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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.

RECORDED BY: VIDEOTAPE

TRANSCRIBED BY:

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

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P R O C E E D I N G S

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

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

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

MR. URICK: Yes.

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

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

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

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

MR. URICK: No, Your Honor.

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

MR. URICK: Can we approach?

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

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

THE COURT: Okay.

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

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

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

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

MR. URICK: Abe Waranowitz, the witness.

THE COURT: Said to you this morning?

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

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

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<p>1 to Ms. Gutierrez on December 7th, it's a nine page fax. 2 Page one is his resume, page two are a list of seven 3 cell sites with the site name, addresses, the latitude 4 and longitude for those sites. Page three are the 5 error call report from that date. Page four is a copy 6 of what we entered as State's --</p> <p>7 THE COURT: State's 44?</p> <p>8 MR. URICK: I'm just checking on that.</p> <p>9 Forty-five. The next one is a copy of State's 44 and 10 then there's four pages of cell sites along with their 11 frequency plan which is technical data relating to the 12 cell sites.</p> <p>13 So, Ms. Gutierrez not only had an opportunity to 14 observe and copy this stuff in our office, she actually 15 had the materials faxed to her. For her to stand up in 16 front of the jury and say she had never seen it is a 17 egregious misconduct that is overly prejudicial.</p> <p>18 That's why we're at this time renewing our motion for a 19 mistrial.</p> <p>20 In lieu of that, if the Court's not inclined to 21 grant a mistrial we would ask for a motion in limine 22 that Ms. Gutierrez be instructed not make any comments 23 related to discovery matters or issues in front of the 24 jury and the -- that the Court give a curative 25 instruction and a corrective statement that this is not</p>	<p>1 did have the numbers of the cell sites as they appear 2 there in large letters and that ultimately we were able 3 to figure that out. I received nothing else from any 4 source. Certainly never received except for the 5 disclosure that we discussed yesterday, the State's 6 amended disclosure that I believe is stamped in and my 7 office stamp is received on October 8th or 9th, I'm not 8 sure which day. That was the two page amended 9 disclosure that should have a list of cell sites and 10 said, an address would trigger this cell site or that 11 cell site, that is the only disclosure. We never 12 received any other lists --</p> <p>13 THE COURT: Ms. Gutierrez, really to be 14 honest with you, you could go on. The Court found that 15 the discovery rules had been made by the State. It in 16 fact ruled against you and I would tell you that as far 17 as I'm concerned I feel that the materials that you 18 should have gotten were turned over to you and I agree 19 that there may have been some misunderstanding, there 20 may have an abundance of records that were provided to 21 you with -- with no indication by the expert as to what 22 each item was, but I did find that the discovery rules 23 had been met and I ruled against you. With regard to 24 the motion for mistrial I will tell the State it is 25 denied. I have instructed the jury and I've reminded</p>
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<p>1 evidence and that it was incorrect information that was 2 stated.</p> <p>3 THE COURT: Ms. Gutierrez, you don't really 4 want to be heard on that, do you?</p> <p>5 MS. GUTIERREZ: No, Judge. Only to correct 6 the record. Ms. Murphy did not testify that she gave 7 it to us, that she saw anybody xerox it. I think I 8 made the record very clear. Although the Court asked 9 her repeatedly, she didn't say what Mr. Urick tries to 10 imply that she said yesterday. I will state 11 categorically for the record, the only thing that I 12 received from -- and again, I didn't receive it from 13 the State at all, it's there obligation no matter what 14 other source from which I can get it from Mr. 15 Waranowitz's boss who's name I don't remember, but I'm 16 sure I can locate, was the overlay map without the 17 underlay that is large that I believe duplicates or was 18 presented to duplicate the colored portion that appears 19 on the board.</p> <p>20 THE COURT: An you indicated that you got the 21 overlay without the benefit of the map, --</p> <p>22 MS. GUTIERREZ: Yes.</p> <p>23 THE COURT: So the overlay was meaningless to 24 you because you didn't have it.</p> <p>25 MS. GUTIERREZ: Well, except that we -- it</p>	<p>1 them on numerous occasions that there will be 2 opportunities when the Defense would make and state 3 things and that the State would make and state things 4 regarding legal issues that if they were done in front 5 of the jury that it is not evidence. That the 6 attorneys were acting in an appropriate fashion to 7 indicate those items that should not or would not be 8 reflected in their consideration. That they are not 9 issues for the jury, that the evidence comes from the 10 witness stand. That the evidence are those items that 11 were marked and admitted into evidence. That they would 12 be referenced by way of red and blue stickers and that 13 they should disregard the statements of Counsel because 14 what State and what Counsel says is not evidence in 15 this case. I did indicate that on the outset, I think 16 I even said it a couple time during the course of the 17 trial and so, with regard to the motion for a mistrial 18 made by the State I do deny that.</p> <p>19 I would ask both Counsel, I'm not picking on 20 either one, that during the course of the proceedings 21 if I asked you to come to the bench that you keep your 22 voices down, that you not raise them. I would indicate 23 that it allows us to handle bench conferences in such a 24 way that the jury can not hear what is being said. I 25 would add that in light of the fact that this is a very</p>

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

6 So, for the reasons indicated I don't believe
 7 there's been any unfairness, I don't believe there's
 8 been any misunderstanding by the jury that was being
 9 said with regard to evidence or what rulings I'm making
 10 relative to those evidentiary issues are just that.

11 And so for that reason the State's motion is denied. I
 12 don't believe there's any prejudice that's been placed
 13 against the State at this juncture. With regard to any
 14 other issues before I bring the jury out?

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

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

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

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

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

6 THE COURT: Is there something behind the
 7 water cooler?

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

14 Additionally, at the end of the day when we were
 15 trying to sort out time and the Court was trying to
 16 settle out and ultimately arrived in asking everyone to
 17 be here at 8:30. In front of the jury, the Court I
 18 believe inadvertently, certainly had a little
 19 discussion with the guard about can you get him here at
 20 8:30 and the jury was still in the room because you
 21 were trying to figure out what time to tell them and,
 22 you know --

23 THE COURT: Are you making a motion?

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

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1 that you could consider against him.

2 THE COURT: I'd be happy to do that.

3 Actually, I recalled my remark and if --

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

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

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

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

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

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

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

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

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1 so.

2 THE COURT: Does the State wish to be heard?
 3 MR. URICK: Yes, Your Honor we have a counter
 4 motion.

5 THE COURT: No, I would like to hear you
 6 respond to that motion first.
 7 MR. URICK: I will proffer to the Court that
 8 when we went to Mr. Waranowitz -- when we were talking
 9 to him we said, we've got cell phone records and we
 10 have statements that this AT&T wireless phone were in
 11 these locations and these calls were received were
 12 made. Is it possible to test the system to see if it
 13 is possible for the system to respond in those places
 14 in these manners and that was the test to check out the
 15 cell phone records and the statements to see if it can
 16 be shown that this -- that the system can respond in
 17 this way. He explained to use you can never say from a
 18 cell phone record the spot where something was, you can
 19 never prove that. You can only show through the fact
 20 that it initiated a call through a cell site, that it
 21 was in that coverage area for that cell site. But you
 22 can go to specific locations and see if it's possible
 23 for the system to respond as the cell phone records do.
 24 That was his test, that was the purpose of it.
 25 THE COURT: Do you believe that the test that

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

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1 you presented to this jury was indicative of what you
 2 were trying to prove?
 3 MR. URICK: Yes, I do. We asked -- we told
 4 him what we wanted to show and we left it up to him as
 5 to how to do it based on his knowledge of the system.
 6 He went out and he did that and this shows that this is
 7 -- that the system in fact can respond in this manner.
 8 THE COURT: You would agree that there are
 9 some flaws in his tests though.

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

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

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

<p>1 Hence it is corroborative and it's relevant. The 2 degree to which it is would be weight.</p> <p>3 THE COURT: I understand. And that's your 4 response to that -- the motion of the Defense at this - 5 - at this point with regard to striking all of Abe 6 Waranowitz's testimony?</p> <p>7 MR. URICK: Yeah, and I believe he could 8 adequately explain the degree to which it is a 9 justifiable test for that situation.</p> <p>10 THE COURT: With regard to the Defense motion 11 I won't strike Abe Waranowitz's testimony. However, 12 I'm going to instruct the jury and I'd ask that both 13 the State and the Defense fashion an instruction to be 14 used at the close of the case when I provide them the 15 instruction as to how an expert's testimony shall be 16 viewed. And so I'd ask that Counsel make a note that 17 I'll be looking for an instruction to be submitted 18 along with the other instructions specifically with 19 regard to Abe Waranowitz's testimony. I don't know if 20 there will be any other instructions that may have been 21 provided, but I will also indicate and reiterate that 22 the Defense because of the tenuous nature of the test 23 that was run, I'm still am going to give you great 24 latitude on cross with regard to bringing out those 25 issues that would affect the reliability of the tests</p>	<p>Page 21</p> <p>1 to interact with the system in the same way.</p> <p>2 THE COURT: Okay. In light of the questions 3 of the Court yesterday, Ms. Gutierrez, do you have any 4 objection to that question?</p> <p>5 MS. GUTIERREZ: Yes, Your Honor.</p> <p>6 THE COURT: All right. I will allow him to 7 answer that question only as it relates to -- you'll 8 have to lay the foundation that the Court soft o went 9 into out of the presence of the jury, his knowledge he 10 testified during that period that he had tested Nokias 11 and other phones in the past, that they performed in 12 certain ways, that it had to do with the model of the 13 phone. You lay that foundation and then I will let you 14 ask the question you just posed. You do not lay that 15 foundation for his basis of knowledge, the question 16 will be sustained.</p> <p>17 MR. URICK: Thank you. I would ask that the 18 item that I provided the Court be marked as State's 19 Exhibit One for the motion of 2/9 and that it be 20 incorporated into the Court file.</p> <p>21 THE COURT: Which -- which item is that?</p> <p>22 MR. URICK: The fax, Your Honor and receipt.</p> <p>23 THE COURT: You're asking that the fax and 24 receipt be marked for identification purposes?</p> <p>25 MR. URICK: As far as an exhibit for the</p>
<p>Page 22</p> <p>1 that was run and would aid the jury in making the 2 weighing that Counsel has just indicated, will have to 3 be done with regard to the value if any, that the jury 4 may find with regard to Mr. Waranowitz's testimony 5 regarding his test.</p> <p>6 However, I find that Mr. Waranowitz's testimony in 7 other aspects with regard to his expertise in the 8 knowledge of the network system was indeed extremely 9 helpful and I do find that that information was of the 10 quality that expert testimony is normally rendered in a 11 proceeding and I do not find that there was any error 12 made in accepting him as an expert. I also find that 13 in fact, the fact that he is an expert he was able to 14 help us sift through the value that or the problems 15 that may have existed with regard to the test that was 16 run.</p> <p>17 So with that in mind, keep in mind I will be 18 looking for an instruction relative to how Mr. 19 Waranowitz's expert testimony and that test should be 20 viewed. Mr. Urick, you said you had some other issue 21 or motion.</p> <p>22 MR. URICK: Yes, I would based on my previous 23 proffer to the Court move that I'd be allowed to ask 24 him based on your experience and understanding of the 25 system would a properly functioning Nokia phone be able</p>	<p>Page 23</p> <p>1 motion, the motion exhibit.</p> <p>2 THE COURT: You're welcome to submit it as an 3 exhibit for the motion and why don't we give it a 4 different sticky number apart from -- why don't we make 5 it Exhibit 100. You're not going to have a 100, are 6 you?</p> <p>7 MR. URICK: I doubt it.</p> <p>8 THE COURT: Why don't we make it Exhibit 200 9 to make sure, absolutely, positively and put on there 10 motion for mistrial, I think that was part of your 11 evidence.</p> <p>12 (State's Exhibit No. 200 was 13 received into evidence.)</p> <p>14</p> <p>15 And for the record the Court does recall that Ms. 16 Gutierrez did qualify that she was not sure if someone 17 in her office may have received this is as part of the 18 stack, but that she did not have an independent 19 recollection of having seen it. That was my 20 recollection of what Ms. Gutierrez said at the bench.</p> <p>21 Ms. Gutierrez.</p> <p>22 MS. GUTIERREZ: Well, the only difference, 23 Judge is I stated affirmatively, not that I didn't 24 recall that it could have been --</p> <p>25 THE COURT: That it could have been part of a</p>

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1 pile.

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

17 THE COURT: Very well.

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

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

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

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

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

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

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

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

12 THE COURT: I'm sorry.

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

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

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

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

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

5 JUROR: Yes.

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

10 JUROR: Yes.

11 THE COURT: Do what you need to do?

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

14 THE COURT: The Community College of
 15 Baltimore?

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

19 THE COURT: You will not get paid?

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

22 THE COURT: All right. Now, --

23 JUROR: I'm a contractual worker.

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

<p>1 do this would this then satisfy your concerns?</p> <p>2 JUROR: Yes.</p> <p>3 THE COURT: All right. And there's nothing</p> <p>4 about your job or your home situation that's</p> <p>5 interfering with your ability to pay attention or allow</p> <p>6 you to be -- continue to be fair and impartial?</p> <p>7 JUROR: No. One of my co-workers called me</p> <p>8 last night.</p> <p>9 THE COURT: One of your co-workers alerted</p> <p>10 you to the fact that you needed to get up there.</p> <p>11 JUROR: That I needed to get up there, yeah.</p> <p>12 THE COURT: All right. Ms. Gutierrez, are</p> <p>13 you satisfied? Mr. Urick, are you satisfied?</p> <p>14 MR. URICK: Very much so. Thank you, Your</p> <p>15 Honor.</p> <p>16 THE COURT: Very well, sir. At 11:30 we will</p> <p>17 break, I have the rest of my docket that I'm going to</p> <p>18 deal with and so, we'll allow you to do that and we'll</p> <p>19 bring the jury back at 1:30.</p> <p>20 JUROR: All right.</p> <p>21 THE COURT: Very well.. Also at 1:30 you'll</p> <p>22 hear me tell you, the jurors what they can do to get</p> <p>23 paid and you should do that as well.</p> <p>24 JUROR: Thank you.</p> <p>25 THE COURT: You may take your seat. There's</p>	<p>Page 31</p> <p>1 promptly this morning. I was advised that you all were</p> <p>2 here promptly at 8:30. We have dealt with some matters</p> <p>3 this morning and I want to let you know that we're</p> <p>4 going to proceed with this case. Before we get started</p> <p>5 I need to bring to your attention that at close of the</p> <p>6 day yesterday I made some reference to the fact, asking</p> <p>7 the correctional officers to transport the Defendant</p> <p>8 and you may have noticed that through the course of the</p> <p>9 trial that he is, the Defendant has been escorted by</p> <p>10 someone from Corrections. Please be advised that that</p> <p>11 means nothing. The pretrial status of the Defendant</p> <p>12 whether he's incarcerated or not is not relevant to</p> <p>13 this case in anyway and should not be considered by you</p> <p>14 in any way whatsoever with regard to the facts,</p> <p>15 circumstances, evidence or anything regarding this</p> <p>16 case.</p> <p>17 An individual as I indicated to you at the outset</p> <p>18 charged with the Defense is innocent until proven</p> <p>19 guilty: The State priors that burden at all times, so</p> <p>20 therefore his pretrial status should have no relevance</p> <p>21 or bearing on you whatsoever during the course of this</p> <p>22 trial or your deliberations. At this time we're going</p> <p>23 to continue with the testimony of Mr. Waranowitz and at</p> <p>24 this time the State I believe has a few questions.</p> <p>25 MS. GUTIERREZ: We would just have a</p>
<p>Page 30</p> <p>1 no reason you should leave. Yes.</p> <p>2 UNKNOWN: (inaudible)</p> <p>3 THE COURT: At 12:30. I understand, but I</p> <p>4 can make arrangements for him to be paid at 1:30, I was</p> <p>5 told as well. Thank you. Put that in the file, and if</p> <p>6 we could bring the remaining jurors.</p> <p>7 MR. URICK: Yeah, just ask the witness to</p> <p>8 come in. It's okay for the witness to come in?</p> <p>9 THE COURT: Whatever you'd like, Mr. Urick at</p> <p>10 this point.</p> <p>11 MR. URICK: Thank you, Your Honor.</p> <p>12 THE COURT: Obviously you've directed them</p> <p>13 and that's what -- she's gone so, she'll do whatever</p> <p>14 you've told her to do.</p> <p>15 MR. URICK: I apologize if I was</p> <p>16 presumptuous.</p> <p>17 THE COURT: That's all right. I just wanted</p> <p>18 to have the jury together as much as possible. Sir,</p> <p>19 you make take the witness stand.</p> <p>20 MR. WARANOWITZ: Thank you, Your Honor.</p> <p>21 (The jury returned to the courtroom.)</p> <p>22 THE COURT: Good morning, ladies and</p> <p>23 gentlemen.</p> <p>24 JURY: Good morning.</p> <p>25 THE COURT: I thank you for being here</p>	<p>Page 32</p> <p>1 continuing objection to any further questions asked.</p> <p>2 THE COURT: Yes, and as we proceed I'd ask</p> <p>3 that Counsel be advised that -- of my previous ruling</p> <p>4 with regard to this witness, ask that those preliminary</p> <p>5 foundation questions be made if you intend to go in the</p> <p>6 area that we've previously discussed.</p> <p>7 MR. URICK: Thank you, Your Honor. At this</p> <p>8 time I'll continue with what I was going to do when we</p> <p>9 were breaking yesterday. If the witness may get off</p> <p>10 the stand and approach.</p> <p>11 THE COURT: Yes, and Mr. Urick, I must remind</p> <p>12 you, you must keep your voice up. The jurors have</p> <p>13 indicated they can not hear you. I know the mic is far</p> <p>14 away from you, but I think that part of the problems</p> <p>15 that so are the easels. So, if you could keep your</p> <p>16 voice up so that your voice can be heard it would be</p> <p>17 greatly appreciated.</p> <p>18 MR. URICK: I will do that. Thank you, Your</p> <p>19 Honor.</p> <p>20 THE COURT: Mr. Waranowitz, please step over</p> <p>21 to the easel.</p> <p>22 EXAMINATION</p> <p>23 BY MR. URICK: I'd ask him to approach what's</p> <p>24 been marked for identification as State's Exhibit 33.</p> <p>25 (State's Exhibit 33 was marked for</p>

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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 [REDACTED]

Cathy's [REDACTED] Affix the sticker that I
9 wrote A. T-E-R-R. at that spot. I would note for the
10 record that he has affixed those stickers at the two
11 places he identified yesterday later in the day when
12 everybody was using Scotch tape I'm going to put tape
13 over those to make sure that they are permanently
14 affixed. You may return to the stand at this time.
15 At this time I'd move into evidence State's Exhibit 33,
16 the exhibit that he just affixed the final stickers to.

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

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

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

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

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

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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

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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

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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

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1 quality. It makes it sound warbley.
 2 Q Are there any variables in performance over
 3 different makes of Nokia phones?
 4 A Yes.
 5 Q And what performance -- what -- how might
 6 these factors effect performance?
 7 A Different makes of different Nokia phones
 8 appear to perform differently. I have not tested
 9 anything other then 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?

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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

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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

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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

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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 Cathy's
 21 concerning a test that you made at the [REDACTED]
 22 [REDACTED], 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

Cathy's

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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.

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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 underlying 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

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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

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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?

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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

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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.

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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?

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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.

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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?

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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?

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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.

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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

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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 [REDACTED] Road, Street whatever, was it not?
19 A Yes.
20 Q Now, [REDACTED] doesn't appear in this
21 column, does it?
22 A No, it does not.
23 Q No, and [REDACTED] is not the address of a
24 cell site, is it?
25 A No. Jenn's House

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

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1 the Federal Government, the United States Government.	1 A Correct.
2 Q No, I didn't know that.	2 Q And are you aware of the street address of
3 A And are you aware that there is not a single	3 that mall?
4 address that applies to all of eleven buildings?	4 A No, I am not.
5 A I am not aware of that.	5 Q No, and Security Square Mall doesn't appear
6 Q The building that you identified in the	6 here, does it?
7 picture though is what you and your colleagues called	7 A No, it does not.
8 the Social Security building, correct?	8 Q And the [REDACTED] address that you
9 A That is correct.	9 were both told about and taken to, were you not?
10 Q You of course couldn't tell us which of the	10 A I'm sorry, say again.
11 eleven buildings is the one that you and your	11 Q The [REDACTED], the address that
12 colleagues have designated by your own name for it,	12 Mr. Urick questioned you about extensively just moments
13 could you?	13 ago, do you recall that?
14 A I've identified a building (inaudible)	14 A Yes.
15 THE COURT: I'm sorry. Wait a minute, sir.	15 Q And that doesn't appear in this column, does
16 You've got to -- you have to understand this is a	16 it?
17 recording device and the mics pick up what you're	17 A No, it does not.
18 saying and record it, so if you speak softly I can't	18 Q And the Lincoln Park, what you referred to
19 hear and I bet the mics not picking up what you're	19 burial site, does that have an address?
20 saying. So I need you to keep your voice up. Now, she	20 A No, it does not.
21 asked you about how you could identify that building	21 Q And incidentally you went there, did you not?
22 and your answer is?	22 A I was taken there, yes.
23 MR. WARANOWITZ: I could identify it by the	23 Q You were taken there by Mr. Urick?
24 AT&T equipment on the roof of the building.	24 A I was taken by Ms. Murphy.
25 THE COURT: Very well. Your next question.	25 Q Okay. And you were shown a location,
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1 BY MS. GUTIERREZ:	1 correct?
2 Q But you, sir, couldn't differentiate that	2 A Yes.
3 building if you couldn't see the antennas from the	3 Q And you were told information about that,
4 other ten buildings as part of the complex?	4 location, were you not?
5 MR. WARANOWITZ:	5 A A little bit, yes.
6 A I'm sorry. Rephrase that again.	6 Q And that location, sir, was located a good
7 Q Sir, you could not differentiate that	7 distance from the road, was it not?
8 building without seeing the antennas from the other ten	8 A No, it was right off the road.
9 buildings in the complex, could you?	9 Q Right off the road. Could you tell us the
10 A No.	10 distance off the road that you were shown and told a
11 Q Now, and, sir, could you tell us without	11 body had been buried?
12 seeing the antenna what the street address of the	12 A I was told that the body was buried behind
13 building that contains the antennas that you tell us	13 the concrete barriers.
14 you could recognize is?	14 Q And you saw those concrete barriers, did you
15 A I don't know exactly.	15 not?
16 Q Now, while you're still up here and then I'll	16 A Yes, I did.
17 let you sit down. Let me ask you about other addresses	17 Q Were you actually taken into the wood and
18 that Mr. Urick gave you to conduct your test. One of	18 shown an exact spot and told this is where a body was
19 those was Rolling Road at I70, was it not?	19 buried?
20 A Yes.	20 A No.
21 Q And Rolling Road at I70 doesn't appear in	21 Q So, you were just taken up to the area that
22 this column, does it?	22 surrounded by concrete barriers?
23 A No, just the map.	23 A Yes.
24 Q Another address that you had given was	24 Q We call them Jersey walls or the construction
25 Security Square Mall, correct?	25 industry calls them Jersey walls, are you aware of

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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.

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

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

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

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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 --

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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?

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

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- 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.

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- 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?

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1 A Correct.		1 three years ago, correct?
2 Q So, and what you called the site is that 3 which emanates the signal, correct?		2 A Yes.
4 A Yes.		3 Q Okay. Was there something hard about that 4 questions?
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?		5 MR. URICK: Objection.
8 A Yes.		6 THE COURT: Sustained.
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?		7 BY MR. GUTIERREZ:
13 A Yes, that is my understanding.		8 Q Is there any reason you hesitated to answer?
14 Q But a cover -- well, it's not your 15 understanding --		9 MR. WARANOWITZ:
16 MR. URICK: Objection.		10 A I was listening for more of the question.
17 BY MS. GUTIERREZ:		11 Q But there's no dispute that the network is 12 relatively new, isn't that correct?
18 Q You've testified to it about as an expert, 19 have you not?		13 A That is correct.
20 THE COURT: Sustained.		14 Q And you told us that you were in on it from 15 the beginning, correct?
21 BY MS. GUTIERREZ:		16 A From -- from before it was launched, yes.
22 Q The coverage area is an area larger than the 23 cell site, is it not?		17 Q Okay. And by launched you mean started, 18 right?
24 MR. WARANOWITZ:		19 A Yes.
25 A Yes.		20 Q Launched meant it was operational, correct?
	Page 78	21 A Correct.
1 Q Whether that cell site is a separate tower or 2 placed on an existing structure, 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?
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 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		
	Page 80	
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.		

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- 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.

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- 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 deflection 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 its
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

<p style="text-align: right;">Page 85</p> <p>1 us that the receipt of signals among phones on your 2 network still varies, correct?</p> <p>3 A Yes, it does.</p> <p>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?</p> <p>8 A Yes.</p> <p>9 Q And what phone is that?</p> <p>10 A That would be the Nokia 6160.</p> <p>11 Q The 6160. The same phone that your company 12 issues to your engineers, correct?</p> <p>13 A Yes.</p> <p>14 Q Although you currently use a Motorola, 15 correct?</p> <p>16 A Yes.</p> <p>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?</p> <p>20 A Correct.</p> <p>21 Q And some of those dropped call complaints 22 come from customers that are utilizing a Nokia phone, 23 are they not?</p> <p>24 A Yes.</p> <p>25 Q A Nokia 6160?</p>	<p style="text-align: right;">Page 87</p> <p>1 deemed low, would it not?</p> <p>2 A Yes.</p> <p>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?</p> <p>6 A Yes.</p> <p>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?</p> <p>11 A No, it may not be.</p> <p>12 Q But it might be?</p> <p>13 A It can be.</p> <p>14 Q It can be. And that again would depend on 15 the quality of the signal, correct?</p> <p>16 A Yes.</p> <p>17 Q And the quality of the phone for which the 18 signal is wasn't handled, correct?</p> <p>19 A Yes.</p> <p>20 Q Now, that phones perform differently there is 21 an ideal performance for cell phones, is there not?</p> <p>22 A Cell phones should perform within certain 23 specifications.</p> <p>24 Q Okay. And within those specifications 25 relates to the quality of the radio sound, does it not?</p>
<p style="text-align: right;">Page 86</p> <p>1 A Yes.</p> <p>2 Q Because you can, sir, from your statistical 3 monitoring always determine what phone the customer is 4 using, can you not?</p> <p>5 A Yes.</p> <p>6 Q Yes, and that is because your computer has 7 the capability to distinguish the signals, correct?</p> <p>8 A Correct.</p> <p>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.</p> <p>14 A Correct.</p> <p>15 Q Correct? That's a truism, is it not?</p> <p>16 A Could you rephrase that?</p> <p>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?</p> <p>20 A No.</p> <p>21 Q Well, they have to be able to be heard, 22 correct?</p> <p>23 A Yes.</p> <p>24 Q And if they're unable to see as the term 25 you've used it, a signal their performance would be</p>	<p style="text-align: right;">Page 88</p> <p>1 A Yes.</p> <p>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?</p> <p>5 A Yes.</p> <p>6 Q Whether that number be a land line or another 7 cell phone, correct?</p> <p>8 A Correct.</p> <p>9 Q And the ability of the phone connection to 10 remain open for however long the user wants it, correct?</p> <p>11 A Yes.</p> <p>12 Q And for nothing to interfere with the call, 13 correct?</p> <p>14 A Correct.</p> <p>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.</p> <p>18 A Yes.</p> <p>19 Q And that there be no interference, correct?</p> <p>20 A Correct.</p> <p>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?</p> <p>25 A Correct.</p>

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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.

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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.

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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?

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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?

	Page 97	Page 99
1	A It was one of our test phones.	1 A Correct.
2	Q And the addresses from which you tested your	2 Q And during the test as you were reporting
3	3 Erickson phone did not include an address listed as a	3 ongoing results, Ms. Murphy didn't say, oh, that's not
4	4 cell site, did it?	4 good enough, did she?
5	A Not that I know of.	5 A She did not say anything like that.
6	Q And you, of course didn't go to any place	6 Q Nothing like that, right? She didn't suggest
7	7 that Ms. Murphy didn't tell you to go, did you?	7 to you other things that you could do, did she?
8	A No.	8 A No.
9	Q But when you reported the results of your	9 Q She didn't suggest to you that there should
10	10 test to her or Mr. Urick you essentially gave the	10 be or that you should find a way to report to her that
11	11 information that at the addresses that you were asked	11 a certain address would only trigger one cell site, did
12	12 to check, that a cell phone at any specific address	12 she?
13	13 would trigger two different cell sites, did you not?	13 A No, I explained --
14	A There are two different possibilities, but	14 Q As to --
15	15 they would not trigger the same cell site at the same	15 MS. MURPHY: Objection.
16	16 time.	16 THE COURT: Sustained.
17	Q Sir, I only asked you, did you report to them	17 BY MS. GUTIERREZ:
18	18 that a cell phone used for instance, at Rolling Road	18 Q As to Rolling -- so, you explained it to her,
19	19 and I70, an address provided to you by Ms. Murphy	19 your results?
20	20 triggers, with an S at the end of it, cell site L651C	20 MR. WARANOWITZ:
21	21 or L698A, is that correct?	21 A Yes.
22	A That is correct.	22 Q As they went along.
23	Q And, sir, you would agree that 69 --651C and	23 A Yes.
24	24 that's the pink?	24 Q And you recall that in your reporting, would
25	A Correct.	25 you not?
	Page 98	Page 100
1	Q Correct, on -- is there a do north on this	1 A Yes.
2	2 map?	2 Q And you explained it to her in great deal,
3	A Yes.	3 did you not?
4	Q Is north to the top?	4 A I explained my results.
5	A That is correct.	5 Q And you explained to her more then the simple
6	Q So, the pink would be the western edge of the	6 reporting of a cell phone at Rolling Road at I70
7	7 map, correct?	7 triggers cell site L651C or L698A, did you not?
8	A Correct.	8 A Yes.
9	Q All right. And the other cell site that it	9 Q Your conversation was more then that with Ms.
10	10 could trigger would be L698A, is that correct?	10 Murphy, was it not?
11	A That is correct.	11 A Yes.
12	Q So, your report to them said, well if I went	12 Q You answered any questions she had, did you
13	13 and used a cell phone at this address you told me about	13 not?
14	14 either it would put a signal over here, correct?	14 A Yes.
15	A Correct.	15 Q And that was part of your reporting and you
16	Q Or a signal over here, correct?	16 explaining the test as it went along?
17	A Correct.	17 A Yes.
18	Q And, in fact, as to each address they gave	18 Q And you so reported and explained to her
19	19 you, you reported similarly that it would trigger two	19 after each single address, did you not?
20	20 different cell sites, one or the other, correct?	20 A I reported it at the address.
21	A Correct.	21 Q Now, sir, your map that you tell us you
22	Q And this was after you did the test, correct?	22 carefully prepared doesn't indicate where Rolling Road
23	A No, that was during the test.	23 at I70 exists, does it?
24	Q During the test as you reported them to her,	24 A No, it does not.
25	25 correct?	25 Q There's not a place that flags it either on

<p>1 33A, the underlying map, right?</p> <p>2 A No.</p> <p>3 Q And certainly not on the overlay? Jenn's House</p> <p>4 A No.</p> <p>5 Q And on the map, the address [REDACTED] isn't flagged either?</p> <p>6 A Correct?</p> <p>7 Q Nor is Security Square Mall?</p> <p>8 A Correct. Cathy's Apartment</p> <p>10 Q And nor is [REDACTED]?</p> <p>11 A Correct.</p> <p>12 Q Or --</p> <p>13 A Oh, I put [REDACTED] on there a few minutes ago.</p> <p>15 Q You put that on yesterday or this morning.</p> <p>16 A This morning.</p> <p>17 Q This morning. It wasn't on the map in it of itself?</p> <p>19 A No.</p> <p>20 Q On either A?</p> <p>21 A No.</p> <p>22 Q Or B?</p> <p>23 A No, it was not.</p> <p>24 Q And Briar Cliff Road, without an address, that's not indicated on A or B either?</p>	<p>Page 101</p> <p>1 where it was before you testified, did you?</p> <p>2 A Well, I know where it is.</p> <p>3 Q That's not my question, sir. This isn't a quiz.</p> <p>5 MR. URICK: Objection.</p> <p>6 THE COURT: Ms. Gutierrez.</p> <p>7 BY MS. GUTIERREZ:</p> <p>8 Q Did you put a designation of where Woodlawn High School was --</p> <p>10 MR. WARANOWITZ:</p> <p>11 A No.</p> <p>12 Q On the underlaying map?</p> <p>13 A No.</p> <p>14 Q Did you put such a designation on the overlaying --</p> <p>16 A No.</p> <p>17 Q You also prepared?</p> <p>18 A No.</p> <p>19 Q Were you ever asked to do so before today?</p> <p>20 A No, I was not.</p> <p>21 Q No. If I may have a moment, Your Honor.</p> <p>22 THE COURT: Certainly.</p> <p>23 MR. WARANOWITZ: Can we take a break, Your Honor?</p> <p>25 THE COURT: Pardon.</p>
<p>1 A No.</p> <p>2 Q Or Best Buy, whatever it may be located?</p> <p>3 A Nope.</p> <p>4 Q And Crosby, where ever that is?</p> <p>5 A No.</p> <p>6 Q And I70 Park and Ride?</p> <p>7 A No.</p> <p>8 Q Cooks Lane up to Forest Park?</p> <p>9 A No.</p> <p>10 Q And Forest Park, four blocks east of Security Boulevard?</p> <p>12 A No.</p> <p>13 Q Nor put Gelston Park?</p> <p>14 A I put Gelston Park on this morning.</p> <p>15 Q You put it on.</p> <p>16 A That's correct.</p> <p>17 Q It didn't appear independently on the 33A map that you said you, yourself drew up?</p> <p>19 A No, it did not.</p> <p>20 Q And it doesn't appear on the overlay?</p> <p>21 A No.</p> <p>22 Q Or Woodlawn High School doesn't appear on the map?</p> <p>24 A I'm not sure where that is.</p> <p>25 Q You didn't make an independent designation</p>	<p>Page 102</p> <p>1 MR. WARANOWITZ: Can we take a break?</p> <p>2 THE COURT: We are going to take a break. I may be able to finish with you. Can you give me ten minutes?</p> <p>5 MR. WARANOWITZ: I can wait.</p> <p>6 THE COURT: Is that --</p> <p>7 MR. WARANOWITZ: Thank you, Your Honor.</p> <p>8 THE COURT: Ms. Gutierrez, do you expect to be any longer then about ten minutes?</p> <p>10 MS. GUTIERREZ: I do, Judge. I'll try to shorten it, but I do need more time.</p> <p>12 THE COURT: That's all right. Can you come up for scheduling purposes?</p> <p>14 (Counsel approached the bench and following ensued:)</p> <p>16 THE COURT: Mr. Waranowitz, Mr. Waranowitz, you may step down and wait in the hall. What I'm trying to engage is whether or not we would finish with this witness on or by like 11:30, 11:20?</p> <p>20 MS. GUTIERREZ: I don't know, Judge.</p> <p>21 THE COURT: Okay.</p> <p>22 MS. GUTIERREZ: I know I'm long winded. I'm not fast.</p> <p>24 THE COURT: No, I'm not trying to rush you. I'm just trying to get --</p>

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1 MS. GUTIERREZ: I'm a terrible estimate of
2 time.

3 THE COURT: I have Counsel that would like to
4 do a postponement and --

5 MS. GUTIERREZ: It's just that because of
6 this witness I know that I'm not rushing with it. So,
7 I --

8 THE COURT: No. You're not asked to.

9 MS. GUTIERREZ: I don't think I'm going to be
10 finished by then.

11 THE COURT: By 11:30?

12 MS. GUTIERREZ: No, I don't.

13 THE COURT: Okay. All right.

14 MS. GUTIERREZ: So, if you want to --

15 THE COURT: To take the postponement request?

16 MS. GUTIERREZ: That's fine.

17 THE COURT: Do you have a question, issue?

18 MR. URICK: She wanted to know that means
19 we're going to take a brief break? She would like one.

20 THE COURT: Yes. We all can take a brief
21 break.

22 MS. GUTIERREZ: Okay.

23 THE COURT: And I'll have Counsel -- and I'll
24 have Counsel bring up -- all right.

25 (Counsel returned to the trial tables and

1 him here because we're not going to take a break that
2 long. Counsel, if you would like to take a recess or
3 step back, use the facilities please do so. I'm going
4 to remain on -- actually, I'm going to take a brief
5 break myself, but I'm going to ask that as soon as
6 Danny Marcus and Lynn Stewart, the attorneys in that
7 other case arrive and the Defendant who's being brought
8 up arrives we will proceed. Ms. Connelly, will you let
9 me know when Mr. Marcus and Ms. Stewart as well as the
10 Defendant in the other matter arrive so that we can do
11 this postponement request. The Court stands in recess.

12 THE CLERK: All rise.

13 (Brief recess.)

14 (Case hears other matters, case resumes as
15 follows:)

16 (Jury not present upon reconvening.)

17 THE COURT: Mr. Urick, Ms. Murphy and Ms.
18 Gutierrez, if you'll step back up, we can resume the
19 Syed case with a few more questions and then I will
20 send the jurors to lunch allowing juror number two to
21 take care of the business he's indicated he must
22 acquire. I would note that we would be resuming at
23 about 1:30. You're frowning.

24 MR. URICK: If I may inquire. Did the Court
25 anticipate finishing this witness before breaking for

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1 the following ensued:)

2 THE COURT: Ladies and gentlemen, we're going
3 to take a brief recess. Allow you to use the
4 facilities and then we'll bring you back and continue
5 with this witness. I'm going to ask at this time that
6 you leave your note pads face down, that you leave them
7 there because we're going to come back and resume and
8 continue with testimony for just a brief time after the
9 break. Scheduling wise there has been a request by one
10 of the jurors to do some things with his job, so
11 therefore, what we're going to do is take a little
12 longer lunch break then we would normally do to allow
13 that juror to be accommodated, but I'm going to ask
14 that you do come back with a few moments and at that
15 time we'll give a better guesstimate as how the morning
16 will go.

17 At this time will you go with the Deputy Sheriff
18 Church who will walk you around to the jury room, he is
19 at the door. Do not discuss the testimony you've heard
20 this morning or any other day during the trial. Do not
21 discuss it amongst yourselves or with anyone, you have
22 not heard the entire case yet. You can go with Deputy
23 Chief -- Deputy Church at this time.

24 (The jury was excused from the courtroom.)

25 THE COURT: Mr. Gilmore, you're free to leave

1 lunch?

2 THE COURT: No. You have a juror as you
3 heard that needs more 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

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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

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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?

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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

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1 test, were you not?	1 Q You only know about your network?
2 A Yes.	2 A Yes.
3 Q And your origination test was essentially causing a call to be made, correct?	3 Q And you are familiar with the difficulty that your network has for its users, are you not?
4 A A test call.	5 A Yes.
6 Q A test call, right?	6 Q And that's not a surprise to you, is it?
7 A Yes.	7 A No, it is not.
8 Q But a call, right?	8 Q Because the terrain in Lincoln Park is difficult, is it not?
9 A Yes.	10 A Yes, it is.
10 Q Meaning a call to be that would emanate from your phone that you were using to conduct that test to have a call go out from your phone to seek whatever signal it would seek, correct?	11 Q It's difficult in fall?
11 A Correct.	12 A Yes.
15 Q Now, sir, have you ever driven through Lincoln Park before?	13 Q It's difficult in summer?
16 A Yes, I have.	14 A Yes.
18 Q And, sir, you are familiar with the road that goes through there, are you not?	15 Q In spring?
20 A I am familiar with the coverage on the road,	16 A Yes.
21 yes.	17 Q And, in fact, it's difficult in winter, is it not?
22 Q No, sir. That wasn't my question.	19 A Yes, it is.
23 A I am familiar with the road.	20 Q The terrain in Lincoln Park goes to terrain that is much, much higher than the terrain of the road who's name you don't remember, is it not?
24 Q I didn't ask you about the coverage zone, I asked you, were you familiar with the road.	23 A Yes.
	24 Q And there's a major stream or waterway that runs through Lincoln Park, is there not?
Page 114	Page 116
1 A Yes.	1 A Yes.
2 Q And what's the name of the road?	2 Q And you're aware that the banks of the waterway because the terrain is uneven is often times below what we call street level, referring to the level of the street who's name you don't remember?
3 A I'd have to look it up.	6 A Yes.
4 Q So, sir, whatever familiarity you have with the road you don't recall its name?	7 Q And none of that information is a surprise to you, is it?
6 A That is correct.	9 A No.
7 Q That road, however familiar you are with it, runs the breath of Lincoln Park throughout Baltimore City, does it not?	10 Q And notwithstanding that, your network has been launched now for maybe up to three years. Lincoln Park as a coverage area, it's always been difficult, has it not?
10 A I think so, yes.	14 A That is true.
11 Q And, sir, are you aware of the difficulty any cell phone user has regardless of phone, regardless of what network of actually speaking on the phone while one is in Lincoln Park?	15 Q All year long?
15 A Yes.	16 A Yes.
16 Q And are you aware of the difficulty any cell phone user, regardless of the phone, regardless of what network is utilized, has in receiving a phone call if they at the time are in Lincoln Park?	17 Q Regardless of what phones people use?
20 A I'm sorry, could you rephrase that?	18 A Yes.
21 Q You are aware, are you not, of the difficulty any cell phone user no matter what cell phone is used in actually or what network is utilized in actually receiving a call while one is in Lincoln Park?	19 Q And that that difficulty has persisted whether the phone being used is the one making the call or the phone being used is the one receiving the call, isn't that correct?
25 A I don't know about other networks.	23 A Yes.
	24 Q And, sir, that existed back in fall when you conducted your origination test, did it not?

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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

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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 its 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.

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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 your 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

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<p>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?</p> <p>7 MR. WARANOWITZ: I believe it was.</p> <p>8 THE COURT: Very well. Thank you very much.</p> <p>9 MR. URICK: Do you want a State's number or a 10 Defense number for the exhibit?</p> <p>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.</p> <p>18 BY MS. GUTIERREZ: Thank you, Your Honor.</p> <p>19 Q Sir, before the break we spoke about a 20 location called Woodlawn High School.</p> <p>21 MR. WARANOWITZ:</p> <p>22 A Yes.</p> <p>23 Q And, sir, you are aware of where that is 24 located?</p> <p>25 A Yes.</p>	<p>1 A Yes.</p> <p>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?</p> <p>6 A What road was that?</p> <p>7 Q Dogwood, D-O-G-W-O-O-D.</p> <p>8 A Right, Dogwood intersects Woodlawn Drive.</p> <p>9 Q And on the other end Woodlawn Drive 10 intersects Security Boulevard, does it not?</p> <p>11 A Yes.</p> <p>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?</p> <p>16 A Yes.</p> <p>17 Q And the name to which Dogwood Road changes 18 into is a road by the name of Franklintown, is it not?</p> <p>19 A Yes.</p> <p>20 Q And Franklintown 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?</p> <p>23 A I believe so, yes.</p> <p>24 Q And from the map, that's not a great deal of 25 distance, is it?</p>
<p style="text-align: center;">Page 126</p> <p>1 Q And that it is located on Woodlawn Drive?</p> <p>2 A I'd have to verify that.</p> <p>3 MS. GUTIERREZ: Can we show the witness our 4 map so that he (inaudible).</p> <p>5 THE COURT: Is there an object to any of 6 this? I mean -- no.</p> <p>7 MS. GUTIERREZ: Objection.</p> <p>8 THE COURT: Good point, Ms. Gutierrez. Your 9 objection is overruled. You may ask -- continue to ask 10 your questions.</p> <p>11 BY MS. GUTIERREZ: Thank you.</p> <p>12 Q Can you see that, sir? Can you locate 13 Woodlawn Drive in the map book?</p> <p>14 MR. WARANOWITZ:</p> <p>15 A Woodlawn Drive?</p> <p>16 Q Yes, sir.</p> <p>17 A Woodlawn High School?</p> <p>18 Q Yes, sir.</p> <p>19 A I've located it.</p> <p>20 Q Okay. And Woodlawn High School, in fact, is 21 on Woodlawn Drive, is it not?</p> <p>22 A It appears to be, yes.</p> <p>23 Q And it appears to be in your map, correct?</p> <p>24 A Yes.</p> <p>25 Q The same map upon which you rely, correct?</p>	<p style="text-align: center;">Page 128</p> <p>1 MR. URICK: Objection.</p> <p>2 THE COURT: Overruled.</p> <p>3 MR. WARANOWITZ: It is not far.</p> <p>4 BY MS. GUTIERREZ:</p> <p>5 Q No. And Woodlawn High School is not a 6 location that Ms. Murphy directed you to, was it?</p> <p>7 MR. WARANOWITZ:</p> <p>8 A I was taken to Woodlawn High School.</p> <p>9 Q And did you do an origination test there?</p> <p>10 A Yes.</p> <p>11 Q And that was to make a call from that 12 location?</p> <p>13 A Yes.</p> <p>14 Q To determine, what if any, cell site such a 15 call would trigger, is that correct?</p> <p>16 A Yes.</p> <p>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?</p> <p>20 A It was either 651A or 651C.</p> <p>21 Q 651A, would that be the orange?</p> <p>22 A Yes.</p> <p>23 Q Or not that one, but the pink one, correct?</p> <p>24 A Correct.</p> <p>25 Q Is that correct?</p>

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1 A Correct.		1 several different neighborhoods, does it not?
2 Q Either one or the other, right?		2 A Yes.
3 A Yes.		3 Q Those being residential, correct?
4 Q And, sir, the address on that cell phone tower, the same cell phone tower would be the same whether it was orange, right?		4 A Residential and commercial.
5		5 Q And commercial, but does include residential,
6		6 correct?
7 A Yes.		7 A Yes.
8 Q Or pink, right?		8 Q And includes a broader geographical range
9 A Yes.		9 then does A, does it not?
10 Q The cell phone tower's address is -- what you are referring to now is your copy of this blown up version of State's Exhibit 34, is it not?		10 A The coverage does go off the map.
11		11 Q So, in regard to what you call coverage,
12		12 again, you are referring to the coverage that one would
13 A Yes.		13 expect in an ideal situation to include an area much
14 Q And the cell phone, cell site address is 1500 Woodlawn Drive, is it not?		14 larger than just the location of this cell site,
15		15 correct?
16 A Yes.		16 A Yes.
17 Q And that same address is whether or not the call was made by a cell phone in 651A, right?		17 Q And the coverage area, although this be the ideal that you drew for us to help you explain, in reality doesn't look like this, does it?
18		18
19 A Yes.		19
20 Q Or whether or not it was made in 651C, is that correct?		20 MR. URICK: Objection.
21		21 THE COURT: Overruled.
22 A Yes.		22 MR. WARANOWITZ: It doesn't look like that,
23 Q And if it were made in A on your map which you prepared it includes more than one designated neighborhood, does it not?		23 no.
24		24 BY MS. GUTIERREZ:
25		25 Q Now, sir, in regard to the apartment building
	Page 130	Page 132
1 A I'm sorry, could you rephrase that?		1 that's located near the intersection of Windsor Mill
2 Q On your map which you prepared, if it were originated from 651A, A is the orange?		2 Road and Forest Park Avenue, you call that apartment complex?
3		3
4 A Yes.		4 MR. WARANOWITZ:
5 Q All right. If the cell phone was located in 651, that area would include several different neighborhoods, would it not?		5 A No, we call that Govins Manor.
6		6 Q Okay. You recalled that one, correct?
7		7 A Yes.
8 A Neighborhoods, yes.		8 Q The cell site are antennas on top of the apartment complex, correct?
9 Q Yes. And those neighborhoods would include several different defined subdivisions and listings of different neighborhoods, would it not?		9
10		10 A Yes.
11		11 Q And the apartment complex contains more than one building, does it not?
12 MR. URICK: Objection.		12
13 THE COURT: Do you whether that would include several different neighborhoods in that area or not?		13 A I don't recall.
14		14 Q But the antenna is on top, is it not?
15 MR. WARANOWITZ: Yes it would.		15 A Yes.
16 BY MS. GUTIERREZ:		16 Q And, sir, do you recall how high, how many stories the apartment complex is?
17 Q And that would also be true --		17
18 THE COURT: Overruled.		18 A I don't recall.
19 BY MS. GUTIERREZ:		19 Q You didn't make a notation of that, did you?
20 Q If the cell phone, your Erickson cell phone were used to make a call if it had been located anywhere in 651C, that's the pink, right?		20 A No.
21		21 Q And, sir, the apartment complex upon which your site antennas are covers almost, in addition to
22		22 other areas, almost the entirety of the western edge of
23 MR. WARANOWITZ:		23 Lincoln Park, does it not?
24 A Right.		24
25 Q And that whole area, that pink also includes		25 A Correct.

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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 be designated as Lincoln Park, correct? 25 A Well, we do take into consideration the	1 MR. WARANOWITZ: 2 A Yes. 3 Q And then your test included noting 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
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1 limitations of a cell site system. 2 Q Sir, my question was not notwithstanding 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 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.

<p style="text-align: right;">Page 137</p> <p>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?</p>	<p style="text-align: right;">Page 139</p> <p>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.</p>
<p style="text-align: right;">Page 138</p> <p>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</p>	<p style="text-align: right;">Page 140</p> <p>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</p>

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1 outside of what one it expects it to perform, correct?	1 be located somewhere with it appears pink, right?
2 A Yes.	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?	3 Q But no way can it tell us exactly where it 4 was, can it?
7 A Correct.	5 A No.
8 Q And if a phone doesn't see a signal then it 9 doesn't trigger, correct?	6 Q Or give us an address to name the place where 7 the cell phone was, correct?
10 A Correct.	8 MR. URICK: Objection.
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?	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?
15 A No.	13 MR. WARANOWITZ: No, it can not give you an 14 address of where the phone was.
16 Q And your test can't help us with that, can 17 it? Can it?	15 THE COURT: Very well. Your next question.
18 A I disagree.	16 BY MS. GUTIERREZ:
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?	17 Q On any day, right?
24 A Yes.	18 MR. WARANOWITZ:
25 Q All right. If a cell phone is physically	19 A On any day.
Page 150	Page 152
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?	1 Q You dialed a code which is not the phone 2 number, correct?
4 A Yes.	3 A It could be considered a phone number.
5 Q You would expect that cell phone to trigger 6 that signal inside the five, correct?	4 Q Okay. But it wasn't the phone number that 5 you were dialing, right?
7 A Correct.	6 A It does the same thing a phone number does.
8 Q And for your records to be able to tell us 9 that, correct?	7 Q It does the same thing meaning it triggers 8 the signal at the cell site, correct?
10 A Yes.	9 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?	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 A No, it can not.	14 MR. URICK: Objection.
15 Q And it can't tell us, for instance, if it's a 16 good performance phone, correct?	15 BY MS. GUTIERREZ:
17 A No.	16 Q Were you?
18 MR. URICK: Objection.	17 THE COURT: Overruled.
19 BY MS. GUTIERREZ:	18 MR. WARANOWITZ: No, with an explanation.
20 Q Or a bad performance phone, correct?	19 BY MS. GUTIERREZ:
21 MR. WARANOWITZ:	20 Q Well, my question only asked for a yes or 21 not.
22 A No.	22 MR. URICK: Objection.
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	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

<p style="text-align: right;">Page 153</p> <p>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.</p> <p>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</p>	<p style="text-align: right;">Page 155</p> <p>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.</p>
<p style="text-align: right;">Page 154</p> <p>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</p>	<p style="text-align: right;">Page 156</p> <p>1 Q Mr. Waranowitz, lets go back to the 2 triangular -- 3 MR. URICK: Objection. 4 BY MS. GUTIERREZ: 5 Q Up here on cell site 651, correct? 6 THE COURT: The objection is overruled. The 7 witness has indicated he does not understand Counsel's 8 question, so Counsel may clarify the question and Mr. 9 Waranowitz, if you would follow her direction and 10 again, if you don't understand her question, just say, 11 I do not understand the question. 12 MR. WARANOWITZ: Yes, Your Honor. 13 THE COURT: All right. Very well. 14 BY MS. GUTIERREZ: 15 Q The test that you performed, you performed it 16 you told us in may different locations, correct? 17 MR. WARANOWITZ: 18 A Yes. 19 Q And the test that you performed was the same 20 at every location, was it not? 21 A Yes. 22 Q And it was always performed under your phone, 23 correct? 24 A Yes. 25 Q Your Erickson phone, correct?</p>

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1	A Yes.	1 A No.
2	Q Not a Nokia, correct?	2 Q Eighteen?
3	A Correct.	3 A No.
4	Q Not a Nokia of this certain model, correct?	4 Q Twenty-two?
5	A Correct.	5 A No.
6	Q And the purpose when you performed that test	6 Q Twenty-three, twenty-four, twenty-five?
7	was to determine when you performed the test on the day	7 A No.
8	that you did so, what if any cell site it would signal,	8 Q Twenty-six?
9	correct?	9 A No.
10	A Yes.	10 Q Thirty?
11	Q It was the only purpose of your test,	11 A No.
12	correct?	12 Q Thirty-one through thirty-four?
13	A Yes.	13 A No.
14	Q Now, you never dialed the number, 869-9498 --	14 Q You were never asked to dial any of those
15	MR. URICK: Objection.	15 numbers, correct?
16	BY MS. GUTIERREZ:	16 A Correct.
17	Q Did you?	17 Q And you did not do so, correct?
18	THE COURT: Overruled.	18 A Correct.
19	MR. WARANOWITZ: No, I did not dial that	19 Q And you didn't dial any of your calls at any
20	number.	20 of the locations you were taken by Ms. Murphy at any of
21	BY MS. GUTIERREZ:	21 the specific times listed in call time, were you?
22	Q And you weren't asked to do so, were you?	22 A No.
23	MR. WARANOWITZ:	23 Q No. After you completed all of the tests at
24	A No, I was not asked to do so.	24 the locations that don't appear on the chart, after you
25	Q By anyone?	25 completed them you had reported all of your findings to
	Page 158	Page 160
1	A By anyone.	1 Ms. Murphy because she was there in the car with you,
2	Q But when you didn't dial 340-7374, did you?	2 right?
3	A No.	3 A I reported them as I saw them, yes.
4	Q And if you would look at your sheet, you	4 Q Okay. So, as you went along, you gave her
5	didn't dial the phone number listed in four, did you?	5 the heads up, right?
6	MR. URICK: Objection.	6 A Yes.
7	MR. WARANOWITZ: No.	7 Q And at no time during that day, at any time
8	THE COURT: Overruled.	8 did you tell Ms. Murphy, I did this test, Ms. Murphy,
9	BY MS. GUTIERREZ:	9 and I can tell you --
10	Q Or in five?	10 THE COURT: Ms. Gutierrez, at this point
11	MR. WARANOWITZ:	11 we're going to interrupt because I note that it is now
12	A No.	12 12:30. I'm going to take a lunch and recess at this
13	Q Or in six?	13 time and you will come back after lunch and continue
14	A No.	14 with this questioning. Ladies and gentlemen, we have a
15	Q Or in seven?	15 number of things that are going to be taken place at
16	A No.	16 lunch time. This Court will be tied up at lunch time
17	Q Or in eight?	17 as well.
18	A No.	18 So, we're going to recess from this time until
19	Q Or in nine?	19 2:15 at which time we will return with the continued
20	A No.	20 questioning of this witness. Ladies and gentlemen, as
21	QQ Or in twelve?	21 you go out please leave your note pads face down.
22	A No.	22 Please do not discuss the testimony of this witness or
23	Q Thirteen?	23 anyone else, amongst yourselves or with anyone. Your
24	A No.	24 note pads will be locked away by the Clerk and returned
25	Q Seventeen.	25 to your chairs after the lunch and recess. Please go

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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 mislead in anyway that
 24 I know or am aware of what time you will be done.
 25 Counsel has the right to ask you questions and I can't

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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

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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 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,

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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.

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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.

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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

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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 --

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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.

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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,

Jenn's House

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1 [REDACTED] 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

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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 --

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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.

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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?

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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

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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?

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1 A I recall two cell sites.	1 Q On each occasion that you visited these
2 Q Two cell sites. And, sir, as to the only	2 thirteen locations, correct?
3 other location was Woodlawn High School, correct?	3 A Yes.
4 A I don't remember if there are more at this	4 Q But you know that because you were there,
5 point.	5 right?
6 Q Well, sir, do you recall that Ms. Murphy	6 A Yes.
7 listed thirteen locations that you reported to her	7 Q You knew who had that cell phone in their
8 orally on?	8 hand, did you not?
9 A Yes.	9 A Which cell phone?
10 Q And are you aware that of the list I just	10 Q Cell phone you were using, sir.
11 read you, that Woodlawn would be the thirteenth	11 A Yes.
12 location?	12 Q Okay. There isn't any other cell phone that
13 A Woodlawn High School?	13 we don't know about, is there?
14 Q Yes, sir.	14 A No.
15 A Yes.	15 MR. URICK: Objection.
16 Q And, sir, that's the Woodlawn High School	16 BY MS. GUTIERREZ:
17 that we discussed and you looked up on your map book,	17 Q There isn't a hidden cell phone here, is
18 correct?	18 there?
19 A Yes.	19 THE COURT: Sustained.
20 Q And that was a place that Ms. Murphy took	20 BY MS. GUTIERREZ:
21 you, correct?	21 Q You didn't conduct the test on any other cell
22 A Yes.	22 phone then your own Erickson that you used at the time.
23 Q On that day, that you don't recall when it	23 correct?
24 was?	24 MR. WARANOWITZ:
25 A Yes.	25 A Yes.
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1 Q Now, sir, this morning and we discussed again	1 Q And, sir, at the time you conducted this test
2 that, of course, on the test that you did, you knew	2 you were an engineer for AT&T, were you not?
3 where you were when you were doing the test, right?	3 A Yes.
4 A Yes.	4 Q You were using an Erickson phone, correct?
5 Q And you knew where the cell phone was	5 A Yes.
6 physically located that you caused to originate a phone	6 Q Although you told us that AT&T had issued its
7 call, correct?	7 engineers Nokias, correct?
8 A Yes, the test phone call.	8 A Yes.
9 Q That what you did was punch in a code as you	9 Q You chose the Erickson phone for the test
10 said, correct?	10 that you were going to administer at Ms. Murphy's
11 A Yes.	11 directions, did you not?
12 Q Not a phone number, correct?	12 A Yes.
13 A Not a standard phone number.	13 Q She didn't chose it for you, did she?
14 Q And in any event, not a phone number on	14 A No she did not.
15 State's Exhibit 34, correct?	15 Q And you never substituted another phone for
16 A Yes.	16 any of these tests, did you?
17 Q And you knew the location of the cell phone	17 A No.
18 that would processing the signal, whatever code you	18 Q No, sir, you were asked by Mr. Murphy this
19 entered into it, were it was, right?	19 morning that based on your experience with Nokias in
20 A Yes.	20 your business, whether or not a Nokia would perform
21 Q It was in your hand, right?	21 competently, comparably to the Erickson, correct?
22 A Yes.	22 A Yes.
23 Q And your hand was next to the physical	23 Q And you answered that you thought so, that
24 presence of Ms. Murphy, was it not?	24 was your opinion, right?
25 A Yes.	25 A Yes.

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- 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?

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- 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.

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- 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?

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- 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

<p>1 is suppose to have made those calls, correct?</p> <p>2 A Yes.</p> <p>3 Q Okay. And they also print out the time the</p> <p>4 calls were made?</p> <p>5 A Yes.</p> <p>6 Q And the duration of the call?</p> <p>7 A Yes.</p> <p>8 Q And the cell site it triggered, correct?</p> <p>9 A Yes.</p> <p>10 Q Okay. Those billing records can never tell</p> <p>11 you who had the cell phone in their hand when they made</p> <p>12 the call the computer registers, can they?</p> <p>13 A That is true.</p> <p>14 Q And they never attempt to do so, do they?</p> <p>15 A No.</p> <p>16 Q And all the records from your company or</p> <p>17 anywhere else regarding testing a phone, the records</p> <p>18 don't reveal who had the phone, do they?</p> <p>19 A No.</p> <p>20 Q Or who dialed the numbers?</p> <p>21 A No.</p> <p>22 Q Nor who they were next to, if anyone?</p> <p>23 A No.</p> <p>24 Q And they can't tell us the location of</p> <p>25 whoever it was that may have caused a phone call to be</p>	<p>Page 185</p> <p>1 Q And their's bill may bill them if they called</p> <p>2 me on their cell phone too, might they not?</p> <p>3 A Yes.</p> <p>4 Q And that would be even if my cell phone</p> <p>5 network billed me, correct?</p> <p>6 A I believe so.</p> <p>7 Q But my cell phone record can only bill the</p> <p>8 number that dialed my number, correct?</p> <p>9 A I don't know.</p> <p>10 Q Well, my cell phone records would list the</p> <p>11 number just like it listed in the records you reviewed</p> <p>12 this morning, would it not?</p> <p>13 MR. URICK: Objection.</p> <p>14 THE COURT: Sustained.</p> <p>15 BY MS. GUTIERREZ:</p> <p>16 Q Now, sir, those records, whatever it is they</p> <p>17 list, can never tell me who actually dialed the number,</p> <p>18 can it?</p> <p>19 MR. URICK: Objection.</p> <p>20 THE COURT: Sustained. This has been asked</p> <p>21 and answered at least twice.</p> <p>22 BY MS. GUTIERREZ:</p> <p>23 Q Sir, if I looked at my records and it</p> <p>24 designated a call, if I recalled making that call then</p> <p>25 I would know I made it, correct?</p>
<p>1 made --</p> <p>2 A No.</p> <p>3 Q From that particular phone, correct?</p> <p>4 A Correct.</p> <p>5 Q Just like your testing on your phone, that</p> <p>6 day that you don't remember, you can only tell us what</p> <p>7 your phone did according to you, right?</p> <p>8 A Correct.</p> <p>9 Q And the records also can't tell us, they</p> <p>10 record, cell phone records record when, if I own a cell</p> <p>11 phone and somebody calls me on my telephone, I don't</p> <p>12 ask them to call me, but they call me anyway, I pay for</p> <p>13 that, don't I?</p> <p>14 A I think so.</p> <p>15 Q If I'm charged by the minute of use, right?</p> <p>16 A I think so.</p> <p>17 Q Even if I don't know the person and it's a</p> <p>18 wrong number, they reach me on my cell phone and I have</p> <p>19 to talk to them for thirty seconds to figure out they</p> <p>20 dialed the wrong number, I still get billed for that</p> <p>21 thirty seconds, do I not?</p> <p>22 A Yes.</p> <p>23 Q Even though I don't know the person who</p> <p>24 originated the call on another unknown phone, correct?</p> <p>25 A Yes.</p>	<p>Page 186</p> <p>1 MR. URICK: Objection.</p> <p>2 THE COURT: Sustained.</p> <p>3 BY MS. GUTIERREZ:</p> <p>4 Q Sir, if I didn't recall making the call and I</p> <p>5 enquired of your network to tell me who made the call</p> <p>6 from my cell phone it couldn't tell me that, could it?</p> <p>7 MR. URICK: Objection.</p> <p>8 THE COURT: Sustained. We've asked and</p> <p>9 answered this line of questioning, please move on.</p> <p>10 BY MS. GUTIERREZ:</p> <p>11 Q Sir, many phones of many makes and models</p> <p>12 have memory capability, do they not?</p> <p>13 MR. WARANOWITZ:</p> <p>14 A Yes.</p> <p>15 Q That record within the phone itself, a list</p> <p>16 of numbers that's called, does it now?</p> <p>17 A Yes.</p> <p>18 Q And that would include Erickson phones that</p> <p>19 have memory capability, correct?</p> <p>20 A Yes.</p> <p>21 Q And Motorola phones that have memory</p> <p>22 capability, correct?</p> <p>23 A Yes.</p> <p>24 Q And Nokia phones that have memory capability,</p> <p>25 correct?</p>

	Page 189	Page 191
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?	1 examine the memory of this phone?
6	A In most cases, yes.	2 A Before now, no.
7	Q But that's the limit of what it can tell you, 8 isn't that correct?	3 Q And you, of course, did not, did you?
9	A Yes.	4 A I did not.
10	Q It can't tell you who placed the calls, can 11 it?	5 MS. GUTIERREZ: Nothing further.
12	MR. URICK: Objection.	6 THE COURT: Anything further from the State?
13	THE COURT: Sustained.	7 MR. URICK: Extremely briefly, Your Honor.
14	BY MS. GUTIERREZ:	8
15	Q As to the memory capability, sir, can it?	9 REDIRECT EXAMINATION
16	MR. URICK: Objection.	10 BY MR. URICK:
17	THE COURT: Overruled. As the memory 18 capabilities of the phone can it tell you who made the 19 call?	11 Q Lets cut to the chase here.
20	MR. WARANOWITZ: No, it can not.	12 MS. GUTIERREZ: Objection.
21	BY MS. GUTIERREZ:	13 THE COURT: Mr. Urick, without the added 14 commentary you make ask your first question.
22	Q And it can not tell you as to the memory 23 capability the identity of who received the call, can 24 it?	15 BY MR. URICK:
25	MR. WARANOWITZ:	16 Q Cell phone records are computer records 17 maintained by the AT&T Wireless Corporation, are they 18 not?
		19 MR. WARANOWITZ:
1	A Yes.	20 Q They show that a particular number on a 21 particular date either dial up or received a call, is 22 that correct?
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?	21 A Correct.
6	A I've had a Nokia 6160 and it has memory 7 capability.	22 Q That that call went through a particular cell
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	
		Page 190
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	
		Page 192
1	A Correct.	
2	Q And in order for that to have occurred the 3 phone had to be somewhere within the coverage area for 4 that particular cell site sector?	
5	A Correct.	
6	Q And if somebody, drawing your attention now 7 to my ten and eleven, what is now in evidence as 8 State's 34. If somebody were in Lincoln Park with an 9 AT&T wireless subscriber phone and two calls those 10 calls would be recorded in the computer records, 11 correct?	
12	A Correct.	
13	Q And the would indicate the cell site for 14 Lincoln Park, which L689C, is that correct?	
15	A Correct.	
16	Q Can I see State's 31 please. Now, Ms. 17 Gutierrez showed you the business records for the cell 18 phone, showed to you the account billing date. I'd 19 like you to look on there and see if you can see a 20 listing for the service user.	
21	A Next to the text service user I see Adrian M. 22 Syed.	
23	Q And does there -- that record indicate when 24 the order was placed or the service was started?	

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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 RECROSS 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?

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1 A Yes.

2 Q If the cell site were functioning properly,
3 correct?

4 A Correct.

5 Q And if the cell phone were operating at a
6 good level, correct?

7 A Correct.

8 Q And that could literally thousands of
9 location inside a sector, one of three sectors serviced
10 for coverage by that cell site, correct?

11 A Correct.

12 Q There is no cell site tower inside of Lincoln
13 Park, is there?

14 A No there is not.

15 Q And there's no building upon which an antenna
16 that becomes a cell site is erected that is inside
17 Lincoln Park, is there?

18 A No.

19 Q And there's no water tower or other structure
20 to which an antenna or antennas are attached, is there?

21 A No.

22 Q So all you can tell us about Lincoln Park is
23 that you were taken to a location inside there by MS.
24 Murphy, correct?

25 A Yes.

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1 Q And shown and told that this is where a body
2 was buried, correct?

3 A Correct.

4 Q And you barely had to go inside the area
5 bounded by the Jersey walls, correct?

6 A I did not go behind the Jersey walls.

7 Q Okay. And you didn't go outside of them in
8 anyway?

9 A No.

10 Q And you caused a phone called to be
11 originated by punching a code, right?

12 A Yes.

13 Q So, as to that date, the date which you do
14 not currently remember, you can tell us what your phone
15 did, correct?

16 A Yes.

17 Q But because it wasn't a billable call you
18 have no record of that phone call, correct?

19 A No, I do not.

20 Q Of the cell site it triggered?

21 A No, I do not.

22 Q Of the duration of the call?

23 A No, I do not.

24 Q Of the time that you made that call, correct?

25 A No, I do not.

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1 Q But you can tell us about it because you did
2 it, right?

3 A Yes.

4 Q And you told Ms. Murphy about what we did,
5 correct?

6 A Yes.

7 Q And you relied on her to write down your
8 information as you told it, correct?

9 A Yes.

10 Q You never wrote down your own information,
11 correct?

12 A Correct.

13 Q And you never generated any documentation
14 that would show that what you told us?

15 MR. URICK: Objection.

16 THE COURT: I'm sorry, I didn't hear the end
17 of that question.

18 MS. GUTIERREZ: You never doc -- you never
19 generated any documentation to that effect, that which
20 you told us, did you?

21 THE COURT: Overruled.

22 MR. WARANOWITZ: Correct.

23 THE COURT: And the answer is correct.

24 BY MS. GUTIERREZ:

25 Q And, sir, if you had generated the

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

5 MR. WARANOWITZ:

6 A Can you ask that again?

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

15 A Correct.

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

20 A Correct.

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

23 A Correct.

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

1 expertise, right?

2 A In this situation I would not.

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

7 A Yes.

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

11 A Yes.

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

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

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

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

3 A Yes.

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

8 A Yes.

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

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

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

15 A I don't recall.

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

18 A No.

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

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

25 Q Okay. Because that's outside of your

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

3 Q And, sir, --

4 A That neighborhood.

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

7 A We have customer complaint records, yes.

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

11 MR. URICK: Objection.

12 THE COURT: Overruled.

13 MR. WARANOWITZ: Yes.

14 BY MS. GUTIERREZ:

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

18 MR. WARANOWITZ:

19 A No.

20 Q And did you do so?

21 A No.

22 THE COURT: Nothing.

23 MS. GUTIERREZ: No.

24 THE COURT: Very well. Anything further?

25 MR. URICK: No, thank you.

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1 THE COURT: May this witness be excused at
 2 this time, Mr. Urick?
 3 MR. URICK: At this time.
 4 MS. GUTIERREZ: Yes, Your Honor.
 5 THE COURT: And released from the summons of
 6 subpoenas?
 7 MR. URICK: Not from the State, Your Honor.
 8 THE COURT: Not for the State?
 9 MR. URICK: No.
 10 THE COURT: And for Ms. Gutierrez?
 11 MS. GUTIERREZ: I don't believe I issued a
 12 subpoena, I'm not sure. If I did, yes he's released.
 13 THE COURT: All right. So, you may need to
 14 call him again, is that what you're saying?
 15 MR. URICK: Yeah, I just -- I don't know what
 16 I might -- if anything in rebuttal, so I don't want to
 17 release this witness.

18 THE COURT: Very well. I must advise you,
 19 sir, that you may not discuss your testimony with
 20 anyone. You must leave this courtroom at this time,
 21 you are a sequestered witness and based on what Mr.
 22 Urick is saying you may be called again. So, since the
 23 State would be calling you, please keep in contact with
 24 the State's attorney's office to find out when you'll
 25 be called. May he be released today? Will you need

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1 because that's the page that you had him reference.
 2 MS. GUTIERREZ: Well, I object to that. That
 3 marking was not made at the time of questioning. I'd
 4 object.
 5 THE COURT: No, I'm not asking that any
 6 markings be made on the map, but it is going to be
 7 marked as an exhibit at my request and the page that
 8 was referenced by the witness at the time the witness
 9 testified will be noted for the record and I'm asking
 10 the clerk to do that.

11 MS. GUTIERREZ: I'm not clear, Judge, if I
 12 did not do so I would move that exhibit into evidence.
 13 THE COURT: Any objection to that Court's
 14 exhibit being made part of the evidence?

15 MR. URICK: No.
 16 THE COURT: Very well. Let it be admitted.
 17 All right. And, sir, you may then go.
 18 MR. WARANOWITZ: Pages 32, 33 and 34.
 19 THE COURT: Very well.
 20 MR. WARANOWITZ: Let me make sure.
 21 THE COURT: For the record the witness is
 22 flipping through to make sure there are no personal
 23 papers belonging to him contained in the book.
 24 MR. WARANOWITZ: Is this the Defense?
 25 THE COURT: The was the Court's.

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1 him back today?
 2 MR. URICK: No, no.
 3 THE COURT: So, he can be released today?
 4 MR. URICK: Yeah. May I speak to him for
 5 just a moment as he walks out?
 6 THE COURT: You're going to let him know in
 7 terms of scheduling?
 8 MR. URICK: Yeah.
 9 THE COURT: Very well, you may speak to Mr.
 10 Urick with regard to any scheduling. Thank you very
 11 much, sir.
 12 MR. WARANOWITZ: Thank you, Your Honor.
 13 THE COURT: Yes.

14 MR. WARANOWITZ: Does the Court need
 15 information (inaudible)
 16 THE COURT: Those items that have been marked
 17 must remain.
 18 MR. WARANOWITZ: Should I mark the pages in
 19 here that I looked at?
 20 THE COURT: Yes.
 21 MS. GUTIERREZ: Your Honor, I'm going to
 22 object to the witness now marking the exhibit.
 23 THE COURT: No, these were the exhibits that
 24 were already marked. He's just showing the clerk which
 25 page it was that he opened and I ask that he do that

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

<p style="text-align: right;">Page 205</p> <p>1 THE COURT: Can you slide them along to the 2 side as I had asked before and as you do that your next 3 witness, is that witness in the hallway?</p> <p>4 MR. URICK: Yes.</p> <p>5 THE COURT: And that is?</p> <p>6 MR. URICK: Mr. Wiles.</p> <p>7 THE COURT: Can you ask that Mr. Wiles, 8 Deputy Church, have Mr. Wiles come into the courtroom 9 please.</p> <p>10 MS. GUTIERREZ: Defense, may we approach?</p> <p>11 THE COURT: Certainly. Why don't we give 12 Counsel an opportunity to move some of these items. 13 Just have a seat for a moment, sir. Thank you, 14 Counsel, for your assistance in moving those items. 15 All right.</p> <p>16 (Counsel and Defendant approached the bench 17 and following ensued:)</p> <p>18 MS. GUTIERREZ: Judge, I don't know if I 19 misunderstood --</p> <p>20 THE COURT: One second, one second. You were 21 going to let me know if we needed to take a break.</p> <p>22 MS. GUTIERREZ: Yes, I thought I made it 23 clear that I knew that I needed a break.</p> <p>24 THE COURT: Okay.</p> <p>25 MS. GUTIERREZ: And that I would like to take</p>	<p style="text-align: right;">Page 207</p> <p>1 that juror particularly since she let us know ahead of 2 time and he doesn't want to take a break given just how 3 long this case is taking particularly in light of what 4 he brought to my attention if we recall we told this -- 5 the jury panel that it was likely to take two weeks and 6 we're way beyond that. Not through anybody's fault but 7 that that's part of his concern to give up another day 8 for this panel when we're clearly going to go into the 9 middle of next week which would be the fourth calendar 10 week, although we haven't sat continuously throughout 11 that time. So, his preference would be to allow this 12 juror to go and replace her with an alternate.</p> <p>13 THE COURT: I must say that we did have some 14 snow days so it effected --</p> <p>15 MS. GUTIERREZ: Yes, oh, I know.</p> <p>16 THE COURT: Our ability to proceed. Does the 17 State have any objection?</p> <p>18 MR. URICK: We said we wouldn't object one 19 way or the other, we stated our preference but we have 20 no objection to the other way as well.</p> <p>21 THE COURT: In order to accommodate the 22 witness --</p> <p>23 MS. GUTIERREZ: We have no objection to doing 24 it now, it doesn't seem to make sense to have her --</p> <p>25 THE COURT: Juror --</p>
<p style="text-align: right;">Page 206</p> <p>1 it now and then walk up to my office and go test my 2 blood sugar and then see how I'm doing.</p> <p>3 THE COURT: We can do it, that's fine.</p> <p>4 MS. GUTIERREZ: Okay. I thought that I was 5 misunderstood.</p> <p>6 THE COURT: I just wanted to make sure that 7 we at least made the transition to the next witness, 8 then I can advise this witness --</p> <p>9 MS. GUTIERREZ: Right.</p> <p>10 THE COURT: What he is to do and then we can 11 at that point advise the jury and take our afternoon 12 break.</p> <p>13 MS. GUTIERREZ: Okay.</p> <p>14 THE COURT: All right. And we'll do that at 15 this time.</p> <p>16 MR. URICK: What about the other matter for 17 Friday? We were going to get a --</p> <p>18 THE COURT: Yeah, what's your feeling?</p> <p>19 MS. GUTIERREZ: I think that it is Mr. Syed's 20 preference that he doesn't want to take a break in 21 trial.</p> <p>22 THE COURT: Okay.</p> <p>23 MS. GUTIERREZ: And since there are four 24 alternates, all of whom have clearly been paying 25 attention, he certainly doesn't want to inconvenience</p>	<p style="text-align: right;">Page 208</p> <p>1 MS. GUTIERREZ: Right, to make her come back 2 if she's not going to, you know, participate in 3 deliberations. It seems a waste to make her come back, 4 so we have no objection to substituting her now.</p> <p>5 THE COURT: I'll ask her as we get ready to 6 take the break to remain.</p> <p>7 MS. GUTIERREZ: Okay. That's fine.</p> <p>8 THE COURT: Or would you like me to do it at 9 the end of the day?</p> <p>10 MR. URICK: She probably --</p> <p>11 THE COURT: Be easier to do it at the end of 12 the day since she's already here.</p> <p>13 MS. GUTIERREZ: Well, I guess my sense is, 14 Judge, that if she's going to go then we should let her 15 go rather than make her sit when we're the ones that 16 know the truth that it matters her not that she sits. 17 We should just let her go.</p> <p>18 THE COURT: And your position would be that 19 juror number -- alternate number one would replace her 20 as juror number, six, correct?</p> <p>21 MS. GUTIERREZ: Yes, well accept, Judge, not 22 to waive our previous objection if you recall --</p> <p>23 THE COURT: To the voir dire selection 24 process.</p> <p>25 MS. GUTIERREZ: Right, that it would have</p>

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

4 MR. URICK: No objection to alternate one.

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

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

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

18 MR. URICK: Not today.

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

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1 strike that.

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

12 (The jury was excused from the courtroom.)

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

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

21 (Brief recess.)

22 (Jury not present upon reconvening.)

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

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

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

13 MS. GUTIERREZ: That's correct.

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

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

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

19 MS. GUTIERREZ: I explained that to him.

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

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1 morning at 9:30, do you understand?

2 MR. WILES: Yes, Judge.

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

5 MR. WILES: Thank you.

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

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

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

13 MR. URICK: Okay.

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

18 MR. URICK: Thank you, Your Honor.

19 (The jury returned to the courtroom.)

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

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

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

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

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

6 (The jury was excused from the courtroom.)

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

10 JUROR: Yes, Friday morning.

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

15 JUROR: Okay.

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

20 JUROR: Okay.

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

25 JUROR: Yes it does.

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

10 JUROR: Okay.

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

13 JUROR: Okay.

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

16 JUROR: Okay. Well, thank you.

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

23 JUROR: Okay.

24 THE COURT: All right.

25 JUROR: All right. Well, thank you.

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

3 JUROR: Oh, okay.

4 THE COURT: Leave my pads.

5 JUROR: Okay.

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

8 JUROR: Sure.

9 THE COURT: Very well. Thank you again.

10 JUROR: All right. Thank you.

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

16 JUROR: Okay.

17 THE COURT: Thank you.

18 JUROR: All right.

19 THE COURT: Have a good evening.

20 JUROR: All right. Thank you.

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

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1 attorneys together and the other matter.
 2 So, while they're getting themselves together we
 3 certainly could start with some testimony and I believe
 4 we will be picking up with the cross examination of Mr.
 5 Wiles, is that not correct?

6 MS. GUTIERREZ: Yes, Your Honor.

7 THE COURT: Very well. I'll see you all
 8 tomorrow morning at 9:30. This Court stands in recess
 9 until 9:30 tomorrow morning.

10 BAILIFF: All rise.

11 (The trial was recessed for the day.)

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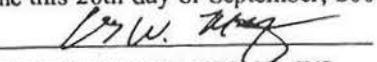
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CERTIFICATE

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

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

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


 CHRISTOPHER W. METCALF, CVR
 Official Court Reporter

CHRISTOPHER W. METCALF, CVR

Official Court Reporter

507 Courthouse West

Baltimore, MD 21202

