meant by that?

24 MR. WARANOWITZ:

25 A Large objects will tend to create shadows

1 that make it difficult to make a phone call.

2 Q And the reason why you build a tower to put
3 up the antennas higher is what?

4 A To eliminate the number off objects between
5 your phone and the cell site.

6 Q Does that also determine the radius that the
7 radio waves can spread out at?

8 A Yes, it does.

9 Q Is that datermined solely by the design of
10 the cell towers? Taking into account the terrain.

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

12 Q And is that determined solely by the design
13 of the cell tower taking into account particular
14 features like terrain that might be in that area?

15 A There are other factors.

16 Q What might those be?

17 A Neighboring cell sites, neighboring cell
18 sites.

19 Q Now, last fall we asked you to take a test of
20 the system. Can you explain what the test was that we
21 asked you to do?

22 A I was asked to visit a number of places in
23 the area located on this map and take readings and make
24 phone calls to fins out what cell site I would
25 originate at certain locations.

1 Q And --

2 MS. GUTIERREZ: I'd like a copy to follow the
3 testimony, Mr. Urick.

4 MR. URICK: Your investigator picked up
5 copies.

6 MS. GUTIERREZ: I don't have a copy of it. I
7 haven't seen it. I'd like a copy.

8 THE COURT: Counsel, may I see you at the
9 bench? Ms. Gutierrez, Mr. Syed, Mr. Urick.

10 (Counsel and Defendant approached the bench
11 and following ensued:)

12 THE COURT: Okay. Is there a problem?

13 MR. URICK: We've provided copies of this
14 previously to the Defense and she's saying no.

15 THE COURT: Well, first of all I would like
16 to know what it is you have.

17 MR. URICK: They're marked for identification

18 --

19 THE COURT: May I see what you have?

20 MR. URICK: They're marked for identification
21 State's 44 and 45.

22 THE COURT: Okay. This is a map. This is
23 the map that the witness is going to testify from?

24 MR. URICK: Yeah, he created it.

25 THE COURT: Forty four and 45. Okay. I note

1 that there are markings on it. All right. And you're
2 saying you do not have another copy of this?

3 MR. URICK: Not with us, but we've previously
4 provided it to the Defense.

5 THE COURT: Okay. But is there -- when you
6 say not with us, is somebody that you -- is your office
7 in this building?

8 MR. URICK: I can go make a copy if the Court
9 would --

10 THE COURT: Okay. I would make a copy
11 myself, but this appears to be in color copy. Those
12 items on here are in color. Will they have some
13 significance to the testimony of this witness?

14 MR. URICK: I have no -- I don't believe so.

15 THE COURT: The circles are color coded.

16 MR. URICK: I think that's just -- that they
17 printed out that way to differentiate it so it can be
18 visible, so it does have the significance.

19 THE COURT: Well, differentiate for the
20 purposes of this witness testifying or differentiate it
21 for the purposes of his just looking pretty? In other
22 words, is he going to use the colors in his testimony?

23 MR. URICK: I think only to identify the
24 geographic areas on the map that are important.

25 THE COURT: I'll ask the question again. Are

1 the colors significant so that if I have a black and
2 white copy made of this that Ms. Gutierrez is not going
3 to be able to follow the testimony or do you need a
4 color copy made?

5 MR. URICK: I do not believe there will be a
6 problem following a black and white copy of this.

7 THE COURT: Okay. But the testimony is not
8 relative to the colors?

9 MR. URICK: If it is it can also be
10 designated by the line of numbers that follow.

11 THE COURT: By the numbers that are on there.

12 MR. URICK: That are following the line.

13 THE COURT: All right. Then -- so that
14 Counsel can have something in front of her, I'd ask
15 that you make copies.

16 MS. GUTIERREZ: Thank you, Judge. But I'd
17 like the record to reflect what Mr. Urick just told me
18 is that my investigator picked up these copies. They
19 have never been provided to me, the arrangements to get
20 discovery were very explicit. An investigator never
21 picked up anything from Mr. Urick as a result of him
22 notifying us that he had information for us either I or
23 one of my law clerks, specifically Mr. Lewis or Mr.
24 Perthemis were the only people allowed to pick them up.
25 He never mailed them, he never delivered them to us.

1 One of us had to go pick up upon his designation.
2 These have never been provided, I do not have an
3 investigator in my office, I hire outside investigators
4 who do not such tasks as going to a prosecutor's office
5 to pick up anything. I've not seen these.

6 THE COURT: You've never see these?

7 MS. GUTIERREZ: No.

8 THE COURT: Have you been provided with the
9 report?

10 MS. GUTIERREZ: No, Judge. That was the
11 whole, you know the illusion this morning. The only
12 thing is that we got designation of Abe Waranowitz and
13 we got a half a page designation of a list of cell
14 sites that would be triggered at a certain address. We
15 sent numerous requests in writing for any report, for
16 any maps, for any documents that this witness used. We
17 got no response other than saying we've given all that
18 we're going to give, period.

19 THE COURT: Ms. Gutierrez, if you would pause
20 right here. Ms. Murphy or Mr. Urick.

21 MR. URICK: Ms. Murphy ---

22 THE COURT: Show me what you gave to the
23 Defense in discovery relative to this witness?

24 MS. MURPHY: Your Honor, I was present --

25 THE COURT: No, no. My question is show me.

1 MS. MURPHY: I need to give you some
2 background. I was present in the conference room of my
3 office when Ms. Gutierrez, her investigator, Mr. Dru
4 Davis and her associate who's present today all came to
5 my office and photocopied numerous exhibits and they
6 were also given an opportunity to view these and
7 photocopy them if they wanted to, I don't know if they
8 did.

9 THE COURT: Can you --

10 MS. MURPHY: I specifically recall, Your
11 Honor that Mr. Davis examined these because he
12 specifically asked me what these numbers meant and I
13 told him I could not explain that, that they would have
14 to ask the expert.

15 THE COURT: Okay. The person that came to
16 your office was whom?

17 MS. MURPHY: Ms. Gutierrez, Mr. Dru Davis,
18 her investigator and her associate, I don't remember
19 his name, who is present today.

20 THE COURT: They came to your office?

21 MS. GUTIERREZ: He's my law clerk.

22 MS. MURPHY: Yes. And --

23 THE COURT: When did they come to your
24 office?

25 MS. MURPHY: Oh, this was back --

1 MR. URICK: Just prior before the last trial
2 date when they made a request to see exhibits and
3 potential exhibits.

4 MS. MURPHY: Yes. We spent upwards of an
5 hour in the conference room of my office and they were
6 given a photocopy machine.

7 THE COURT: So, you gave them a copy of this,
8 right?

9 MS. MURPHY: I gave them everything they
10 wanted and they copied --

11 THE COURT: No, that's not what I asked you.

12 MS. MURPHY: Your Honor, whether they copied
13 it or not was up to them at that point in time. They
14 were given access to these.

15 THE COURT: You gave them a copy -- you gave
16 them a copy of Exhibits 44 and 45?

17 MS. MURPHY: Yes.

18 THE COURT: Did you tell them what they were?

19 MS. MURPHY: I explained that they were
20 produced by the AT&T representative and that I was
21 asked to explain the numbers and I said I couldn't.
22 That really he would have to explain it for them.

23 THE COURT: Have you received a report from
24 this expert as to what the expert is going to testify
25 to?

1 MS. MURPHY: Has he written a report?

2 MR. URICK: No written report.

3 MS. MURPHY: He has disclosed notes taken
4 during these.

5 THE COURT: I'm not going to deal with two
6 people at one time. So, you decide which one's going
7 to talk and then that will be the person who can answer
8 my question. Is it going to be you, Ms. Murphy or Mr.
9 Urick?

10 MS. MURPHY: To the best of my ability. I
11 mean I was present for this and that's what I'm
12 addressing this, Your Honor.

13 THE COURT: Okay. So, my question is have
14 you given the Defense a copy of what it is or a summary
15 of what it is that this witness is going to testify to?

16 MS. MURPHY: Yes, they've been given a
17 disclosure based on my notes from when Mr. Waranowitz
18 made these.

19 THE COURT: Okay. Now, I first asked you to
20 show me what it is that you gave the Defense?

21 MS. MURPHY: I would have to ask Mr. Urick
22 for that.

23 THE COURT: That's fine, that's fine.

24 MR. URICK: I'd have to go down to our office
25 and get a copy of the discovery.

1 THE COURT: Okay. Do that.

2 MR. URICK: Can I take those along at this
3 time to make a xerox?

4 THE COURT: Yes, would you do that as well.
5 You may have a seat, Ms. Gutierrez.

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

8 MR. URICK: Court's permission?

9 THE COURT: Yes. Ladies and gentlemen, we're
10 going to stay put. Mr. Urick is going to retrieve some
11 things for the Court. If you want to stand up, stretch
12 your legs, if you would like some water from the water
13 cooler feel free to walk over and get that. Take a
14 moment to retrieve the items that I asked for and then
15 we'll continue in just a moment. We're all going to
16 stay in the Court, we're not leaving, we're not
17 recessing, but you're welcome to stand, stretch your
18 legs, the water cooler is there. Are there cups there
19 on the side?

20 JUROR: No, Your Honor.

21 THE COURT: No. Would you go and see if we
22 can't receive some cups for us? Counsel, as soon as
23 you have the items that I've requested would you bring
24 them up for me.

25 (Counsel approached the bench and the

1 following ensued:)

2 MR. URICK: This is the --

3 THE COURT: Amended discovery dated October
4 12th, 1999 and the number which relates to the items
5 that you are indicating would be -- lets see. An oral
6 statement, A. Waranowitz of AT&T reported the
7 following, cell phone trigger cell site, okay. Okay.
8 Okay.

9 MS. GUTIERREZ: Judge, I have that. I
10 brought that up with me. I will tell you this is the
11 only disclosure that we get regarding Mr. Waranowitz
12 and in fact --

13 THE COURT: One second before you respond I
14 just want to make sure. You gave the Defense this?

15 MS. MURPHY: Yes.

16 THE COURT: Item which is the amended
17 disclosure.

18 MS. MURPHY: Correct.

19 THE COURT: Anything else? You said you were
20 present when copies of State's Exhibits 44 and 45 were
21 made?

22 MS. MURPHY: Whether they made the copies was
23 up to them. They were given the opportunity to inspect
24 and copy them as provided for in the rules, Your Honor.

25 THE COURT: Okay.

1 MS. MURPHY: And I remember a specific
2 discussion about these.

3 THE COURT: Because they asked you about
4 them?

5 MS. MURPHY: Exactly.

6 THE COURT: When you say they, who is they?

7 MS. MURPHY: It was a conversation with
8 either Mr. Davis or I think it's Mr. Fisher who's
9 present here today, one of the two.

10 THE COURT: Mr. Lewis, the blond hair
11 gentlemen?

12 MS. MURPHY: I'm sorry, Your Honor, Mr.
13 Lewis, I apologize. One of them asked me specifically
14 about these maps. These were the only maps generated
15 by the witness of this nature.

16 THE COURT: And at the time that you were
17 asked about them you explained that these are maps that
18 Mr. Abe Waranowitz would be the one that could explain?

19 MS. MURPHY: All right. And for the record
20 I'm just giving you these as the xerox copies of the
21 exhibits.

22 MS. GUTIERREZ: Thank you, Judge.

23 THE COURT: That you did not have before.

24 MS. GUTIERREZ: For the record --

25 THE COURT: And I ask that the witness refer

1 to the items when he testifies by the numbers and not
2 by the colors since I see that this copy does not
3 provide the colors in the xerox fashion. So, the
4 record will be clear as to what the witness is
5 referring to. All right. Now, Ms. Gutierrez I'll hear
6 from you.

7 MS. GUTIERREZ: For the record, Judge. We
8 were not provided copies of these. I had no
9 discussion, there's nothing in these exhibits that
10 identified them in any way. Mr. Waranowitz's name or
11 initials or anything do not appear to establish that he
12 made them. What we were provided at the evidence room
13 about which we had a great number of questions and as a
14 result of those questions which Ms. Murphy was not able
15 to answer any of those questions, we were referred to
16 Mr. Waranowitz who I spent about a month tracking down
17 who did not want to speak to us. If was through his
18 supervisor that we were provided a copy of the overlay
19 of the map. The colored portions on which are written
20 those large numbers, the six, the cell site numbers.

21 THE COURT: Right.

22 MS. GUTIERREZ: Appear on --

23 THE COURT: L something.

24 MS. GUTIERREZ: The overlay, but not the
25 underlying map to which the attempt is to identify it,

1 so all it was, was a series of colors that were
2 identified by numbers and we were unable to get any
3 information from Mr. Waranowitz to explain it. The
4 only other discovery we had from Mr. Waranowitz refers
5 to the cell sites which at that point we had figured
6 out were in fact the large number on the colored
7 overlay unattached to any map. I will note just for my
8 own familiarity with the geological survey map --

9 THE COURT: One moment. Ladies and gentlemen
10 of the jury, at this time I'm going to have to ask you
11 not to speak. What is occurring at this time is you
12 have a microphone in front of you and as I indicated to
13 you before that when you speak in this room because
14 it's a video courtroom, the audio goes to the person
15 who's speaking the loudest. So, if your voices happen
16 to exceed ours then the recording device will switch to
17 you and not us. So, at this time I'm going to have to
18 ask you not to talk, we will be with you shortly.
19 Thank you.

20 MS. GUTIERREZ: That I believe just from my
21 familiarity with geological survey map which is, you
22 know obtainable from all kinds of sources that because
23 of markings of Arbutus that it appears to be a very
24 tiny portion of that map. The Arbutus section of
25 Baltimore were to appear on the lower right hand --

1 THE COURT: Right hand.

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

1 930 something and then there's two hand written in
2 identifications to the cell site, L65 -- I think 55B
3 and L608C appear handwritten in. And again, there's no
4 notation where these came from, who made the notations,
5 who made the handwriting, that they are related to Mr.
6 Waranowitz. I did attend together with my investigator
7 and Mr. Lewis a session that we are -- that they are
8 required to afford under the rules to -- I don't know
9 the date of that session although I'm sure I can
10 calculate that date by my letters, but it occurred
11 before this.

12 THE COURT: This meaning --

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

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

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

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

17 MS. GUTIERREZ: Underneath.

18 THE COURT: Underneath.

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

21 THE COURT: And the US geological street map
22 is not the same item that is being marked as State's
23 44, 45, correct?

24 MR. URICK: Correct.

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

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

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

7 THE COURT: Okay.

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

10 THE COURT: The numbers that appear on your
11 State's Exhibit 44 and 45, numbers like 860, 854, 911,
12 926, those numbers correspond to what?

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

18 THE COURT: Okay. And the materials --

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

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

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

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

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

12 MR. URICK: Part of it, yes.

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

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

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

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

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

24 MR. URICK: Yes.

25 THE COURT: Very well. Your objection is

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

3 MR. URICK: Thank you.

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

6 MS. GUTIERREZ: May I have a continuing
7 objection?

8 THE COURT: Yes, you may.

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

11 THE COURT: As Counsel goes back, let the
12 record reflect that the information contained on 44 and
13 45 I find is the data under the rules 4-263. The oral
14 report and the conclusion would be required. The data
15 was additional information and I find that is part of
16 the basis of the overruling of the objection. The
17 continue objection, Ms. Gutierrez is noted. You may
18 proceed, Mr. Urick.

19 MR. URICK: Thank you.

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

24 MR. WARANOWITZ: I understand.

25 THE COURT: All right. Very well. You may

1 proceed.

2 BY MR. URICK:

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

5 MR. WARANOWITZ:

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

9 Q Did we ask you to go to Gelston Park?

10 A Yes.

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

13 A Yes.

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

16 THE COURT: Yes, you may approach.

17 BY MR. URICK:

18 Q With this laser pen you just press down.

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

23 BY MR. URICK:

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

1 site covering from 698, is that correct?

2 MR. WARANOWITZ:

3 A Yes.

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

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

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

10 A Yes, there is a small hill there that shadows
11 698.

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

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

17 Q Have you seen that before?

18 A Yes.

19 Q What is that?

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

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

25 A This was generated from an Erickson test

1 phone while driving around in this neighborhood.

2 Q Was this generated the day we had you doing
3 the test?

4 A Yes, it was.

5 Q And what system did it use to generate this
6 data from? What is the global tracking satellite?

7 MS. GUTIERREZ: Objection.

8 THE COURT: Overruled. You may tell us what
9 the global tracking satellite is.

10 MR. WARANOWITZ: GPS?

11 MR. URICK: Yes.

12 MR. WARANOWITZ: Global positioning system.

13 BY MR. URICK:

14 Q Please explain what that is.

15 MR. WARANOWITZ:

16 A I can't answer that.

17 Q How do you use it?

18 A We use it to specify -- we used it to find
19 out where we are when we're driving around.

20 Q Is that map generated from that data?

21 A Yes.

22 THE COURT: I'm going to sustain the
23 objection in that Ms. Gutierrez objected to his
24 description of the satellite and is it your testimony
25 that you don't know what the satellite is, is that

1 correct?

2 MR. WARANOWITZ: I'm not an expert in that
3 area.

4 THE COURT: I didn't ask if you were an
5 expert in the area, I asked if you knew what the
6 satellite was? Do you know what it is?

7 MR. WARANOWITZ: Yes.

8 THE COURT: Okay. What -- as it relates to
9 what that item is can you tell or answer the question?

10 MR. WARANOWITZ: We use the GPS system to
11 pinpoint our location when we test our network.

12 THE COURT: And you use that as part of your
13 job, is that correct?

14 MR. WARANOWITZ: That is correct?

15 THE COURT: Ladies and gentlemen of the jury,
16 this is not an expert with regard to the satellite,
17 he's not been offered as an expert, so with regard to
18 his testimony as to what the item is that is the
19 satellite you consider him as a lay person as you would
20 and, ladies and gentlemen you are as to what a
21 satellite is. You may use your own -- that portion of
22 his testimony should be considered as a lay person and
23 that portion of Ms. Gutierrez's objection is therefore
24 sustained.

25 MS. GUTIERREZ: Thank you, Your Honor.

1 THE COURT: When an expert testifies you note
2 that, ladies and gentlemen I limited him as to what
3 portion of his testimony you should consider as expert
4 testimony. As he testifies if he's asked a question
5 where he is responding not as an expert, but as a lay
6 person I will let you know. Ms. Gutierrez, you have a
7 continuing objection to anything that is not expert
8 testimony, but rather that of a lay person. If it is
9 as his expert testimony I will not qualify it, if it is
10 as a lay person I will qualify it. Your next witness.
11 Your next question, Mr. Urick.

12 BY MR. URICK:

13 Q Now, the letters on that exhibit is written
14 in 654C. How did that get on the exhibit?

15 MR. WARANOWITZ:

16 A I wrote that on there.

17 Q And does that fairly and accurately record
18 the tests on that date?

19 A Yes, it does.

20 MR. URICK: Would offer State's Exhibit 44,
21 the exhibit at this time.

22 MS. GUTIERREZ: Objection.

23 THE COURT: Have all the notations on the
24 exhibit been identified?

25 BY MR. URICK:

1 Q May I have a moment. The printed out three
2 digit numbers, do you know what those are?

3 MR. WARANOWITZ:

4 A Those are the frequencies we use.

5 Q Explain what you mean by that.

6 A We have a range of frequencies much like
7 radio and television channels that we use. We record
8 those channels and how strong their signal strength is
9 and relate it to the GPS location. That frequency, it
10 can be identified specifically to a cell site.

11 Q And those numbers are printouts of what
12 frequency is being used at any given -- at that
13 particular location?

14 A Yes.

15 MR. URICK: Would offer the exhibit at this
16 time.

17 MS. GUTIERREZ: Same objection.

18 THE COURT: It's just --

19 MS. GUTIERREZ: Your Honor, I note that all
20 handwritten items on the map have been identified.

21 THE COURT: For that reason it will
22 sustained.

23 BY MR. URICK:

24 Q There's some circles drawn on there, who drew
25 those?

1 MR. WARANOWITZ:

2 A The circle that I have drawn around Gelston
3 Park and parts of Rolling Road indicates that the cell
4 phone that we were using to test saw L654C as it's
5 strongest cell site at those locations.

6 Q I'm sorry. Can you give me that last
7 sentence again?

8 MS. GUTIERREZ: Objection.

9 THE COURT: Sir, can you repeat the end of
10 your answer for Counsel?

11 MR. WARANOWITZ: Yes. The --

12 THE COURT: It's overruled. Go ahead.

13 MR. WARANOWITZ: The frequencies that I have
14 circled on this map around Gelston Park and Rolling
15 Road indicate where the phone has picked up L654C as
16 it's strongest cell site.

17 BY MR. URICK:

18 Q Are there any other handwritten notations on
19 the map?

20 MR. WARANOWITZ:

21 A I don't see any, no.

22 MR. URICK: At this time I would offer
23 State's Exhibit 44.

24 MS. GUTIERREZ: Objection. Same basis and I
25 would note that there is some handwriting that has not

1 been identified.

2 THE COURT: May I see the exhibit please?
3 Mr. Clerk, would you pass it to me please? Thank you.
4 Mr. Waranowitz, I notice there are other colored
5 markings on that, have you identified those for the
6 record?

7 MR. WARANOWITZ: No.

8 THE COURT: I notice there are a series of
9 numbers that go vertical across the top of the page,
10 from top to bottom. Have you identified those numbers
11 either? Just yes or no.

12 MR. WARANOWITZ: Yes.

13 THE COURT: Okay. And the numbers that go
14 across the middle of the page?

15 MS. GUTIERREZ: Objection.

16
17 THE COURT: I understand, Counsel. My -- my
18 problem is --

19 MS. GUTIERREZ: I do understand, but I'm --

20 THE COURT: You're noting the objection for
21 the record.

22 MS. GUTIERREZ: Thank you.

23 THE COURT: Have those numbers been
24 identified by you?

25 MR. WARANOWITZ: Yes.

1 THE COURT: You identified them today? No,
2 look at me. Did you identify them today?

3 MR. WARANOWITZ: I've identified the
4 frequencies on here, yes.

5 THE COURT: Okay. I didn't ask you about
6 frequencies, I asked you about numbers. Did you
7 identify the numbers?

8 MR. WARANOWITZ: Yes.

9 THE COURT: Okay. Very well. With regard to
10 the objection as this juncture it's sustained. There
11 are items on that exhibit that have not been
12 identified. The witness has not been asked to identify
13 them and therefore this item is not in evidence. The
14 witness has not been asked to identify them and
15 therefore this item is not in evidence yet.

16 BY MR. URICK:

17 Q The colored markings, are those handwritten
18 in?

19 MR. WARANOWITZ:

20 A No, they are computer drawn.

21 Q And what do they signify?

22 A They signify the signal strength that the
23 phone sees at that position.

24 Q And how does it signify it?

25 A The different colors indicate different

1 signal strengths. Generally, blue stands for neg,
2 85DB, red stands for neg., 75 and yellow for -- I'm
3 sorry, neg 105 and less.

4 Q And do the colors match up with the
5 particular three digit numbers beside them?

6 A Yes.

7 Q Are there any other computer generated
8 notations like that on the document as opposed to
9 handwritten?

10 A Just the under -- just the underlaying map.

11 Q There was some reference to some numbers
12 running across the top, is that correct?

13 A Which -- which numbers?

14 Q And all the computer generated numbers,
15 colors, etcetera are -- first of there's a line of them
16 running almost through -- up -- through the center of
17 the page running from the bottom to the top. Do you
18 know what they are following?

19 A The numbers following Rolling Road indicate
20 the frequencies.

21 Q And that's driving up Rolling Road, is that
22 correct?

23 A Down, yes.

24 Q And then the circle of ones that go off to
25 the left, those go around what geographical feature?

1 A There's a hill in the middle of that circle.

2 Q And those numbers follow Rolling Road and
3 then the path followed around the surf of the hill,
4 correct?

5 A Yes.

6 MR. URICK: Would offer the exhibit at this
7 time.

8 MS. GUTIERREZ: Same objection.

9 THE COURT: Overruled at this time. Let the
10 exhibit be admitted. I believe that's Exhibit Number
11 44.

12 (State's Exhibit No. 44, previously
13 marked for identification, was
14 received into evidence.)

15 BY MR. URICK:

16 Q If you could pass it to the Clerk at this
17 time I would appreciate it. Now, I'd like you to look
18 at what's been marked for identification as State's
19 Exhibit 34. Now, have I shown you this exhibit before?

20 MR. WARANOWITZ:

21 A Yes.

22 Q Now, in the far right are a list of
23 addresses. Have you had a chance to examine the
24 exhibit to check those addresses against the cell sites
25 that are listed in the column to directly left from the

1 computer generated business records of the Defendant?

2 A Yes.

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

5 A Yes.

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

10 MS. GUTIERREZ: Objection.

11 THE COURT: Sustained.

12 BY MR. URICK:

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

18 MR. WARANOWITZ:

19 A Yes.

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

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

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

9 BY MR. URICK:

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

12 MR. WARANOWITZ:

13 A Yes.

14 Q What test did you perform there?

15 A I originated a phone call.

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

18 A Yes.

19 Q And what was that cell site?

20 A L654C.

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

23 A On Dorchester Road.

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

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

3 A Yes.

4 Q Could you please find that?

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

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

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

16 THE COURT: Yes you may. Exhibit 45.

17 BY MR. URICK:

18 Q Can you identify that?

19 MR. WARANOWITZ:

20 A Yes.

21 Q And what is that?

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

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

1 A That would be the address that you gave me.

2 Q Now, when you got to the 470 block of Gateway
3 Terrace what if anything did you discover about the
4 functioning of the AT&T Wireless network at that
5 location where you initiated calls?

6 A I found that there were two cell sites very
7 strong in that area.

8 Q And affect did that have on your phone?

9 A Depending on where you were located on that
10 road you could originate a call on one of two cell
11 sites.

12 Q Now, if you look on 6, lines 14, 15 and 16.
13 There you'll see three calls. One through cell site
14 16, 655A, the other two L608C. Were those the cell
15 sites that you picked up in your test when you went to
16 the 2700 block of Gateway Terrace?

17 A Yes.

18 Q If I may approach the Clerk at this time, I
19 need State's Exhibit 9. It's one of the big photo
20 arrays. I'm now showing you what's been marked for
21 identification or in evidence as State's Exhibit 9. I
22 would like you to look at the top left photograph and
23 then the others as well. Can you identify that
24 location?

25 A This was the location I was taken to where I

1 was told a body was buried.

2 Q Already designated on this map by a B.
3 You've had a chance to look at the map and see that?

4 A Yes.

5 Q When you got to that site and you can hand
6 the exhibit back to the Clerk at this time, what test
7 did you perform?

8 A I originated a phone call.

9 Q And what cell site did you find that that
10 sight went through?

11 A L689B.

12 Q I would like if you look at lines 10 and 11
13 on the State's Exhibit 34, you've got cell sites 689,
14 L689B, address 2122 Windsor Park Lane. Is that the
15 same cell site that a phone call initiated there went
16 through?

17 A Yes.

18 Q Now, if the witness may approach the exhibit,
19 that's been marked overhead exhibit at this time.

20 THE COURT: Yes you may.

21 BY MR. URICK:

22 Q Can you find cell site 653 please? Now,
23 where is 653A of the three colored zones there?

24 MR. WARANOWITZ:

25 A It would start in the brown area.

1 Q And where is 651C, 653C, pardon me?

2 A It would be this orange area here.

3 Q Okay. You may return to the stand at this
4 time. Now, what do mean by the term originated?

5 A It means that the phone call, I mean that the
6 wireless phone has begun to make a call or receive a
7 call.

8 Q Do you have an AT&T wireless phone yourself?

9 A Yes.

10 Q And do you get billing notices from that?

11 A Yes.

12 Q I'd like you to look at lines 18 and 19 on
13 this. What do those two lines show?

14 MS. GUTIERREZ: Objection.

15 THE COURT: Overruled. This response then
16 would be as a lay person that's responding to a
17 question that one might be able to answer based on
18 their records receiving cellular phone information.
19 You may proceed.

20 MR. WARANOWITZ: This means that the customer
21 has dialed his voice mailbox.

22 BY MR. URICK:

23 Q Why does it take two lines, if you know?

24 MR. WARANOWITZ:

25 A I don't know.

1 Q However, the records for those do indicate
2 the exact same time and the exact same duration of the
3 call?

4 A Yes.

5 Q Now, if there were testimony that someone
6 were in a car traveling westbound on Edmondson Avenue
7 and that two calls were made on an AT&T Wireless
8 subscriber phone and you found cell records that had
9 first 653A and then a moment, minute or two later a
10 call originating 653C, would that functioning of the
11 network be consistent with the testimony?

12 MS. GUTIERREZ: Objection.

13 THE COURT: You may answer as only it relates
14 to an Erickson piece of equipment cell phone.

15 MR. WARANOWITZ: Yes that would be
16 consistent.

17 BY MR. URICK:

18 Q Now, if there were testimony that two people
19 in Lincoln Park at the burial site and that two
20 incoming calls were received on a cell phone, they're
21 an AT&T subscriber cell phone there, cell phone records
22 with two calls that were -- went through that
23 particular cell site location, would the -- that
24 functioning of the AT&T network be consistent with the
25 testimony?

1 MS. GUTIERREZ: Objection.

2 THE COURT: You may answer only as it relates
3 to an Erickson piece of equipment.

4 MR. WARANOWITZ: Yes.

5 BY MR. URICK:

6 Q Now, if there were testimony that at the 2700
7 block of Gateway Terrace two people were visiting other
8 people and two or three incoming calls were received on
9 a AT&T wireless subscriber phone at that location and
10 the cell phone records indicated the cell sites you
11 listed for the 655A and 608C, would that functioning of
12 the AT&T network be consistent with the testimony?

13 MR. WARANOWITZ:

14 A Yes.

15 MS. GUTIERREZ: Objection.

16 THE COURT: Again, ladies and gentlemen as
17 only as it relates to the Erickson phone and you're
18 answering that question in that fashion, is that
19 correct, sir?

20 MR. WARANOWITZ: Yes.

21 THE COURT: Very well. You may continue.
22 And for the record your objections are overruled only
23 as it relates to the equipment for which he's been
24 qualified to testify.

25 BY MR. URICK:

1 Q Now, if there was testimony that someone had
2 dropped someone off at school to go to track practice
3 and the person who had the car went to Gelston Park,
4 parked for a while and then went back to pick the
5 person up, if you found -- and they called at Gelston
6 Park, one or more incoming calls were received by the
7 AT&T wireless subscriber telephone and then you found
8 cell phone records that had calls from the L654C cell
9 site, would that functioning of the AT&T network be
10 consistent with the testimony?

11 MR. WARANOWITZ:

12 A Yes.

13 MS. GUTIERREZ: Objection.

14 THE COURT: Sustained only as to the
15 equipment being for Erickson may you answer and your
16 answer is?

17 MR. WARANOWITZ: Yes.

18 THE COURT: You may proceed.

19 BY MR. URICK:

20 Q Now, in terms of the coverage and the
21 functioning of the network, is it the design of the
22 cell tower that is the operative factor or is it the
23 cell phone?

24 MR. WARANOWITZ:

25 A Cell tower.

1 Q Why?

2 A Because the cell tower provides the coverage
3 in that area.

4 Q Now, based on your knowledge of the AT&T
5 wireless network system, does the particular model or
6 manufacturer of a cell phone, brand of a cell phone
7 have any affect on the functioning of the network?

8 MS. GUTIERREZ: Objection.

9 THE COURT: I'm going to sustain it, but you
10 can reword it.

11 BY MR. URICK:

12 Q What affect if any does a brand of a cell
13 phone -- what if any affect does a brands of cell
14 phones have on the functioning of the AT&T wireless
15 network.

16 MS. GUTIERREZ: Objection.

17 THE COURT: Overruled. If you know.

18 MR. WARANOWITZ: It depends on the quality of
19 the phone.

20 BY MR. URICK:

21 Q How might that affect it?

22 MS. GUTIERREZ: Objection.

23 THE COURT: Overruled. And again, if you
24 know?

25 MR. WARANOWITZ: For performance.

1 BY MR. URICK:

2 Q And how so?

3 MS. GUTIERREZ: Objection.

4 THE COURT: At this point I'm going to
5 sustain and, Mr. Urick unless you are prepared to lay a
6 foundation for this witness's basis of knowledge as to
7 other equipment other than Erickson phones and how they
8 relate to your question this entire line of questioning
9 will be sustained.

10 BY MR. URICK:

11 Q Your AT&T wireless cell phone is what brand?

12 MR. WARANOWITZ:

13 A I use a Motorola phone.

14 Q Have you used other cell phones with the
15 network?

16 A Yes.

17 MS. GUTIERREZ: Objection.

18 THE COURT: Overruled.

19 BY MR. URICK:

20 Q What other cell phones have you used?

21 MR. WARANOWITZ:

22 A Erickson.

23 MS. GUTIERREZ: May I continue my objection?

24 THE COURT: Yes, you may.

25 MR. WARANOWITZ: Erickson, Nokia.

1 BY MR. URICK:

2 Q Are you -- in your experience -- well, how
3 have you used those phones?

4 MS. GUTIERREZ: Objection.

5 THE COURT: Question is too general, it's
6 sustained.

7 BY MR. URICK:

8 Q Are you familiar -- do you have any knowledge
9 of the technology that's used in those phones?

10 THE COURT: In what phones?

11 MR. URICK: The Erickson, Nokia and Motorola.

12 THE COURT: Overruled. Do you, yes or no?

13 MR. WARANOWITZ: Could you rephrase the
14 question please?

15 BY MR. URICK:

16 Q Do you have any knowledge as to the radio
17 technology that's used by the Nokia, the Erickson, the
18 Motorola phones?

19 MS. GUTIERREZ: Objection.

20 THE COURT: Overruled. Yes or no? Do you or
21 don't you?

22 MR. WARANOWITZ: I have limited knowledge,
23 yes.

24 BY MR. URICK:

25 Q If an owner of any of those three types of

1 phones had an adequately performing phone would it have
2 made any difference in the functioning of the AT&T
3 network as you described for an Erickson phone?

4 MS. GUTIERREZ: Objection.

5 THE COURT: The objection is sustained and
6 you may not answer that question.

7 MR. URICK: May I have the Court's
8 indulgence?

9 THE COURT: Yes, you may.

10 BY MR. URICK:

11 Q Are you familiar with the performance of the
12 Motorola, the Erickson and the Nokia cell phones?

13 MS. GUTIERREZ: Objection.

14 THE COURT: Overruled. Yes or no?

15 MR. WARANOWITZ: Yes.

16 BY MR. URICK:

17 Q Is there any difference in the performance of
18 those three?

19 MS. GUTIERREZ: Objection. You may answer.

20 MR. WARANOWITZ: Yes.

21 BY MR. URICK:

22 Q What is the difference?

23 MS. GUTIERREZ: Objection.

24 THE COURT: Sustained.

25 MR. WARANOWITZ: There are --

1 THE COURT: No, you can not answer the
2 question unless the -- again, Mr. Urick this witness is
3 not qualified with regard to the technology of the
4 Motorola or the Nokia. You have not asked questions to
5 qualify him as an expert in such and he will not be
6 permitted to testify as an expert in such, until such
7 time you are able to qualify him. Ladies and
8 gentlemen, as you heard at the beginning, he is an
9 expert as it relates to Erickson equipment, not
10 Motorola or Nokia and so therefore he can not testify
11 unless we can qualify him as such and there is a
12 standing objection which is sustained. Your next
13 question, Mr. Urick.

14 BY MR. URICK:

15 Q Are Nokia phones, cell phones used by
16 subscribers in the AT&T wireless network?

17 MS. GUTIERREZ: Objection.

18 THE COURT: Overruled. You may answer that.

19 MR. WARANOWITZ: Yes.

20 BY MR. URICK:

21 Q Are you -- have you had occasion to test the
22 network for it's performance for those phones?

23 MS. GUTIERREZ: Objection.

24 THE COURT: Overruled. You may answer that.

25 MR. WARANOWITZ: Yes.

1 BY MR. URICK:

2 Q What sorts of tests have you run of those
3 phones?

4 MS. GUTIERREZ: Objection.

5 THE COURT: Sustained.

6 BY MR. URICK:

7 Q What if any training have you had in that
8 type of telephone?

9 MS. GUTIERREZ: Objection.

10 THE COURT: The Nokia telephone?

11 MR. URICK: Yes.

12 THE COURT: You may answer that question.

13 What type of training have you had with regard to Nokia
14 telephones?

15 MR. WARANOWITZ: None.

16 THE COURT: None. I'm sorry, I couldn't hear
17 you.

18 MR. WARANOWITZ: None.

19 THE COURT: Very well.

20 BY MR. URICK:

21 Q What sort of experience have you had in on
22 the job testing and use of those phones?

23 MS. GUTIERREZ: Objection.

24 THE COURT: Overruled. What kind of on the
25 job training have you had?

1 MR. WARANOWITZ: I use them for my personal
2 phone.

3 BY MR. URICK:

4 Q Have you --

5 MS. GUTIERREZ: Objection, move to strike.

6 THE COURT: No, he can answer that he uses it
7 for his personal phone.

8 MS. GUTIERREZ: That doesn't qualify as on
9 the job training.

10 THE COURT: Well, the answer stands and the
11 jury can consider it for what it's worth that he has a
12 personal phone that's a Nokia. Your next question.

13 BY MR. URICK:

14 Q How does that personal phone relate to your
15 job?

16 MS. GUTIERREZ: Objection.

17 THE COURT: Overruled. Does it relate to
18 your job?

19 MR. WARANOWITZ: Yes, it does.

20 BY MR. URICK:

21 Q How?

22 MR. WARANOWITZ:

23 A AT&T gave engineers Nokia phones to use for
24 personal and for business related.

25 Q And have you had occasion to use the testing

1 abilities of the AT&T network to test the performance
2 of Nokia phones?

3 MS. GUTIERREZ: The testing abilities?

4 THE COURT: I could not hear the question.
5 If you could repeat it.

6 BY MR. URICK:

7 Q Have you had occasion to test the performance
8 of Nokia phones on the AT&T network?

9 MS. GUTIERREZ: Objection.

10 THE COURT: Overruled. Have you had an
11 occasion to test the Nokia phones on the AT&T system?

12 MR. WARANOWITZ: Yes.

13 MR. URICK: At this time would offer the
14 witness for his expertise in the Nokia phone on the
15 AT&T network.

16 THE COURT: To generally or the performance
17 of the Nokia telephone on the AT&T system?

18 MR. URICK: The performance.

19 THE COURT: Any voir dire on this witness's
20 expertise?

21 MS. GUTIERREZ: No, voir dire, Judge. I'd
22 like to be heard on it.

23 THE COURT: All right.

24 MS. GUTIERREZ: I don't have any further voir
25 dire.

1 THE COURT: Okay.

2 MS. GUTIERREZ: All he's testified is that he
3 was given it for both personal and business use. No
4 training on it, no expertise, no basis of expertise
5 established. We would object.

6 THE COURT: Very well. May I see Counsel at
7 the bench on this objection.

8 (Counsel and Defendant approached the bench
9 and following ensued:)

10 THE COURT: All right. First of all, for the
11 record the Court has allowed the leading nature of Mr.
12 Urick's questions because the Court finds that these
13 are foundation questions in an attempt to make sure
14 that the witness does not provide an opinion prior to
15 being qualified as an expert and in search for whether
16 or not he is an expert in a particular area. Such to
17 the extent that the objections were overruled and the
18 objection was related to their leading nature.
19 However, I gather that the objection of more is to some
20 substance and for that the objections will continue to
21 be reflected in the record. With regard to this
22 particular witness's testimony.

23 First, the Court is concerned that this witness if
24 he did not conduct these tests using the telephone
25 similar to the Defendant's telephone that he was the

1 alleged originator of cellular phone 4432539023, that
2 the -- no further questions be requested of this
3 witness on this issue. Because obviously from the
4 witness's testimony the phones perform in a different
5 fashion and so if you have tests that were run, in just
6 a few moments I'm going to allow Defense to question
7 this witness. The same phone wasn't utilized, the same
8 type of phone wasn't utilized. This witness will be
9 permitted on cross to talk about the differences and
10 the types of phones that could be used and the
11 readings.

12 At this point the State is attempting to bolster
13 this witness's testimony and expand it beyond it's
14 expertise and I've yet to heard any -- hear any
15 foundation that would allow it to do so.

16 MR. URICK: He is the person that used the
17 Nokia and he's had occasion to test it's performance.

18 THE COURT: But this test did not include the
19 use of a Nokia did it?

20 MS. GUTIERREZ: Judge, for the record --

21 THE COURT: Wait a minute, Ms. Gutierrez.
22 His test did not include the use of the Nokia, did it?

23 MR. URICK: However, the cell phone does not
24 originate the signals, the cell tower so the particular
25 cell phone makes no difference in the given location.

1 THE COURT: Didn't you just testify that
2 different phones perform differently on the AT&T
3 system. That was his testimony.

4 MR. URICK: I don't believe it was testimony
5 as to the difference in terms of the frequency or
6 signal that would be picked up and used at a given
7 location.

8 THE COURT: Does this witness know the answer
9 to that question or are you guessing.

10 MR. URICK: I would have not asked him --
11 that is a question I'd like to ask him.

12 THE COURT: Which means, Mr. Urick that
13 you're guessing because he's testified clearly on your
14 question that those different phones perform
15 differently.

16 MR. URICK: But he's not been allowed to
17 explain what he meant by that.

18 THE COURT: That's true. Ms. Gutierrez.

19 MS. GUTIERREZ: The only thing that I want to
20 make sure that the record reflects. We're not talking
21 about tests in the plural, we're not talking about
22 tests meaning some scientific protocol that's been
23 followed to achieve a certain result. The test is
24 making a phone call or causing a phone call to be made,
25 it's that simple. There isn't any mystery here, there

1 isn't any magic to it. That's what he did and he's
2 clearly said the performance, i.e., the ability of the
3 phone to make a call and be heard and the ability of
4 the phone to receive a call and be heard is different.
5 There isn't any magic about interpreting that.

6 THE COURT: Different depending on the type
7 of phone.

8 MS. GUTIERREZ: Yes.

9 THE COURT: He said that. And so to the
10 extent that Ms. Gutierrez is objection as to this
11 witness as being able to talk about the Nokia for which
12 he has said he has no training other than his own
13 personal use of the phone the objection is sustained.
14 And I'm not going to allow the witness to go into
15 anything further, he is not an expert, he has a Nokia
16 phone like any other person and he did not use the
17 Nokia phone when he was conducting the test for which
18 the State wishes to offer him as evidence his
19 testimony. And he has testified that the different
20 phones perform differently on the system, that's what
21 he said.

22 MR. URICK: But he wasn't allowed to explain
23 what he meant by that.

24 THE COURT: All right. Why don't you all
25 step back.

1 MR. URICK: Thank you.

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

4 THE COURT: Ladies and gentlemen, we're going
5 to ask that you go with Ms. Connelly around to the jury
6 room and I'd ask that you leave your note pads face
7 down. I ask that you not discuss the testimony that
8 you've heard so far with anyone either amongst
9 yourselves or anyone else and I will see you back in
10 this courtroom in a very few minutes.

11 (The jury was excused from the courtroom.)

12 THE COURT: All right. Mr. Urick, if you
13 would like to voir dire this witness on the issue of
14 whether or not he knows the difference in the
15 performance rate of these phones feel free to do so.

16 MS. GUTIERREZ: My continuing objection.

17 THE COURT: I understand, Ms. Gutierrez.

18 BY MR. URICK:

19 Q What radio technology does cell phones use?

20 MS. GUTIERREZ: We can't hear the question.

21 BY MR. URICK:

22 Q What radio technology do cell phones use?

23 MS. GUTIERREZ: Objection.

24 THE COURT: Do you know what radio
25 technology?

1 MR. WARANOWITZ: Yes.

2 BY MR. URICK:

3 Q And what is that technology?

4 MR. WARANOWITZ:

5 A We call it TDMA.

6 Q And what education have you had in that
7 technology?

8 A AT&T wireless training and Erickson training.

9 Q And your educational degree was in what
10 again?

11 A Electrical engineering.

12 Q And what if any classes did you have in radio
13 technology in that program?

14 A Electromagnetic wave propagation.

15 Q How long have you been employed by the AT&T
16 network?

17 A Four years.

18 Q What tests are -- what performance tests are
19 run on cell phones on that network?

20 MS. GUTIERREZ: Objection.

21 THE COURT: Overruled. If you know.

22 MR. WARANOWITZ: Signal strength, dropped
23 calls, bit error rate.

24 MS. GUTIERREZ: Can't hear the witness.

25 MR. WARANOWITZ: There are three areas that

1 we test for. One is signal strength, one is bit error
2 rate and one is dropped calls.

3 MS. GUTIERREZ: I still can't hear the
4 witness. I didn't get the second.

5 MR. WARANOWITZ: Bit error rate.

6 MS. GUTIERREZ: Bit error?

7 THE COURT: Spell it.

8 MR. WARANOWITZ: Bit, error, E-R-R-O-R,
9 R-A-T-E. Bit error rate.

10 BY MR. URICK:

11 Q Have you personally conducted those types of
12 tests on cell phones on the network?

13 MR. WARANOWITZ:

14 A Yes.

15 Q Have you performed those sorts of tests on
16 Nokia phones?

17 A Yes.

18 Q What is the business purpose of performing
19 those sorts of tests?

20 A To identify and locate bad phones.

21 Q Bad to mean by that?

22 A Malfunctioning.

23 Q And how often do you run tests like that on
24 Nokia phones?

25 A Daily.

1 Q About how many Nokia phones have you tested
2 in your four years with the AT&T wireless network on
3 those types of performance tests?

4 A If I may elaborate.

5 Q Please do.

6 A We monitor poor performing phones
7 statistically and we -- this is automated, it's not
8 something that's tested with a -- as you would think as
9 a test, it is monitored automatically by the switch and
10 it is listed for us.

11 Q When you say it's monitored by the switch,
12 what does that do?

13 A That tells us how many dropped calls a certain
14 phone has for example. That is flagged for us and then
15 we try to identify if it's a bad phone or poor
16 performing phone.

17 Q Does the system perform this function
18 regardless of the brand of phone?

19 A Yes.

20 Q And then what do you do as a result of
21 information -- of that information that you receive?

22 A We pass that information on to another group
23 called customer care.

24 Q Now, is there any difference in the
25 functioning of the Nokia phone as opposed to the

1 Erickson phone on the AT&T network?

2 MS. GUTIERREZ: Objection. No basis
3 established.

4 THE COURT: Well, that's the whole point, Ms.
5 Gutierrez. I'm trying to determine whether he has a
6 basis of knowledge for which he can testify. Do you
7 know --

8 MR. WARANOWITZ: Yes.

9 THE COURT: The difference between the
10 Erickson and the Nokia?

11 MR. WARANOWITZ: Yes. They use the same
12 standards to communicate with our network.

13 THE COURT: You said they use the same
14 standards. Are they or do those two phones perform
15 differently on your network?

16 MR. WARANOWITZ: They perform differently,
17 but they use the same standards, yes.

18 THE COURT: Okay. They perform differently.

19 MR. WARANOWITZ: Yes.

20 THE COURT: So, if you were to originate a
21 call in one place on a Nokia the ratings, the frequency
22 and those results that you have tallied for the State
23 would differ if you used a Nokia phone versus an
24 Erickson phone, is that correct?

25 MR. WARANOWITZ: Sometimes, yes.

1 THE COURT: Okay. Depending on where you
2 were, isn't that right?

3 MR. WARANOWITZ: No.

4 THE COURT: Depending on what?

5 MR. WARANOWITZ: Depending on the quality of
6 the phone.

7 THE COURT: Depending on the quality of the
8 phone. So, you would need to need know not only the
9 maker of the phone or the manufacturer of the phone,
10 but you would have to know the serial number or -- what
11 do call it. The --

12 MR. WARANOWITZ: The serial number.

13 THE COURT: Is it the serial number?

14 MR. WARANOWITZ: Yes.

15 THE COURT: The serial number of the phone to
16 compare it to a like model in another manufacturer.

17 MR. WARANOWITZ: Correct.

18 MR. URICK: If I could follow up on his
19 response. You said --

20 MS. GUTIERREZ: Objection.

21 THE COURT: Overruled. At this point I'm
22 going to allow the State to ask whatever questions it
23 would like and then I'm going to allow the Defense to
24 ask whatever questions it would like in light of the
25 Court's questions. You may proceed, Mr. Urick.

1 BY MR. URICK:

2 Q Now, you said it depended on the quality of
3 the phone. Will you explain what you meant by that?

4 MR. WARANOWITZ:

5 A We have seen -- I have seen in my experience
6 a couple of poor performing phones.

7 Q Does the brand of the phone have any
8 relationship to that? That is could an Erickson be as
9 likely to be poor performing as a Nokia?

10 A Yes.

11 MR. URICK: No further questions.

12 THE COURT: Ms. Gutierrez?

13 MS. GUTIERREZ: I have no other questions.

14 THE COURT: Now, Counsel -- sir, I'm going to
15 ask you to step out in the hallway for just a moment.
16 I'd ask that you not discuss your testimony with
17 anyone.

18 Now, Counsel first of all, Mr. Urick with regard
19 to your testing of this particular scenario, Ms.
20 Gutierrez's objection is sustained. He will not be
21 able to talk about the results of any test and draw any
22 conclusions. If you want to continue to march him
23 through the different places on that map where he
24 originated calls with his Erickson I will continue to
25 advise the jury that as it relates to the Erickson

1 phone he used they can consider the responses or the
2 cell site information for what it's worth.

3 Ms. Gutierrez, on cross you will have open leeway
4 with regard to this witness on the relevance if any
5 with of this whole test that was conducted by the
6 State. You will also have the ability if you choose to
7 ask the questions that the Court asked during this voir
8 fire to qualify this expert because I find that the use
9 of this expert by the State is misleading and I also
10 find that this expert has expertise with regard to
11 other phones including the Nokia and Motorola and
12 Erickson. But the issue that I believe needs to be
13 addressed in order for clarification with this jury is
14 that the model of the phone is relevant and this
15 witness did not conduct a test with the model.

16 And so to the extent that the State is misleading
17 the jury at this point, the Defense is going to have a
18 lot of leeway. Do you understand me, Ms. Gutierrez?

19 MS. GUTIERREZ: Certainly do, Judge.

20 THE COURT: And the State needs to be advised
21 that the Court is not happy at all with the way in
22 which this witness is being utilized. It is not happy
23 with the attempt to mislead because that's precisely
24 what you have done. You have mislead this jury and to
25 the extent that this Court can clarify as long as he's

1 being questioned by the State I will do so to ensure
2 that that jury is not in anyway mislead about the test
3 that was conducted by this witness or the results
4 therein. And the Defense will have wide leeway and I
5 also will ask at this juncture, Ms. Gutierrez if at any
6 point in time during your questioning you decide you
7 want to qualify him as an expert to use him in anyway
8 you believe is appropriate, feel free to do so.

9 MS. GUTIERREZ: Thank you, Judge.

10 THE COURT: Very well. I'm going to ask that
11 the witness return. Is there any question, Mr. Urick
12 about what I've just said?

13 MR. URICK: No, thank you, Your Honor.

14 THE COURT: Any question, Ms. Gutierrez?

15 MS. GUTIERREZ: No, Judge, but could I have a
16 bathroom break?

17 THE COURT: You may have a bathroom break
18 before we bring the witness back in.

19 MR. URICK: Your Honor, if I may remind the
20 Court the purpose of bringing this witness in today was
21 because he's unavailable tomorrow through Saturday.

22 THE COURT: I understand that, but what can I
23 say. We are doing the best we can today and Ms.
24 Connelly, will you please have my secretary call to
25 Annapolis and advice Judge Harrington that I will not

1 be able to meet my obligations in Annapolis and you may
2 continue.

3 MS. GUTIERREZ: Well, Judge based on your
4 schedule I've made plans for this evening which I
5 normally don't do with my children and others because I
6 counted on being able to leave by five.

7 THE COURT: Well, we will end by five. We
8 will stop by five, but please advise Ms. -- Judge
9 Harrington that I will not be available. And, Ms.
10 Gutierrez if you would while you're out you may go
11 around to Judge Gordy's secretary if you need to make a
12 phone call with regard to children, please feel free to
13 do that as well. Harrington, H-A-R-R-I-N-G-T-O-N. Can
14 you call her back, ask her if Judge Harrington would e-
15 mail me any information. Ms. Gutierrez, do you still
16 have scheduling difficulties?

17 MS. GUTIERREZ: Well, Judge as long as I can
18 leave by five I can get to where --

19 THE COURT: All right. Very well. Also
20 before the jury comes back I received to questions from
21 my law clerk handed to her by the jury and they both
22 say please ask the State's lawyer to speak louder and
23 clearer and also can they speak louder and clearer.
24 Please, we are having a hard time hearing. So, I'm
25 going to ask Counsel, if you lean forward I know the

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

9 (The jury returned to the courtroom.)

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

15 BY MR. URICK: Thank you, Your Honor.

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

19 MS. GUTIERREZ: Objection.

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

22 BY MR. URICK:

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

25 THE COURT: You may answer the question.

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

4 BY MR. URICK:

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

7 MR. WARANOWITZ:

8 A In this case it is terrain and trees.

9 Q And how do trees affect it?

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

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

14 A Yes.

15 Q And what affect would that have?

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

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

23 MS. GUTIERREZ: Is 34 the --

24 THE COURT: The chart.

25 MS. GUTIERREZ: The chart.

1 THE COURT: Yes. Any objection?

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

4 THE COURT: Thirty one?

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

6 THE COURT: That is the cell phone records,
7 30?

8 MS. GUTIERREZ: It's three pages.

9 THE COURT: Yes.

10 MS. GUTIERREZ: I think that's 31.

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

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

16 THE COURT: What number is that anyway?

17 MS. GUTIERREZ: It's 31.

18 THE COURT: It is 31?

19 MS. GUTIERREZ: Yes.

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

22 MS. GUTIERREZ: Judge, no and I would argue
23 that the column in the addresses have not been
24 established by the evidence or as to any (inaudible) on
25 31A which list and we don't object and I would object

1 to 34 as it is. The objection --

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

4 MS. GUTIERREZ: Right.

5 THE COURT: With the addresses as the last
6 column.

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

10 THE COURT: Without addresses.

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

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

18 BY MR. URICK:

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

22 MR. WARANOWITZ:

23 A Yes, I did.

24 Q And are those accurate addresses for those
25 cell sites?

1 A Yes.

2 THE COURT: The objection is sustained.

3 MR. URICK: May we approach?

4 THE COURT: Yes, you may.

5 (Counsel approached the bench and following
6 ensued:)

7 THE COURT: You want to know why it's
8 sustained?

9 MR. URICK: I'd like a clarification of the
10 objection.

11 THE COURT: Ms. Gutierrez, you want to tell
12 him why it's sustained?

13 MS. GUTIERREZ: Do I have to, Judge?

14 THE COURT: Yes.

15 MS. GUTIERREZ: Well, I think that just
16 saying addresses are accurate does not establish or
17 meet the burden of establishes that these -- what in
18 fact these addresses are, what they relate to. There
19 are 34 separate entries listed and they're not 34
20 separate addresses, many of them are repeated.
21 Repeating or just saying that he looked at the cell
22 site and are these addresses accurate tells us nothing
23 and in no way establishes that column.

24 THE COURT: Mr. Urick, your witness said upon
25 your questions that these addresses fall in the shaded

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

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

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

16 MS. GUTIERREZ: What one are you asking?

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

19 MS. GUTIERREZ: Okay.

20 THE COURT: Twenty two.

21 MS. GUTIERREZ: Twenty two.

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

25 MS. GUTIERREZ: Right.

1 THE COURT: Okay. So, you're saying Govins
2 Manor is located at 2121 Windgard Lane?

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

4 THE COURT: Of the tower.

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

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

9 MR. URICK: Yes.

10 MS. GUTIERREZ: Well, Judge --

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

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

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

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

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

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

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

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

16 MR. URICK: Thank you.

17 THE COURT: No, this is my copy.

18 MR. URICK: Sorry.

19 THE COURT: That's all right.

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

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

24 BY MR. URICK:

25 Q Mr. Waranowitz, are you familiar with the

1 addresses of the cell sites in the Baltimore
2 Metropolitan region?

3 MS. GUTIERREZ: Objection.

4 THE COURT: Overruled. Are you familiar with
5 them, yes or no?

6 MR. WARANOWITZ: No.

7 MS. GUTIERREZ: May we approach the bench?

8 THE COURT: Do you have an objection to the
9 exhibit?

10 MS. GUTIERREZ: Yes, I do.

11 THE COURT: What is the exhibit number.

12 MR. URICK: For identification.

13 MS. GUTIERREZ: Forty six.

14 MR. URICK: Forty --

15 MS. MURPHY: Thirty two.

16 MR. URICK: I'm sorry, I've marked it wrong.

17 That should be for identification State's 32.

18 (State's Exhibit No. 32 was
19 marked for identification.)

20 THE COURT: Thirty two, and if you'd bring it
21 up please so the Court can see it.

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

24 THE COURT: And the objection?

25 MS. GUTIERREZ: Well, Judge it's an unmarked

1 exhibit if multi pages. What I believe it to be and I
2 will note I personally never seen it. Mr. Lewis tells
3 me that he believes that we made a copy of it, that we
4 did not receive it from the State. The only
5 identification and he doesn't recollect the writing at
6 the top and other then the handwriting the only list is
7 it's not to AT&T, I think it's a site name and then
8 address, a list of addresses in a column that then has
9 a designation of a state, and a column that has a
10 designation that just believe says site number one. I
11 haven't looked through it all. I think it's likely it
12 would correspond at least as to the Maryland sites --
13 to the sites although it is certainly more inclusive.

14 So one, I would object, it's never been disclosed
15 to us or identified in regard to this witness and this
16 witness has said he has no familiarity with cell site
17 addresses. Although, he's presented himself and been
18 presented as an expert for the Baltimore/Washington
19 network as somebody who designed, located, selected and
20 continues to select such things as cell sites for the
21 entire AT&T wireless network covering all of Maryland.
22 In an attempt to show this witness something that's
23 never been disclosed before us as a way to have him
24 read off or identify or to trigger something in his
25 memory when he has already testified he's not familiar

1 with the addresses.

2 So, substituting his lack of knowledge by saying,
3 here read this exhibit which lists addresses. We have
4 no way and this has not been established as coming from
5 records of AT&T certified as coming from records,
6 coming in under any business records exceptions, he's
7 not the custodian of records. He's already testified
8 to his lack of unfamiliarity, so for all those reasons
9 I believe it's unfair to even create in front of this
10 jury, again a subsequent misleading question to
11 suggest, oh, well he just forgot, we're going to show
12 him the list and then he's going to recognize the list
13 is unfair.

14 THE COURT: I'll allow the State to use this
15 exhibit if the witness can identify that he has seen it
16 before, he's familiar with it and he can use it to
17 refresh his recollection as to the address. I would
18 indicate that he has already the towers and he's
19 already what they looked --

20 MS. GUTIERREZ: Some towers.

21 THE COURT: No, he's identified all the
22 towers that appear on State's Exhibit Number 34, he's
23 identified them and they've been marked in photographs
24 as --

25 MS. GUTIERREZ: I would beg to differ with

1 the Court's interpretation.

2 THE COURT: If I may -- if I may. Exhibits
3 Number 43C, D, E, F, G. He's identified C, the Social
4 Security building has ten cables, etcetera, 43B, 43D
5 and given the location of the Social Security building,
6 Cooks on Athol Street, Goldings Manor location, Route
7 40 and Rolling Road, etcetera. And so to the extent
8 that that document is able to refresh his recollection
9 as to a specific address, if it does we will allow it,
10 if it does not it will not be allowed.

11 MS. GUTIERREZ: Well, Judge my notation is
12 this is not a witness that said, well I know but I
13 can't remember or that's at all been established that
14 it is his recollection that is impaired. He was asked
15 if he was familiar with the addresses for the cell
16 sites and he answered, no. Not that he couldn't
17 remember what they were, he's testified that he's not
18 familiar with all the addresses, and so I believe it's
19 improper to allow the State to attempt to refresh a
20 recollection who's impairment has not been established.

21 THE COURT: I understand that. It's
22 overruled and I note your objection for the record.

23 MS. GUTIERREZ: Thank you.

24 MR. URICK: I would also note for the record
25 that all these addresses are already in evidence

1 pursuant to the court order when this -- when Ms.
2 Gutierrez was cross examining the previous witness,
3 that you moved it into evidence because --

4 THE COURT: I moved into evidence the cell
5 sites.

6 MR. URICK: The addresses.

7 THE COURT: Not -- no, the cell site, not the
8 address, the cell site not the address. She referred
9 to each one I believe only by cell site number.

10 MS. GUTIERREZ: Who's the she?

11 THE COURT: Ms. Gutierrez. If I may have one
12 moment.

13 MR. URICK: She also read off the addresses
14 and you moved that in at the time.

15 THE COURT: Give me one moment, one moment.
16 She did not do it as to all. She did it as to --

17 MS. GUTIERREZ: I missed -- during what
18 witness?

19 THE COURT: One moment. During Jay Wild's
20 testimony.

21 MS. GUTIERREZ: Right, right.

22 THE COURT: The remember of lines, Ms.
23 Gutierrez that at the time you made the inquiry as to
24 the cell site --

25 MS. GUTIERREZ: Right.

1 THE COURT: You indicated a particular line
2 and I then indicated that if you were going to ask
3 about the cell site by reading it into the record that
4 you would then put it into evidence.

5 MS. GUTIERREZ: The cell site itself, yes.

6 THE COURT: I do not recall, my recollection
7 does not include your giving the address and I have --
8 you did not do it as to all. You did it as to lines --
9 one moment, line 23, I stand corrected, you did give
10 the address.

11 MS. GUTIERREZ: As to that line.

12 THE COURT: As to line --

13 MS. GUTIERREZ: I think I did it to about
14 five --

15 THE COURT: As to line 23, as to line 24, as
16 to line 22, as to line 23, as to line 26 and line 27,
17 as to line 25, 27 again, line 12, line 13, in that
18 order and you did refer to all of those which I just
19 read to you happen to be 1500 Woodlawn Drive.

20 MS. GUTIERREZ: Woodlawn Drive, yes.

21 THE COURT: And those are the addresses only
22 that are in evidence at this time with those cell sites
23 and those only. Now, I made add if you want to redact
24 your exhibit and remove the addresses for those that
25 are not in evidence by use of a black magic marker and

1 then attempt to move the exhibit in you're welcome to
2 do that.

3 MR. URICK: Thank you.

4 THE COURT: You may proceed.

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

7 MR. URICK: If I may approach the witness at
8 this time to show him what's been marked for
9 identification as State's Exhibit --

10 MS. GUTIERREZ: Objection, may I note my
11 continuing objection?

12 THE COURT: Yes you may.

13 MS. GUTIERREZ: Thank you.

14 BY MR. URICK:

15 Q Please take a few moments and examine that.
16 Have you had a chance to examine the exhibit?

17 MR. WARANOWITZ:

18 A Yes.

19 Q Can you identify that?

20 A This is a listing of our cell sites in the
21 Baltimore/Washington market, the site name, the
22 address, the street address I might add and the state
23 that the cell site is located in.

24 Q And is that document generated from the
25 computer records of the AT&T Wireless Corporation?

1 A It is in our database for AT&T Wireless, yes.

2 MS. GUTIERREZ: Objection.

3 THE COURT: Overruled.

4 BY MR. URICK:

5 Q And is it the normal part -- is that data put
6 in that database by people who have personal knowledge
7 of that information at the time that it's put into the
8 database or by people who have that information?

9 MS. GUTIERREZ: Objection. Objection.

10 THE COURT: Sustained. Do you know how this
11 information is placed in this document?

12 MR. WARANOWITZ: Yes, I do.

13 THE COURT: You do?

14 MR. WARANOWITZ: Yes.

15 THE COURT: You may answer the question.

16 MR. WARANOWITZ: This information is put in
17 place or put in the database by what we call site
18 acquisition coordinators. They are the people that
19 look for cell sites.

20 BY MR. URICK:

21 Q And is this information collected as part of
22 the normal business of the AT&T Wireless Corporation?

23 MS. GUTIERREZ: Objection.

24 THE COURT: Overruled.

25 MR. WARANOWITZ: Yes.

1 BY MR. URICK:

2 Q And is it necessary for the functioning of
3 the AT&T Wireless Corporation that this data be kept?

4 MR. WARANOWITZ:

5 A Yes.

6 MR. URICK: I'd offer the business records,
7 State's Exhibit 32.

8 MS. GUTIERREZ: Objection.

9 THE COURT: One moment. The objection is
10 sustained.

11 BY MR. URICK:

12 Q Do you use those records?

13 MS. GUTIERREZ: Objection.

14 THE COURT: Overruled.

15 MR. WARANOWITZ: I use the cell site name and
16 the cell site -- I don't use the street address often.

17 BY MR. URICK:

18 Q Are you familiar with that information
19 though?

20 MR. WARANOWITZ:

21 A Yes.

22 Q Now, if you look at State's -- your copy of
23 State's Exhibit 34. Now, if you look at line 3, do you
24 recall the address for cell site L698B?

25 MS. GUTIERREZ: Objection.

1 THE COURT: Overruled.

2 MR. WARANOWITZ: Can you rephrase the
3 question please?

4 BY MR. URICK:

5 Q Do you remember the street address for cell
6 site L698B?

7 MR. WARANOWITZ:

8 A No.

9 Q Would examining State's Exhibit 32 for
10 identification help your refresh your recollection?

11 A Yes.

12 Q Please examine it at this time.

13 MS. GUTIERREZ: I would note my continuing
14 objection based on --

15 THE COURT: I understand.

16 MS. GUTIERREZ: Previous --

17 THE COURT: And just for the record, the
18 witness may use this exhibit to refresh his
19 recollection and respond to the addresses that Counsel
20 is inquiring about. The exhibit is not admitted as
21 evidence, however.

22 BY MR. URICK:

23 Q Have you had a chance to look at the
24 document?

25 MR. WARANOWITZ:

1 A Yes.

2 Q And is your memory refreshed?

3 A Yes.

4 Q What is the address for that cell site?

5 A 2040 Powers Lane.

6 Q Now, if you would go down to line 14 and 15,
7 do you remember the address for cell site L608C?

8 A It would 3600 Georgette Road.

9 Q Now, line 16, do you remember the address for
10 L655?

11 MS. GUTIERREZ: I would note for the record
12 that the witness is merely reading from the list that
13 is not into evidence.

14 THE COURT: Very well. Let the record
15 reflect that the observation is made, however, the
16 witness is directed that he may use the exhibit to
17 refresh his recollection as to any specific address and
18 then I'd ask that he not read it, but just look away
19 from the exhibit. And Counsel has seen the exhibit,
20 it's been marked for identification purposes and may be
21 used to refresh his recollection as to a specific
22 address. You may continue.

23 BY MR. URICK:

24 Q Do you remember the address for L655?

25 MR. WARANOWITZ:

1 A It is located on Walker Road near UMBC.

2 Q And do you remember the address for L654?

3 A It would be Dorchester Road.

4 Q Do you remember the specific street address?

5 You may look at the document to refresh your memory.

6 A 824.

7 Q Do you remember the street address for L652?

8 Look down at line 30 and 31, 30 pardon me, 29 and 30.

9 A 714 Poplar.

10 MS. GUTIERREZ: Again, for the record the
11 witness is referring to the list.

12 THE COURT: Referring to Exhibit Number, I
13 believe it's 15, is that right? The exhibit number,
14 sir is?

15 MR. WARANOWITZ: Thirty two and --

16 THE COURT: The one in your left hand, the
17 exhibit number at the bottom?

18 MR. WARANOWITZ: Thirty two.

19 THE COURT: Forty two.

20 MR. WARANOWITZ: Thirty two.

21 THE COURT: Thirty two. All right. Very

22 well.

23 BY MR. URICK:

24 Q Do you remember the street address for L688?

25 MR. WARANOWITZ:

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

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

5 A That would be the 824 Dorchester Water Tank.

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

8 A We call that Central Savings.

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

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

12 BY MR. URICK:

13 Q Now, these street addresses are what?

14 MR. WARANOWITZ:

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

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

20 A Cell sites.

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

25 MS. GUTIERREZ: Objection. Form of the

1 question.

2 THE COURT: Overruled.

3 MR. WARANOWITZ: Please restate the question.

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

8 MR. WARANOWITZ:

9 A Yes.

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

12 THE COURT: Any objection at this time?

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

15 THE COURT: Certainly.

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

18 THE COURT: With regard to the addresses?

19 MS. GUTIERREZ: Yes.

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

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

24 THE COURT: Very well.

25 (State's Exhibit No. 34, previously

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

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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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1 continuing objection to any further questions asked.

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

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

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

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

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

22 EXAMINATION

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

25 (State's Exhibit 33 was marked for

1 identification.)

2 MR. URICK:

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

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

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

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

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

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

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

3 MR. URICK: Thirty-three.

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

7 MS. GUTIERREZ: No, Your Honor.

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

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

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

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

18 BY MR. URICK:

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

20 MR. WARANOWITZ:

21 A No, not currently.

22 Q Have you ever had a Nokia phone?

23 A Yes, I have.

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

1 A AT&T Wireless Services.

2 Q How did you obtain that phone?

3 A It was given to me by the company.

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

6 A Yes.

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

11 A Yes.

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

16 MS. GUTIERREZ: Objection.

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

20 MR. WARANOWITZ: Yes.

21 BY MR. URICK:

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

24 MS. GUTIERREZ: Objection.

25 THE COURT: Overruled. At this point the

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

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

5 THE COURT: Very well. You may continue.

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

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

15 THE COURT: Overruled. You may continue.

16 BY MR. URICK:

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

19 MR. WARANOWITZ:

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

22 Q How many phones have you done this to?

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

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

1 monitored?

2 A Hundreds of thousands.

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

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

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

12 A Poor antennas, problems with the batteries.

13 Q How would these problems be appearing?

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

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

20 A Sometimes, yes.

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

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

1 quality. It makes it sound warbly.

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

4 A Yes.

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

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

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

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

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

18 MS. GUTIERREZ: Objection.

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

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

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

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

3 THE COURT: Which questions are they?

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

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

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

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

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

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

23 THE COURT: A Nokia 6160?

24 MR. URICK: Yes.

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

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

9 MR. URICK: Thank you.

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

17 MR. URICK: Thank you very much.

18 THE COURT: All right.

19 MS. GUTIERREZ: Well, Judge --

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

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

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

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

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

18 THE COURT: Or specifically this phone.

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

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

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

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

10 THE COURT: In the performance of the --

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

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

15 MR. URICK: Yes.

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

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

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

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

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

4 THE COURT: Yes, you may.

5 BY MR. URICK:

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

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

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

12 THE COURT: All right. Very well.

13 BY MR. URICK:

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

15 MR. WARANOWITZ:

16 A Yes, I have.

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

19 A This is a Nokia 6160 phone.

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

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

7 A Yes.

8 MS. GUTIERREZ: Objection.

9 THE COURT: Overruled.

10 BY MR. URICK:

11 Q And what is that opinion?

12 MR. WARANOWITZ:

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

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

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

19 BY MR. URICK:

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

23 MR. WARANOWITZ:

24 A Yes.

25 MR. URICK: Witness with the Defense.

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

2 MS. GUTIERREZ: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MS. GUTIERREZ:

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

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

8 BY MS. GUTIERREZ:

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

12 MR. WARANOWITZ:

13 A Yes.

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

16 A Yes.

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

19 A Yes.

20 Q And names of neighborhoods?

21 A Yes.

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

24 A That is correct.

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

1 through sheet of transparent plastic, is it not?

2 A Yes.

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

5 A Yes.

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

8 A Yes.

9 Q And sometimes the colors are repeated?

10 A Yes.

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

13 A Correct.

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

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

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

20 A Correct.

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

24 A Right.

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

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

6 A Yes.

7 Q And you drew this, correct?

8 A Yes.

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

11 A Correct.

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

15 A Yes, it's symbolic of that.

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

20 A Yes.

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

23 A I drew in the numbers.

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

1 A No, that was generated by the computer.

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

6 A Could you (inaudible)

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

9 A Yes, it did.

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

12 A Yes, it did.

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

15 A Yes.

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

19 A Where I drew these at?

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

24 A Yes.

25 Q The area that they cover is exactly the same

1 for each three sectors, is it not?

2 A Yes.

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

5 A No.

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

9 A No.

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

12 A No.

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

15 A Yes, I did.

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

18 A 653A.

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

21 A Yes.

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

25 A That would be L653C.

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

3 A Yes.

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

8 A That is correct.

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

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

14 Q You didn't understand it?

15 A Please ask me again.

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

18 A Yes.

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

21 A Yes.

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

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

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

12 THE COURT: Okay.

13 BY MS. GUTIERREZ:

14 Q Now, on the overlay --

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

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

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

22 MR. WARANOWITZ: Yes.

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

25 MR. WARANOWITZ: Yes.

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

3 BY MS. GUTIERREZ:

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

6 MR. WARANOWITZ:

7 A No, it does not.

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

9 A Correct.

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

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

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

14 A Just the road maps.

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

17 A Yes.

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

20 A The software is created by LCC.

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

23 A Yes.

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

1 A Correct.

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

4 A Correct.

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

8 A Yes.

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

11 A No.

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

17 A Yes.

18 Q You were asked by him were you not?

19 A Yes.

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

21 A Yes, I did.

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

24 A Yes.

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

1 A Yes.

2 Q He gave them to you, right?

3 A Yes.

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

7 A No, I did not.

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

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

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

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

19 THE COURT: Your next question.

20 BY MS. GUTIERREZ:

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

24 MR. WARANOWITZ:

25 A Correct.

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

3 A Correct.

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

5 A Yes.

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

8 A I don't know.

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

11 A I don't know.

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

18 A Correct.

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

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

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

1 A Yes.

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

4 A Yes.

5 Q The duration of the call?

6 THE COURT: Is that a question, Ms.

7 Gutierrez?

8 MS. GUTIERREZ: Yes, ma'am.

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

11 MR. WARANOWITZ: It would, yes.

12 BY MS. GUTIERREZ:

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

15 MR. WARANOWITZ:

16 A Yes.

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

19 A No, I don't.

20 Q Your company pays for it, right?

21 A That is correct.

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

25 A No.

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

3 A No, I don't do that.

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

7 A No.

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

12 A No, I don't handle billing.

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

15 A No.

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

18 A No, I do not.

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

24 A No.

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

1 34?

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

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

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

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

10 BY MS. GUTIERREZ:

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

13 THE COURT: You may.

14 BY MS. GUTIERREZ:

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

17 MR. WARANOWITZ:

18 A Yes.

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

21 A Yes.

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

24 A Yes.

25 Q In regard to the columns in the far right

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

3 A I recognize the cell site.

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

6 A Yes.

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

9 A Correct.

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

12 A No, I did not.

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

16 A Yes.

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

19 A Yes.

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

22 A No, it does not.

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

25 A No.

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

4 A Correct.

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

10 A Yes.

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

13 A I'm familiar with the complex.

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

16 A Yes.

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

20 A I'm aware.

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

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

25 Q And that all of those buildings are owned by

1 the Federal Government, the United States Government.

2 A No, I didn't know that.

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

5 A I am not aware of that.

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

9 A That is correct.

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

14 A I've identified a building (inaudible)

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

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

25 THE COURT: Very well. Your next question.

1 BY MS. GUTIERREZ:

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

5 MR. WARANOWITZ:

6 A I'm sorry, Rephrase that again.

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

10 A No.

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

15 A I don't know exactly.

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

20 A Yes.

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

23 A No, just the map.

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

1 A Correct.

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

4 A No, I am not.

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

7 A No, it does not.

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

10 A I'm sorry, say again.

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

14 A Yes.

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

17 A No, it does not.

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

20 A No, it does not.

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

22 A I was taken there, yes.

23 Q You were taken there by Mr. Urick?

24 A I was taken by Ms. Murphy.

25 Q Okay. And you were shown a location,

1 correct?

2 A Yes.

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

5 A A little bit, yes.

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

8 A No, it was right off the road.

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

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

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

16 A Yes, I did.

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

20 A No.

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

23 A Yes.

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

1 that?

2 A Yes, Jersey walls.

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

5 A Correct.

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

8 A No, I was not.

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

12 A No, I don't remember.

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

14 A I'm sorry.

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

16 A I was taken to that location.

17 Q Where the Jersey walls are.

18 A Yes.

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

21 A Yes.

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

25 A That is my understanding.

1 Q And, sir, did you explore the terrain beyond
2 the Jersey walls?

3 A No, I did not.

4 Q You could have if you wanted to, couldn't you
5 have?

6 A Yes.

7 Q Nobody stopped you from exploring, did they?

8 A No.

9 Q And were you taken anywhere from that place
10 that led you to the edge of stream?

11 A No.

12 Q Or were you told that a stream meandered back
13 there behind the Jersey wall?

14 A No.

15 Q And the body wasn't there when you did this,
16 was it?

17 A No, it was not.

18 Q This part of this test that you tell us about
19 you conducted in the fall, did you not?

20 A Yes.

21 Q The exact date?

22 A I don't remember the exact date.

23 Q And you didn't write it down?

24 A I wrote it down somewhere, I don't remember
25 the date.

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

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

3 A It's possible.

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

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

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

10 A No.

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

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

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

19 A By Ms. Murphy.

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

22 A Yes.

23 Q And --

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

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

3 THE COURT: With regard to the Exhibit 34?

4 BY MS. GUTIERREZ: Yes.

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

8 MR. WARANOWITZ:

9 A I don't recall that address.

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

12 A Yes.

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

15 A No.

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

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

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

21 A (inaudible) reports.

22 Q And --

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

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

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

4 BY MS. GUTIERREZ:

5 Q Would you be surprised, sir --

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

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

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

12 BY MS. GUTIERREZ:

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

16 MR. WARANOWITZ:

17 A I am not surprised.

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

21 A Yes.

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

24 A No.

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

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

2 A Yes.

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

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

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

11 A If that address was given to me.

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

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

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

18 A Yes.

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

21 A No, it does not.

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

24 A No.

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

1 appear on the address column anywhere, does it?

2 A No.

3 Q And Crosby, if that's a street, road or lane,
4 whatever at Interstate 695, it doesn't appear anywhere
5 in this address list, does it?

6 A No.

7 Q Route 40 and Cooks Lane up to Forest Park
8 doesn't appear on this, does it?

9 A No.

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

11 A No.

12 Q And Forest Park/Park and Ride, it's nowhere
13 in this column, isn't it?

14 A No.

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

16 A No, it is not.

17 Q Forest Park, four blocks east, whatever
18 direction that may be of Security Boulevard is not an
19 address that appears here, is it?

20 A No, it is not.

21 Q And Gelston Park, west of Rolling Road
22 doesn't appear in this column, does it?

23 A No.

24 Q And Woodlawn High School doesn't appear in
25 this column, is it?

1 A No.

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

4 A No.

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

8 A Yes.

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

12 A Correct.

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

16 A Correct.

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

18 A The pink would be C.

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

21 A That would be sector A.

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

25 A That would be sector B, correct.

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

4 A Yes.

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

8 A Correct.

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

11 A Yes.

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

13 A Yes.

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

16 A Correct.

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

20 A Yes.

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

23 A Yes.

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

1 A Correct.

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

5 A Yes.

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

9 A Rolling Road is not written on this map.

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

12 A I know that that road is Rolling Road.

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

15 A Yes.

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

18 A No.

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

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

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

25 A Correct.

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

4 A Yes.

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

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

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

11 A No, I did not note that in.

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

14 A No, my name is not on there.

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

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

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

22 A No, it does not.

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

1 A Correct.

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

4 A Yes.

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

8 A Yes.

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

13 A Yes, that is my understanding.

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

16 MR. URICK: Objection.

17 BY MS. GUTIERREZ:

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

20 THE COURT: Sustained.

21 BY MS. GUTIERREZ:

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

24 MR. WARANOWITZ:

25 A Yes.

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

3 A Yes.

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

6 A Yes.

7 Q All the orange area, right?

8 A Yes.

9 Q And all the pink area, correct?

10 A Correct.

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

14 A Correct.

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

19 A Correct.

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

23 A Correct.

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

1 three years ago, correct?

2 A Yes.

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

5 MR. URICK: Objection.

6 THE COURT: Sustained.

7 BY MR. GUTIERREZ:

8 Q Is there any reason you hesitated to answer?

9 MR. WARANOWITZ:

10 A I was listening for more of the question.

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

13 A That is correct.

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

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

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

19 A Yes.

20 Q Launched meant it was operational, correct?

21 A Correct.

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

1 A Yes.

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

4 A Correct.

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

6 A Yes.

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

8 A Correct.

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

12 A Correct.

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

15 A Yes.

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

19 A There have been a few, yes.

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

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

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

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

4 Q Yes, it was.

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

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

11 A Yes.

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

16 A Correct.

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

19 A No, I worked with team of engineers.

20 Q Engineers like you, correct?

21 A Yes.

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

25 A Yes.

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

4 A There are complaints from customers, correct.

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

6 A Yes, yes.

7 Q Even now, is it not?

8 A Yes.

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

12 A Yes.

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

15 A Yes.

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

18 A Yes.

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

21 A Correct.

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

24 A Correct.

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

1 they not?

2 A Not necessarily.

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

5 A Yes.

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

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

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

15 A Correct.

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

18 A Yes.

19 Q Some are manufactured by Motorola, correct?

20 A Yes.

21 Q Some are manufactured by Erickson, right?

22 A Yes.

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

25 A Yes.

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

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

3 A Yes, it does.

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

8 A Yes.

9 Q And what phone is that?

10 A That would be the Nokia 6160.

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

13 A Yes.

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

16 A Yes.

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

20 A Correct.

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

24 A Yes.

25 Q A Nokia 6160?

1 A Yes.

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

5 A Yes.

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

8 A Correct.

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

14 A Correct.

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

16 A Could you rephrase that?

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

20 A No.

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

23 A Yes.

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

1 deemed low, would it not?

2 A Yes.

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

6 A Yes.

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

11 A No, it may not be.

12 Q But it might be?

13 A It can be.

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

16 A Yes.

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

19 A Yes.

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

22 A Cell phones should perform within certain
23 specifications.

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

1 A Yes.

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

5 A Yes.

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

8 A Correct.

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

11 A Yes.

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

14 A Correct.

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

18 A Yes.

19 Q And that there be no interference, correct?

20 A Correct.

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

25 A Correct.

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

4 A Yes.

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

7 A An origination test.

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

10 A What do mean by scientific?

11 Q Well, is there a protocol for it?

12 A Yes.

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

15 A Yes, there are.

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

19 A There can be more to it.

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

21 A Yes.

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

24 A Yes.

25 Q And when one is doing this origination test

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

3 A No.

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

6 A I dialed a code, yes.

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

9 A Yes.

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

12 A Yes.

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

16 A Yes.

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

20 A Yes.

21 Q And an actual number, correct?

22 A Yes.

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

25 A Yes.

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

3 A Yes.

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

6 A Yes.

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

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

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

13 A No.

14 Q Anywhere, right?

15 A No.

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

18 A Correct.

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

23 A No.

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

1 A I was asked to do that, yes.

2 Q Okay.

3 A The process is different.

4 Q And you, sir, you didn't decide what it was,
5 did you? Your test. Did you make up this test?

6 A No, I did not make it up.

7 Q You, sir, consulted with the manual that
8 outlines how this test should be performed, is that
9 correct?

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

11 Q No, you didn't. And did you consult with
12 anyone else?

13 A No.

14 Q And, sir, you of course were made aware that
15 the phone -- you reviewed the billing records of this
16 phone, did you not?

17 A Yes.

18 Q And that's how a list of the cell sites
19 appear, is it not?

20 A Yes.

21 Q Because the cell sites appear on the record,
22 correct?

23 A They appear on the billing records I was
24 provided, yes.

25 Q Okay. And you looked at them before doing

1 this test, did you not?

2 A Yes.

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

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

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

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

13 Q Did you ask?

14 A No, I did not.

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

17 A Yes.

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

20 A Yes.

21 Q In an ideal way, correct?

22 A In the real world they perform comparably.

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

25 A No, it does not.

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

2 A I don't know.

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

5 A Would do mean by that?

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

8 A I can not tell.

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

14 A Yes.

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

17 A No.

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

20 A Yes.

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

23 A No, I can not.

24 Q By anyone, can you?

25 A No.

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

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

1 A It was one of our test phones.

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

5 A Not that I know of.

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

8 A No.

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

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

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

22 A That is correct.

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

25 A Correct.

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

3 A Yes.

4 Q Is north to the top?

5 A That is correct.

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

8 A Correct.

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

11 A That is correct.

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

15 A Correct.

16 Q Or a signal over here, correct?

17 A Correct.

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

21 A Correct.

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

23 A No, that was during the test.

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

1 A Correct.

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

5 A She did not say anything like that.

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

8 A No.

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

13 A No, I explained --

14 Q As to --

15 MS. MURPHY: Objection.

16 THE COURT: Sustained.

17 BY MS. GUTIERREZ:

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

20 MR. WARANOWITZ:

21 A Yes.

22 Q As they went along.

23 A Yes.

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

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

1 33A, the underlying map, right?

2 A No.

3 Q And certainly not on the overlay?

4 A No.

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

6 flagged either?

7 A Correct?

8 Q Nor is Security Square Mall?

9 A Correct.

10 Q And nor is 4703 Gateway Terrace?

11 A Correct.

12 Q Or --

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

14 minutes ago.

15 Q You put that on yesterday or this morning.

16 A This morning.

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

18 itself?

19 A No.

20 Q On either A?

21 A No.

22 Q Or B?

23 A No, it was not.

24 Q And Briar Cliff Road, without an address,

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

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

1 where it was before you testified, did you?

2 A Well, I know where it is.

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

5 MR. URICK: Objection.

6 THE COURT: Ms. Gutierrez.

7 BY MS. GUTIERREZ:

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

10 MR. WARANOWITZ:

11 A No.

12 Q On the underlaying map?

13 A No.

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

16 A No.

17 Q You also prepared?

18 A No.

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

20 A No, I was not.

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

22 THE COURT: Certainly.

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

25 THE COURT: Pardon.

1 MR. WARANOWITZ: Can we take a break?

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

5 MR. WARANOWITZ: I can wait.

6 THE COURT: Is that --

7 MR. WARANOWITZ: Thank you, Your Honor.

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

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

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

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

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

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

21 THE COURT: Okay.

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

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

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

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

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

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

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

11 THE COURT: By 11:30?

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

13 THE COURT: Okay. All right.

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

15 THE COURT: To take the postponement request?

16 MS. GUTIERREZ: That's fine.

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

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

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

22 MS. GUTIERREZ: Okay.

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

25 (Counsel returned to the trial tables and

1 the following ensued:)

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

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

24 (The jury was excused from the courtroom.)

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

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

12 THE CLERK: All rise.

13 (Brief recess.)

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

16 (Jury not present upon reconvening.)

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

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

1 lunch?

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

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

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

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

22 THE COURT: Do you know that?

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

1 lunch.

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

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

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

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

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

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

5 (The jury returned to the courtroom.)

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

12 JUROR: No.

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

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

17 THE COURT: Yes.

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

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

22 BY MS. GUTIERREZ:

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

1 MR. WARANOWITZ:

2 A Yes.

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

6 A Yes.

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

12 A Correct.

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

17 A Correct.

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

20 A Correct.

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

24 A Yes.

25 Q And you were asked to conduct an origination

1 test, were you not?

2 A Yes.

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

5 A A test call.

6 Q A test call, right?

7 A Yes.

8 Q But a call, right?

9 A Yes.

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

14 A Correct.

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

17 A Yes, I have.

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

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

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

23 A I am familiar with the road.

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

1 A Yes.

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

3 A I'd have to look it up.

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

6 A That is correct.

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

10 A I think so, yes.

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

15 A Yes.

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

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

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

25 A I don't know about other networks.

1 Q You only know about your network?

2 A Yes.

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

5 A Yes.

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

7 A No, it is not.

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

10 A Yes, it is.

11 Q It's difficult in fall?

12 A Yes.

13 Q It's difficult in summer?

14 A Yes.

15 Q In spring?

16 A Yes.

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

19 A Yes, it is.

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

23 A Yes.

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

1 A Yes.

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

6 A Yes.

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

9 A No.

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

14 A That is true.

15 Q All year long?

16 A Yes.

17 Q Regardless of what phones people use?

18 A Yes.

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

23 A Yes.

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

1 A Yes.

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

5 A Between what time frame?

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

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

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

12 A Yes.

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

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

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

21 A No.

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

1 A No, I did not.

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

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

6 Q Was the date of the phone calls?

7 A Yes.

8 Q That's what you were told?

9 A Yes.

10 Q And by Ms. Murphy?

11 A Either Ms. Murphy or Mr. Urick.

12 Q You accepted that information, did you not?

13 A Yes.

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

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

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

21 A Yes.

22 Q Not a -- your phone?

23 A Correct.

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

1 A Right.

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

4 A Yes.

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

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

10 Q From any source, sir?

11 A No.

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

14 A No, I did not?

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

17 A No.

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

20 A No.

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

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

25 Q And did you hear that name?

1 A I have heard the name.

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

4 A Yes.

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

7 A No.

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

12 A Yes.

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

15 A Yes.

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

20 A That's my understanding, yes.

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

23 A Yes.

24 Q And only from that information?

25 A Yes.

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

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

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

9 A Correct.

10 Q And 689B sits where?

11 A It sits on the building called Govins Manor.

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

13 A I think it is.

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

17 A Let me verify that please.

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

20 A Yes it is.

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

23 A The greater Baltimore area.

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

1 Baltimore area map book, is it not?

2 A Yes.

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

5 A Yes it does.

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

7 A I don't know.

8 Q You carry that book with you?

9 A Yes, I do.

10 Q As part of your job?

11 A Yes.

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

14 A Yes.

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

16 A Yes.

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

20 MR. URICK: Objection.

21 THE COURT: Sustained.

22 BY MS. GUTIERREZ:

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

24 MR. URICK: Objection.

25 THE COURT: Sustained.

1 BY MS. GUTIERREZ:

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

4 MR. WARANOWITZ:

5 A Yes.

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

9 A Yes.

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

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

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

18 A No, I was down in Lincoln Park.

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

22 A Yes it is.

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

24 A It is higher, yes.

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

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

4 A I think so.

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

7 A Yes.

8 Q And perpendicular to Windsor Mill Road?

9 A Yes.

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

12 A I'd have to check on that.

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

14 A Yes.

15 Q And could you now?

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

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

20 A Yes.

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

23 MR. URICK: Objection.

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

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

7 MR. WARANOWITZ: I believe it was.

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

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

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

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

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

21 MR. WARANOWITZ:

22 A Yes.

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

25 A Yes.

1 Q And that it is located on Woodlawn Drive?

2 A I'd have to verify that.

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

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

7 MS. GUTIERREZ: Objection.

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

11 BY MS. GUTIERREZ: Thank you.

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

14 MR. WARANOWITZ:

15 A Woodlawn Drive?

16 Q Yes, sir.

17 A Woodlawn High School?

18 Q Yes, sir.

19 A I've located it.

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

22 A It appears to be, yes.

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

24 A Yes.

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

1 A Yes.

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

6 A What road was that?

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

8 A Right, Dogwood intersects Woodlawn Drive.

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

11 A Yes.

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

16 A Yes.

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

19 A Yes.

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

23 A I believe so, yes.

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

1 MR. URICK: Objection.

2 THE COURT: Overruled.

3 MR. WARANOWITZ: It is not far.

4 BY MS. GUTIERREZ:

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

7 MR. WARANOWITZ:

8 A I was taken to Woodlawn High School.

9 Q And did you do an origination test there?

10 A Yes.

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

13 A Yes.

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

16 A Yes.

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

20 A It was either 651A or 651C.

21 Q 651A, would that be the orange?

22 A Yes.

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

24 A Correct.

25 Q Is that correct?

1 A Correct.

2 Q Either one or the other, right?

3 A Yes.

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

7 A Yes.

8 Q Or pink, right?

9 A Yes.

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

13 A Yes.

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

16 A Yes.

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

19 A Yes.

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

22 A Yes.

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

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

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

4 A Yes.

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

8 A Neighborhoods, yes.

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

12 MR. URICK: Objection.

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

15 MR. WARANOWITZ: Yes it would.

16 BY MS. GUTIERREZ:

17 Q And that would also be true --

18 THE COURT: Overruled.

19 BY MS. GUTIERREZ:

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

23 MR. WARANOWITZ:

24 A Right.

25 Q And that whole area, that pink also includes

1 several different neighborhoods, does it not?

2 A Yes.

3 Q Those being residential, correct?

4 A Residential and commercial.

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

7 A Yes.

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

10 A The coverage does go off the map.

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

16 A Yes.

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

20 MR. URICK: Objection.

21 THE COURT: Overruled.

22 MR. WARANOWITZ: It doesn't look like that,
23 no.

24 BY MS. GUTIERREZ:

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

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

4 MR. WARANOWITZ:

5 A No, we call that Govins Manor.

6 Q Okay. You recalled that one, correct?

7 A Yes.

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

10 A Yes.

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

13 A I don't recall.

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

15 A Yes.

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

18 A I don't recall.

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

20 A No.

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

25 A Correct.

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

3 A I understand your question.

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

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

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

13 A Yes.

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

18 A Yes it does.

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

20 A Yes.

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

25 A Well, we do take into consideration the

1 limitations of a cell site system.

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

12 MR. URICK: Objection.

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

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

19 THE COURT: Very well.

20 BY MS. GUTIERREZ:

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

1 MR. WARANOWITZ:

2 A Yes.

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

6 A Yes.

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

8 A Yes.

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

11 A Yes, with an explanation.

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

14 MR. URICK: Objection.

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

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

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

23 MR. WARANOWITZ: Yes.

24 THE COURT: Go right ahead.

25 MR. WARANOWITZ: We do not take weather into

1 consideration in our network design.

2 BY MS. GUTIERREZ:

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

6 MR. WARANOWITZ:

7 A No, I did not.

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

10 A No, with an explanation.

11 Q And you didn't make --

12 MR. URICK: Objection.

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

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

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

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

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

1 BY MS. GUTIERREZ:

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

4 MR. WARANOWITZ:

5 A That is correct.

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

8 A Yes.

9 Q And part of what that perform differently in,
10 is related to what you have referred to is the ability
11 of the phone to see the signal, correct?

12 A Yes.

13 Q The seeing of the signal refers to the signal
14 that emanates from the tower, correct?

15 A Yes.

16 Q And that varying phones of varying quality
17 would be able to see or not see the phone, correct?

18 A Correct.

19 Q And the difference in phones might mean that
20 at sometimes a certain phone might see a signal,
21 correct?

22 A Yes.

23 Q At other times that phone might not see the
24 same signal it was able to see at some other designated
25 time?

1 A Time probably wouldn't be a factor.

2 Q Because time isn't a factor you, of course,
3 made no effort to conduct your test when the alleged
4 calls that you were conducting this test to make an
5 opinion actually occurred, did you?

6 A I'm sorry, could you say that again?

7 Q You didn't attempt to construct your test
8 according to the times that your own phones records
9 indicated certain calls were made, did you?

10 A My phone records?

11 THE COURT: Mr. Waranowitz, if you can't
12 answer a question say, I do not understand the
13 question, I'm sorry, I can't answer the question and
14 then Counsel will rephrase the question, okay? At this
15 point I assume you can't answer the question?

16 MR. WARANOWITZ: I don't understand the
17 question.

18 THE COURT: You don't understand the
19 question. Very well, your next question.

20 BY MS. GUTIERREZ:

21 Q When you reviewed the phone records of the
22 certain cellular phone, did you not?

23 MR. WARANOWITZ:

24 A Yes.

25 Q And you understood that those phone records

1 belonged to an AT&T wireless customer, did you not?

2 A Yes.

3 Q Can I see the file? I think they're 31.

4 Yes. Thank you. May I approach the witness?

5 THE COURT: Yes, you may.

6 BY MS. GUTIERREZ:

7 Q I'm going to show you what's already been
8 marked as State's Exhibit 31. Those are the phone
9 records that you reviewed, are they not?

10 MR. WARANOWITZ:

11 A They appear to be, yes.

12 Q And those phone records are produced for the
13 company you work for, right?

14 A Yes.

15 Q And they indicate there the phone records for
16 a certain cell phone number, do they not?

17 A Yes.

18 Q And they indicate that that phone is billed
19 to an account number with the name Balial Alned, does
20 it not?

21 A This does show that.

22 Q Okay. And the phone number to which these
23 records refer is listed as area code, 443-253-9023,
24 does it not?

25 A Yes it does.

1 Q And attached to those pages, sir, are three
2 pages on which are listed: dates, times, duration of
3 call, are there not?

4 A Yes.

5 Q And you expect based on your experience for
6 those records to be accurate, do you not?

7 A Yes.

8 Q And you're aware of these records as part of
9 the way to do your so called, origination test, were
10 you not?

11 A Yes.

12 Q And were you asked to conform your test in
13 any way to the times in which calls were alleged to
14 have been made?

15 A Time.

16 Q Do you not understand that question, sir?

17 A Please rephrase it.

18 Q Were you asked by anyone to conform your
19 test, i.e., the structure, your test in a way that
20 conformed to the information concerning actual calls
21 that were made?

22 A No, I was not.

23 Q And you didn't do so, did you?

24 A No.

25 Q And you were not asked to structure your test

1 to conform to the order in which calls were made, were
2 you?

3 A No.

4 Q And you didn't do so, did you?

5 A No.

6 Q Now, in regard to what you can tell us is
7 from your Erickson phone, whatever model that may be,
8 when you attempted to originate a call, whatever day
9 you did so in the fall of 1998 it triggered that cell
10 site up by the intersection of Windsor Mill Road and
11 north Forest Park, did it not?

12 A I'm sorry, could you use shorter questions?

13 Q Sir, in the middle of that Jersey wall
14 section where you were directed to by Ms. Murphy, you
15 were asked to conduct the test that you keep calling
16 origination test, correct?

17 A Yes.

18 Q And that origination test meant that you
19 caused a phone call to be made from you Erickson phone,
20 correct?

21 A Yes.

22 Q Not a Nokia phone, correct?

23 A Yes.

24 Q Of any model, correct?

25 A Yes.

1 Q And when you caused that phone to make a
2 phone call based on whatever you did then, whatever day
3 that may have been it triggered the cell site that's
4 located on the apartment building, of indeterminate
5 height that is located where the intersection of
6 Windsor Mill Road and north Forest Park Avenue,
7 correct?

8 A Yes.

9 Q Your origination test can't tell us where the
10 cell phone, whatever model or make it may have been
11 was, physically when it made a call on January 13th,
12 '99, can it?

13 A No, it can not.

14 Q And it can only tell us that if it was where
15 you were standing, on whatever day it was you were
16 standing inside those Jersey wall embankments, that you
17 would expect it to trigger that same cell site on top
18 of the apartment building, correct?

19 A Yes.

20 Q But you can't tell us if it did, can you?

21 A It did.

22 Q Well, sir, let us backtrack here. All you
23 can tell us is what your cell phone did, correct?

24 A Correct.

25 Q On whatever day you did something with your

- 1 cell phone, correct?
- 2 A Yes.
- 3 Q You can't tell us what another cell phone did
4 on any date, can you?
- 5 A I can tell some information.
- 6 Q You can tell us what you would expect a cell
7 phone to do if it was in a certain place, correct?
- 8 A Yes.
- 9 Q But you can't tell us it did that, correct?
- 10 A No.
- 11 Q Whether some other cell phone that was a
12 Motorola was involved, correct?
- 13 A I'm sorry, say that question again.
- 14 Q Whether or not the cell phone involved was a
15 Motorola, correct?
- 16 A I don't understand what you're referring to.
- 17 Q Well, sir, you used an Erickson, right?
- 18 A Yes.
- 19 Q And based on what your cell phone did or does
20 you'd expect all other similar Ericksons to act the
21 same way, right?
- 22 A Yes.
- 23 Q If they were in the same place, correct?
- 24 A Correct.
- 25 Q But notwithstanding, notwithstanding your

1 high expectations for the performance of phones, you've
2 come across bad phones, have you not?

3 A Yes.

4 Q Phones that do not perform according to your
5 expectations about them, correct?

6 A Yes.

7 Q Because phones don't always perform according
8 to specification?

9 A Yes.

10 Q Your model number for your Erickson phone is
11 what, sir?

12 A I don't recall the number. Oh, the model
13 number is ED398.

14 Q And, sir, would it be fair to assume if there
15 are more phones at that same manufacture by Erickson?

16 A Yes.

17 Q And, sir, all you can tell us in regard to
18 other similar model number Erickson phone, is that you
19 would expect it to perform like yours, correct?

20 A Yes.

21 Q But it may not, correct?

22 A Yes.

23 Q Because it could be a bad quality Erickson of
24 that number, right?

25 A Yes.

1 Q And, sir, where ever another phone was that
2 made a call that you are trying to duplicate the input,
3 if it made a call in a specific location within a
4 designated A, B or C sector, if it were in C it would
5 trigger the same site whether it was at the northern
6 most portion of C, correct?

7 A Yes.

8 Q Or the southern most portion?

9 A Yes.

10 Q Correct? Or the middle?

11 A Yes.

12 Q Or the western most edge?

13 A Yes.

14 Q Whatever one of the numerous neighborhoods,
15 it might exist, it would still signal the same cell
16 site, correct?

17 A Yes.

18 Q So, all that you can tell us about is what
19 your phone, whatever model it was, did when you made a
20 call at a location you were directed to, right?

21 A Yes.

22 Q You can not tell us where the cell phone that
23 made any call on that exhibit, I believe is still in
24 your hands, was at any point any call was made, can
25 you?

1 A No.

2 Q Did you hesitate (inaudible)?

3 A Yes, I did.

4 Q But your answer is no, isn't it?

5 A My answer is no, I can not tell where a cell
6 site -- a cell phone is when it originates a call based
7 on the billing records.

8 Q And your test can't tell us where the cell
9 phone was physically when the call from the line was
10 made?

11 A No, it can not.

12 Q And it can only tell us that where ever it
13 was, when it made this call that it triggered the
14 signal that you've located as cell site L651C, correct?

15 A Correct.

16 Q And 651C would be the purple blob on the
17 right hand side --

18 A No.

19 Q Of 651?

20 A No.

21 Q It would be the pink?

22 A Correct.

23 Q Okay. B is the purple, right?

24 A Yes.

25 Q So that that cell phone, that was utilized in

1 describing call one could have been anywhere, correct?

2 A Yes.

3 Q And it still would have signaled the same
4 cell site?

5 A Yes.

6 Q And your test can't help us with picking a
7 spot where it might have been, correct?

8 A My test can show that if you were in a
9 certain location, with a certain phone, that you would
10 originate on a certain cell site.

11 Q And the certain location that you did this
12 originating test was selected by Ms. Murphy, correct?

13 A Yes.

14 Q You didn't select any location to make a
15 certain call, correct?

16 A Correct.

17 Q And your certain phone call made a designated
18 location can't tell us where this phone was when the
19 call was made, can it?

20 A No, it can not.

21 Q It can only tell us that where ever it was it
22 triggered this cell site tower signal, correct?

23 A Correct.

24 Q And that would hold true for every single one
25 of these entries, would it not?

1 A Correct.

2 Q And, sir, it would be very easy, the cell
3 phone I showed you that you opened up and identified as
4 a Nokia, sir?

5 A Yes.

6 Q That cell phone, other than what you did on
7 the stand, you never really examined?

8 A No, I have not examined that particular
9 phone.

10 Q And you didn't conduct any test on that one,
11 correct?

12 A No, I did not.

13 Q And the fact that you may have examined other
14 Nokia phones at other times, which you may or may not
15 remember, only tells you what you might expect a
16 similar model of the Nokia to act like?

17 A Yes.

18 Q And to act like means, how it performs,
19 correct?

20 A Yes.

21 Q And that includes how it sees signals,
22 correct?

23 A Yes.

24 Q Because different phones, though they may be
25 of the same model, of the same manufacturer may perform

1 outside of what one it expects it to perform, correct?

2 A Yes.

3 Q And some phones, although it may come from
4 the same manufacturer's batch and model number, some
5 phones might see a signal and other phones might not,
6 correct?

7 A Correct.

8 Q And if a phone doesn't see a signal then it
9 doesn't trigger, correct?

10 A Correct.

11 Q And whether a phone is a good performance
12 phone or a bad performance phone doesn't add to your
13 ability to tell where it was when it sent out a signal,
14 does it?

15 A No.

16 Q And your test can't help us with that, can
17 it? Can it?

18 A I disagree.

19 Q Sir, your test -- lets deal with 651,
20 correct? And lets us assume for the purpose of this
21 question, that the cell tower is located in the middle
22 of the bottom circle of the five, okay? Can you assume
23 that?

24 A Yes.

25 Q All right. If a cell phone is physically

1 located in it's entirety, somewhere inside the
2 geographical area outlined and what appears in the hot
3 pink. That's L5 -- 651C, right?

4 A Yes.

5 Q You would expect that cell phone to trigger
6 that signal inside the five, correct?

7 A Correct.

8 Q And for your records to be able to tell us
9 that, correct?

10 A Yes.

11 Q But your records, based on receipt of the
12 signal can't tell us exactly where the cell phone was
13 when it made that, can it?

14 A No, it can not.

15 Q And it can't tell us, for instance, if it's a
16 good performance phone, correct?

17 A No.

18 MR. URICK: Objection.

19 BY MS. GUTIERREZ:

20 Q Or a bad performance phone, correct?

21 MR. WARANOWITZ:

22 A No.

23 Q And from your expertise, what the records can
24 tell us is that you would expect the phone that made
25 the call, that triggered the signal inside the five to

1 be located somewhere with it appears pink, right?

2 A Yes.

3 Q But no way can it tell us exactly where it
4 was, can it?

5 A No.

6 Q Or give us an address to name the place where
7 the cell phone was, correct?

8 MR. URICK: Objection.

9 THE COURT: This question has been asked and
10 answered and Mr. Waranowitz I'll let you answer it one
11 more time and your answer to that question is, it can't
12 give you an address of where the phone was, can it?

13 MR. WARANOWITZ: No, it can not give you an
14 address of where the phone was.

15 THE COURT: Very well. Your next question.

16 BY MS. GUTIERREZ:

17 Q On any day, right?

18 MR. WARANOWITZ:

19 A On any day.

20 Q Now, sir, when you made the origination test
21 you said you caused a phone call to be made, correct?

22 A Yes.

23 Q You didn't have to dial the phone numbers
24 into the phone correct?

25 A I dialed a code.

1 Q You dialed a code which is not the phone
2 number, correct?

3 A It could be considered a phone number.

4 Q Okay. But it wasn't the phone number that
5 you were dialing, right?

6 A It does the same thing a phone number does.

7 Q It does the same thing meaning it triggers
8 the signal at the cell site, correct?

9 A Yes.

10 Q But you weren't asked when you did your
11 origination test to actually dial the same numbers that
12 you knew to have been dialed back on January 13th,
13 1999?

14 MR. URICK: Objection.

15 BY MS. GUTIERREZ:

16 Q Were you?

17 THE COURT: Overruled.

18 MR. WARANOWITZ: No, with an explanation.

19 BY MS. GUTIERREZ:

20 Q Well, my question only asked for a yes or
21 not.

22 MR. URICK: Objection.

23 THE COURT: Overruled or sustained. I'm
24 going to allow the witness to explain his answer and if
25 you would explain your answer. You do not have to

1 answer a yes or no and you don't have to say with an
2 explanation, just answer the question would be fine.

3 MR. WARANOWITZ: Yes, ma'am.

4 THE COURT: You may now provide your answer.

5 MR. WARANOWITZ: The phone number that you
6 are dialling on a cell phone does not effect what cell
7 site you originate on, whether it's long distance,
8 local or your voice mail. It does not effect how you
9 access that cell site.

10 BY MS. GUTIERREZ:

11 Q Well, sir, so the answer to my question is
12 no, you weren't asked to dial these numbers?

13 MR. WARANOWITZ:

14 A No, I was not asked to dial those numbers.

15 Q And you didn't, did you?

16 A No.

17 Q You didn't dial call number one to that
18 number, did you?

19 A No, it was not necessary.

20 Q And you didn't dial -- I didn't ask you that,
21 sir.

22 THE COURT: Ms. Gutierrez.

23 BY MS. GUTIERREZ:

24 Q Did you dial --

25 THE COURT: Ms. Gutierrez, one moment. Your

1 answer, sir, was, I was not asked to do that, is that
2 what you said?

3 MR. WARANOWITZ: That is correct. I was not
4 asked to do that and it is not necessary to do that.

5 BY MS. GUTIERREZ:

6 Q It's not necessary to conduct your
7 origination test, correct?

8 THE COURT: Do you understand the question?

9 MR. WARANOWITZ: Could you ask that again
10 please?

11 BY MS. GUTIERREZ:

12 Q You answered it wasn't necessary to dial the
13 number I asked you if you dialed correct, right?

14 MR. WARANOWITZ:

15 A Right.

16 Q And your answer was you didn't dial it,
17 right?

18 A No.

19 Q Well, did you dial it or didn't you?

20 A No, I did not dial it.

21 Q All right. And then you said you needed to
22 explain why not, correct?

23 A Yes.

24 Q And you said it wasn't necessary, right?

25 A It was not necessary to dial those specific

1 phone numbers.

2 Q So, your answer to my question is, yes. You
3 then said, it wasn't necessary, right?

4 MR. URICK: Objection.

5 THE COURT: The objection is sustained. Mr.
6 Waranowitz, we're sitting here, why don't you tell us
7 why it wasn't necessary.

8 MR. WARANOWITZ: I just did.

9 THE COURT: No, tell us why it wasn't
10 necessary for you not to dial the numbers. Ms.
11 Gutierrez is asking you that question, if you could
12 just answer it.

13 MR. WARANOWITZ: It is not necessary to dial
14 those phone numbers because they do not effect what
15 cell site you originate on.

16 THE COURT: All right. Very well. Next
17 question.

18 BY MS. GUTIERREZ:

19 Q So, the only impact would have been to your
20 origination test, right?

21 MR. WARANOWITZ:

22 A Impact?

23 Q Of dialing or not dialing the numbers would
24 have been to your origination test, correct?

25 A I'm sorry, I don't understand.

1 Q Mr. Waranowitz, lets go back to the
2 triangular --

3 MR. URICK: Objection.

4 BY MS. GUTIERREZ:

5 Q Up here on call site 651, correct?

6 THE COURT: The objection is overruled. The
7 witness has indicated he does not understand Counsel's
8 question, so Counsel may clarify the question and Mr.
9 Waranowitz, if you would follow her direction and
10 again, if you don't understand her question, just say,
11 I do not understand the question.

12 MR. WARANOWITZ: Yes, Your Honor.

13 THE COURT: All right. Very well.

14 BY MS. GUTIERREZ:

15 Q The test that you performed, you performed it
16 you told us in may different locations, correct?

17 MR. WARANOWITZ:

18 A Yes.

19 Q And the test that you performed was the same
20 at every location, was it not?

21 A Yes.

22 Q And it was always performed under your phone,
23 correct?

24 A Yes.

25 Q Your Erickson phone, correct?

1 A Yes.

2 Q Not a Nokia, correct?

3 A Correct.

4 Q Not a Nokia of this certain model, correct?

5 A Correct.

6 Q And the purpose when you performed that test

7 was to determine when you performed the test on the day

8 that you did so, what if any cell site it would signal,

9 correct?

10 A Yes.

11 Q It was the only purpose of your test,

12 correct?

13 A Yes.

14 Q Now, you never dialed the number, 869-9498 --

15 MR. URICK: Objection.

16 BY MS. GUTIERREZ:

17 Q Did you?

18 THE COURT: Overruled.

19 MR. WARANOWITZ: No, I did not dial that

20 number.

21 BY MS. GUTIERREZ:

22 Q And you weren't asked to do so, were you?

23 MR. WARANOWITZ:

24 A No, I was not asked to do so.

25 Q By anyone?

1 A By anyone.

2 Q But when you didn't dial 340-7374, did you?

3 A No.

4 Q And if you would look at your sheet, you
5 didn't dial the phone number listed in four, did you?

6 MR. URICK: Objection.

7 MR. WARANOWITZ: No.

8 THE COURT: Overruled.

9 BY MS. GUTIERREZ:

10 Q Or in five?

11 MR. WARANOWITZ:

12 A No.

13 Q Or in six?

14 A No.

15 Q Or in seven?

16 A No.

17 Q Or in eight?

18 A No.

19 Q Or in nine?

20 A No.

21 Q Or in twelve?

22 A No.

23 Q Thirteen?

24 A No.

25 Q Seventeen.

1 A No.

2 Q Eighteen?

3 A No.

4 Q Twenty-two?

5 A No.

6 Q Twenty-three, twenty-four, twenty-five?

7 A No.

8 Q Twenty-six?

9 A No.

10 Q Thirty?

11 A No.

12 Q Thirty-one through thirty-four?

13 A No.

14 Q You were never asked to dial any of those

15 numbers, correct?

16 A Correct.

17 Q And you did not do so, correct?

18 A Correct.

19 Q And you didn't dial any of your calls at any

20 of the locations you were taken by Ms. Murphy at any of

21 the specific times listed in call time, were you?

22 A No.

23 Q No. After you completed all of the tests at

24 the locations that don't appear on the chart, after you

25 completed them you had reported all of your findings to

1 Ms. Murphy because she was there in the car with you,
2 right?

3 A I reported them as I saw them, yes.

4 Q Okay. So, as you went along, you gave her
5 the heads up, right?

6 A Yes.

7 Q And at no time during that day, at any time
8 did you tell Ms. Murphy, I did this test, Ms. Murphy,
9 and I can tell you --

10 THE COURT: Ms. Gutierrez, at this point
11 we're going to interrupt because I note that it is now
12 12:30. I'm going to take a lunch and recess at this
13 time and you will come back after lunch and continue
14 with this questioning. Ladies and gentlemen, we have a
15 number of things that are going to be taken place at
16 lunch time. This Court will be tied up at lunch time
17 as well.

18 So, we're going to recess from this time until
19 2:15 at which time we will return with the continued
20 questioning of this witness. Ladies and gentlemen, as
21 you go out please leave your note pads face down.
22 Please do not discuss the testimony of this witness or
23 anyone else, amongst yourselves or with anyone. Your
24 note pads will be locked away by the Clerk and returned
25 to your chairs after the lunch and recess. Please go

1 with Deputy Church and he will take you back to the
2 jury room. I'm sorry. Yes, you may go over to the
3 jury assembly room any time now -- between now and
4 1:30, they are ready for you. Any time between now and
5 1:30 you may go to jury assembly and be paid. They're
6 expecting you to come over any time between now and
7 1:30. It's up to you. You can go first or not, it's
8 up to you.

9 MS. GUTIERREZ: The courtroom will be locked
10 again?

11 THE COURT: The courtroom will be locked
12 during the recess.

13 MS. GUTIERREZ: Thank you.

14 THE COURT: If Counsel will wait one moment
15 until all of our jurors leave.

16 (The jury was excused from the courtroom.)

17 THE COURT: Mr. Waranowitz, I understand you
18 have made changes or adjustments to your travel
19 schedule?

20 MR. WARANOWITZ: Yes.

21 THE COURT: To depart at 3:30. I need to
22 advise you I have no idea what time you're going to
23 finish. I do not want you to be misled in anyway that
24 I know or am aware of what time you will be done.
25 Counsel has the right to ask you questions and I can't

1 anticipate or expect what that will entail.
2 Unfortunately, from 12:30 to two o'clock at least, this
3 Court is tied up in a sentencing hearing involving
4 three other judges. I am already late, I am going
5 directly there. We will resume promptly at 2:15 at
6 which time we will continue with the questions of Ms.
7 Gutierrez. Also let me advise you during the break,
8 you may not discuss your testimony with either the
9 State's attorneys or the Defense. They should have no
10 conversations with you regarding your testimony and you
11 should have no conversations with anyone else. You are
12 a sequestered witness, do you understand?

13 MR. WARANOWITZ: Yes, Your Honor.

14 THE COURT: Very well. This Court then
15 stands in recess until 2:15.

16 MR. URICK: Your Honor, before we go off the
17 record we would just like to note for the record that
18 Ms. Gutierrez pounded very heavily on Ms. Murphy's
19 chair at their last questioning in her questioning and
20 there was no reason for that display towards Ms.
21 Murphy.

22 THE COURT: Ms. Gutierrez, I'm going to ask
23 that you not pound on any chairs whether it be your
24 chair or anyone else's chair. I would also ask that
25 you will have an absolute right to conduct cross

1 examination, but I'd ask that you adjust your tone with
2 this witness. This witness is a witness subpoenaed by
3 the State. He is not here of his own accord, he is
4 already as you know, being inconvenienced as to his
5 work or personal schedule.

6 That has nothing to do with you, but I'd ask that
7 common courtesy be afforded the witness and I'd ask
8 that of all witnesses that come into this Court.
9 However, you have absolute right to cross examine the
10 witness and I'd ask that you continue to do that, but I
11 would just ask that you be mindful of those things and
12 I would ask that all of us be mindful of common
13 courtesy. Not only with the witnesses, with the jurors
14 and with each other, and with that this Court will
15 stand in recess until 2:15.

16 BAILIFF: All rise.

17 (Lunch recess.)

18 (Jury not present upon reconvening.)

19 THE COURT: We have called for the Defendant
20 to be brought up, he should be here shortly. Ms.
21 Gutierrez, your client should be here shortly. Once he
22 is settled in we will have the jury brought back.

23 MS. GUTIERREZ: Judge, can we approach the
24 bench?

25 THE COURT: Certainly, please come up. Is

1 this something we need to discuss with your client?

2 (Counsel approached the bench and the
3 following ensued:)

4 MS. GUTIERREZ: No, I don't think so.

5 THE COURT: Is it a scheduling matter?

6 MS. GUTIERREZ: Sort of.

7 THE COURT: You're sure you don't need your
8 client here?

9 MS. GUTIERREZ: I don't need my client here.
10 Judge, the rest of my cross is not going to be that
11 long on this witness. Over the break I went and I ate
12 lunch, I don't know if the Court's aware, I'm a
13 diabetic?

14 THE COURT: Are you okay?

15 MS. GUTIERREZ: Well, I'm not sure. I don't
16 -- I had lunch, things seemed to be fine. I was going
17 to say something to the Court anyway because yesterday
18 eating so late is something that throws me off --

19 THE COURT: Okay.

20 MS. GUTIERREZ: And I should have stopped and
21 I didn't, I felt fine, but often times I just have bad
22 reactions a day or so later. I was fine, I left, we
23 walked back and by the time I got in the building I was
24 overwhelmed and had to vomit. I didn't feel like
25 walking up to my office where my blood sugar tester is,

1 so I would like to do is to finish cross of this
2 witness which I don't think will take long, let them do
3 whatever redirect and then ask the Court to take a
4 short break. I would like to walk up to my office --

5 THE COURT: That's fine.

6 MS. GUTIERREZ: And test my blood sugar and
7 see if there's anything I can do, my medication is up
8 there and see if I can clear it up.

9 THE COURT: That will be fine. I have no --
10 you have no problem with that, do you?

11 MR. URICK: No.

12 THE COURT: And I would tell you that if you
13 want depending on what is going on we can stop.

14 MS. GUTIERREZ: Yes, I know, but I'm not -- I
15 just don't know and it's early enough that if I walk up
16 it may pass and I'll be fine.

17 THE COURT: Fine.

18 MR. URICK: Shouldn't we have the Defendant
19 present?

20 THE COURT: I really would like the Defendant
21 here.

22 MS. GUTIERREZ: Okay. All right.

23 THE COURT: When it is scheduled --

24 MS. GUTIERREZ: We can do it afterwards or
25 something.

1 THE COURT: To the witnesses or something.

2 MR. URICK: What are your plans for Friday
3 with the juror who wants to go on the weekend trip?

4 THE COURT: Well, today is?

5 MR. URICK: Wednesday.

6 MS. GUTIERREZ: Wednesday.

7 MR. URICK: Tomorrow is Thursday.

8 THE COURT: Tomorrow is Thursday, we're not
9 going to finish by tomorrow. So, why don't you guys
10 think about --

11 MS. GUTIERREZ: I need to talk to my client -

12 THE COURT: Yeah, talk to him.

13 MS. GUTIERREZ: but I don't think he'll have
14 any objection to that.

15 THE COURT: And the choice would be, we
16 continue through Friday or we stop and we continue on
17 Monday.

18 MS. GUTIERREZ: Right.

19 THE COURT: Just --

20 MR. URICK: We have --

21 THE COURT: You guys think about what you
22 want to do. Actually, he's here. So, why don't we
23 just bring him up.

24 MS. GUTIERREZ: Mr. Syed, come up for a
25 minute.

1 THE COURT: Mr. Syed, we were discussing
2 scheduling for Friday. We have a juror that has
3 indicated that they had a vacation planned and they
4 would be departing a 6:00 a.m. on Friday. We --

5 MS. GUTIERREZ: It's juror number twelve, is
6 it?

7 THE COURT: I thought it was six.

8 MR. URICK: I think six.

9 MS. GUTIERREZ: Okay.

10 THE COURT: And that juror doesn't -- has
11 planned to leave at 6:00 a.m. on Friday and we weren't
12 sure whether we were going to have to sit on Friday
13 depending upon how the case progressed. What Counsel
14 and I are now about to discuss, we were waiting for
15 you, is what the State and the Defense's pleasure is.

16 The choices are as follows: we can continue on
17 Friday which would mean that juror number six would be
18 struck from the panel by agreement, alternate number
19 would take that seat because we can't take testimony
20 with a missing juror and juror number six would be
21 excused or we can stop the testimony altogether on
22 Friday and resume with the testimony on Monday when all
23 the jurors that are currently in the panel will be
24 present.

25 So, those are the choices. You can talk to your

1 attorney and indicate your feeling one way or another.
2 Have you already discussed this and are prepared to
3 tell me what your choice is?

4 MR. URICK: I think we have a slight
5 preference not to sit Friday.

6 MS. MURPHY: Our witnesses need to go to
7 work.

8 MR. URICK: And also being in Felony
9 narcotics, I've got so much other work, another day out
10 of Court would give me a chance to get caught up.

11 THE COURT: Well, maybe we can do something
12 by agreement. It would be nice if we could do it by
13 agreement then that way --

14 MR. URICK: We're not going to disagree one
15 way or the other. We would prefer Friday.

16 THE COURT: Okay. Whichever --

17 MS. GUTIERREZ: Judge, we would like to delay
18 the decision making until the jury comes out and we an
19 picture --

20 THE COURT: Who?

21 MS. GUTIERREZ: Right, who's who and --

22 THE COURT: Okay.

23 MS. GUTIERREZ: And then so if we could come
24 up at the end of this witness we could then give you
25 our answer --

1 THE COURT: Very well.

2 MS. GUTIERREZ: In regard to that.

3 THE COURT: That will be fine. We'll start
4 as soon as we can have the jury brought back. Thank
5 you.

6 (Counsel and Defendant returned to the trial
7 tables and the following ensued:)

8 MR. URICK: Should we ask the witness to step
9 back in at this time?

10 THE COURT: Yes, please. And I'll have --
11 Deputy Church, if you could have the witness, Mr.
12 Waranowitz come back in the courtroom.

13 (A bell sounded.)

14 THE COURT: That's probably the jury telling
15 us that they're ready.

16 (The jury returned to the courtroom.)

17 THE COURT: Please be seated everyone. Ms.
18 Gutierrez, you may continue.

19 MS. GUTIERREZ: Yes, Your Honor.

20 THE COURT: And if I may just, for the
21 record, just indicate your name, sir.

22 MR. WARANOWITZ: My name is Abraham John
23 Waranowitz.

24 THE COURT: I'm reminding you you're still
25 under oath from this morning. You may continue.

1 BY MS. GUTIERREZ:

2 Q Mr. Waranowitz, just to clarify, you
3 indicated that you reported your findings based on what
4 you called your origination test as they occurred to
5 Ms. Murphy?

6 MR. WARANOWITZ:

7 A Yes.

8 Q Is that correct? And your findings could be
9 categorized essentially as a statement that a certain
10 address would trigger a certain site, is that not
11 correct?

12 A No.

13 Q Well, sir, did you report your findings to
14 Ms. Murphy in regard to all of the addresses that she
15 pointed out and she took you to as to whether or not
16 they trigger a site or sites?

17 A Yes.

18 Q So, you reported that information, correct?

19 A Yes.

20 Q And that information would fairly be
21 characterized if it were written as if a cell phone at
22 Rolling Road at I70 triggers cell site L651C or L698A,
23 is that correct?

24 A Yes.

25 Q Okay. And in fact, on many of the addresses,

1 1208 Macado again, you listed two separate cell sites,
2 did you not?

3 A Yes.

4 Q And as for the Security Mall site, sir?

5 A Yes.

6 Q You also listed two separate cell sites?

7 A I believe I did, yes.

8 Q And, sir, you were in what specific location
9 at Security Mall?

10 A We drove around the mall.

11 Q Around the mall?

12 A Yes.

13 Q Not inside the mall?

14 A Correct.

15 Q So the phone call that you caused to be
16 originated was made from outside the mall?

17 A Yes.

18 Q And, sir, after you reported these findings
19 to Ms. Murphy you didn't then generate on top of that a
20 written report, did you?

21 A No.

22 Q No, and you've generated no written report,
23 did you?

24 A No, I did not.

25 Q And there's no information generated by your

1 company, such as would be generated when a real sell
2 phone user using any type of phone would make such a
3 call and the computer would record it and then at
4 billing print out the length of the call that your --
5 the time the call was made and the cell site that it
6 triggered?

7 A The test calls are not billable.

8 Q Okay. So, the answer to my question then,
9 sir, is no.

10 A No.

11 Q And in regard to the Briar Cliff Road
12 address, again you indicated to Ms. Murphy that that
13 also triggered two sites, is that correct?

14 A I'd like to see the report on that.

15 Q Well, sir, you didn't write a report, did
16 you?

17 A No, I did not.

18 Q And did you take notes?

19 A No, Ms. Murphy took notes for me.

20 Q Ms. Murphy took notes. You took no notes of
21 your own origination test, correct?

22 A Correct.

23 Q And did you check her notes for accuracy?

24 A I reviewed her notes and it was consistent.

25 Q And were they --

1 THE COURT: One moment, I'm sorry.

2 MR. WARANOWITZ: I reviewed her notes, I'm
3 sorry, Your Honor.

4 THE COURT: You said, I reviewed her notes
5 and --

6 MR. WARANOWITZ: I reviewed her notes and
7 they were consistent with what I say that date.

8 BY MS. GUTIERREZ:

9 Q Did you review her notes as she took them?

10 MR. WARANOWITZ:

11 A No, I did not.

12 Q You reviewed them after you were all done,
13 correct?

14 A Yes.

15 Q I gather to say you went to visit a number of
16 addresses, did you not?

17 A Yes.

18 Q Thirteen in fact, isn't that correct?

19 A Yes.

20 Q And that took you a little while, didn't it?

21 A Yes.

22 Q And you reviewed her notes after you finished
23 visiting and performing your origination test at those
24 locations, correct?

25 A Yes.

1 Q And at that time you recalled that her notes
2 appeared to be accurate, correct?

3 A Yes.

4 Q Now, sir, you don't know the cell site names
5 and numbers off the top of your head ordinarily, do
6 you?

7 A No, I do not have them memorized.

8 Q And you don't know their addresses, do you?

9 A No, I do not work with addresses on a daily
10 basis.

11 Q So, the answer to my question is no?

12 A No.

13 Q And, sir, yesterday when you were asked you
14 were given a list of addresses and identities of all
15 cell sites in the network, were you not?

16 A Yes.

17 Q When you were asked questions about the
18 location you merely looked them up, did you not?

19 A Yes.

20 Q They didn't refresh your lost memory off
21 where those cell sites were, was it?

22 A No, I know where the cell sites are from
23 experience.

24 Q From experience of having tested them before,
25 correct?

1 A Yes.

2 Q But you never tested any of these addresses
3 before, did you?

4 A No.

5 Q You weren't asked ever before by Ms. Murphy
6 or anyone to go to that specific list of thirteen
7 locations, were you?

8 A I'm sorry. Ask that question again.

9 Q You were never asked before by Ms. Murphy or
10 by anyone to go to that list of thirteen locations,
11 were you?

12 A No.

13 Q Nor to perform tests?

14 A No.

15 Q And that none of the thirteen locations did
16 you, yourself take notes?

17 A No, I did not.

18 Q You relied on her to take notes, right?

19 A Yes.

20 Q And then later after you were all done all
21 thirteen locations you checked her notes for accuracy,
22 correct?

23 A Yes.

24 Q All right. Now, Crosby on your list you
25 listed as also triggering two separate cell sites, did

1 you not?

2 A I believe so.

3 Q And Crosby, is that a name of a building or a
4 street perhaps?

5 A Crosby I believe is a street that crosses
6 695.

7 Q And I70 Park and Ride you listed as
8 triggering two separate cell sites depending upon where
9 you were at that location, correct?

10 A Yes.

11 Q And Route 40 at Cooks Lane up to Forest Park
12 triggered, in fact, depending again on where you were
13 on one of those roads, three separate cell sites, did
14 it not?

15 A I'd have to review the notes.

16 Q Okay. You don't recall that off hand?

17 A I don't recall off hand exactly.

18 Q Okay. And, sir, it would be fair to say that
19 a location triggering three cell sites, not two cell
20 sites was unusual even from your list of thirteen
21 properties, wasn't it?

22 A It is not unusual.

23 Q No, but now, sir, in regard to Gelston Park,
24 again, you indicated to Ms. Murphy that that location
25 would trigger three separate cell sites, did you not?

1 A I recall two cell sites.

2 Q Two cell sites. And, sir, as to the only
3 other location was Woodlawn High School, correct?

4 A I don't remember if there are more at this
5 point.

6 Q Well, sir, do you recall that Ms. Murphy
7 listed thirteen locations that you reported to her
8 orally on?

9 A Yes.

10 Q And are you aware that of the list I just
11 read you, that Woodlawn would be the thirteenth
12 location?

13 A Woodlawn High School?

14 Q Yes, sir.

15 A Yes.

16 Q And, sir, that's the Woodlawn High School
17 that we discussed and you looked up on your map book,
18 correct?

19 A Yes.

20 Q And that was a place that Ms. Murphy took
21 you, correct?

22 A Yes.

23 Q On that day, that you don't recall when it
24 was?

25 A Yes.

1 Q Now, sir, this morning and we discussed again
2 that, of course, on the test that you did, you knew
3 where you were when you were doing the test, right?

4 A Yes.

5 Q And you knew where the cell phone was
6 physically located that you caused to originate a phone
7 call, correct?

8 A Yes, the test phone call.

9 Q That what you did was punch in a code as you
10 said, correct?

11 A Yes.

12 Q Not a phone number, correct?

13 A Not a standard phone number.

14 Q And in any event, not a phone number on
15 State's Exhibit 34, correct?

16 A Yes.

17 Q And you knew the location of the cell phone
18 that would processing the signal, whatever code you
19 entered into it, were it was, right?

20 A Yes.

21 Q It was in your hand, right?

22 A Yes..

23 Q And your hand was next to the physical
24 presence of Ms. Murphy, was it not?

25 A Yes.

1 Q On each occasion that you visited these
2 thirteen locations, correct?

3 A Yes.

4 Q But you know that because you were there,
5 right?

6 A Yes.

7 Q You knew who had that cell phone in their
8 hand, did you not?

9 A Which cell phone?

10 Q Cell phone you were using, sir.

11 A Yes.

12 Q Okay. There isn't any other cell phone that
13 we don't know about, is there?

14 A No.

15 MR. URICK: Objection.

16 BY MS. GUTIERREZ:

17 Q There isn't a hidden cell phone here, is
18 there?

19 THE COURT: Sustained.

20 BY MS. GUTIERREZ:

21 Q You didn't conduct the test on any other cell
22 phone then your own Erickson that you used at the time,
23 correct?

24 MR. WARANOWITZ:

25 A Yes.

1 Q And, sir, at the time you conducted this test
2 you were an engineer for AT&T, were you not?

3 A Yes.

4 Q You were using an Erickson phone, correct?

5 A Yes.

6 Q Although you told us that AT&T had issued its
7 engineers Nokias, correct?

8 A Yes.

9 Q You chose the Erickson phone for the test
10 that you were going to administer at Ms. Murphy's
11 directions, did you not?

12 A Yes.

13 Q She didn't chose it for you, did she?

14 A No she did not.

15 Q And you never substituted another phone for
16 any of these tests, did you?

17 A No.

18 Q No, sir, you were asked by Mr. Murphy this
19 morning that based on your experience with Nokias in
20 your business, whether or not a Nokia would perform
21 competently, comparably to the Erickson, correct?

22 A Yes.

23 Q And you answered that you thought so, that
24 was your opinion, right?

25 A Yes.

1 Q And by comparably you meant that they'd
2 perform exactly the same?

3 A They perform almost exactly the same.

4 Q And, sir, is that your opinion as to every
5 Erickson and every Nokia?

6 A Generally.

7 Q Generally, ideally, right?

8 A Yes.

9 Q What you'd expect them to perform, correct?

10 A Yes.

11 Q But it's fair to say based on your earlier
12 statements that phones perform in a different fashion,
13 do they not?

14 A Yes.

15 Q And it would be fair to say that among Nokias
16 on any model number, some are very good performers, are
17 they not?

18 A I am familiar with the Nokia 6160.

19 Q Only as to the 6160. Out of the thousands of
20 Nokia 6160 some are good performers, are they not?

21 A Yes.

22 Q Some exceed expectations, do they not?

23 A Yes.

24 Q And some are mediocre performers, are they
25 not?

1 A Yes.

2 Q And some are poor performers, are they not?

3 A Yes.

4 Q You couldn't tell which category any Nokia
5 6160 fell into by looking at it, could you?

6 A No.

7 Q You'd have to test that individual phone to
8 know what type of performer it was, would you not?

9 A Yes.

10 Q To find out whether it met expectations and
11 performed as it was expected to do, correct?

12 A Yes.

13 Q Or whether it fell below that line and
14 performed poorly.

15 A Yes.

16 Q Isn't that correct? And part of performance
17 in the differences of phones are that some phones are
18 able to see some signals and other phones can not,
19 isn't that correct?

20 A Some phones would be able to see signals at
21 different levels than other phones.

22 Q And the level at which a phone sees a signal
23 you would characterize in terms of strength or
24 weakness, would you not?

25 A Yes.

1 Q And the readings one gets from phones that
2 are translated to the computer records are related to
3 the phones seeing a signal or not, are they not?

4 A I'm sorry, could you ask that again?

5 Q A phone either sees a signal or it does not,
6 correct?

7 A Yes.

8 Q And the seeing part of the signal is the
9 ability to recognize and communicate with the signal,
10 correct?

11 A Yes.

12 Q So, two phones that are side by side in
13 equate distance from a signal being sent from the cell
14 phone tower, one could read it and one could not,
15 correct?

16 A Yes.

17 Q And one of them could read one signal that's
18 actually closer to both phones, correct?

19 A Yes.

20 Q And one phone couldn't read that signal
21 that's closest, correct?

22 A Yes.

23 Q In fact, for some reason one phone could see
24 a signal that's further away but not see a signal
25 that's closer, could it not?

1 A No.

2 Q Well, sir, the ability to see a signal is
3 part of what you would call its performance, correct?

4 A Yes.

5 Q Now, sir, in regard to the same thing that
6 we're talking about, your test you can only tell us
7 that that phone was in your hand because you did it,
8 right?

9 A Yes.

10 Q And you were there, right?

11 A Yes.

12 Q And Ms. Murphy was there and saw you did it,
13 right?

14 A Yes.

15 Q In regard to the AT&T records, the billing
16 records, do you recall those billing records that I
17 showed this morning?

18 A Yes.

19 Q They print out the existence of a call, do
20 they not?

21 A Yes.

22 Q They print out the number the call was made?

23 A Yes.

24 Q And the records are set up so that it is
25 clear that it is the cell phone whose bill it is that

1 is suppose to have made those calls, correct?

2 A Yes.

3 Q Okay. And they also print out the time the
4 calls were made?

5 A Yes.

6 Q And the duration of the call?

7 A Yes.

8 Q And the cell site it triggered, correct?

9 A Yes.

10 Q Okay. Those billing records can never tell
11 you who had the cell phone in their hand when they made
12 the call the computer registers, can they?

13 A That is true.

14 Q And they never attempt to do so, do they?

15 A No.

16 Q And all the records from your company or
17 anywhere else regarding testing a phone, the records
18 don't reveal who had the phone, do they?

19 A No.

20 Q Or who dialed the numbers?

21 A No.

22 Q Nor who they were next to, if anyone?

23 A No.

24 Q And they can't tell us the location of
25 whoever it was that may have caused a phone call to be

1 made --

2 A No.

3 Q From that particular phone, correct?

4 A Correct.

5 Q Just like your testing on your phone, that
6 day that you don't remember, you can only tell us what
7 your phone did according to you, right?

8 A Correct.

9 Q And the records also can't tell us, they
10 record, cell phone records record when, if I own a cell
11 phone and somebody calls me on my telephone, I don't
12 ask them to call me, but they call me anyway, I pay for
13 that, don't I?

14 A I think so.

15 Q If I'm charged by the minute of use, right?

16 A I think so.

17 Q Even if I don't know the person and it's a
18 wrong number, they reach me on my cell phone and I have
19 to talk to them for thirty seconds to figure out they
20 dialed the wrong number, I still get billed for that
21 thirty seconds, do I not?

22 A Yes.

23 Q Even though I don't know the person who
24 originated the call on another unknown phone, correct?

25 A Yes.

1 Q And their's bill may bill them if they called
2 me on their cell phone too, might they not?

3 A Yes.

4 Q And that would be even if my cell phone
5 network billed me, correct?

6 A I believe so.

7 Q But my cell phone record can only bill the
8 number that dialed my number, correct?

9 A I don't know.

10 Q Well, my cell phone records would list the
11 number just like it listed in the records you reviewed
12 this morning, would it not?

13 MR. URICK: Objection.

14 THE COURT: Sustained.

15 BY MS. GUTIERREZ:

16 Q Now, sir, those records, whatever it is they
17 list, can never tell me who actually dialed the number,
18 can it?

19 MR. URICK: Objection.

20 THE COURT: Sustained. This has been asked
21 and answered at least twice.

22 BY MS. GUTIERREZ:

23 Q Sir, if I looked at my records and it
24 designated a call, if I recalled making that call then
25 I would know I made it, correct?

1 MR. URICK: Objection.

2 THE COURT: Sustained.

3 BY MS. GUTIERREZ:

4 Q Sir, if I didn't recall making the call and I
5 enquired of your network to tell me who made the call
6 from my cell phone it couldn't tell me that, could it?

7 MR. URICK: Objection.

8 THE COURT: Sustained. We've asked and
9 answered this line of questioning, please move on.

10 BY MS. GUTIERREZ:

11 Q Sir, many phones of many makes and models
12 have memory capability, do they not?

13 MR. WARANOWITZ:

14 A Yes.

15 Q That record within the phone itself, a list
16 of numbers that's called, does it now?

17 A Yes.

18 Q And that would include Erickson phones that
19 have memory capability, correct?

20 A Yes.

21 Q And Motorola phones that have memory
22 capability, correct?

23 A Yes.

24 Q And Nokia phones that have memory capability,
25 correct?

1 A Yes.

2 Q If the phone has memory capability if can
3 print up or display the identity of numbers that have
4 either called that phone or been called by that phone,
5 can it not?

6 A In most cases, yes.

7 Q But that's the limit of what it can tell you,
8 isn't that correct?

9 A Yes.

10 Q It can't tell you who placed the calls, can
11 it?

12 MR. URICK: Objection.

13 THE COURT: Sustained.

14 BY MS. GUTIERREZ:

15 Q As to the memory capability, sir, can it?

16 MR. URICK: Objection.

17 THE COURT: Overruled. As the memory
18 capabilities of the phone can it tell you who made the
19 call?

20 MR. WARANOWITZ: No, it can not.

21 BY MS. GUTIERREZ:

22 Q And it can not tell you as to the memory
23 capability the identity of who received the call, can
24 it?

25 MR. WARANOWITZ:

1 A No it can not.

2 Q Given what you've described as your
3 familiarity with Nokia phones, sir, I'm going to show
4 you what's in evidence. Can you tell us if that phone
5 has memory capability?

6 A I've had a Nokia 6160 and it has memory
7 capability.

8 Q Your Nokia 6160 has memory capabilities, is
9 that correct?

10 A The Nokia that I -- the Nokia 6160s that I
11 have used all have memory capability.

12 Q Well, sir, I'm asking you, can you look at
13 this particular 6160 and tell us if it has memory.

14 MR. URICK: Objection.

15 THE COURT: Overruled. Can you tell if this
16 particular exhibit, whether it has memory or not?

17 MR. WARANOWITZ: I can not do that because
18 the battery is dead.

19 BY MS. GUTIERREZ:

20 Q Were you never asked to examine its memory
21 capabilities which you believe it would have?

22 MR. WARANOWITZ:

23 A I'm sorry. Could you ask that question
24 again?

25 Q Were you personally ever asked by anyone to

1 examine the memory of this phone?

2 A Before now, no.

3 Q And you, of course, did not, did you?

4 A I did not.

5 MS. GUTIERREZ: Nothing further.

6 THE COURT: Anything further from the State?

7 MR. URICK: Extremely briefly, Your Honor.

8

9

REDIRECT EXAMINATION

10 BY MR. URICK:

11 Q Lets cut to the chase here.

12 MS. GUTIERREZ: Objection.

13 THE COURT: Mr. Urick, without the added
14 commentary you make ask your first question.

15 BY MR. URICK:

16 Q Cell phone records are computer records
17 maintained by the AT&T Wireless Corporation, are they
18 not?

19 MR. WARANOWITZ:

20 A Yes.

21 Q They show that a particular number on a
22 particular date either dial up or received a call, is
23 that correct?

24 A Correct.

25 Q That that call went through a particular cell

1 site tower or structure, correct?

2 A Correct.

3 Q And in order for that to have occurred the
4 phone had to be somewhere within the coverage area for
5 that particular cell site sector?

6 A Correct.

7 Q And if somebody, drawing your attention now
8 to my ten and eleven, what is now in evidence as
9 State's 34. If somebody were in Lincoln Park with an
10 AT&T wireless subscriber phone and two calls those
11 calls would be recorded in the computer records,
12 correct?

13 A Correct.

14 Q And the would indicate the cell site for
15 Lincoln Park, which L689C, is that correct?

16 A Correct.

17 Q Can I see State's 31 please. Now, Ms.
18 Gutierrez showed you the business records for the cell
19 phone, showed to you the account billing date. I'd
20 like you to look on there and see if you can see a
21 listing for the service user.

22 A Next to the text service user I see Adrian M.
23 Syed.

24 Q And does there -- that record indicate when
25 the order was placed or the service was started?

1 A I see an order date of January 1st -- January
2 11th, 1999.

3 Q Thank you. If I may have the Court's
4 indulgence for just second.

5 THE COURT: Certainly.

6 MR. URICK: No further questions. Thank you.

7 THE COURT: Anything further, Ms. Gutierrez?

8 MS. GUTIERREZ: Yes, Your Honor.

9

10 REXCROSS EXAMINATION

11 BY MS. GUTIERREZ:

12 Q With regard to, the question you were asked
13 about Lincoln Park, sir.

14 MR. WARANOWITZ:

15 A Yes.

16 Q The cell site that you say would be triggered
17 if one were in Lincoln Park and made a phone call,
18 isn't in Lincoln Park, is it?

19 A It is not.

20 Q It isn't even near a street that goes through
21 Lincoln Park, is it?

22 A No it is not.

23 Q And the cell site that you say was triggered,
24 would be triggered from any number of places in the
25 coverage area, correct?

**Cited Excerpts of Trial Testimony
from Jennifer Pusateri
(2/15/2000) (Pages 191-196)**

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IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND

VERSUS INDICTMENT NOS. 199103042, 43, 45, 46

ADNAN SYED

/ FEBRUARY 15, 2000

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

BEFORE:

THE HONORABLE WANDA HEARD, JUDGE
AND A JURY

APPEARANCES

ON BEHALF OF THE STATE:

KEVIN URICK, ESQUIRE
KATHLEEN MURPHY, ESQUIRE
ASSISTANT STATE'S ATTORNEYS

ON BEHALF OF THE DEFENDANT:

M. CRISTINA GUTIERREZ, ESQUIRE

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Official Court Reporter

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1 THE WITNESS: That is what I meant.

2 THE COURT: -- that's not something that
3 you know, but you're guessing at it.

4 THE WITNESS: All right.

5 THE COURT: Well, I don't know what you
6 knew. I'm just saying that if you start off a
7 sentence with it must have, it means you're guessing
8 unless it is. So that's an objection and it's
9 sustained and you're being directed to answer the
10 question from what you know, what you saw with your
11 own eyes, what someone told you with your own -- you
12 heard with your ears, not what someone else said that
13 you didn't see or what you guessed at or what must
14 have happened, do you understand?

15 THE WITNESS: Right.

16 THE COURT: Very well. Now, your next
17 question, Ms. Murphy.

18 Q About what time, if you know, did you
19 receive that message from Jay?

20 A About eight o'clock.

21 Q What time had you planned to meet him?

22 A Earlier. I don't know. I don't remember.

23 Q What do you remember next?

24 A After he paged me to tell me to come pick
25 him up at Westview Mall parking lot, I left and went

1 to Westview Mall parking lot. He told me to meet him
2 there like in fifteen minutes.

3 Q Now, is this a separate page from the one
4 that you described as confusing?

5 A Yes.

6 Q Okay. When did this happen?

7 A Like right -- like probably about ten
8 minutes after -- ten or fifteen minutes maybe after I
9 had talked to someone on the cell phone. It all
10 happened between like seven-thirty and eight-fifteen.

11 Q And what happened with this next page, Jay
12 said what?

13 A To come and pick him up in front of
14 Westview Mall parking lot, or maybe I talked to Jay
15 on the phone, one or the other.

16 MS. GUTIERREZ: Objection. Move to strike.

17 THE COURT: Overruled. You're saying that
18 you just don't recall the order of things?

19 THE WITNESS: Right.

20 THE COURT: Then you need to say so. You
21 need to say I don't recall the order. Do you follow
22 me?

23 THE WITNESS: Yes.

24 THE COURT: Very well. The objection is
25 overruled. You may ask your next question.

1 MS. MURPHY: Thank you, Your Honor.

2 Q Ms. Pusateri, does your pager accept only
3 numerical pages or can you receive voice messages
4 also?

5 A Both.

6 Q So at some point then you picked up Mr.
7 Wilds?

8 A Yes.

9 Q And where was that?

10 A In front of Value City at Westview Mall.

11 Q Was anybody with Jay?

12 A Yes.

13 Q Who was that?

14 A Adnan.

15 Q Now, did you know Adnan prior to that date?

16 A Yes.

17 Q How did you know him?

18 A From Woodlawn.

19 Q Now, the person you've described as Adnan,
20 is that person present here today?

21 A Yes.

22 Q Can you point him out for the jury, please?

23 A Over there.

24 THE COURT: Indicating the defendant Mr.
25 Syed for the record.

1 Q Thank you. Did you have any conversation
2 with Adnan at that point?

3 A He spoke and said hello.

4 Q Where did you first see Adnan and Jay?

5 A In front of Westview Mall in the Value City
6 parking lot.

7 Q In the parking lot. Were they walking?

8 A No, they were in the car. They pulled up
9 after I was parked there.

10 Q Who was driving?

11 A Adnan.

12 Q Did you have any further discussions with
13 him?

14 A No.

15 Q What happened next?

16 A Jay got in the car and we left the parking
17 lot.

18 Q How was Jay behaving at that point in time?

19 A At that point he got in the car and the
20 first thing he said was like put on your seat belt
21 and let's go and --

22 Q Is that a normal thing to say?

23 A He didn't act normal, no, not like normal,
24 not yet.

25 Q What happened next?

1 A Then he proceeded to tell me about what had
2 happened. First he said like --

3 MS. GUTIERREZ: Can I just note my
4 objection for the record.

5 THE COURT: Okay. If we could back up. At
6 the time he's telling you what happened, who is
7 present?

8 THE WITNESS: Just me.

9 THE COURT: You and Mr. Wilds?

10 THE WITNESS: Yes.

11 THE COURT: Okay, overruled. You may
12 proceed.

13 A Jay's in the car.

14 MS. GUTIERREZ: I just want to make sure
15 the records reflects a continuing objection.

16 THE COURT: Yes, the record's noted.

17 A Jay gets in the car, tells me to put on my
18 seat belt, we get ready to leave the parking lot, and
19 he tells me he has something that he wants to tell
20 me, but I can't tell anybody. It has to stay between
21 me and him, that he feels like he needs to tell
22 somebody in order to protect himself as well as --
23 just because once he told me the information, I could
24 understand why he needed to feel like he needed to
25 tell somebody. So he went on to tell me that Adnan

1 had strangled Hae and then like he was like he wanted
2 to go see his girlfriend Stephanie to make sure she
3 was okay. It was her birthday. So we proceeded to
4 Stephanie's house, and then he said that Adnan had
5 used his shovels and he wanted to go around and make
6 sure there wasn't any of his prints I guess on
7 shovels from before.

8 So he had me drive him to the back of
9 Westview Mall. Back to Westview Mall, so we went to
10 the back of Westview Mall and Jay got out of the car
11 and walked over towards some dumpsters. I sat in the
12 car. He came back and got in the car and we went to
13 go hang out at my friend's house.

14 Q Did he tell you where Adnan had strangled
15 Hae?

16 A Yea, I think I remember him telling me that
17 he had done it in, because I remember him saying that
18 Adnan was going to get caught, that he had done it in
19 the Best Buy parking lot.

20 Q Did Mr. Wilds indicate to you whether he
21 had seen Hae?

22 A Yes, he told me that he saw her body in the
23 trunk of a car.

24 Q Now, when you picked up Jay at the mall
25 later that night did he still have the phone?

**Cited Excerpts of Trial Testimony
from Kristina Vinson
(2/16/2000) (Pages 209-15, 225-39)**

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IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND



VERSUS INDICTMENT NOS. 199103042, 43, 45, 46

ADNAN SYED

/ FEBRUARY 16, 2000

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

BEFORE:

THE HONORABLE WANDA HEARD, JUDGE
AND A JURY

APPEARANCES

ON BEHALF OF THE STATE:

KEVIN URICK, ESQUIRE
KATHLEEN MURPHY, ESQUIRE
ASSISTANT STATE'S ATTORNEYS

ON BEHALF OF THE DEFENDANT:

M. CRISTINA GUITERREZ, ESQUIRE

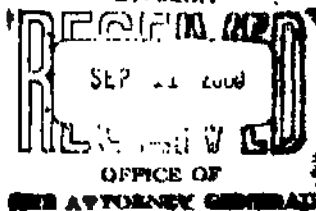
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1 clothes, watching TV, just hanging out.

2 Q Anything else happen?

3 A Then Jay and Adnan came to my apartment.

4 Q Was it strange that Jay would come to your
5 house?

6 A No, it wasn't strange.

7 Q Why is it memorable to you then?

8 A Because they were acting real shady when
9 they got there.

10 Q What do you mean by shady?

11 A Weird, funny. Something was going on, not
12 how he usually acts.

13 Q Can you describe what they were doing?

14 A They weren't doing anything. I mean, they
15 weren't talking, just quiet.

16 Q What were you doing at that point?

17 A Watching TV. We were all watching TV.

18 Q Do you recall at what time that was?

19 A Like around 6:00 o'clock.

20 Q And how do you know it was 6:00 o'clock?

21 A Judge Judy was on, watching Judge Judy.

22 Q That's something you watch frequently?

23 A When I can, when I have a chance.

24 Q Now, the person who you said was with Jay,
25 did you know that person?

1 A Uh-uh.

2 Q Can you describe that person?

3 A Young, black hair.

4 Q Is that person here today?

5 A Uh-huh.

6 Q Can you point him out for the jury, please?

7 A The defendant.

8 MS. MURPHY: Indicating for the record,
9 Your Honor, the defendant.

10 THE COURT: Mr. Syed for the record.

11 Q Did Jay introduce to you to this person?

12 A No.

13 Q What did they do?

14 A Well, they rang the bell or knocked on the
15 door and I answered the door and Jay was like hey
16 what's up, can we come in and chill for awhile. I
17 was like sure, come on in, what's up. Then they came
18 in and Jay sat -- the way my house was configured at
19 the time was two chairs facing the TV. I had a bed
20 on the side that doubled for a couch sometimes, and
21 then I had a small like round table and like an
22 alcove with chairs, and Jeff was sitting on the left
23 chair. I was sitting on the right. Jay went and sat
24 on one of the chairs near the table and the bed
25 wasn't made, or, you know, the couch wasn't made up

1 or whatever. So there was pillows on the floor and
2 stuff and Adnan went and just kind of just sat on the
3 pillows.

4 Q Now, is there a separate bedroom in the
5 apartment or did you usually sleep on that couch that
6 you described?

7 A I usually slept on the couch just because
8 my apartment didn't have any air conditioning and I
9 had the window. I had an air conditioner in the
10 window. So I had moved my bed out into the main room
11 just because it was cooler, but I did have a separate
12 bedroom in the back.

13 Q Did the defendant say anything?

14 A Not at first.

15 Q At any time?

16 A Oh, okay. While we were all watching TV
17 and he was like, you know, he was slumped over for
18 awhile and nobody was talking. Like nobody had said
19 anything basically when we were sitting down and then
20 he just like kind of popped up and was like, you
21 know, how do you get rid of a high, and so I was like

22 --

23 Q What did you take that to mean?

24 A Oh. He was high? I don't know.

25 Q Did he say anything else?

1 A Not at that time.

2 Q What happened next?

3 A Next I think Jen called and I remember
4 taking -- I remember talking to her in the back. I
5 don't remember if Jeff answered the phone or if I
6 answered the phone. I remember talking to her like
7 in the hallway and then in my bedroom just --

8 Q Did Jen call you or did she call one of the
9 other people in the apartment?

10 A No, Jen called me, yea.

11 Q Do you have a phone in your apartment?

12 A Uh-huh.

13 Q Is that the phone she called?

14 A Right.

15 Q What do you remember about that?

16 A I was like, you know, who is this person in
17 my apartment and, you know, Jay and somebody else are
18 here and, you know, they're acting really crazy. You
19 know, they're acting real shady, what's going on, and
20 she was like, you know, I don't know who's there. Is
21 it so and so, and I said -- I don't remember what
22 name she asked me, and I said, you know, I don't know
23 who it is. It's a guy. He has black hair and she's
24 like I don't know who it is, and I was like, well,
25 you know, what's going on. She was like I don't

1 know, I'm supposed to meet Jay later, I'll find out
2 then for you, I'll find out what's going on then.

3 Q What happened after you talked to Jen?

4 A I can't remember if I was -- I wasn't on
5 the phone with Jen. I remember being in my chair
6 watching TV. I don't remember if Jeff was on the
7 phone with her or if I had hung up, but the next
8 thing that happened was Adnan got a call on his cell
9 phone and he answered the phone and --

10 Q Where was the cell phone?

11 A In his jacket pocket.

12 Q What happened?

13 A It was really quiet in the room. We were
14 just watching TV. So you could really hear what he
15 was saying. He was, you know, they're going to come
16 talk to me. They're going to, you know, what should
17 I say, what should I do, something to that effect.

18 Q Did you understand what he was talking
19 about?

20 A No.

21 Q What happened next?

22 A This is the part where I really don't
23 remember. I remember that Jeff was on the phone with
24 Jen. I can't remember whether she called back,
25 whether he had been on the phone with her while I was

1 watching TV, but I was sitting in my chair when Adnan
2 just jumped up and left the apartment.

3 Q What was Jay Wilds doing at that point?

4 A He was sitting to the right of me just
5 smoking a cigarette.

6 Q Did he stay there?

7 A For like a hot second. I mean, Adnan ran
8 out of the apartment. I was like what's wrong with
9 him. I said something to that effect, and Jay was
10 like, I don't know and then he sat there for a minute
11 and finished his cigarette and he was just like, you
12 know, hang on a second and he liked jumped up and ran
13 out of the apartment, too.

14 Q Did you see or hear anything after that?

15 A Not -- I mean, I went to the window to see,
16 you know, if they were standing outside. My
17 apartment looks over the street. I didn't know if
18 they were standing outside or what they were doing.
19 I remember walking to the window and being like, you
20 know, they just got up and left. You know, I think
21 they're sitting in the car and I remember Jeff saying
22 that on the phone to Jen, but I don't remember
23 whether we had hung up or not with her. And I said,
24 you know, he just jumped up and left, and Jeff is
25 like what, like what are they doing, and I was like I

1 think they're sitting in the car, and then the car
2 drove away and I was like they're driving away, and
3 so he was like, hmmm I guess they'll be back because
4 Jay's hat and cigarettes were there so --

5 Q Did there come a time when you saw Jay
6 again that night?

7 A Jay came back a couple of hours later.

8 Q Was he with anybody at that point?

9 A With Jen.

10 Q How about the defendant, was he there at
11 that point?

12 A No.

13 Q How were Jay and Jennifer acting when they
14 came to your apartment later on?

15 A Shady, like something was going on.

16 Q Are you still friendly with Jennifer
17 Pusateri?

18 A Uh-huh.

19 Q How about Jay Wilds?

20 A Acquaintances. We're not so much friends
21 anymore.

22 Q Why is that?

23 A Well, because he brought somebody to my
24 apartment and I mean that's not really cool with me.
25 I mean, I can't believe that he would bring some like

1 A Hmm, no, I wouldn't say that.

2 Q No?

3 A Some of them do.

4 Q But you got to know Jen through --

5 A Through the sorority.

6 Q -- through that sorority?

7 A Yes.

8 Q Is that right?

9 A Uh-huh.

10 Q And are there sorority activities?

11 A Yes.

12 Q Now, you said after Jay and his friend got

13 there, and incidentally was it okay with you before

14 you knew anything that Jay brought another friend?

15 A Yea, he had brought other friends to my

16 house.

17 Q Other friends to your house?

18 A Uh-huh.

19 Q And that had been okay?

20 A Yea.

21 Q Is that right? And this is a person that

22 you had never met before?

23 A The person he brought with him?

24 Q Right?

25 A That's correct.

1 Q Is that right?

2 A Uh-huh.

3 Q You'd never seen before?

4 A No.

5 Q You had never observed him in any setting?

6 A No.

7 Q You didn't know his name?

8 A No.

9 Q You had never heard his name mentioned?

10 A No, not at that time.

11 Q By either your friend Jay?

12 A Not at that time.

13 Q Meaning January 13th?

14 A That's correct.

15 Q And you had never heard his name mentioned

16 by your friend Jen?

17 A Not at that time.

18 Q Not at that time. And when he came in, did

19 you think that they had come to smoke weed?

20 A No.

21 Q Did you think they had come to watch Judge

22 Judy?

23 A No.

24 Q You described the period -- did your

25 boyfriend like Judge Judy?

1 A I don't remember, to tell you the truth.

2 Q When Judge Judy was on if you had the time
3 and if you were home by watching it, you would watch
4 it and you would pay attention, would you not?

5 A Uh-huh.

6 Q Is that a yes?

7 A That's a yes.

8 Q Because you liked it?

9 A That's correct.

10 Q You'd want to hear what was said, would you
11 not?

12 A That's correct.

13 Q You wanted to hear what Judge Judy said to
14 the people before her, would you not?

15 A That's correct.

16 Q And you wanted to hear what her decision
17 was about whatever case was before her, right?

18 A That's correct.

19 Q And so there was nothing unusual while you
20 would be watching TV and Jeff would be there and no
21 conversation would be going on?

22 A I mean, sometimes we would watch TV and
23 talk at the same time or other times we would just
24 watch TV.

25 Q And have no conversation?

1 A That's correct.

2 Q So there would be no noise?

3 A Sometimes, yes.

4 Q So during the time period when you were
5 there that day and Jay, Adnan, and Jeff were there
6 and there were periods that were silent, there was
7 nothing unusual about that, was there?

8 A Wait, can you repeat it? I'm sorry.

9 Q On that day --

10 A Uh-huh.

11 Q -- you've described that there were periods
12 of time while the four of you were there in which
13 there was no conversation?

14 A Okay, that's right.

15 Q Right?

16 A Uh-huh.

17 Q There wasn't anything unusual about that,
18 right?

19 A Yea, there was something unusual about
20 that.

21 Q About not having any conversation?

22 A That day it was, yes.

23 Q That day it was, even though that
24 conversation would have taken place while Judge Judy
25 was on?

1 A Uh-huh.

2 Q And when you turned the TV on, do you do it
3 to watch it?

4 A Yes.

5 Q And if you have guests there, do you do it
6 for their entertainment also?

7 A Well, sometimes when guests come over the
8 TV is already on. It doesn't necessarily mean we all
9 sit there and pay a hundred percent attention to it.

10 Q And when you have guests in the room and
11 your favorite show is on, do you ever go up and turn
12 it off?

13 A Sometimes if we want to listen to music or
14 I mean --

15 Q Or if you want to talk?

16 A Usually if we want to talk, it still stays
17 on or more music stays on.

18 Q And that day did you ever turn Judge Judy
19 off?

20 A No.

21 Q Even though there are occasions in which
22 there might be complete silence while Judge Judy is
23 on, that day it was unusual that there was?

24 A I would say it was unusual because other
25 times Jay had come over and the TV would be on we

1 would talk still or we would attempt to have a
2 conversation. It wasn't --

3 Q Jay was pretty talkative, wasn't he?

4 MS. MURPHY: Objection.

5 THE COURT: Sustained.

6 A We would still have a conversation. This
7 time when I would like try to talk to him, he wasn't
8 making any sense. He obviously did not want to talk
9 so it was just very unsettling quiet.

10 THE COURT: Your next question.

11 Q So it was Jay who wasn't making any sense?

12 A Yea, that's correct.

13 Q Is that right?

14 A Yes.

15 Q You had never met this other person before,
16 right?

17 A That's correct.

18 Q You had never smoked weed with him, right?

19 A That's correct.

20 Q He had never visited your home, right?

21 A Yes.

22 Q You had never observed him under any
23 condition, right?

24 A That's correct.

25 Q You didn't know normal, what it was for

1 him, did you?

2 A That's correct.

3 Q You didn't know how he acted around people
4 he had just met?

5 A That's correct.

6 Q And Jay never said to you, oh, by the way,
7 here's this guy I really want you to get to know him,
8 did he?

9 A No.

10 Q And nothing Jay said or did indicated that
11 he was there to interact with you?

12 A Who was there to interact with me?

13 Q The person he brought.

14 A It was never specifically said this person
15 is here to interact with you.

16 Q And he never introduced him to you, did he?

17 A No.

18 Q No. By name?

19 A No.

20 Q Is that right? And Jay never interacted
21 and tried to get a conversation going that involved
22 him, did he?

23 A Who?

24 Q Jay never interacted and attempted to get a
25 conversation going with the person that you had never

1 met that he brought to your home, did he?

2 A That's correct.

3 Q And were you interested in this new person?

4 A When they came in, I kind of thought that
5 Jay would say this is so and so and, you know, I know
6 him from wherever, like he had done, like when he had
7 brought other friends he would say, oh, this is, you
8 know, so and so, and you know, I know them through
9 whatever, and you know, and work, just hanging out,
10 doing whatever.

11 Q So Jay's behavior about the person that he
12 had brought into your house was odd based on your
13 prior experience with Jay and others you didn't know,
14 right?

15 A That's correct.

16 Q In fact, he didn't do it at first and that
17 was strange?

18 A I'm sorry?

19 Q He didn't do it at first, introduce this
20 person, right?

21 A Right.

22 Q And that was strange, right?

23 A A little, uh-huh.

24 Q At any time he didn't do it, did he?

25 A No.

1 Q Before he and this person left, he never
2 introduced him to you?

3 A Nope.

4 Q And he never gave you any heads up as to
5 why he was there; is that right?

6 A That's right.

7 Q And this person whom you had never met,
8 you, of course, had no way of knowing what his norm
9 of behavior was, did you?

10 A No.

11 Q And you had -- nobody smoked weed while you
12 all were there, did they?

13 A I don't remember. We could have, but I'm
14 not sure.

15 Q You could have smoked weed in the presence
16 of someone you not only didn't know and had not even
17 been introduced to you?

18 A I'm sorry, I can't hear you when you turn
19 around.

20 Q You could have smoked weed together with
21 the person whose name you didn't know and had not
22 been introduced to you?

23 A That's correct.

24 Q And that you never smoked with before?

25 A That's correct.

1 Q And you just don't remember if that
2 happened or not?

3 A I'm not sure.

4 Q It could have?

5 A It could have.

6 Q Now, the total time that they were there
7 was how long?

8 A Hmm, I would say between twenty, thirty
9 minutes to forty-five at the most.

10 Q So you remember Judge Judy was still on
11 when they left?

12 A I don't remember. It could have been.

13 Q It could have been?

14 A I don't remember.

15 Q You wouldn't turn your favorite TV show
16 off, right?

17 A Well, the TV wasn't off. I know the TV
18 wasn't off. Whether that show had gone off or not,
19 I'm not sure.

20 Q And nothing about -- for instance, if you
21 had smoked weed while they were there would have made
22 you turn off Judge Judy, would it?

23 A It would have made -- it wouldn't have made
24 me turn off the TV?

25 Q Right, I'm asking you, would it have made

1 you --

2 A No.

3 Q Of course, you don't remember whether you
4 did or didn't?

5 A No.

6 Q But you could have?

7 A Yep. I mean, I've even eaten shrimp
8 before. I can't tell you when the last time I ate
9 shrimp was, but I know I've eaten shrimp. It's kind
10 of the same thing.

11 Q Well, Ms. Vinson eating shrimp and smoking
12 marijuana aren't exactly the same kind of activities,
13 are they?

14 MS. MURPHY: Objection.

15 THE COURT: Sustained.

16 Q There's nothing illegal about eating shrimp
17 --

18 A No, I'm just trying to say that it was
19 usual in the fact that, yes, I have before. It
20 wasn't uncommon. I have before, but do I remember if
21 I did that day? No, I don't remember.

22 Q Now, had you had -- did you expect Jen's
23 phone call that day?

24 A Did I expect Jen's phone call? No.

25 Q It was nothing unusual about it though,

1 right?

2 A That's correct.

3 Q She was your friend and she called?

4 A Yes.

5 Q And she didn't call looking for Jay?

6 A I don't think so.

7 Q She could have?

8 A Well, I don't know how she would have known
9 that Jay was there since Jay wasn't planning to come
10 over, or I didn't know that Jay was planning to come
11 over.

12 Q You didn't know whether or not he was
13 planning to come over, right?

14 A Right.

15 Q But you wouldn't know if Jen perhaps knew
16 that he was planning to come over?

17 MS. MURPHY: Objection.

18 THE COURT: Ms. Gutierrez, repeat that
19 again.

20 Q You wouldn't have known if Jen knew that he
21 meaning Jay, was planning to come over, would you
22 have?

23 THE COURT: Sustained.

24 Q Now, when you got the call from Jen, Jay
25 was still there, right?

1 A That's correct.

2 Q And he was acting out of the norm?

3 A That's correct.

4 Q And you described -- and I want to make
5 sure I heard it shady as in s-h-a-d-y?

6 A That's correct.

7 Q Shady?

8 A Shady.

9 Q Not right?

10 A Not right.

11 Q Not normal?

12 A Not normal.

13 Q Hiding something?

14 A Possibly.

15 Q That certainly came to mind, did it not?

16 A Yea.

17 Q Did you ask Jay if he were high?

18 A Did I ask Jay if he was high?

19 Q Yes.

20 A No, I did not.

21 Q Did he appear to be acting high as you had
22 previously observed him to be?

23 A I can never tell if Jay is high or not. So
24 he could have been.

25 Q He doesn't show?

1 A No.

2 Q Did he appear to be concealing something,
3 that kind of shady?

4 A Concealing something?

5 Q Hiding something?

6 A He was appearing that something was going
7 on that he did not tell me about.

8 Q Did you ask about it?

9 A I didn't say what is going on, tell me
10 right now. No, I did not say that.

11 Q Not to him?

12 A No.

13 Q And the person with him, of course, you
14 didn't know how he acted normally, right?

15 A No, I didn't know how he acted normally.

16 Q So you wouldn't know if how he appeared to
17 you was different than he always appeared under other
18 circumstances, did you?

19 A Well, he was slumped over on my floor
20 hiding his face. I don't know if that's normal for
21 him, but that wasn't I thought normal.

22 Q Well, he didn't hide his face such that you
23 can't identify it, right?

24 A Well, I saw him when he came in and I saw
25 him when he left and I saw him when he got his phone

1 call and when he looked at everybody and asked, you
2 know, how do you get rid of a high. But the rest of
3 the time he was slumped over like that.

4 Q But he didn't conceal his face from you
5 such that you couldn't tell who he was; is that
6 right?

7 A Uh-huh.

8 Q He was only in your apartment, you said he
9 got there at six and maybe stayed at the most
10 forty-five minutes?

11 A That's correct.

12 Q Is that right? And that's the only
13 interaction you had with him?

14 A That's correct.

15 Q And the way that you described it, there's
16 those two chairs in the alcove?

17 A Right.

18 Q And where he was, there were pillows, were
19 there not?

20 A On the floor, uh-huh.

21 Q On the floor?

22 A Which he was sitting on, right.

23 Q And that's where he was, right?

24 A Right.

25 Q And the pillows on the floor, they weren't

**Cited Excerpts of Trial Testimony
from Deborah Warren
(2/16/2000) (Page 300)**

1 the homecoming dance?

2 A No.

3 Q Did you become aware of any break ups in
4 their relationship?

5 A Yes, I did.

6 Q What do you remember about that?

7 A They had broken up probably two times
8 before their final break up. Hae was upset at Adnan
9 because he was becoming very over protective of her
10 and she felt like she wasn't free in the relationship
11 and she called it off.

12 Q You mentioned their final break up, do you
13 remember when that was?

14 A Between December and January of '99.

15 Q Now, the first two break ups that you
16 mentioned --

17 A Uh-huh.

18 Q -- during those periods of time were you
19 ever aware that Hae dated anyone else?

20 A No, she didn't.

21 Q And how about after the final break up?

22 A Yes, she did.

23 Q Who was that?

24 A Donnie.

25 Q And did you ever meet Donnie?

**Cited Excerpts of Trial Testimony
from Deborah Warren
(2/17/2000) (Pages 136-37)**

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IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND

COPY

VERSUS INDICTMENT NOS. 199103042, 43, 45, 46

ADNAN SYED

/ FEBRUARY 17, 2000

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

BEFORE:

THE HONORABLE WANDA HEARD, JUDGE
AND A JURY

APPEARANCES

ON BEHALF OF THE STATE:

KEVIN URICK, ESQUIRE
KATHLEEN MURPHY, ESQUIRE
ASSISTANT STATE'S ATTORNEYS

ON BEHALF OF THE DEFENDANT:

M. CRISTINA GUTIERREZ TO:
RENEZ, ESQUIRE General

RECORDED BY: VIDEO TAPE

TRANSCRIBED BY:
Diane R. Walker
Official Court Reporter

Office of the Attorney General
200 St. Paul Place
Baltimore, MD 21202
Tina Stavrou
410-576-6491
Attention:

Please return by: 8-04-10

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1 Q If she had contemplated running away at
2 that point, do you believe she would have told you?

3 MS. GUTIERREZ: Objection.

4 A Yes.

5 THE COURT: Sustained.

6 Q Now, this rumor that perhaps Hae had gone
7 to California to see this person that she may have
8 referred to as her father, do you recall that Adnan
9 was one of the people that suggested that?

10 A I don't recall.

11 Q I mean, you were asked did Adnan make Hae
12 stop seeing her friends, and your response was, well,
13 make, no. It was an issue between them, wasn't it?

14 A Correct.

15 Q Can you describe that for the jury, please?

16 A Adnan was very over protective of Hae. He
17 never made her sustain from seeing her friends but he
18 did suggest that she spend more time with him. He
19 wanted to know where she was going, when she was
20 going, who she was with, almost like he was her
21 father.

22 Q And you stated that only part of the reason
23 for their break up were their religious difficulties,
24 what is the rest of the problem?

25 A The control issue between the two of them

1 and his possessiveness, his aggressiveness verbally,
2 and him keeping tabs on her all of the time, that
3 really irked her and she felt like she wasn't free in
4 the relationship.

5 MS. MURPHY: May I approach the witness,
6 Your Honor?

7 THE COURT: Yes, you may.

8 Q I'm showing you State's Exhibit 2 and
9 you've seen this a couple of times now. I ask you
10 just to look over all of the entries from December
11 29th until the end of the entries?

12 A (Witness complied with request.)

13 Q Thank you. Now, the entries that Ms.
14 Gutierrez pointed out to you on cross examination
15 were from December; is that correct?

16 A Correct.

17 Q Some of these entries you've already read
18 to the jury, right?

19 A Yes.

20 Q Is it fair to say that in all of these
21 entries from December 29th to January 12th, the day
22 before Hae disappeared, the defendant Adnan Syed is
23 mentioned only once?

24 A Correct.

25 Q Can you please read, and I'll refer you to

**Cited Excerpts of Trial Testimony
from Detective Gregory MacGillivray
(2/17/2000) (Pages 154-55, 314-15)**

1 Crime Lab technicians to collect evidence, photograph
2 evidence, and also have the Medical Examiner's Office
3 come out and, naturally, remove the remains.

4 Q And were you the primary detective assigned
5 to the investigation of the Hae Min Lee murder?

6 A Yes, I was.

7 Q Now, in the course of your investigation
8 did you have occasion to interview Detective O'Shea
9 of the Baltimore County police force concerning his
10 missing persons investigation of Hae Min Lee?

11 A Yes, I did.

12 Q Based on information that you obtained from
13 him, what, if anything, did you do?

14 A I obtained cell phone records of a phone
15 that Adnan Syed had.

16 Q And drawing your attention now to on or
17 about February 26th of 1999, did you have occasion to
18 be in Baltimore County pursuant to your
19 investigation?

20 A Yes, I did.

21 Q What were you doing on that date and time?

22 MS. GUTIERREZ: I'm sorry, what date was
23 that?

24 Q February 26th?

25 A On the 26th I had the occasion to be in the

1 Woodlawn area and I responded to a residence in that
2 area, 1208 McAdoo.

3 Q What took you to that residence?

4 A After getting the cell phone numbers we had
5 gotten the subscriber information for each of the
6 numbers. One of the subscribers lived -- one of the
7 numbers that we had gotten from the cell phone, the
8 subscriber information came back to 1208 McAdoo. So
9 I responded to that location.

10 Q What, if anything, did you find when you
11 got there?

12 A When I responded, I got out of my car and
13 started to walk towards the residence and a young
14 lady had rolled down her window. She was in a car
15 out front of the residence and inquired as to why I
16 was going to her home.

17 Q Did you have occasion to speak to her at
18 that time?

19 A Yes, I did.

20 Q As a result of that conversation what, if
21 anything, did you do?

22 A She identified herself as Jennifer Pusateri
23 and I learned that she had gone to --

24 Q Please don't tell us what she told you.
25 Tell us what you did?

1 Q But she didn't indicate to you that she had
2 any knowledge of any event that led up to the death
3 of Hae Min Lee?

4 A No.

5 Q Or that she had heard from someone else
6 some information about the death of Hae Min Lee?

7 A No.

8 Q Or about the burial?

9 A She had heard that Hae had been killed.

10 Q Before the body was found?

11 A No.

12 Q And did she indicate where she heard that
13 from? You, of course, would have been interested in
14 the answer to that question, would you have not?

15 A Yes.

16 THE COURT: One moment. Why don't we let
17 him finish answering the first question. You can
18 answer that question.

19 THE WITNESS: Yes. On the 26th when I was
20 speaking to her, I asked her if she knew how Hae had
21 been killed.

22 THE COURT: Next question.

23 Q And she answered you?

24 A Yes.

25 Q And?

1 A She had heard that Hae was strangled.
2 Q Was strangled?
3 A Correct.
4 Q And she --
5 A She heard that information from a friend of
6 hers by the name of Nicole.
7 Q Of?
8 A A friend of hers, Nicole.
9 Q That was important to you, was it not?
10 A Very important, since that information had
11 not been released.
12 Q But you knew that, right?
13 A I knew that.
14 Q Because you had gotten the heads up from
15 Dr. Korell?
16 A Correct.
17 Q So anybody that might know the details of
18 Hae Min Lee's death, that got your ears perking,
19 didn't it?
20 A Correct.
21 Q You, of course, got Nicole's full name and
22 address?
23 A Just Nicole Parks.
24 Q And no phone number?
25 A Somewhere on Washington Boulevard,

**Cited Excerpts of Trial Testimony
from Detective Gregory MacGillivray
(2/18/2000) (Page 186)**

923-00
29835

IN THE CIRCUIT COURT FOR BALTIMORE CITY

STATE OF MARYLAND

*

v.

*

CASE NOS. 199103042-46

ADNAN SYED,

*

Defendant

* * * * *

(TRIAL ON THE MERITS)

FEBRUARY 18TH, 2000

BALTIMORE, MARYLAND

BEFORE:

THE HONORABLE WANDA KEYES HEARD, ASSOCIATE JUDGE
(And a Jury)

APPEARANCES:

For the State:

KEVIN URIK, ESQUIRE
KATHLEEN MURPHY, ESQUIRE

For the Defendant:

CHRISTINA GUTIERREZ, ESQUIRE

RECORDED BY: VIDEO TAPE

TRANSCRIBED BY:

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THE ATTORNEY GENERAL

1 A Correct.

2 Q Was he under arrest at the time?

3 A No, he was not.

4 Q How close were you standing to him?

5 A Sitting on the living room couch. He was seated
6 in the chair.

7 Q Where was he?

8 A In the living room of his home.

9 Q Who, if anyone, else was there?

10 A Detective Ritz, the defendant, Adnan, and his
11 father.

12 Q Had you threatened him at all?

13 A No.

14 Q Now, did there come a time when you learned that
15 the defendant had an opportunity to use this particular
16 cellphone?

17 A Yes.

18 Q Do you recall what date he got this cellphone?

19 A No.

20 Q Please look at page, the second page of State's
21 Exhibit 31 and see if that refreshes your memory.

22 A It was activated on 1/11/99.

23 Q And that is how many days in relation to the
24 disappearance of Hey Lee?

25 A Two days.

**Cited Excerpts of Trial Testimony
from Alonzo Sellers
(2/23/2000) (Pages 4, 22-23, 38, 79-81)**

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IN THE CIRCUIT COURT FOR BALTIMORE CITY
(PART 9)

STATE OF MARYLAND *

v. * CASE NO. 199103042,43,45,46

ADNAN SYED *

Defendant *

-----/*

BALTIMORE, MARYLAND
WEDNESDAY, FEBRUARY 23, 2000

(TRIAL ON THE MERITS)

BEFORE:

THE HONORABLE WANDA K. HEARD, ASSOCIATE JUDGE

(AND A JURY)

APPEARANCES:

FOR THE STATE:

KEVIN URICK, ESQUIRE
KATHLEEN C. MURPHY, ESQUIRE

FOR THE DEFENDANT:

CRISTINA GUTIERREZ, ESQUIRE

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THE ATTORNEY GENERAL

1 THE COURT: Okay.

2 BY MS. GUTIERREZ:

3 Q Mr. Sellers, I'd like to direct your attention to
4 February 9th, 1999, do you recall that day?

5 A Not really, but I --

6 Q We spoke about that day yesterday, did we not?

7 A Yes, yes.

8 Q Okay. There was a day, whether or not you recall
9 the exact date, wherein you found a body or what you
10 thought to be a body --

11 A Right.

12 Q -- inside Leakin Park, is that correct?

13 A Correct.

14 Q That's the day I'd like to direct your attention
15 to.

16 A Right.

17 Q Yesterday you told us that you left your work at
18 lunchtime to drive home to get a plane, is that correct?

19 A Yes, correct.

20 Q Now, when you got home, having driven through
21 Leakin Park, there were several people at your home?

22 A Two.

23 Q Okay. And that was your stepson Tyrone?

24 A Yes.

25 Q And his girlfriend?

1 urinate and then stopped or had you not begun to urinate at
2 all?

3 A No, I did not start to urinate.

4 Q You did not start to urinate?

5 A I mean -- no, I did not. No, I did not.

6 Q Okay. Now, when you saw what you saw, was it on
7 the other side of the tree that you were stepping over or
8 was it --

9 THE WITNESS: Yes, it was. Excuse me, I'm sorry.

10 BY MS. GUTIERREZ:

11 Q It was on the other side from where you came
12 from, is that right?

13 A Yes.

14 Q And what you saw was what?

15 A What I thought it was a body.

16 Q You thought it was a body?

17 A Um-hum.

18 Q And did it appear to be the outlines of a body?

19 A No, not until I seen what looked like a foot was
20 sticking up.

21 Q You saw a foot?

22 A Um-hum.

23 Q And you saw something else, didn't you?

24 A Yeah. It looked like the head.

25 Q Hair?

1 A The hair, right, exactly.

2 Q Did you see the head or was it the hair?

3 A Just hair.

4 Q It was hair, okay.

5 And after you saw that, did you do anything to

6 investigate whether or not it really was a body?

7 A No. I left out there quickly.

8 Q You left out there?

9 A I left quickly because I was, you know,

10 frightened and --

11 Q Because?

12 A I was frightened, scared.

13 Q You were frightened of what you thought you saw?

14 A Yes.

15 Q Now, sir, did you take a stick and investigate?

16 A No.

17 Q Not at all?

18 A Not really. I don't think so.

19 Q You just left quickly. Did you return to your

20 truck?

21 A Of course.

22 Q And you pulled your truck out of there?

23 A Yes.

24 Q And did you return to Coppin State College?

25 A Yes.

1 A Yes, I went to see him.

2 Q And how long did all this take?

3 A I'm not sure. I don't know. It happened so

4 fast.

5 Q Sir, you had been the one that thought that what

6 you saw on the far side of that tree was a body?

7 A Yes, right.

8 Q And you weren't sure but you pretty strongly

9 thought that?

10 A Yeah. In a way, yeah.

11 Q And having been at that location, sir, where the

12 body was was not an easy location to find, was it?

13 A I mean, you could find -- I don't know. If

14 you're just walking to get back in the woods to do your

15 business, I guess you can find it, yeah.

16 Q So if anybody else happened to be walking in that

17 exact place at the park there, then they would have found

18 the body?

19 A Yes.

20 MR. URICK: Objection.

21 MS. GUTIERREZ: Would that --

22 THE COURT: Overruled.

23 BY MS. GUTIERREZ:

24 Q Would that have been easily?

25 A Yes, because a lot of people do fishing there.

1 MR. URICK: He has not denied making the
2 statements, his only statement is I can't recollect it.
3 That has not been authenticated as, it has not been
4 authenticated as a prior recollection recorded. There's
5 been no foundation under any basis for the admission of
6 these exhibits.

7 THE COURT: I would agree that the only thing
8 missing, the only thing missing, the only thing missing is
9 him seeing the statement and at least asking him that.

10 MS. GUTIERREZ: I thought I asked him in the
11 beginning. I don't think he's ever seen the statement,
12 which is why I didn't bother --

13 THE COURT: The date that it was taken?

14 MS. GUTIERREZ: Right. It was recorded.

15 THE COURT: Was he asked to sign it?

16 MS. GUTIERREZ: No, Judge, it's a -- and we got
17 this from them. They made this statement from the
18 recording. We've never heard the recording, all we've ever
19 gotten is the transcript prepared by either their office or
20 the police department. It was not prepared on the same
21 day, he didn't sign it, there was no indication, and I
22 thought he answered -- I asked that question yesterday.

23 THE COURT: Which is why you were planning on
24 calling Ritz?

25 MS. GUTIERREZ: No, Judge. I was if I had to. I

1 have other reasons that I would call Ritz. And certainly,
2 I could call either Ritz or McGilvery, both of who are
3 still listed.

4 THE COURT: Well, what's missing is a foundation
5 question, as far as I'm concerned, to the admissibility of
6 this. I think you've covered everything under 5-613. He's
7 been confronted with the statement.

8 MR. URICK: He has not been asked to look at it.
9 If he looks at it and reviews it, then he can be asked now
10 do you recall making that statement.

11 MS. GUTIERREZ: Judge, I disagree with that. I
12 read him the exact words --

13 THE COURT: Well, under 612, under 612, a writing
14 used to refresh a recollection, the witness looks at it.
15 Under 613, the statement, if it was written, does not have
16 to be shown to the witness. It says does not.

17 The party examining a witness about a prior
18 written or oral statement made by the
19 witness need not show it to the witness or
20 disclose its content at the time, provided
21 that before the end of the examination the
22 statement, if written, is disclosed to the
23 witness and the parties or, if the statement
24 is oral, the contents of the statement and
25 the circumstances under which it was made,

1 including the persons to whom it was made,
2 are disclosed to the witness and the witness
3 is given an opportunity to explain or deny
4 it.

5 Now, everything seems to be there, except I'm not
6 satisfied that it has been properly -- a foundation for
7 it --

8 MS. GUTIERREZ: The only thing is that this is
9 the only thing that we were given. There's no indication
10 on it as to who did the transcriptions. I don't know that
11 information. I assume that the police did it because they
12 did everything else, but I'm not --

13 THE COURT: Detective Litz can do that because
14 he's present, he's one of the speakers.

15 MS. GUTIERREZ: Yes, that's fine.

16 THE COURT: Which is why I said at this point the
17 only thing that's missing is a foundation question because,
18 frankly, counsel, I don't know where you got this from.
19 And as the Court --

20 MS. GUTIERREZ: Well, I'm telling you, as an
21 officer of the Court, Mr. Urick gave it to me.

22 THE COURT: I understand that. I can see that
23 they've been left out of what appears to be a transcript of
24 Alonzo Sellers.

25 MS. GUTIERREZ: Yes.

**Cited Excerpts of Trial Testimony
from Michael Sye
(2/23/2000) (Pages 100-104)**

1 A Yes, he did.

2 Q And did he participate as a member of the indoor
3 track team from the beginning of the season?

4 A Yes, he did.

5 Q Were there meets that took place between your
6 track team and other schools' track teams?

7 A Yes.

8 Q And did they start taking place in November?

9 A Yes -- no. Early December.

10 Q Early December?

11 A Early December.

12 Q And throughout all of December?

13 A Yes, throughout December.

14 Q And January?

15 A Yes.

16 Q And February?

17 A Yes.

18 Q All right. Now, sir, did Adnan Syed participate
19 in those track meets?

20 A Yes, he did.

21 Q And how did he perform?

22 A He performed fairly well.

23 Q Did he medal or win his events in some of the
24 meets?

25 A Yes, some of the meets he did place.

1 Q Okay. Now, let me direct your attention -- as to
2 track practices, did they take place?

3 A Yes, they did.

4 Q And when and where did they take place?

5 A Practice was every day after school, after their
6 study hall, from --

7 Q And what time would that be?

8 A Approximately 4:00 to 5:30, 6.

9 Q And was that a regular time every day?

10 A Regular time every day.

11 Q Okay. And were members of the track team
12 expected to be at practice?

13 A Everyone was expected to be at practice.

14 Q To be at practice?

15 A Yes.

16 Q And did you take roll of people who came to
17 practice?

18 A Not a physical actual, written roll, more of a
19 mental roll.

20 Q Just a mental --

21 A Yes.

22 Q Okay. You sort of knew -- did you sort of know
23 when there would be track team participants who didn't come
24 regularly?

25 A Yes.

1 Q Okay. And what, if any, action did you take
2 against people who didn't bother to come to practice?

3 A Well, those who didn't bother to come to
4 practice, you know, it usually started with a warning and
5 then I would sit them down for the next meet, if that was
6 necessary.

7 Q They weren't allowed to participate in the meets?

8 A Yeah.

9 Q And even though you didn't take a formal roll,
10 was there anyplace that track team members had to go to
11 sign in to show that they were there at practice?

12 A Well, they were -- all the athletes had to go to
13 study hall right after school.

14 Q And that was at a specific place?

15 A Yes.

16 Q Okay. And -- but you didn't have anyplace for
17 them to sign in once they came over to track practice?

18 A No.

19 Q Okay. Now, back in November, December, January,
20 and February, Adnan was a regular member of the track team?

21 A November, December, and January, yes.

22 Q Okay. And did he regularly come to practice?

23 A Yes, for the most part.

24 Q Sir, you're aware that Woodlawn had a couple
25 dozen Muslim students?

1 A Was I aware that the school had? Yes.

2 Q Yes.

3 A Yes.

4 Q And are you aware of the Muslim religious month
5 of Ramadan?

6 A Yes.

7 Q And that during Ramadan, Muslims, the tenets of
8 their faith suggests that they should fast from daybreak to
9 after, I guess after sundown?

10 A Yes.

11 Q Okay. Now, did you come -- ever come to know
12 whether Adnan Syed was a Muslim?

13 A Yes, I did.

14 Q And did you know about Ramadan back then?

15 A Yes.

16 Q And were you aware that Ramadan started in mid-
17 December of 1998 and went through -- or late December of
18 1998 and went through to the end of January 1999?

19 A Well, I didn't know really about December but I
20 knew during the month of January.

21 Q Okay. How did you know about that?

22 A One day we were at practice and Adnan was there,
23 and we had a lengthy conversation. I knew that he was
24 fasting for his religion, and he just sat down and
25 explained to me the whole purpose of it.

1 Q Was there any treatment that was extended in
2 regard to whether or not athletes had to actually practice
3 during the time that they were fasting?

4 A No.

5 Q So did they have to practice, even though they
6 were fasting?

7 A No. He knew -- we talked about it and, as long
8 as he came to practice, he was exempt from the actual
9 practice.

10 Q From actually running the course?

11 A Actually running, yeah.

12 Q And was that related to the effects of fasting on
13 the body?

14 A Yes.

15 Q Okay. And was that accommodation extended to
16 Adnan?

17 A Yes, it was.

18 Q And was Adnan one who came regularly to practice?

19 A Yes.

20 Q And did he come even when he was fasting?

21 A Yes.

22 Q And were there times when he came when he was
23 fasting that he did not actually run?

24 A Excuse me, what was that again?

25 Q I don't know what to call it. That he came while

**Cited Excerpts of Trial Testimony
from Syed Rahman
(2/23/2000) (Pages 274-75)**

1 A No, actually we did not.

2 Q And why not?

3 A Because we wanted him to give -- his top
4 priority, number one, is his studies.

5 Q To your knowledge, was he a good student?

6 A Yeah.

7 Q Okay. But you wanted him to devote all of his
8 energy to that?

9 A And because he was top 5 percent student of the
10 class.

11 Q Now, sir, again going back to Ramadan, beginning
12 on December 20th, 1998, through January 18th, 1999, you
13 were starting to tell us that you would go to the mosque.

14 A That's right.

15 Q And what time would that be?

16 A I ordinarily would go before 8:00.

17 Q Okay. And how much before 8:00?

18 A Well, it depends. Maybe 7:30, quarter to 8 or
19 things like that.

20 Q Would you appear in the mosque close in time to
21 the time when you would break your fast?

22 A Beg your pardon?

23 Q Would you go to the mosque at any time that was
24 close in time to the time that you would break your fast?

25 A We could, but mostly -- sometimes at mosque and

1 sometimes at home.

2 Q Okay. On the times that you went to the mosque
3 to break the fast, how would you break it?

4 A We just take sip of water or some dates, that's
5 it.

6 Q Okay. And then after -- so you break the fast
7 with very little to go in your stomach?

8 A That's right.

9 Q Just sometimes water?

10 A Yeah, water.

11 Q And after you broke your fast and on the days
12 that you did it at the mosque, would you then remain there
13 until the 8:00 prayers or would you go home?

14 A Well, actually, we tried to go home so that we
15 could have meals, have a little bit rest and then come
16 back.

17 Q Okay. So you'd break your fast with just a
18 little bit, then you'd go home to have a meal?

19 A That's right.

20 Q Okay. Now, who would you go to the mosque with
21 on the days that you would go?

22 A Well, I will definitely take Adnan with me.

23 Q Okay. And did sometimes your other son, Tanvir,
24 go?

25 A He may accompany us, he may not.

**Cited Excerpts of Trial Testimony
from Syed Rahman
(2/24/2000) (Pages 16-17)**

923-00
32835

IN THE CIRCUIT COURT FOR BALTIMORE CITY
(PART 9)

STATE OF MARYLAND *

v. *

ADNAN SYED *

Defendant *

*

* CASE NO. 199103042,43,45,46

*

*

/*

BALTIMORE, MARYLAND
THURSDAY, FEBRUARY 24, 2000

(TRIAL ON THE MERITS)

BEFORE:

THE HONORABLE WANDA K. HEARD, ASSOCIATE JUDGE

(AND A JURY)

APPEARANCES:

FOR THE STATE:

KEVIN URICK, ESQUIRE
KATHLEEN C. MURPHY, ESQUIRE

FOR THE DEFENDANT:

CRISTINE GUTIERREZ, ESQUIRE

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1 A Yeah, if I were to be off from the job, yeah.

2 Q But during Ramadan, very specifically, the last

3 10 days of Ramadan 1999, did your son Adnan go with you to

4 the mosque every night for the Ramadan prayers that began

5 at 8?

6 A That is correct.

7 Q Is that correct?

8 A That's correct.

9 Q And so, he went with you on the 14th and you

10 specifically recollect an additional fact about that day,

11 right?

12 A That's right.

13 Q That he led the prayers that day, right?

14 A That's right.

15 Q He also went with you on the 15th?

16 A Yeah.

17 MR. URICK: Objection.

18 MS. GUTIERREZ: And the 16th?

19 THE WITNESS: That's correct.

20 THE COURT: Overruled.

21 BY MS. GUTIERREZ:

22 Q And he also went with you on the 13th?

23 A That's correct.

24 Q And the 12th?

25 A That's correct.

1 Q And the 11th?

2 A That's correct.

3 Q And the 10th?

4 A That's correct.

5 Q And the 9th?

6 A That's correct.

7 Q And the 8th?

8 A That's correct.

9 Q You weren't just merely testifying that he
10 usually went with you?

11 A He was every day with me.

12 Q He was with you every day?

13 A That's correct, yeah.

14 Q To go back and, after you broke the fast, to
15 return to the mosque physically?

16 A That's correct.

17 Q With you?

18 A That's correct.

19 MS. GUTIERREZ: That's all, thank you.

20 THE COURT: Very well. Any further?

21 MR. URICK: Very briefly, Your Honor, based on
22 that.

23 RE CROSS EXAMINATION

24 BY MR. URICK:

25 Q At the mosque, the prayer from 8 to roughly 10,

**Cited Excerpts of Trial Testimony
from Detective William Ritz
(2/24/2000) (Pages 58-60)**

1 MR. URICK: Mr. Clerk, will you give that to the
2 witness, please?

3 THE CLERK: Which one, No. 3?

4 THE COURT: I believe it's 15, is it not?

5 MS. GUTIERREZ: Seventeen, Judge.

6 MR. URICK: Three.

7 THE COURT: Three.

8 MS. GUTIERREZ: Oh, 3, right. Correct.

9 THE COURT: Exhibit 3?

10 MR. URICK: Yes, this is the exhibit.

11 THE COURT: Detective, we'll need you to read the
12 entire thing since we're publishing it. Everything that's
13 on that page needs to be read.

14 THE WITNESS: Yes, Your Honor.

15 THE COURT: From top to bottom.

16 THE WITNESS: The memo is dated 12 February 1999.
17 It's from Detective Darryl Massey to Detective Greg
18 McGilvery. It's in reference to possibly pertaining to
19 Hey Men Lee investigation, H-99-030.

20 Sir, on February 12th, 1999, approximately
21 1519 hours, your writer received a call from
22 anonymous called (Asian male, 18 to 20 years
23 old) who advised your investigators should
24 concentrate on the victim's boyfriend (Adnan
25 Syed, Asian male, 17 years of age) as a

1 suspect in the murder. The caller further
2 advised that the boyfriend has taken the
3 victim to Leakin Park on past occasions for
4 sexual encounter. Prior to concluding the
5 phone interview, the caller further stated
6 that the victim broke off the relationship
7 with her boyfriend about a week before she
8 was reported missing.

9 At this point, the caller terminated the
10 conversation. Simultaneously, your writer
11 activated Star 57 on extension 2100. The
12 recording informed your writer the service
13 was not available due to the caller not
14 being in the service area.

15 On February 12th, 1999, approximately 1525
16 hours, the above anonymous person called the
17 Homicide Unit. This time the caller
18 remembered that a year ago the suspect
19 informed a friend of his (Baser Ali, Asian
20 male, 17) if he ever hurt his girlfriend he
21 would drive her car into a lake. The caller
22 stated the suspect's friend attends
23 Centennial High School in Columbia,
24 Maryland, and his home phone number is area
25 code 410-203-0522. Again Star 57 was

1 activated. The recording stated the service
2 was not available due to the caller not
3 being in the service area.

4 Respectfully, Darryl Massey.

5 THE COURT: Thank you.

6 BY MR. URICK:

7 Q And you looked that number up in a crisscross
8 directory, is that correct?

9 A That is correct.

10 Q And that number came back listed to who?

11 A I believe it was -- the last name of the family
12 was Hussein, 35 I believe it was 09 Charlow Court out in --
13 it wasn't Baltimore County, it was Howard County; I
14 believe.

15 Q And you are aware that that is the home address
16 of Yassar Ali?

17 A Yes, sir, I am.

18 MS. GUTIERREZ: Objection.

19 THE COURT: Overruled.

20 MS. GUTIERREZ: Wasn't established, any home
21 address of anybody. He's only established the listing to
22 the name.

23 THE COURT: Overruled.

24 BY MR. URICK:

25 Q And that Yassar Ali is a friend of the Defendant,

**Cited Excerpts of Trial Testimony
from Saad Chaudry
(2/24/2000) (Pages 116-17, 151)**

1 Q All right. Now, how often did you have an
2 occasion to see him at the mosque?

3 A At times, it would be almost every other day but
4 sometimes it would be weekly.

5 Q Sometimes it would be weekly. And what would,
6 what would that depend upon?

7 A Whether we had school or not. In the summer, I'd
8 be there almost every day or every other day, but during
9 school, most likely, it was a weekly basis.

10 Q As between yourself and Adnan Syed, who was at
11 the mosque more often?

12 A Adnan.

13 Q And to your awareness, how close to the mosque
14 did he live?

15 A Less than a mile. He was very close.

16 Q Okay. And, Mr. Chaudry, did your -- the rest of
17 your family belong to the mosque?

18 A Yes.

19 Q And did the rest of Adnan's family belong to the
20 mosque?

21 A Yes, as far as I know.

22 Q What are the obligations of Muslims or the
23 encouragement of Muslims in regard to ordinary days of the
24 year and praying?

25 A The Muslims pray at least five times a day.

1 Q And is it required that the praying take place at
2 a specific location?

3 A No, it's not.

4 Q And is the mosque open to accommodate Muslims
5 coming to the mosque to pray?

6 A Yes, it is.

7 Q And does that include students such as yourself
8 who would still be in high school?

9 A Yes.

10 Q And are you encouraged to pray five times a day?

11 A Yes, I am.

12 Q And is there any tenet of the faith that requires
13 you to go to the mosque to pray?

14 A Nothing that requires me to go to the mosque to
15 pray.

16 Q But it urges you to do so?

17 A Yes.

18 Q All right. Now, during the regular year in
19 regard to attendance at the mosque for prayer in the
20 evening, were you a better attender or was Adnan?

21 A Adnan.

22 Q Okay. And how did you know that?

23 A Well, one of the ways I met him was going to the
24 mosque. You know, almost every time I went, which was
25 occasionally, he would be there. So that's how I met him.

1 phone, correct?

2 A No. For some time that he was dating Hey Men
3 Lee, he didn't have a cell phone.

4 Q And it wasn't till after the second breakup with
5 her that he actually got a cell phone, correct?

6 A I don't remember the exact date he got the cell
7 phone, but I do know that while he was going out with Hey,
8 for some time, he did not have a cell phone.

9 Q Now, you appeared before the Grand Jury on
10 April 2nd --

11 MS. GUTIERREZ: Objection.

12 MR. URICK: -- April 5th, April 6th, and
13 April 7th, correct?

14 THE COURT: Sustained.

15 BY MR. URICK:

16 Q Do you have any recollection of seeing the
17 Defendant on January 13th?

18 A No.

19 Q Is it a fact the Defendant told you that his
20 parents came to the Homecoming Dance?

21 MS. GUTIERREZ: Objection. Beyond the scope.

22 THE COURT: Overruled.

23 And you can answer that yes or no.

24 THE WITNESS: Yes.

25 BY MR. URICK:

**Cited Excerpts of Trial Testimony
from Saad Patel
(2/24/2000) (Page 185)**

1 actually been at the mosque but not actually praying --

2 A Yes.

3 Q -- or able to listen to him?

4 A Yes.

5 Q But generally, otherwise, you were there every
6 day of Ramadan?

7 A Most of the time I was there.

8 Q Because it was recommended?

9 A It was recommended.

10 Q And every time you were there, was Adnan there?

11 MS. MURPHY: Objection as to form.

12 THE COURT: Overruled.

13 Do you recall?

14 THE WITNESS: Yes. He was there most of the
15 time. Most of the time he was there.

16 BY MS. GUTIERREZ:

17 Q Much more than you?

18 A Oh, he was there more than I was.

19 MS. GUTIERREZ: Thank you. I have nothing
20 further.

21 THE COURT: Anything further, Ms. Murphy?

22 MS. MURPHY: No, Your Honor. Thank you.

23 THE COURT: May this witness be excused,
24 Ms. Gutierrez?

25 MS. GUTIERREZ: Yes, Your Honor.

**Cited Excerpts of Trial Testimony
from Maqbool Patel
(2/24/2000) (Pages 193-96)**

1 Q To try to use the terms holier, are the last 10
2 days holier than the first 20 days of Ramadan?

3 A I would say.

4 Q Okay. Now, directing your attention back to
5 Ramadan last year, do you recall that?

6 A Yes.

7 Q Okay. And, sir, back then you knew Adnan Syed?

8 A Yes.

9 Q And you knew his family?

10 A Yes.

11 Q Is Adnan Syed someone you saw during Ramadan?

12 A Yes.

13 Q And when and where would you see him?

14 A Normally, the Prayer Hall.

15 Q And is that during the night prayers that we've
16 discussed?

17 A I would say yes.

18 Q In whose company would he be?

19 A The young people of his age.

20 Q And did you see his father there?

21 A Yes.

22 Q Was his father someone who attended the mosque to
23 pray on a nightly basis?

24 A Yeah, he's pretty regular.

25 Q And did his -- when his father came to the

1 mosque, did he bring Adnan, if you know?

2 A I cannot recall that because I see most of the
3 people in the mosque itself.

4 Q Okay. But you can't recall any specific day?

5 A As soon as they get out of the car, I will --
6 different people take different routes.

7 Q In regard to -- did there come a day when Adnan
8 gave a talk or led a prayer?

9 A Yes.

10 Q And do you recall that day?

11 A Reason I recall it, that most of the arrangements
12 are made through me, the list --

13 Q Through you?

14 A Right. Those people, you know, normally -- one
15 of the person who's in charge will make the recommendation
16 and we will --

17 Q That's one of your jobs?

18 A Yes.

19 Q For the mosque?

20 A Yes.

21 Q Okay. And were you physically present when Adnan
22 did so?

23 A I have seen him talking in them mosque.

24 Q Okay. And was that an occasion -- was that a
25 good or bad occasion for his family, if you know?

1 A It's an excellent occasion for the family and the
2 community.

3 Q And why is it such a good occasion for his
4 family?

5 A See, normally, prayers are derived from the Koran
6 itself and --

7 Q Which is considered the Holy Book in --

8 A It's considered the Holy Book.

9 Q For Muslims?

10 A For the Muslims, yeah.

11 And then normally, the talk is given based on
12 that. So, you know, they are really prepared to talk from
13 the Book itself.

14 Q Is there some significance to a younger person,
15 such as 17, being afforded the opportunity to do so?

16 A Yes. The mosque always tries -- try to do that,
17 the younger people should be to --

18 Q And why is that?

19 A So that they know and they have a knowledge
20 because there is no other place to gain such knowledge.

21 Q Okay. And you remember that occasion?

22 A Yes.

23 Q And that occasion occurred on what date?

24 A I cannot say. What it is, is every night I am
25 there.

1 Q Oh, okay. So you recall the occasion but not
2 specific --

3 A I recall the occasion that he was there.

4 Q Okay, but -- and generally, during Ramadan that
5 began on December 20th, 1998, and ended in late January
6 1999, did Adnan attend regularly with his father?

7 A I would say yes.

8 Q Now, being familiar with Adnan all of his life,
9 what language does he speak?

10 A Normally, all of our children, including him,
11 tend to speak English.

12 Q Okay. And are you aware whether or not English
13 was his first language?

14 A First language is, I believe -- see, that's the
15 reason -- he originally come from a region where the Pashtu
16 was being spoken.

17 Q And that would have been the Pakistani language
18 of his parents?

19 A One of the Pakistani languages.

20 Q Are you aware of whether or not Adnan speaks
21 Arabic?

22 A I don't believe he can speak Arabic.

23 Q Is the Koran written in Arabic?

24 A Right. He can read it but --

25 Q Now, Mr Patel, are you familiar with the tenets

**Cited Excerpts of Jury Instructions
(2/25/2000) (Pages 32-33)**

923-00
33835

IN THE CIRCUIT COURT FOR BALTIMORE CITY
(PART 9)

STATE OF MARYLAND

*

v.

* CASE NO. 199103042, 43, 45, 46.

ADNAN SYED

*

Defendant

*

-----/*

BALTIMORE, MARYLAND
FRIDAY, FEBRUARY 25, 2000

(TRIAL ON THE MERITS)

BEFORE:

THE HONORABLE WANDA K. HEARD, ASSOCIATE JUDGE

(AND A JURY)

APPEARANCES:

FOR THE STATE:

KEVIN URICK, ESQUIRE
KATHLEEN C. MURPHY, ESQUIRE

FOR THE DEFENDANT:

CRISTINE GUTIERREZ, ESQUIRE

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1 You need not believe any witness, even if the
2 witness's testimony is uncontradicted. You may believe
3 all, part or none of the testimony of any witness.

4 Now, there was expert witness testimony given in
5 this case. An expert is a witness who has special training
6 or expertise in a given field. You should give expert
7 testimony the weight and value you believe it should have.
8 You are not required to accept any expert opinion. You
9 should consider an expert's opinion together with all other
10 evidence in the case.

11 The weight of the evidence, as I've indicated
12 previously, does not depend on the number of witnesses on
13 either side. You may find that the testimony of a smaller
14 number of witnesses for one side is more believable than
15 the testimony of a greater number of witnesses on the other
16 side.

17 The Defendant, Mr. Syed, has an absolute
18 constitutional right not to testify. The fact that
19 Mr. Syed did not testify must not be held against him. It
20 is not to be considered by you in any way, or even
21 discussed by you.

22 The mere presence of a person at the time and
23 place of the commission of an offense is not by itself
24 sufficient to establish his guilt but may be considered
25 with all the other surrounding circumstances. Evidence has

1 been presented at this case that the Defendant was not
2 there when the crime was committed. You should consider
3 this evidence along with all other evidence in the case.
4 Thus, in order to convict the Defendant, the State must
5 prove beyond a reasonable doubt that the crime was
6 committed and that the Defendant committed it.

7 You've also heard testimony from a witness, Jay
8 Wilds, who may have been an accomplice. An accomplice is
9 one who knowingly and voluntarily cooperated with, aided,
10 advised or encouraged another person in the commission of a
11 crime. If you are not convinced that Jay Wilds was an
12 accomplice, you should treat that testimony as you would
13 treat the testimony of any other witness. On the other
14 hand, if you are convinced that Jay Wilds was an
15 accomplice, then you must decide whether that testimony was
16 corroborated before you may consider it. The Defendant
17 cannot be convicted solely on the uncorroborated testimony
18 of an accomplice. However, only slight corroboration is
19 required. This means there must be some evidence in
20 addition to the testimony tending to show either that, one,
21 the Defendant committed the crime charged or, two, that the
22 Defendant was with others who committed the crime at the
23 time and place that the crime was committed.

24 If you find that the testimony of Jay Wilds has
25 been corroborated, it should be considered with caution and

**Cited Excerpts of State's
Closing Statement at Trial
(2/25/2000)(Page 50, 54, 65-66, 125)**

1 1999. She was buried in Leakin Park. She was killed in
2 her own car. These are facts that we know from all the
3 evidence in the case.

4 We know this is a murder. You heard from
5 Dr. Corell (phon. sp.), the medical examiner. She told you
6 in great detail why we know that Hey Lee was strangled.
7 And we know more than that. She was strangled by someone's
8 bare hands, with the Defendant's bare hands. Dr. Corell
9 told you about the bruised muscles in her neck, about the
10 tiny blood vessels in her eyes that burst, about the bone,
11 the hyoid bone in her throat. It was broken by the force
12 of human hands. She told you all these things.

13 We know that this occurred in Hey Lee's car. We
14 know this because the Defendant told Jay Wilds that's where
15 he did it, but we know much more about it. Think again
16 about Dr. Corell's testimony and what this autopsy report
17 tells you. We know that Hey Lee was a passenger in the
18 car. The Defendant told Jay Wilds that as she struggled,
19 as she tried to get away, she kicked the wiper lever. You
20 saw a video showing this wiper lever, how it dangled from
21 the steering column on the car. That was consistent with
22 what Jay Wilds said. In order for Hey Lee to kick this
23 wiper lever, we know she was in that passenger seat.

24 Dr. Corell told you about bruises on the right
25 side of her head. Think about it. She struggled, she's

1 trouble with her mother's rules, which is not unusual for
2 teenagers, she doesn't mention it once in any of the
3 January entries. She was planning to go somewhere but she
4 didn't take her diary. And the very last entry,
5 January 12th, 1999.

6 And most importantly, ladies and gentlemen,
7 consider what we know about Hey Lee. She's a bright girl,
8 she's a busy girl. And on January 13th, 1999, she had lots
9 of things to do. What does her schedule that day tell us?
10 We know she was in class at 2:15. Ayisha Pittman had that
11 class with her, and so did the Defendant. Ayisha Pittman
12 told you that at the end of class at 2:15 Hey was talking
13 to the Defendant. We know she immediately went to the gym
14 area because that's where Inez Butler him. They told you
15 in great detail about their encounter.

16 We know that she left immediately to pick up her
17 young cousins who were just in elementary school. By 3:00,
18 it was known to her family that she had not done this.
19 Ladies and gentlemen, Hey Lee was dead in 20 to 25 minutes
20 from when she left school. And we know that she was dead
21 because she was supposed to return to Woodlawn High School
22 and travel with the rest of the team. We know this didn't
23 happen because Ms. Inez Butler, who remembers so well
24 seeing Hey that afternoon, had to go in Hey's place with
25 the rest of the team because she didn't show up.

1 go to the mall. Sure enough, the records show you
2 10:45 a.m. the Defendant calls Jay Wilds to go shopping.
3 The Defendant calls Jay Wilds. The records will show you,
4 if you look at call no. 32, that cell phone was in the
5 coverage area of L651A, up here in the orange, the area
6 that covers Woodlawn High School, which is where the
7 Defendant was that morning. Krista Meyers told you she saw
8 him in first period class.

9 The Defendant picks Jay up and they go to the
10 mall. At some point, the Defendant goes back to school and
11 he gives his car and his cell phone to Jay Wilds at that
12 point in time. Where Jay Wilds goes in this period is not
13 clear. It's not clear from Jay, it's not clear. Nobody
14 knows. But it is clear from these cell phone records that
15 Jay Wilds is nowhere near Hey Men Lee. He is nowhere near
16 Woodlawn High School where we know she is. Jay Wilds is
17 over here and Jay Wilds is downtown. He thinks he may have
18 gone to -- looking for marijuana. Maybe he did. But the
19 records are clear, he's nowhere near Hey Men Lee.

20 Jay does remember at 12:43 p.m., while he's
21 downtown, he gets a call from the Defendant. The Defendant
22 says I'm not ready for you yet but pick me up at 3:45. At
23 this point, Jay is still in the city, L652A.

24 We know that class ended at 2:15 that day. And
25 remember back to Ayisha Pittman's testimony. The Defendant

1 was talking to Hey Lee at that point in time and Inez
2 Butler sees Hey as she rushes out of school, grabs her
3 snack, and heads out the door. Ladies and gentlemen, she's
4 dead within 20 minutes.

5 2:36 p.m. the Defendant calls Jay Wilds, come get
6 me at Best Buy. Jay Wilds is at the home of Jennifer
7 Pusitari at this point, and the records are clear. Call
8 no. 28 occurs in the cell area covered by L651B. This is
9 the area that the AT&T engineer told you covers Jennifer
10 Pusitari's house --

11 So Jay drives to the Best Buy, and it is there
12 that the Defendant, for the first time, opens his trunk and
13 shows Jay Wilds the body of Hey Lee. By 3 p.m., by 3 p.m.,
14 her family knows she hasn't picked up her cousins.

15 The Defendant gets Jay to follow him to the I-70
16 parking lot where they leave Hey's car, and they then head
17 back towards Woodlawn from the park and ride together.
18 It's at that point, at 3:32 p.m., that the Defendant calls
19 Neisha Tanner in Silver Spring. She says hello to Jay. We
20 know they are together at that point in time. That call
21 lasts for 2 minutes and 22 seconds. Jay Wilds doesn't know
22 Neisha Tanner, and Neisha Tanner told you this is her own
23 private line, nobody answers that line but her, and the
24 Defendant is the only one who knows her. This occurs in
25 the coverage area of L651C, the pink area, which would be

1 that there were two almost identical strength signals,
2 either one of which a cell phone could originate a call
3 through and that those were cells 608C and 605A. And lo
4 and behold, three calls in the time period that two
5 different witnesses put them at that location, both of
6 those sites originate calls out of this cell phone.

7 The Defense tells you well, they can't place you
8 specifically within any place by this. Absolutely true,
9 but look at 7:09 and 7:16, 689B, which is the Leakin Park
10 coverage area. There's a witness who says they were in
11 Leakin Park. If the cell coverage area comes back as that
12 that includes Leakin Park, that is reasonable
13 circumstantial evidence that you can use to say they were
14 in Leakin Park. You've got it two ways: through the cell
15 phone records, through the witness testimony. The two mesh
16 together. And notice again that cell phone is nowhere near
17 the mosque, which would be at the corner of Johnnycake and
18 Rolling Road, which is over here, which is right near the
19 Defendant's house, too. That cell phone is way downtown at
20 689B. That's another inference from which you can say the
21 Defendant was not at the mosque.

22 And immediately following that are the two calls
23 in the 653A and C areas that would be consistent with a car
24 on Edmondson Avenue, moving back towards Woodlawn, and
25 those are at 8:04, 8:05. That cell phone is not at the

**Cited Excerpt of Trial Verdict
(2/25/2000) (Pages 133-35)**

1 THE CLERK: Who shall say for you?

2 THE JURY: Juror 1.

3 THE CLERK: Madam Foreperson, please stand.

4 Madam Foreperson, as to the case of State of
5 Maryland versus Adnan Syed, Cases No. 199103042, 43, 46, as
6 to Case No. 199103042, question 1 as to Count 1, charge of
7 first degree murder of Hey Men Lee, how do you find the
8 Defendant Adnan Syed, not guilty or guilty?

9 THE FOREPERSON: Guilty.

10 THE CLERK: Case No. 199103043, question 3 as to
11 Count 1, charge of kidnapping by fraudulently carrying
12 Hey Men Lee within the State, how do you find the Defendant
13 Adnan Syed, not guilty or guilty?

14 THE FOREPERSON: Guilty.

15 THE CLERK: As to Case No. 199103045, question
16 no. 4 as to Count 1, charge of robbery of Hey Men Lee, how
17 do you find the Defendant Adnan Syed, not guilty or guilty?

18 THE FOREPERSON: Guilty.

19 THE CLERK: Case No. 199103046, question no. 5,
20 as to the charge of false imprisonment by deception of
21 Hey Men Lee, how do you find the Defendant Adnan Syed, not
22 guilty or guilty?

23 THE FOREPERSON: Guilty.

24 THE CLERK: Is there a request to poll the jury?

25 MS. GUTIERREZ: Yes.

1 THE CLERK: Madam Foreperson, have a seat.
2 Juror No. 2, you heard the verdict, is your
3 verdict the same?
4 JUROR NO. 2: Yes.
5 THE CLERK: Juror No. 3, is your verdict the
6 same?
7 JUROR NO. 3: Yes.
8 THE CLERK: Juror No. 4, is your verdict the
9 same?
10 JUROR NO. 4: Yes.
11 THE CLERK: Juror No. 5, is your verdict the
12 same?
13 JUROR NO. 5: Yes.
14 THE CLERK: Juror No. 6, is your verdict the
15 same?
16 JUROR NO. 6: Yes.
17 THE CLERK: Juror No. 7, is your verdict the
18 same?
19 JUROR NO. 7: Yes.
20 THE CLERK: Juror No. 8, is your verdict the
21 same?
22 JUROR NO. 8: Yes.
23 THE CLERK: Juror No. 9, is your verdict the
24 same?
25 JUROR NO. 9: (No audible response)

1 THE CLERK: Juror No. 10, is your verdict the
2 same?

3 JUROR NO. 10: Yes.

4 THE CLERK: Juror No. 11, is your verdict the
5 same?

6 JUROR NO. 11: Yes.

7 THE CLERK: Juror No. 12, is your verdict the
8 same?

9 JUROR NO. 12: Yes.

10 THE CLERK: Members of the jury, hearken to the
11 verdict as the Court has recorded it. As to Case No.
12 199103042, as to Count 1, charge of first degree murder,
13 you find the Defendant guilty; as to Case No. 199103043, as
14 to Count 1, charge of kidnapping, you find the Defendant
15 guilty; as to Case No. 199103045, Count 1, charge of
16 robbery, you find the Defendant guilty; as to Case
17 No. 199103046, false imprisonment, you find the Defendant
18 guilty, and so say you all? If so, please say I do.

19 THE JURY: I do.

20 THE COURT: Ladies and gentlemen, I want to thank
21 you for your time. If you'll just remain seated for one
22 moment, I do want to address you in just a moment.

23 Counsel, there having been a guilty finding as to
24 the counts that were sent to the jury, at this time is
25 there a request by the Defense with regard to any

**Cited Excerpt of State's Post-Conviction
Motion for Court Order
(11/29/2010) (Pages 5-6)**

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ADNAN SYED VS. STATE OF MARYLAND
November 29, 2010 BEFORE JUDGE MARTIN P. WELCH

ADNAN SYED	*	IN THE
Petitioner	*	CIRCUIT COURT
vs	*	FOR
STATE OF MARYLAND	*	BALTIMORE CITY
Respondent	*	1991036042-46

* * * * *

TRANSCRIPT OF OFFICIAL PROCEEDINGS
(Motions Hearing)

--- -- -- -- --

BEFORE: THE HONORABLE MARTIN P. WELCH, JUDGE

--- -- -- -- --

DATE: November 29, 2010

--- -- -- -- --

APPEARANCES:

For the Petitioner: Justin Brown, Esq.

For the Respondent: Kathleen Murphy, Esq.

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ADNAN SYED VS. STATE OF MARYLAND
November 29, 2010 BEFORE JUDGE MARTIN P. WELCH

1 MR. BROWN: Yes, we are, Your Honor.

2 MS. MURPHY: Your Honor, this is the State's --

3 THE COURT: Ms. Murphy.

4 MS. MURPHY: -- motion. We are requesting an
5 order from Your Honor directing Mr. Brown to release
6 portions of Ms. Gutierrez's file.

7 As Your Honor is aware, the defendant in this case,
8 Adnan Syed, was convicted of first degree murder and
9 related charges following a six week trial in 2000 that
10 took place before Judge Kerr.

11 Mr. Syed strangled his classmate and former
12 girlfriend, Hai Min Lee, and buried her body in Lincoln
13 Park where it was not discovered for many weeks. Following
14 the conviction Mr. Syed's appeal was litigated and denied,
15 and he filed this post -- this petition for post conviction
16 relief.

17 Primary allegation, Your Honor, is ineffective
18 assistance of counsel. His trial counsel was Christina
19 Gutierrez, who as Your Honor is aware is deceased.

20 THE COURT: The late Christina Gutierrez, yes.

21 MS. MURPHY: And counsel alleges numerous grounds
22 on which he bases the petition, including failure to
23 establish a timeline, failure to investigate an alibi
24 witness, failure to move for a new trial, failure to
25 effectively cross examine a certain witness, failure to

ADNAN SYED VS. STATE OF MARYLAND
November 29, 2010 BEFORE JUDGE MARTIN P. WELCH

1 pursue a plea offer, failure to request change of venue,
2 failure to investigate an accessory. And in the end he
3 alleges a cumulative ineffective assistance of counsel.

4 Attached to the petition are documents, including a
5 letter from this alleged alibi witness to the defendant,
6 and also an affidavit from the alleged alibi witness. I
7 think these documents exemplify that the State is in need
8 of documentation from Ms. Gutierrez's file because without
9 her input in this situation, we don't know all the facts
10 she considered in preparing her defense. We do know there
11 was a defense utilized in this case. And as I mentioned,
12 the trial was six weeks long.

13 The Strickland case, which is the seminal case on
14 ineffective assistance, initially suggested the requirement
15 that inquiry into a counsel's conversation to the defendant
16 may be critical to the proper assessment of counsel's
17 litigation decisions.

18 And the Maryland case on point is State vs Thomas
19 which refers to the idea that the attorney client privilege
20 is subsequently waived pursuant to a claim of ineffective
21 assistance. It refers to that as the universally accepted
22 rule.

23 The State does acknowledge in reviewing petitioner's
24 response to our motion that the waiver is, of course, not
25 open ended. That materials that we are seeking do need to

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