

April 9, 2008 volume 1 Jury Selection.txt
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1 SANTA ANA, CALIFORNIA; WEDNESDAY, APRIL 9, 2008; 8:00 A.M.

2 THE COURT: We are on record. I want to take the
3 jury questions for a moment and try to give you as much
4 latitude as possible, but I agree with the questions such
5 as: what is your current job and employer? And what is
6 your current spouse's and your spouse's current job as an
7 employee? Have you ever been self-employed and managed
8 supervision? I could save you a lot of time in asking those
9 questions.

10 Maybe something about education. In fact, when we
11 get to questions like number five, does anyone hire or fire
12 people as a part of their job, I am not going to ask that.
13 It's not the Court's position to ask that.

14 what is the effort that you had in school? If you
15 want to use that precious 20 minutes you have with the first
16 group, I am not precluding these questions. I am just not
17 going to ask them.

18 Number eight I will ask. Number nine, does anyone
19 have a computer programming background? Of course. Does
20 anyone know what an IP or internet protocol address is?
21 Without getting too specific I will ask that question for
22 you, because at least it gives you an idea of the

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sophistication.

24 Do you own a home computer or have you ever owned
25 one? Certainly I'll ask that question. I always ask if

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1 they own Blackberries or something more sophisticated to
2 give you an indication. What I won't do is ask what I call
3 the broader questions. Number 12, is there anyone here that
4 believes there is too much technology in our society? No.
5 Now, am I precluding you from doing that? No.

6 Have you ever been involved in testing a computer
7 company's product or reverse engineering? Yes, I will ask
8 about reverse engineering for you. It takes you off the
9 hook. So I am the genesis of that.

10 But number 14, do you believe that reverse
11 engineering is always wrong or shouldn't be taken too far?
12 Absolutely not. That's not a question that a Court would
13 normally ask.

14 Fifteen, I will alert them that witnesses are
15 coming from Canada, Israel, Europe, I think Switzerland, and
16 try to forewarn them, you know, about possible bias or
17 prejudice that some may have. But I won't ask the last part
18 of question. It goes on. I will simply ask about persons
19 who were foreign born.

20 I am not going to ask them if they have ever been
21 accused of lying, fraud, or cheating. If I was a juror and
22 you asked me that question -- but are you precluded?
23 Absolutely not. Those start to appear to be jury consultant
24 questionnaires without much litigation experience. That's
25 why I assume it's a jury consultant questionnaire.

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1 Have any of you had a litigation dispute? I'll

2 make that general in court. I simply want to know if they
3 have been involved in court proceedings or filed a complaint
4 of some type against a party. I'm not going to get into
5 acts of unfair competition or the digital millennium -- I'm
6 not going to do that. I just want to know if they have had
7 general litigation issues in a court of law or if they have
8 been a witness. That's critical to me.

9 The question in number 18 is an interesting
10 question because does anyone here have strong feelings or
11 reactions, positive or negative, for any of the parties in
12 this case? EchoStar may not have an owner who has had the
13 same notoriety, for instance, that NDS and DirectTV have had
14 in this merger.

15 I don't know if that's negative or positive. It
16 seems to me it's not strong feelings or reactions against a
17 company because I don't think most people will recognize NDS
18 or EchoStar. Most common people think of DirectTV maybe; but
19 EchoStar and NDS, I doubt it.

20 The true issue you have to decide is do you want
21 me to mention Mr. Murdoch, or do you want to leave that to
22 you, because his name is going to come out during this
23 trial, hopefully on your side a positive, and of course on
24 the plaintiff's side in a negative way. So in a moment
25 you're going to tell me that, if you want me to mention Mr.

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1 Murdoch or some other person that you might have who you
2 think has made the news on EchoStar. Tell me and I will
3 take the sting out of it for you. Otherwise I probably
4 won't even ask this question.

5 I can ask them if you know Mr. Murdoch. The
6 danger of that is that he seems now to be so involved with
7 NDS when in fact there is a lot of transactions that have
8 occurred in the meantime that were so close in nature.
9 First of all, he is not going to be kept out of the lawsuit,
10 so I will mention it.

11 I am not going to talk about 19, positive or
12 negative reactions to those who bring lawsuits. America is
13 a wonderful country because people can bring a lawsuit.
14 It's not vigilanteism. Is there anyone who could not award
15 a substantial sum of money for the plaintiff? No,
16 absolutely not. It assumes that there is going to be money
17 awarded.

18 Do any of you have any experience, training, or
19 specialized business knowledge in business as an executive
20 decision maker or board member? Yes, I will ask that.

21 Twenty-two, would you describe yourself as a
22 pessimist or glass-half-empty type person? Not a chance.
23 Twenty-three, would you describe yourself as suspicious or
24 believe that -- no. Twenty-four, do you believe that most
25 companies can compete against each other, play by the rules,

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1 and interfere with one another? No. Those are actually --
2 I am not going to give those questions.

3 Twenty-five, who here would say that you sometimes
4 make important spur-of-the-moment decisions? No, absolutely
5 not. You have done a wonderful job but not in a court of
6 law.

7 Finally my greatest concern turns out to be these
8 proposed questions. I am going to want to know if a loved
9 one or family has ever been convicted of a felony. That's a
10 tough question to ask because you're going to have a number
11 of witnesses who testify to have felony backgrounds.

12 And you're going to get an across-the-board
13 response. It's going to be varied. Most people who have
14 loved ones who have felonies, oftentimes the system wronged
15 that loved one and are more than happy to set that straight
16 in another court of law.

17 Other people have a tremendous reaction the other
18 way. Once a felon, always a perjurer or a liar. So let me

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19 ask that tough question about felonies.

20 Finally, the less talking that I do and the more
21 we can get the jurors talking about themselves, the more
22 indication you will have of who they are. So for you jury
23 commissioners and you lawyers, if we can have them start
24 going through, well, this is what I did, this is what my
25 wife does. I read this newspaper. I am sophisticated in

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1 terms of internet protocol.

2 If we can get them start to speak, you discover
3 two things. First, does the person have a language problem
4 without embarrassing them? Second, what do they sound like?
5 Are they articulate when they speak to you? Is this a
6 thoughtful person or a non-thoughtful person.

7 Finally you get more information out of what
8 people want to tell you because otherwise you get this yes
9 or no to your questions.

10 Now, the one question I am going to start with is
11 there is an award of hundreds of millions or even billions
12 of dollars at the end of the case. It presupposes, advises
13 the jury. The best you can say is if there was an award of
14 damages, are you able to give damages? But you're not going
15 to get into hundreds of millions of dollars or billions of
16 dollars. It's prejudicial.

17 For the jury commissioner or the jury personnel,
18 it places a tremendous strain on you, because although you
19 have been very helpful in your focus groups, et cetera, it
20 really becomes an attorney decision.

21 Now, we've only got three preempts and it's going
22 to move quickly. We're going to have this jury within two
23 hours.

24 Now, the second thing is the rulings. I just had
25 them.

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1 MR. SNYDER: Your Honor, when there is an
2 appropriate moment, there are a couple of status issues that
3 I want to bring to the Court's attention.

4 THE COURT: I'm sure there are. Right before
5 litigation there always are. It never fails. I won't give
6 my time to them right now.

7 Let me say to the audience, because many of you
8 represent DirectTV, you are not only involved, you're
9 peripherally involved as house counsel, for instance, for
10 EchoStar and NDS, et al. These attorneys have been under
11 tremendous pressure to get people to court, and they have my
12 respect.

13 when they came to my court -- I want you to listen
14 very carefully because you can be of help to me -- each side
15 was prepared to present their case through a series of
16 depositions, and what was about to occur through these
17 depositions were that the world's foremost alleged pirates,
18 hackers, or people in the world on both sides who chose to
19 appear would appear, and those who chose not to appear
20 because they were outside the jurisdiction of this court
21 were choosing not to appear.

22 I think that that left the jury in a position of
23 not being able to view demeanor, credibility; and it put the
24 trial attorneys in a difficult position because they started
25 depositions three years ago in this case.

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1 what they do -- let's say in 2005 they wish they
2 could have had another deposition by 2007 because more
3 information came to them. So if we could have all the
4 depositions now, they would have been in a lot better
5 position when they found themselves early in the litigation.

6 Number two, some of your companies were a little

7 reluctant on both sides to hand over information in a timely
8 fashion. I find that to be co-equal. So it left the
9 attorneys scrambling for source code at the last moment,
10 having to retalk to their experts at the last moment.
11 Therefore I think the attorneys in my court have been
12 exemplary. I don't think your clients have been,
13 respectfully, on both sides.

14 I think there has been delay, obfuscation, and
15 it's been somewhat co-equal. It's hard to judge who has
16 been the person who has been the most reluctant at this
17 point. Unless people appear in this court, there will be
18 adverse inferences given by this Court which will be
19 devastating to that side.

20 So I am very pleased to see Mr. Kudelski is
21 coming, because from your standpoint, this lawsuit would
22 have probably been over. I am very pleased to see the
23 people from Israel coming and the other side request it.
24 From your standpoint I don't think you could explain why
25 some of those people weren't here.

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1 You need to continue to cooperate with this Court.
2 witnesses will be in this court other than a few limited
3 rulings we've made, or adverse inferences will be given by
4 this Court. My jury is not going to be in a position of
5 deciding tactically between the two of you who you choose to
6 present in my court for tactical reasons and who is in
7 Switzerland or Israel or Canada, and who decides not to come
8 after some of the ludicrous depositions that took place.

9 Many of these witnesses decided to answer
10 questions that they chose to answer and to ignore the
11 others. So these people need to be in court. And whatever
12 benefit you can give to me as house counsel, stemming that
13 back to your corporate heads and the owners of your
14 companies, will be very much appreciated.

15
16 cooperation, the adverse inferences will be damning, and I
17 use that word for the side that I feel has some tenuous
18 nexus to a particular witness.

19 Now, counsel have heard this how many times?

20 MR. SNYDER: Several, Your Honor.

21 THE COURT: Several.

22 MR. STEWART: Many.

23 THE COURT: You as house counsel haven't heard it.
24 You will hear it once, and that will be the last time.

25 Okay. The rulings are as follows. EchoStar

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1 indicated during an informal discussion that it intended to
2 present evidence of Graham James, as well as an alleged
3 forged e-mail from Len Withall to Graham James to establish
4 part of NDS's modus operandi in giving a competitor's code
5 to hacker and pirate employees. Specifically EchoStar
6 claims that withall provided James with a portion of the
7 Canal+ code and told him, quote, "You can have fun with it,"
8 allegedly a suggestion that James distributed the code for
9 profit.

10 From the offer of proof presented by EchoStar, it
11 is not clear how this testimony fits within the larger modus
12 operandi such that it could be admitted for character
13 purposes. For one, it is not clear that giving an employee
14 a competitor's code is particularly idiosyncratic within the
15 satellite industry, nor is it clear how this conduct
16 corresponded with conduct alleged in the case or the
17 incident action.

18 I am particularly concerned about this portion of
19 James's testimony if James does not testify live at trial to
20 illuminate these foundational issues. Nothing, however,
21 precludes EchoStar from presenting foundational evidence to
22 demonstrate generally that giving a code to employees under
23 suspicious circumstances is a unique and part of the scheme

24 alleged in this lawsuit.

25 At the present time, though, without some definite

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1 assurances that James will appear -- I was particularly
2 concerned about this portion of Mr. James's testimony if
3 James did not testify live at trial to illuminate these
4 foundational issues. There is nothing that precludes
5 EchoStar once again from presenting foundational evidence to
6 demonstrate generally giving code to employees under
7 suspicious circumstances was unique and part of the scheme.

8 At the present time without some definite
9 assurance that James will appear, other evidence about his
10 testimony relating to a larger pattern or practice -- I
11 could not admit this evidence.

12 Accordingly, I am not going to permit through the
13 opening statement this aspect of James's testimony. I will
14 give you an opportunity to establish the foundation in the
15 future when I know he is actually here.

16 So in a sense you are not prejudiced. One, you
17 have got DirectTV, but I agree with counsel for NDS that I
18 need to know that James is here, so your opening statement
19 excluding this is diminimus.

20 Concerning the defendants seeking to admit the two
21 criminal convictions of Ecosphere International Corporation
22 to impeach plaintiff EchoStar Communications Corporation
23 through testimony of its chairman and CEO, Charles Ergen --
24 is Mr. Ergen in court today?

25 MR. WELCH: No, sir, he's not. He will be here

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1 later.

2 THE COURT: Two things happened that I would think

3 would be very unfair from NDS's position, and that is, Ergen
4 was not designated to be a witness. Yes, Ergen's deposition
5 had been taken, but I think that -- I am not satisfied that
6 that was as complete as NDS would have liked it to have
7 been. Ecosphere IC was a corporate subsidiary of Ecosphere
8 Corporation. Ecosphere, as I understand it, was principally
9 owned and controlled by Mr. Ergen.

10 In the deposition testimony Mr. Ergen stated that
11 he probably owned 40 percent of Ecosphere IC. From the
12 depo, I don't know who the other owners are. I am assuming
13 he's a majority shareholder; therefore, he may be a
14 controlling party and most likely is, but I want a better
15 record for the Circuit.

16 Ecosphere IC was dissolved in 1992, and your claim
17 on behalf of EchoStar has been this is so far back in time,
18 Judge. Well, Ecosphere was reorganized into DISH, Ltd., in
19 1993. I need to know as a record in my court, not by an
20 offer of proof, what was Ergen's position. Was he a
21 majority shareholder of DISH? Was he the CEO? Was he the
22 CEO as well as of Ecosphere IC that was dissolved in 1992,
23 not just a shareholder and also had a managerial position?

24 In 1995, it became a subsidiary of EchoStar CC
25 through DISH, Limited. On March 8th, 1991, Ecosphere IC

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1 pled guilty to criminal charges in Texas involving
2 violations of federal export control laws. Ecosphere IC
3 pled guilty to similar charges in Arizona on April 29th,
4 1991. Ecosphere IC's criminal convictions were based on the
5 acts of two employees acting on behalf of Ecosphere IC who
6 engaged in unlawful exploitation of commodities.

7 Let me stop there for a moment. I don't know the
8 size of this company. I don't know if this is a
9 closely-held company. I don't know how actively involved
10 the Court might assume that Mr. Ergen was. Was it a

11 thousand people in the company? Was it a thousand people?
12 I want to talk to Mr. Ergen about that. Or was it five
13 people where Mr. Ergen might be expected to have much more
14 access to them?

15 The problems stem from -- while Ecosphere IC's
16 criminal convictions were based on the acts of two employees
17 acting on behalf of Ecosphere IC who engaged in unlawful
18 exportation of commodities, the problems stem from issues
19 related to Ecosphere IC's compliance procedure program,
20 which seems unrelated.

21 Now, remember, when felonies are introduced,
22 they're introduced for impeachment purposes. I'll give you
23 an example. I commit a burglary, but I am impeached on the
24 sale -- on possession with intent to sale of narcotics.
25 It's the intent, the person who's impeached, it's a moral

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1 turpitude. There doesn't have to be a nexus between the
2 two. Priors, prior felony convictions, were put in just as
3 you so ably argue because of the moral turpitude aspect of
4 that. So there doesn't have to be a relationship, and there
5 doesn't have to be a time qualification. If Mr. Ergen is
6 continually involved and goes from Ecosphere IC to DISH to
7 EchoStar, that is a continuing relationship. And I don't
8 think courts should stand in the way of what I call the
9 shell game.

10 The problem, though, is the sentencing memorandum
11 found that Ecosphere IC was not a load company, but the
12 target here is Mr. Ergen. Defendant seeks to admit these
13 two convictions in order to impeach EchoStar CC through its
14 officer, Mr. Ergen. In certain circumstances, corporate
15 convictions can be used for imprisonment purposes.

16 With respect to a testifying witness, a corporate
17 conviction may be used for impeachment but only if that
18 witness actually participated in a criminal conduct. Well,
19 I don't know enough yet to make an intelligent ruling about

20 Ecosphere IC. I would have a much greater assumption if
21 this was a five-employee company than their actual
22 thousand-employee company.

23 Now, with not being listed as a witness, and using
24 my discretion and allowing him to testify when I could have
25 excluded him, puts NDS in the position of not having those

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1 answers to ably argue to me whether that impeachment
2 material should be in front of the jury.

3 Courts have also allowed corporate criminal
4 convictions to be used for impeachment purposes against a
5 corporation itself. Here it could get muddy. It could be
6 Mr. Ergen and it could be the corporation, and I need to
7 sort out those rulings. There hasn't been enough
8 information supplied to this Court. I cite Hickson
9 Corporation versus Norfolk Southern for the proposition of
10 allowing a corporation's criminal conviction to impeach that
11 corporation per the testimony of its employees.

12 In Stone versus Bard, permitting the use of a
13 company's criminal conviction to impeach that company when
14 its president testified regarding the company's reputation
15 for quality, integrity, and service. So I want to know what
16 position did Mr. Ergen hold in Ecosphere IC, and I want to
17 hear it from Mr. Ergen under oath.

18 Defendants first seek to use the evidence to
19 impeach Ergen as an individual. However, defendants have
20 not sufficiently established at least at this time a
21 foundation to show Ergen's participation in the criminal
22 conduct. I deplore the fact of using my discretion and
23 allowing you to introduce Ergen at the last moment, Mr.
24 Hagan. And I gave you that ruling -- and also simply
25 allowing the impeachment out of him. I don't think that's a

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1 fair ruling. You do it by the law.

2 The defense must show some participation either by
3 direct or managerial involvement, and the deposition wasn't
4 able to cover that at the time. I don't even think you
5 suspected Mr. Ergen would ever be a witness.

6 Now, the evidence shows that Mr. Ergen was a
7 significant shareholder in Ecosphere IC but does not speak
8 to his involvement once again in Ecosphere IC. Thus more of
9 a foundation is needed, and specifically more information is
10 needed about Ergen's role in Ecosphere IC and his knowledge
11 of its operations.

12 In addition, the defendants seek to introduce
13 Ecosphere IC's criminal convictions in order to impeach
14 EchoStar CC. More of a foundation is needed regarding the
15 relationship between Ecosphere IC and EchoStar CC. EchoStar
16 CC was not itself convicted. Instead, Ecosphere IC was
17 convicted in 1991, approximately four years before there was
18 an association between Ecosphere and EchoStar CC.

19 Before determining whether Ecosphere IC's criminal
20 conviction may be entered to impeach EchoStar CC, once again
21 the Court needs more information about the relationship
22 between Ecosphere and Ecosphere IC. In addition, more
23 information is needed about the current relationship between
24 Ecosphere and EchoStar CC.

25 Finally, more information is needed regarding

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1 Ecosphere IC's line of business after Ecosphere IC was
2 dissolved. I want to know more about DISH and Mr. Ergen.

3 Now, due to the late addition of Mr. Ergen as a
4 witness, I'll give the defendants an opportunity to
5 establish the necessary foundation before making a
6 determination about the admissibility of Ecosphere IC's

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7 criminal convictions for impeachment purposes.

8 In the meantime, you're not going to be able to
9 raise this during your opening argument. Let me speak to
10 both of you about how dangerous that will be for each of
11 you. Mr. Ergen is going to be your first witness, and I am
12 not going to allow you to vary that schedule.

13 You're going to have to make a tactical decision,
14 not knowing what my ruling is going to be, whether you want
15 to bring out those impeachment felonies right at the
16 beginning and take the sting out of them if you think I am
17 going to let them in.

18 Let me repeat that to you. The way you get rid of
19 these impeachment felonies and look like you're not hiding
20 is usually to bring them out right at the beginning. You
21 don't know what I am going to rule. Therefore, I have no
22 mercy concerning EchoStar because I used my discretion even
23 to allow Mr. Ergen into your case at the last moment.

24 I may not make that ruling today. It depends upon
25 all you have to do tonight, because every piece of evidence

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1 we'll go over again the next day, and we'll do it for Friday
2 also. So we'll be here until 9:00. Also, your Saturdays
3 belong to me, every single Saturday through the duration of
4 the lawsuit. I am going to be kind and say to you that half
5 a day Sunday from 12:00 on belongs to this Court, for you to
6 be here.

7 Now, if we get things accomplished as we get in
8 over the weekend because of your cooperation and your
9 excellent work, because these are some of the finest counsel
10 Court has been associated with, then, of course, you have
11 Sunday free. If we get enough done at night, your Sunday
12 will be free, but every Saturday minimally, just minimally,
13 you will be here.

14 Now, you have some things you wanted to update me
15 with, and then the jury.

16 MR. STONE: We submitted yesterday an amended
17 witness list that included some new witnesses that come
18 principally from two sources and relate to information that
19 we learned yesterday and we believe is enormously important
20 because it goes to the heart of this case, the identity of
21 Nipper and the identity of the person who owned the card.

22 THE COURT: Did this come from the source code
23 evaluation, or how did you learn this information? I wasn't
24 here yesterday.

25 MR. STONE: It came from two sources, Your Honor.

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1 Part of it came from the back-door password in the card and
2 the card ID as subscriber information that we received from
3 plaintiffs on Friday, and we have since followed up on that
4 information.

5 THE COURT: What is that information?

6 MR. STONE: Your Honor, you will recall that we
7 had the spreadsheet that showed that the card ID related to
8 a password traced to an address in Tonawanda, New York. M&M
9 was the name of the McGuires, Paul and Tom McGuire I
10 believe.

11 As I informed Your Honor, we served a subpoena
12 that we were hoping they would respect, and to our amazement
13 they actually respected the subpoena in two ways. They
14 produced documents reflecting that the major customer they
15 had in Ontario who was setting up these false subscription
16 addresses and receiving shipments to and from M&M was none
17 other than Dawn Branton, and Dawn Branton is a very
18 well-known pirate in Canada. The evidence will show she is
19 very well known to plaintiffs. So we got those records
20 yesterday.

21 Mr. McGuire has also agreed to come and testify to
22 authenticate the records and discuss what he was doing.

23 THE COURT: And the import of that is that this is

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24 potentially the Nipper?

25 MR. STONE: This is the Nipper 2000, December

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1 24th, 2000. Yes, Your Honor. This is tracing the card.

2 THE COURT: And you believe that this person is
3 the person who posted?

4 MR. STONE: Or connected with the people who did
5 post, yes, Your Honor.

6 THE COURT: And the people connected would be?

7 MR. STONE: Would be, we believe, the Barrie group
8 and Jim Waters.

9 THE COURT: And you believe that with this new
10 information that has come through discovery -- that this is
11 traceable back to the Barrie group?

12 MR. STONE: We believe so, or at the very least to
13 Dawn Branton, who is a major player close to Barrie. We are
14 still trying to connect all the dots, but certainly the card
15 traces to natural pirate in Ontario, Canada, very near
16 Barrie.

17 MR. SNYDER: And if I could interrupt, Your Honor,
18 I mentioned that there were two sources of information. We
19 got information yesterday from someone who believes to know
20 who actually did the posting in Barrie, Ontario.

21 THE COURT: I am going to extend to you the same
22 courtesy that I extended to the plaintiff in terms of if you
23 choose to use that during your opening statement, but be
24 careful. I'm counseling both of you if you overreach it's a
25 difficult position for you to be in to put your eggs in that

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1 basket. I am speaking now. You're done.

2 This is the by-product not of you -- and let me

3 constantly reiterate, counsel have been exemplary as far as
4 this Court is concerned. It's the foot-dragging that has
5 taken place over the last three years, the last-minute
6 information, and I find that to be co-equal at the present
7 time in the discovery process.

8 You have actually been able to accomplish more, I
9 think, in the last couple months than you have literally the
10 first three years of this lawsuit. I compliment counsel
11 repeatedly for your efforts. And you're going to feel the
12 strain of this. Unfortunately either the house counsel or
13 the corporate entities or whomever is involved in the foot
14 dragging on both sides have really placed their corporations
15 in a difficult position. I don't know who made those
16 decisions, but they are horrible decisions for the parties
17 in this matter that have been made in the past.

18 I really look back over the three years of
19 discovery and think that we should have done this in one
20 year and gotten to this point because there's nothing like
21 litigation that brings all of this crashing in.

22 Now I am going to get a jury. For all the rest of
23 you, if you choose to stay, that would be unwise. I would
24 like you to go down -- unless you are members of the press.
25 Of course, they need to cover this. But if you're support

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1 systems, et cetera, this is simply jury selection. I am
2 going to ask you to leave to make room for the jurors in
3 this court.

4 Now, they are processing them, and how many do we
5 have?

6 (Court and clerk conferring.)

7 THE COURT: Counsel, we only have 64 jurors.
8 That's the best we can do.

9 (Prospective jurors enter courtroom.)

10 THE COURT: Counsel, would you state your
11 appearances.

12 MR. WELCH: Wade Welch and Chad Hagan on behalf of
13 EchoStar Satellite Corporation, et al. Also from my firm is
14 Mr. David Noll and Ms. Christine Willetts.

15 THE COURT: On behalf of NDS group, please.

16 MR. STONE: Good morning, Your Honor. Richard
17 Stone representing NDS. With me from NDS is its general
18 manager, Dov Rubin.

19 THE COURT: Thank you.

20 MR. STONE: Next to him is David Eberhart, an
21 attorney helping me out, and next to him is Darin Snyder.

22 MR. SNYDER: Good morning, Your Honor.

23 MR. STONE: Next to me over on this side is Ken
24 Klein.

25 THE COURT: Thank you very much. I am going to

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1 ask all of you if you would stand. Would you please raise
2 your right hand. Kristee is going to administer an oath to
3 you.

4 (Prospective jurors sworn)

5 THE COURT: Would you please be seated. We are
6 going to call eight potential jurors. Believe me, many of
7 you are going to be excused today. We're going to have a
8 jury, though, within two hours. Therefore, if you're
9 selected, you'll know. And if you're not, you'll go on your
10 way.

11 If you are excused, though, from these
12 proceedings, would you go back down and check with Millie,
13 who is our jury commissioner whom you met this morning --
14 she is a wonderful lady -- because there may be another
15 court that needs your services. So you may go from this
16 case to an eight-month case that Judge Guilford has.

17 So, Kristee, would you call eight jurors, please.

18 THE CLERK: Paul Evans.

19 THE COURT: Mr. Evans, thank you very much. Come

20 on up here, sir. If I get you seated correctly, everybody
21 else will follow very easily. If you would come all the way
22 through the sliding door or the double doors, come all the
23 way down to the end of the jury box down here. There's an
24 opening. And then if you would go up to the top row, sir,
25 and count four seats down.

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1 Mr. Evans, thank you very much. That's E-v-a-n-s;
2 is that correct?

3 PROSPECTIVE JUROR EVANS: Yes.

4 THE COURT: That, counsel, will be seat number 1.
5 Later on if you're selected and there's going to be eight
6 jurors seated in this matter, you can spread out anyplace
7 you like in the jury box. But until we know who the jurors
8 are, that will be seat 1. Number 2.

9 THE CLERK: Huy Nguyen, N-g-u-y-e-n.

10 THE COURT: Mr. Nguyen, if you would have a seat
11 in the top row, sir, three seats down.

12 THE CLERK: Charles Howell, H-o-w-e-l-l.

13 THE COURT: Thank you. Mr. Howell, if you would
14 come forward, sir, if you would have a seat in the top row.
15 And the fourth juror, please.

16 THE CLERK: Timothy Tynan, T-y-n-a-n.

17 THE COURT: Mr. Tynan, thank you, sir. If you
18 would be seated in the top row, the seat closest to me,
19 which would be seat number 4.

20 THE CLERK: Ann Symonds, S-y-m-o-n-d-s.

21 THE COURT: Ms. Symonds, would you be kind enough
22 to be seated in the bottom row, and would you count four
23 seats down, please. Thank you.

24 THE CLERK: Ellen Huizenga, H-u-i-z-e-n-g-a.

25 THE COURT: Thank you. Ms. Huizenga, would you

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1 also be kind enough to be seated in the bottom row and then
2 three seats down. So Ms. Symonds would be seat number 5.
3 Ms. Huizenga would be seat number 6.

4 THE CLERK: Thomas Cannavino, C-a-n-n-a-v-i-n-o.

5 THE COURT: Mr. Cannavino, sir, if you would take
6 seat number 7.

7 THE CLERK: Adam Paff, P-a-f-f.

8 THE COURT: Mr. Paff will occupy seat number 8.
9 First of all, for all of the prospective jurors in the
10 audience, I want you to listen carefully to the questions.
11 I don't intend to have many of those questions repeated, and
12 it will fit your participation. In other words, as you
13 listen to these questions, if you are called into the jury
14 box, then I may simply ask you if you have heard all of the
15 prior questions, if there are any comments that you would
16 like to make, or anything that you would like to add about
17 yourself or a particular way you would have asked that
18 question.

19 Otherwise, we go through all the same questions we
20 are about to ask the eight of you. Time is wasted, and
21 that's just not very efficient. I want to read to you a
22 statement of the case that has been submitted by both
23 parties, and they have stipulated that I read the following:

24 The plaintiffs in this case are EchoStar Satellite
25 Corporation, EchoStar Communications Corporation, EchoStar

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1 Technologies Corporation, collectively referred to as
2 EchoStar. They are represented and seated where you see
3 plaintiff on the edge of their table in the bench that's
4 closest to you.

5 And also included in the plaintiffs' group is
6 NagraStar, LLC. EchoStar is a multi-channel video provider,
7 providing video, audio, and data services to customers via

8 satellite under the name DISH Network.

9 Using an encryption system provided in part by
10 NagraStar, EchoStar encrypts its broadcast signals to
11 prevent unauthorized viewers from viewing various
12 programmers' copyrighted programming content such as HBO,
13 for instance, and Showtime, something that we would be
14 fairly familiar with whether we subscribe or take that or
15 not.

16 The defendants and counterclaimants in this case
17 are NDS Americas, Inc., and NDS Group, PLC, collectively
18 referred to as NDS. NDS provides encryption systems for
19 digital television providers to prevent the unauthorized
20 reception and viewing of satellite television broadcasts.

21 NagraStar and NDS are competitors. So in other
22 words, NDS seated at the defendants' table, the table facing
23 you, and plaintiff NagraStar are competitors.

24 The encryption systems they provide are generally
25 referred to as conditional access systems, and sometimes you

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1 will hear them referred to as CAS or C-A-S. Plaintiffs
2 allege that NDS violated the Digital Millennium Copyright
3 Act, 17 USC, sections 1201(a)(1) and 1201(a)(2); the
4 Communications Act of 1934, which is found at 47 USC,
5 Section 605(a); the Racketeering Influenced and Corrupt
6 Organization Act at 18 USC, Section 1962(c); and California
7 Penal Code sections 593d(a) and 593e(b).

8 Plaintiffs claim that NDS violated these laws by
9 hacking plaintiffs' Conditional Access System, creating a
10 distribution network of pirated EchoStar access cards and
11 posting on the internet information and codes for the
12 EchoStar security system that allegedly provided
13 instructions on how to hack plaintiffs' security system.

14 Defendants deny plaintiffs' allegations. NDS has
15 asserted counterclaims against EchoStar. In other words,

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16 they are suing EchoStar just as EchoStar is suing the
17 defendants. NDS alleges in their counterclaims that
18 plaintiff violated the California Uniform Trade Secrets Act,
19 Civil Code Section 3426, and the Computer Fraud and Abuse
20 Act found at 18 USC, Section 1030.

21 NDS claims that EchoStar violated these laws by
22 obtaining and using confidential internal trade secret NDS
23 documents. Plaintiffs deny these allegations, bringing this
24 in front of us, the community, to see if we can resolve
25 these disputes between the parties.

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1 This case is a fascinating and complex case. It
2 will take every bit of your mental acuity and your attention
3 to detail. I say that to heighten the fact that your time
4 here will not be wasted. Some of the things I'd say to you
5 is if you are able to sit and fortunate enough to be
6 selected, I really think that that's not only a duty,
7 especially coming from a Marine Corps background, because
8 you're not going to Iraq right now, but it's required under
9 our Constitution and it should be an experience that all of
10 us have in a democracy.

11 Having said that, I understand that these are
12 difficult economic times. In the 1970s, early '70s when I
13 first started practicing, some of the corporations in this
14 county, some of the public entities could give us jurors for
15 30 days. Then over a period of time through kindness and,
16 you know, some attention to jury needs, we went to 10 days,
17 and sometimes jury service in Superior Court where I spent
18 17 years in the State court system, now has gone to five
19 days.

20 we did not try to time qualify you. I just
21 finished a nine-month criminal case, believe it or not. We
22 had to send out 11,000 subpoenas to find 200 jurors who
23 could serve involving the Aryan Brotherhood.

24 This is not the situation that requires nine

25 months, but this case will take approximately four weeks.

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1 Therefore, this is a tremendous hardship, and if not a
2 hardship on some of you financially, which may cause excuse
3 if you're a sole provider, or if you have a planned vacation
4 with paid tickets, which I am going to be very lenient
5 about, I expect that this is going to impact your employment
6 in some way, and I am going to bat with you, which means I
7 will write a letter, I will do those things necessary to let
8 your employer know that you're really involved in crucial
9 work for the federal courts.

10 witnesses are literally coming from all over the
11 world to testify -- from Israel, from Switzerland, from
12 Canada, from France -- from the ends of the world, quite
13 frankly, or different parts of the world. And counsel on
14 both sides have done a magnificent job in preparing this
15 matter and will continue to do so.

16 when we're in session from 8:00 or 8:30, whatever
17 we negotiate out for the eight jurors selected, I promise
18 you you'll go home between 4:30 and 5:00 every evening. And
19 we'll work out if you have child-care problems, you have to
20 drop off a child, maybe we have to get started at 8:30. I
21 prefer to start at 8:00, but if 8:30 amongst the eight of
22 you eventually selected, that may be a possibility. We will
23 go home at 4:30 to 5:00. So you can plan on that.

24 I promise you counsel will not leave my court
25 anytime during this trial before 8:00. I cannot imagine it.

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1 And every Saturday they will be in session with me to make
2 sure that every piece of evidence is laid out on the table
3 and we know exactly what is occurring, so that when you

4 spend your time in court, it's not wasted taxpayer time and
5 doesn't inconvenience you.

6 So they look terrific now. Take a look at the
7 attorneys. They're going to look very old in four weeks.
8 Just kidding. But they are going to be working very, very
9 hard, and they have worked very hard, and they have my
10 absolute respect and confidence for their effort so far --
11 which means I'm a workaholic. If you could get here at 7:30
12 and if you could go until 8:00 at night, I could get this
13 down to three weeks. But I don't think you will do that.

14 Okay. So let me start with some general questions
15 for just a moment and just some things I expect. More cases
16 have started over because judges aren't clear about what
17 their expectations are.

18 This is about fundamental fairness. We can dress
19 it up in legal terms. We can say whatever we want to. I
20 can read you all sorts of pre-arranged instructions. But
21 this is about both parties getting an absolute fair trial by
22 those of us selected to decide this issue.

23 The next thing I am so proud of this country and
24 so fortunate to believe that through jury service we get
25 honest, capable, and good people trying their best ethically

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1 to make a decision. And it far surpasses individual judges
2 and their ability to make decisions.

3 I've traveled the world. I just came back from
4 Afghanistan and Armenia two weeks ago, and I can tell you
5 the jury system here is the mark that sets our democracy
6 apart. Whenever you have judges involved, they may be
7 honest and ethical, but they don't bring the common-sense
8 wisdom that a collective group of people bring to this court
9 with your real-life experiences. It's an entirely different
10 process and one to be protected.

11 You are not to say one word to these attorneys in

12 the hallway. They're invisible people. They do not exist.
13 They are not to say one word to you. Don't ask them in the
14 elevator. Don't ask them what time the court starts. Don't
15 speak to them under any circumstances. And if they speak to
16 you, I want to know that immediately. They are not even to
17 say "good morning" to you. They are absolutely invisible.

18 The reason for that is I can have a conversation
19 as an attorney with one of you, and if we liked each other,
20 even though we were talking about our family, the impression
21 that the other side not involved in that conversation, what
22 are they talking about? And because you'd like all sorts of
23 attorneys here, you're giving them an advantage because you
24 knew them personally. We had a conversation.

25 Second, you are to do no independent investigation

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1 of your own. This case has had press notoriety. It will
2 have press notoriety. Apparently the press is interested as
3 far as Switzerland and France and Israel, and it has ABC and
4 other people apparently who are contacting this Court. So
5 you are going to get press notoriety coming from this case.
6 Therefore, if you see somebody you don't know in the
7 hallway, there's a good chance that they're the press, and
8 I'll take that head-on as I do every case. Don't talk to
9 them.

10 If you recognize this on ABC or some other
11 affiliate, CBS or whatever, I want you to turn the channel.
12 In other words, I don't want to cut you off from
13 communication. But if you see something on this on CNN or
14 CBS, I want you to flip that channel to another channel as
15 soon as you recognize it.

16 If you recognize this in the local paper or you
17 get on the internet, please don't continue to read it. In
18 other words, you saw a headline or you saw something, just
19 switch the channel. Now, I don't mean to attach drama.
20 This isn't a case like the Aryan Brotherhood or something

21 that has notoriety to that extent, but you're going to get
22 press coverage on it. I think the easiest way is to
23 forewarn you about that. Turn that source of information
24 off.

25 You could be tempted to go to the internet in this

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1 matter and find out a lot about this case or the companies
2 involved and some of the individuals involved. Some of
3 those will become very clear to you in a while. Please
4 don't. If you do that, I have to start the case all over
5 again at a tremendous waste of taxpayer expense and court
6 time.

7 Third, for those waiting for you at home, let
8 alone your employment at or employees who you work with and
9 care about -- some don't, but most of them hopefully do --
10 and at home there is somebody who cares about you. They
11 can't wait to see how did you get trapped in federal court
12 for a four-week trial. I don't want you to tell them
13 anything about this case, any of the allegations in the
14 complaint or anything about the case, because the more you
15 tell them about the case, the more of an opinion they will
16 have. And eventually counsel within two hours will have a
17 jury of eight people, and you eight will be the jurors that
18 each counsel are trusting in this matter.

19 Finally, when you go home and the first thing you
20 say is "I'm serving the federal jury for four weeks and
21 Judge Carter says I can't talk to you about this," they're
22 going to say, come on. Tell them to call (714) 338-4545.
23 That's my direct number. And I will talk to them, and I
24 will explain to them why they can't talk to you.

25 Finally, with your employers I am deeply

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1 concerned. These are -- I know people say we aren't in a
2 recession. I don't know how to catalog it, but these are
3 tough economic times. I am going to take account of that.
4 If you are a single person and your livelihood is solely
5 dependent upon you, I think all counsel will stipulate very
6 quickly. I don't mean to pick on married people, but if I
7 can contact your employer or have you go back and make a
8 phone call, maybe they will let you serve.

9 Now, over here is a freeway. See the freeway?
10 It's up against this wall. It's called the I-5 freeway.
11 You drove in on it this morning, and I want you to pretend
12 that you're seeing the freeway about 9:00 at night. On that
13 freeway a witness comes into court and they testify right
14 here from the witness stand and they say to you, "I saw a
15 green 1991 Honda hit the back of a white pickup truck, and I
16 estimate that Honda was going a high rate of speed." "How
17 fast?" "I don't know -- 80, 85. And it was green in color.
18 When it hit that white pickup truck, the Honda spun around.
19 Thank goodness it didn't flip. The white pickup truck went
20 off to the side. The Honda driver looked at the white
21 pickup truck driver that he or she had just hit and sped
22 away."

23 we call that hit-and-run under the California
24 Vehicle Code. You don't need to know that. It's not a
25 federal jurisdiction case. But anyway, it sped away. Later

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1 on through investigation, it turns out that this person was
2 a truth-telling person who came to the court, a truthful
3 person who did their best, but they were wrong. This didn't
4 turn out to be a 1991 Honda. It turned out to be a 1992
5 Honda. The body styles didn't change. It turned out to be
6 red in color. It wasn't green. Because it was 9:00 at
7 night, the person mistook the color. And it wasn't going

8 85. The California Highway Patrol does a reconstruction.
9 It was going 105 miles an hour, according to the skid marks.
10 There you have got a truthful person who came into court
11 just like you did, did your best to relate the facts, and
12 you may decide to accept all of their testimony about the
13 real issue; and that is, did the person leave the scene of
14 the accident. That's the real issue.

15 Then, believe it or not, you are going to get
16 people who come into court and look right at you and lie to
17 you. I don't know how to dress that up for you, but they're
18 going to perjure themselves, or they may tell the truth up
19 to a certain point in time. They may tell you all the
20 things that are easily discernible, but they are going to
21 look at you and lie to you.

22 Nobody takes your wisdom or has your wisdom in
23 deciding that issue as well. You know, who is wrong in the
24 perception of right and who is just lying to us in a
25 critical part of this case? I can't guarantee you that

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1 that's going to happen, but there's every possibility.
2 Where that comes from and when, I don't know. Neither do
3 you.

4 The difference is what we call perception versus
5 somebody who is perjuring themselves, and unfortunately it
6 can happen. Now, this is going to involve some pretty
7 high-tech stuff, but you don't have to be a high-tech person
8 to understand it. This is going to involve satellites and
9 codes and communications and some of the world's foremost
10 hackers, going into encryption systems. In fact, you're
11 probably going to meet the world community of hackers from
12 all over the world.

13 But you don't have to be a technical expert, but
14 we would like to find out something about you. So have any
15 of you ever had any prior jury service? If you have ever
16 served on a jury at any time in your life, would you raise

17 your hand. Okay. Five, six, and eight. Could I start with
18 Ms. Symonds. Where and when?

19 PROSPECTIVE JUROR SYMONDS: It was in Newport
20 court and probably four or five years ago.

21 THE COURT: Okay. Was it a
22 driving-under-the-influence charge?

23 PROSPECTIVE JUROR SYMONDS: No. It was a speeding
24 violation and assault on an officer.

25 THE COURT: Okay. I don't want to know the

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1 verdict. Did you reach a verdict on that case?

2 PROSPECTIVE JUROR SYMONDS: Yes, we did.

3 THE COURT: All right. And that was a criminal
4 matter, of course?

5 PROSPECTIVE JUROR SYMONDS: Yes.

6 THE COURT: Any other service that you've had?

7 PROSPECTIVE JUROR SYMONDS: No.

8 THE COURT: Okay. Ms. Huizenga.

9 PROSPECTIVE JUROR HUIZENGA: I served more than
10 once. I have served on a case where I was an alternate. I
11 was an alternate juror, and it was a case of a young man
12 accused of robbery. I did not go into deliberations with
13 the jury.

14 THE COURT: You were an alternate on that case?

15 PROSPECTIVE JUROR HUIZENGA: Correct. However, I
16 was privy to all -- sat with the jury during the
17 proceedings. I received a letter from the judge that the
18 individual was sent to prison and convicted. Two years
19 later on a Saturday morning, I opened the newspaper and
20 there was a picture of the judge and the defendant, and the
21 judge was marrying him and his girlfriend, and they had
22 proven in that length of time he was not guilty.

23 THE COURT: Not guilty.

24 PROSPECTIVE JUROR HUIZENGA: That has weighed

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1 person to jail. The evidence appeared to be overwhelming.
2 That has bothered me to this day.

3 THE COURT: I want to thank you for telling me
4 that.

5 PROSPECTIVE JUROR HUIZENGA: You're welcome.

6 THE COURT: Yeah, very, very much so. And
7 hopefully that helps you a little bit being able to say it.

8 PROSPECTIVE JUROR HUIZENGA: It didn't help the
9 young man.

10 THE COURT: well, you're right. Mr. Paff, any
11 jury service, sir?

12 PROSPECTIVE JUROR PAFF: Yes. I served in the
13 Orange County Superior Court on a situation where a young
14 man had an accident in Silverado Canyon and was suing the
15 County. I have served on two juries in the L.A. --

16 THE COURT: That was a civil matter, then?

17 PROSPECTIVE JUROR PAFF: That was a civil matter,
18 yes. And he lost. I served on two juries in Los Angeles
19 Federal District Court.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR PAFF: One was a drug smuggling
22 issue in Ontario, and the other one was a contraband issue
23 at the Columbia National.

24 THE COURT: That was federal court?

25 PROSPECTIVE JUROR PAFF: That was federal court,

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1 yes.

2 THE COURT: How long ago, sir?

3 PROSPECTIVE JUROR PAFF: Gee, probably 12 years

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ago. Maybe more.

5 THE COURT: Okay. Thank you very much. Why don't
6 you keep that microphone with you for just a moment. There
7 is a difference if you have served on a civil jury, as Mr.
8 Paff has, and if you have served on a criminal matter, which
9 you have also done, and a criminal matter which each of you
10 have done. In a criminal matter we have the standard beyond
11 a reasonable doubt. It's the highest standard of proof, and
12 the jury has to be unanimous and must convict the person
13 beyond a reasonable doubt.

14 If it's a civil matter, there's a difference
15 between federal court and state court. Criminal matters are
16 conducted much the same way, although I spent 17 years as a
17 state court judge and now 10 years as a federal judge. They
18 are similar in terms of -- well, they're the same in terms
19 of our standard of proof and 12 jurors having to be
20 unanimous.

21 In a civil matter there's a tremendous difference.
22 When Mr. Paff served in a civil jury, there were 12 jurors,
23 but three of them could have disagreed. It could have been
24 nine to three. In federal court there is going to be eight
25 jurors, not 12, and all of you must be unanimous as to any

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1 verdict. So there could be dissent, but if there is violent
2 dissent and you can't reach a verdict, it's a hung jury.
3 And that's the difference.

4 I need to get some feeling in just a moment about
5 how sophisticated you are in terms of your computer use. I
6 don't quite know how to gauge that, but it makes a
7 tremendous difference to both counsel. You don't have to
8 be, by the way, to serve. But let me start with number 1.
9 Mr. Evans, what's your current job and employment?

10 PROSPECTIVE JUROR EVANS: I am a quality engineer
11 for Aerospace.

12 THE COURT: Okay. If you're married, does your

13 spouse, is she also employed outside the home?

14 PROSPECTIVE JUROR EVANS: No.

15 THE COURT: Okay. Have you ever been
16 self-employed or owned or operated your own business?

17 PROSPECTIVE JUROR EVANS: No.

18 THE COURT: Does anyone -- do you have an
19 engineering degree of any type?

20 PROSPECTIVE JUROR EVANS: No.

21 THE COURT: Do you own a computer or have one in
22 your home?

23 PROSPECTIVE JUROR EVANS: Yes.

24 THE COURT: Do you know what an IP protocol
25 address is?

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1 PROSPECTIVE JUROR EVANS: Yes.

2 THE COURT: Do you have any computer programming
3 background?

4 PROSPECTIVE JUROR EVANS: A little.

5 THE COURT: Have you ever been involved in testing
6 a company's product or what I call reverse engineering?

7 PROSPECTIVE JUROR EVANS: No.

8 THE COURT: You're going to hear from a number of
9 witnesses, once again literally from all over the world.
10 They're going to be required to be here. In fact, they're
11 going to be lined up out in the hallway, because when I call
12 for the next witness, if they don't appear immediately, that
13 person rests their case. That's much I believe in not
14 wasting time.

15 I want to make certain, though, that there isn't a
16 bias or prejudice if they're Israeli, Canadian, French,
17 Swiss, American; that we treat the witnesses the same; that
18 we don't discriminate in any way or find non-credibility
19 based upon nationality or citizenship. Of course, you're
20 free to find anybody that was fabricating if you want to.

21 Do you understand that?

22 PROSPECTIVE JUROR EVANS: Yes.

23 THE COURT: In other words, I don't want to have
24 anybody to get hometowned because they've got an American
25 witness and somebody has an Israeli witness, for instance,

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1 or a French witness or a Canadian witness.

2 Have you ever been involved in any litigation
3 where you filed a lawsuit and you have ended up in federal
4 or state court -- or municipal courts back in the 1980s?

5 PROSPECTIVE JUROR EVANS: No.

6 THE COURT: There is going to be mention of a
7 gentlemen named Rupert Murdoch. He's a gentleman who is
8 well known in the communications field. Do you have any
9 favorable or unfavorable impressions about that gentleman?

10 PROSPECTIVE JUROR EVANS: No opinion.

11 THE COURT: Now, there are going to be many other
12 people mentioned in this lawsuit also that have, you know,
13 some visibility, but all counsel wanted me to make certain
14 that there was no bias or sympathy involving that gentleman.

15 Now, you have heard all the questions I am going
16 to ask you. And I picked on Mr. Evans as the guinea pig.
17 You have done very well. Thank you. Do you use the
18 internet?

19 PROSPECTIVE JUROR EVANS: Yes.

20 THE COURT: Do you read papers?

21 PROSPECTIVE JUROR EVANS: Yes.

22 THE COURT: Could I ask what papers you subscribe
23 to.

24 PROSPECTIVE JUROR EVANS: The Register.

25 THE COURT: Okay. Do you take any kind of

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1 technical magazines like Engineering Today?

2 PROSPECTIVE JUROR EVANS: No.

3 THE COURT: Okay. Own any stock in any companies
4 such as EchoStar and NagraStar, DirectTV?

5 PROSPECTIVE JUROR EVANS: Not that I know of.

6 THE COURT: Maybe heavily vested in mutual fund.
7 Now, Mr. Nguyen, you have kind of gotten the idea of the
8 general questions. I could ask each one of those again.
9 Start talking to me. Tell me about your profession.

10 PROSPECTIVE JUROR NGUYEN: I got a finance degree
11 in Long Beach. I pretty much buy and sell stocks at home.
12 I also have a beauty spa salon in Laguna Niguel. I have a
13 wife. Ready to be a father in four months. And Sunday
14 school teacher and music director at church.

15 THE COURT: You have paid a lot of attention.
16 Thank you very much. That's a lot of information. I could
17 take an hour to find that out about you. Let me turn back
18 to you now and ask a couple questions. I need to get some
19 indication about if you have any engineering background or
20 how limited you are in terms of computer usage, IP
21 protocols.

22 PROSPECTIVE JUROR NGUYEN: No, I don't have a lot
23 of knowledge. I pretty much just use the internet to
24 research and buy stocks.

25 THE COURT: Okay. Have you ever sued somebody in

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1 court before?

2 PROSPECTIVE JUROR NGUYEN: No.

3 THE COURT: Thank you. Let me turn the microphone
4 over to Mr. Howell. Mr. Howell, the same questions.

5 PROSPECTIVE JUROR HOWELL: I am an econ risk
6 strategy manager for my company, which is a large auto
7 finance company. I have a master's degree in computer
8 science, and I am a former programmer. My wife works out of

9 the home. I don't have any bias for or against Mr. Murdoch.

10 THE COURT: Okay. And I don't know how much he's
11 involved in this case. That will become clear. And there
12 are names, believe me, that will surface in this case that
13 may be known to all of you.

14 Do you know about the hacker community in any way?

15 PROSPECTIVE JUROR HOWELL: I am not in it, but I
16 do have some knowledge of it and concepts of reverse
17 engineering and encryption, yes.

18 THE COURT: Okay. Your spouse -- I'm sorry. If
19 you are married, your spouse's occupation?

20 PROSPECTIVE JUROR HOWELL: She is an intellectual
21 property attorney.

22 THE COURT: Probably appears in this court.

23 PROSPECTIVE JUROR HOWELL: Probably has.

24 THE COURT: Yeah. We get amazing cases here.

25 Thank you very much. Mr. Tynan, the same basic questions to

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1 you, sir.

2 PROSPECTIVE JUROR TYNAN: I have a bachelor of
3 science degree. I work for a veterinary pharmaceutical
4 company. I have limited engineering background. I was
5 hired as an engineer without the background. I knew how the
6 equipment was supposed to run. My wife is a registered
7 nurse, works for Kaiser.

8 I was involved in a court case just this past year
9 where we were the plaintiffs. We were given a product that
10 was supposed to be sterile. It was in fact nonsterile. We
11 wound up in court over the issue.

12 THE COURT: Okay. Was that Superior Court across
13 the way?

14 PROSPECTIVE JUROR TYNAN: It was in L.A. County.

15 THE COURT: All right. Okay. A little bit more
16 about a computer background. Are you generally using it at

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17 home, programmer?

18 PROSPECTIVE JUROR TYNAN: Use it extensively at
19 work, just typical Microsoft programs. No programming
20 background, no significant internet background.

21 THE COURT: You're not a satellite encryption
22 buff?

23 PROSPECTIVE JUROR TYNAN: No, I'm not.

24 THE COURT: You don't know about the alleged
25 hacker community or --

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1 PROSPECTIVE JUROR TYNAN: No.

2 THE COURT: Okay. Thank you very much. I
3 appreciate it.

4 PROSPECTIVE JUROR TYNAN: The only thing I do have
5 to say is I do have a need to be in Canada starting on the
6 17th of this month. I have prepaid tickets. I may also
7 have to go to China later in the month also.

8 THE COURT: Okay. Let me come back to that in
9 just a moment. I think each one of you may have some
10 problems. Let me turn the microphone down to juror number
11 5, Ms. Symonds. Once again, as much as you can tell us
12 about yourself.

13 PROSPECTIVE JUROR SYMONDS: My name is Ann
14 Symonds. I am single. I am a senior vice-president for
15 Memorial Health Services. I'm the owner of six
16 not-for-profit hospitals. I have a degree, bachelor of
17 science degree. I use the Microsoft and my computer both at
18 home and at work extensively. I have no program background
19 or knowledge. I have nothing against Rupert Murdoch.

20 THE COURT: Okay. That's a lot. That's a
21 tremendous amount. You know nothing about the encryption
22 systems, then, satellite encryptions, hacker community?

23 PROSPECTIVE JUROR SYMONDS: None. Nothing.

24 THE COURT: Reverse engineering, you don't
25 participate in that?

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1 PROSPECTIVE JUROR SYMONDS: No.

2 THE COURT: Okay. Thank you very much. Ms.
3 Huizenga.

4 PROSPECTIVE JUROR HUIZENGA: I am retired from a
5 human resource background with Anderson Consulting. I am
6 technically incompetent and aptly so. I depend on my
7 husband to take of when the computer won't print or whatever
8 happens, and that's all the interest I have.

9 THE COURT: Okay. Your husband's occupation?

10 PROSPECTIVE JUROR HUIZENGA: He is retired from
11 finance at Boeing.

12 THE COURT: Okay. I think it's obvious that you
13 have no preconceptions or knowledge about satellite
14 encryption, codes?

15 PROSPECTIVE JUROR HUIZENGA: Absolutely not.

16 THE COURT: Hacker community?

17 PROSPECTIVE JUROR HUIZENGA: What is it?

18 THE COURT: Okay. Thank you very much. Mr.
19 Cannavino.

20 PROSPECTIVE JUROR CANNAVINO: I am on full-time
21 missionary staff with Campus Crusades for Christ, the Jesus
22 home project, and my wife is also on staff with me. I use
23 computer for e-mail and researching things, but that's about
24 the extent of my knowledge. I am not technical at all.

25 THE COURT: Okay. And your spouse, are you

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1 married?

2 PROSPECTIVE JUROR CANNAVINO: Yes.

3 THE COURT: What's her employment again?

4 PROSPECTIVE JUROR CANNAVINO: She is also on

5 staff.

6 THE COURT: Oh, on staff also.

7 PROSPECTIVE JUROR CANNAVINO: Right.

8 THE COURT: Have you ever been involved in any
9 litigation before?

10 PROSPECTIVE JUROR CANNAVINO: No.

11 THE COURT: Stay out of it. All right. Mr. Paff,
12 same question to you, sir. You ought to be an old-timer by
13 now.

14 PROSPECTIVE JUROR PAFF: Yeah. I work for First
15 American Corporation in Santa Ana.

16 THE COURT: First party I ever went to in 1971 in
17 Orange County, right over here in the old parking lot over
18 there when I was a young deputy D.A.

19 PROSPECTIVE JUROR PAFF: We got the new facility
20 down on MacArthur.

21 THE COURT: I don't go to parties anymore.

22 PROSPECTIVE JUROR PAFF: Okay. Anyway, I am an IT
23 manager. My area is data center operations as well as data
24 center hardware support, which includes network cabling,
25 power, and the whole infrastructure.

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1 I am married. I have two children. My wife is a
2 financial planning investment management consultant with an
3 Atlanta-based company called Ronald Blue & Company.

4 THE COURT: That's a lot.

5 PROSPECTIVE JUROR PAFF: Okay. And as far as
6 Rupert Murdoch, it gives me a negative connotation. I guess
7 I am indifferent, but I just don't really care for him.

8 THE COURT: I want to bring -- all counsel wanted
9 me to ask, people that have a high profile. We'll get both,
10 plus and minus. I don't know if the involvement here will
11 be --

12 PROSPECTIVE JUROR PAFF: You asked.

13
14 out also. I think these are simply going to be corporate
15 matters between corporations, but his name will be attached
16 to DirectTV, of course, or at one time. So all counsel
17 thought it would be wise to ask.

18 If I promise to work you to death and not waste
19 any of your time, here's what I promise you. You would be
20 in session on Tuesdays, Wednesdays, Thursdays, and Fridays.
21 You will never be in session on a Monday. We have to keep
22 the court going with 350 other civil cases, so Mondays are
23 what we call calendar days, from literally 8:00 to 5:00.

24 There may be an exception to that where I would
25 ask you to come in, but you would have a lot of notice, and

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1 I cannot imagine what that exception would be. I would like
2 to start at 8:00 or 8:30 at the very latest. The whole
3 world goes to work at 8:00. I don't know why the courts
4 can't do the same thing. And I would like to get out
5 between 4:30 and 5:00 at least for you, because most of you
6 -- well, some of you go home at that time. If we can get
7 about six hours of testimony a day, we are doing extremely
8 well, with a lunchtime break and a morning recess.

9 My job also is to keep you alert and functioning,
10 not to just to speed through this in an inefficient way
11 without you absorbing the information. Now, I know you're
12 going to have problems. You have got engagements in at
13 least two other locations in April that cause, I assume,
14 hardship for you?

15 PROSPECTIVE JUROR TYNAN: For the company
16 actually.

17 THE COURT: We don't care about the company.

18 PROSPECTIVE JUROR TYNAN: I care significantly.
19 It's my livelihood.

20 THE COURT: But you have got some president, and I
21 will talk to him if I need to. Are you okay, sir?

22 PROSPECTIVE JUROR EVANS: I have a scheduled
23 vacation on the 23rd of April.
24 THE COURT: Of April. What date would you leave?
25 PROSPECTIVE JUROR EVANS: The 23rd.

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1 THE COURT: Friday?
2 PROSPECTIVE JUROR EVANS: Wednesday.
3 THE COURT: Wednesday. Okay. Sir?
4 PROSPECTIVE JUROR NGUYEN: I have a store in
5 Laguna Niguel, and I have to come there not every day, but I
6 have to come and check.
7 THE COURT: Okay. Sir?
8 PROSPECTIVE JUROR HOWELL: I don't have any plans.
9 THE COURT: Okay. Number 5, Ms. Symonds.
10 PROSPECTIVE JUROR SYMONDS: No plans.
11 THE COURT: Okay. Ms. Huizenga.
12 PROSPECTIVE JUROR HUIZENGA: I do have a
13 commitment in Santa Barbara on May 1 for one day only.
14 THE COURT: Okay. I think that's a Monday.
15 PROSPECTIVE JUROR HUIZENGA: It's a Thursday.
16 THE COURT: Thursday. Okay. Mr. Cannavino.
17 PROSPECTIVE JUROR CANNAVINO: I have a commitment
18 in Bakersfield on the 18th of this month, and I have some
19 out-of-town people coming in. I don't remember the day, but
20 I am supposed to take them around and have some
21 appointments.
22 THE COURT: Okay. And Mr. Paff.
23 PROSPECTIVE JUROR PAFF: I just have my
24 anniversary this weekend.
25 THE COURT: Well, we're all going to be there.

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1 PROSPECTIVE JUROR PAFF: Just bring her in, right?
2 That will go over real well.

3 THE COURT: Okay. Well, then, counsel, you're
4 forewarned. You know about the problems. Counsel know that
5 I don't excuse them. I just don't excuse them except if
6 there is a death, illness, and maybe in the case of a
7 vacation. But we'll see.

8 Now, counsel, you are free to consult amongst
9 yourselves and you're free to stipulate. In other words, if
10 each of you decide by stipulation as the two of you
11 discussed, lead counsel, so be it. But otherwise I am going
12 to turn the questions over to the plaintiff in just a
13 moment. Each counsel is limited to no more than 20 minutes
14 with all of you as a group.

15 At the end of the case, I am going to read to you
16 instructions that will contain all the law that you need in
17 deciding this case. I ask you not to try to second-guess me
18 on that. I am a lowly trial court. The Supreme Court can
19 change it. The president, Congress, can pass new
20 legislation that affects the United States of America. But
21 the Federal District Courts carry out that law. Therefore,
22 if you like it or don't like it or have a philosophical
23 bent, that is the law. You are ordered to follow it.

24 Finally, I can't tell you how fascinating this
25 case is once I get into it. It will literally keep you

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1 awake and will keep you on the edge of your seat at
2 different times. There will be some times that we're not
3 entertaining you through testimony, believe me, but it will
4 move pretty quickly.

5 Counsel, is there anything else that either one of
6 you would like me to ask other than these questions that I
7 have declined to do. On behalf of the plaintiff?

8 MR. WELCH: No, sir, Your Honor.

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THE COURT: On behalf of the defendant?

9
10 MR. STONE: No, Your Honor.

11 THE COURT: All right. Then you have 20 minutes,
12 counsel. The time is now seven minutes after the hour.

13 MR. WELCH: Mr. Evans, I want to talk to you a
14 little bit about your computer background. And you know
15 what IPs are?

16 PROSPECTIVE JUROR EVANS: Yes.

17 MR. WELCH: What's your understanding of what an
18 IP is?

19 PROSPECTIVE JUROR EVANS: It's an internet
20 protocol for basically channeling data through specific
21 systems.

22 MR. WELCH: Okay. And with respect to the IPs,
23 are you aware of how people can trace those IPs back to
24 certain identities?

25 PROSPECTIVE JUROR EVANS: Basically pinging is

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1 some of the things that I know about. I have a bit of a
2 Unix background.

3 MR. WELCH: What is pinging?

4 PROSPECTIVE JUROR EVANS: Pinging is basically if
5 you know of an IP address, you can quick send it a message
6 and get a response and see if it's a valid connection.

7 MR. WELCH: Okay. Are there any ways that people
8 can mask their identities that you know of?

9 PROSPECTIVE JUROR EVANS: I know there's ways to
10 do it, but I don't know how to do.

11 MR. WELCH: Okay. Have you ever heard of proxies
12 or anonymizers?

13 PROSPECTIVE JUROR EVANS: Yes.

14 MR. WELCH: Could you tell us what your
15 understanding of proxy or anonymizer is.

16 PROSPECTIVE JUROR EVANS: Very vague. I just know
17 they're out there. I know they have subnets and other

18 things like that. I'm not really versed on it that well.

19 MR. WELCH: Do you know what the purpose of a
20 proxy or an anonymizer is?

21 PROSPECTIVE JUROR EVANS: It's control access, I
22 believe.

23 MR. WELCH: Okay. Does anybody -- based on the
24 answers that Mr. Evans has given, does that ring a bell to
25 anybody? Anybody have any knowledge on any of the issues

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1 surrounding -- yes, sir. Mr. Howell, what's your
2 understanding?

3 PROSPECTIVE JUROR HOWELL: My background is in
4 programming and internet programming specifically. So I am
5 fairly familiar with how internet protocol works and ping
6 as Mr. Evans described, and use of -- we use proxies at work
7 to control access to the internet. You can also pass
8 traffic through that or an anonymizer to mask the IP address
9 or your actual location or your MAC address to appear as
10 another party as you are using internet technology and
11 applications and sending traffic over the network.

12 MR. WELCH: Have you seen situations before where
13 you have people that have masked their IP address or masked
14 their identity through using proxies or anonymizers?

15 PROSPECTIVE JUROR HOWELL: Well, I have seen
16 situations where we haven't been able to use IP technology
17 where we would normally geolocate an individual based on
18 their IP address because they were passing it through a
19 network that altered it or gave them random addresses. So
20 we weren't able to trace back and figure out where those
21 people were when we were trying to geolocate. So I have
22 seen something similar.

23 MR. WELCH: Okay. Now, Mr. Howell, I didn't quite
24 get the pharmaceutical company that you work for.

25 PROSPECTIVE JUROR HOWELL: Auto Finance Company.

1 Wachovia.

2 MR. WELCH: Oh, Mr. Tynan. I'm sorry.

3 PROSPECTIVE JUROR TYNAN: My facility is known as
4 Constant Irwindale. We're a part of Bimeda, Incorporated,
5 which is part of Cross Vetpharm Holdings in Dublin, Ireland.

6 MR. WELCH: What kind of pharmaceuticals do you
7 sell?

8 PROSPECTIVE JUROR TYNAN: My facility is a sterile
9 penicillin manufacturing plant. The entire company is
10 animal health care, large animal particularly.

11 MR. WELCH: Can you describe for me what you mean
12 by sterile penicillin plant.

13 PROSPECTIVE JUROR TYNAN: We have two processes
14 whereby we make a sterile injectable drug. In one process,
15 we buy the penicillin from the manufacturer. We suspend it
16 in sterile diluents, fill it aseptically into sterile
17 bottles, stopper it, and then package it and label it
18 appropriately.

19 In the current application we actually react to
20 chemicals to make the active penicillin ingredient, suspend
21 it in the same diluents, aseptically fill it, package it
22 appropriately.

23 MR. WELCH: Okay. What was your B.S. degree in?

24 PROSPECTIVE JUROR TYNAN: Biological sciences.

25 MR. WELCH: Now, we talked about Mr. Murdoch. You

1 haven't heard the name Charlie Ergen yet. Mr. Ergen is the
2 CEO and he's the founder of my client, EchoStar
3 Communications Corporation. Has anybody ever heard of Mr.
4 Ergen? Do any of you have a subscription television,

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5 whether it be cable or satellite? It looks like we have
6 everybody with the exception of number 7 over here. So on
7 the end, Mr. Evans, what do you have?

8 PROSPECTIVE JUROR EVANS: DirectTV.

9 MR. WELCH: You have DirectTV? And how about you,
10 Mr. Nguyen?

11 PROSPECTIVE JUROR NGUYEN: Time Warner.

12 MR. WELCH: Time Warner? And Mr. Howell?

13 PROSPECTIVE JUROR HOWELL: DISH.

14 MR. WELCH: Mr. Tynan?

15 PROSPECTIVE JUROR TYNAN: Time Warner.

16 MR. WELCH: Time Warner? Ms. Symonds?

17 PROSPECTIVE JUROR SYMONDS: Fox.

18 MR. WELCH: And Ms. Huizenga?

19 PROSPECTIVE JUROR HUIZENGA: Cable.

20 MR. WELCH: Which cable company?

21 PROSPECTIVE JUROR HUIZENGA: Take your guess.

22 MR. WELCH: It's just cable to you, huh?

23 PROSPECTIVE JUROR HUIZENGA: I told you I am
24 technically deficient. I don't know.

25 MR. WELCH: Mr. Cannavino? You just go with the

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1 air?

2 PROSPECTIVE JUROR CANNAVINO: No, we don't even do
3 that. We just watch movies.

4 MR. WELCH: You DVD it?

5 PROSPECTIVE JUROR CANNAVINO: Yeah.

6 MR. WELCH: Okay. Mr. Paff?

7 PROSPECTIVE JUROR PAFF: Time Warner.

8 MR. WELCH: Have any of you that currently have
9 cable, have you had satellite systems in the past? Mr.
10 Evans, how long have you had DirectTV?

11 PROSPECTIVE JUROR EVANS: Ten years.

12 MR. WELCH: Ten years? Do you have any
13 understanding with respect to how satellite transmissions

14 work?

15 PROSPECTIVE JUROR EVANS: Vague.

16 MR. WELCH: Do you have an understanding of
17 whether or not those signals are scrambled or if there are
18 protection mechanisms in place to make sure that other
19 people don't get what you're paying for for free?

20 PROSPECTIVE JUROR EVANS: Yes.

21 MR. WELCH: Okay. What's your view of people that
22 basically hack into those systems?

23 PROSPECTIVE JUROR EVANS: No real opinion. I
24 hadn't thought about it.

25 MR. WELCH: Okay. Does anybody have an opinion of

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1 people that hack into these scrambled signals, whether it be
2 cable or satellite systems? Mr. Cannavino.

3 PROSPECTIVE JUROR CANNAVINO: It would not seem
4 like the right thing to do.

5 MR. WELCH: Okay. Does anybody disagree with Mr.
6 Cannavino, that it's not the right thing to do? Okay. Mr.
7 Howell, how do you feel about your DISH network system? Do
8 you like it? Do you have any troubles with it?

9 PROSPECTIVE JUROR HOWELL: I have had it for seven
10 years or so. I haven't had any big problems with it.

11 MR. WELCH: Okay. Now, if you get information
12 that DISH Network --

13 THE COURT: I don't want any preinstruction.
14 Thank you. Your next question.

15 MR. WELCH: What's that, Your Honor?

16 THE COURT: No preinstruction, no pre-facts, no
17 information. Your next question.

18 MR. WELCH: Thank you, Your Honor. Ms. Symonds,
19 you said you are retired from Anderson Consulting. Oh, Ms.
20 Huizenga. Okay. Sorry. I wrote that down wrong.

21 PROSPECTIVE JUROR HUIZENGA: Right.

22 Consulting?

23
24 PROSPECTIVE JUROR HUIZENGA: I was a manager in
25 Human Resources, and I taught a behavioral type of

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1 interviewing class.

2 MR. WELCH: What do you mean by you taught
3 behavioral type of interview?

4 PROSPECTIVE JUROR HUIZENGA: I was on a committee
5 -- not a committee, but a group of people who went around
6 the United States teaching a certain method of interviewing
7 for potential candidates for the consulting practice. And
8 we took -- it was a three-day course, and we took just it
9 just to various cities and taught partners, managers, and
10 other individuals this type of interviewing to helpfully
11 select the right candidates.

12 MR. WELCH: Was part of your job to be able to
13 assess credibility of people and things of that nature?

14 PROSPECTIVE JUROR HUIZENGA: Based on a formula,
15 yes. Definite criteria.

16 MR. WELCH: So it was more of an analytical thing
17 rather than just a feel or based on body movements and
18 things like that?

19 PROSPECTIVE JUROR HUIZENGA: Correct.

20 MR. WELCH: Now, Mr. Cannavino, I think you said
21 you worked for nonprofit?

22 PROSPECTIVE JUROR CANNAVINO: Yes.

23 MR. WELCH: And your wife does as well?

24 PROSPECTIVE JUROR CANNAVINO: Right.

25 MR. WELCH: Okay. What exactly is it that you do

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1 for the nonprofit organization?

2 PROSPECTIVE JUROR CANNAVINO: We are responsible
3 for trying to match the financial needs of the ministry with
4 the donor base. So we work with our major donors to the
5 ministry to fund projects around the world.

6 MR. WELCH: What type of projects are those?

7 PROSPECTIVE JUROR CANNAVINO: We have a film on
8 the life of Christ that's been translated into 120
9 languages, so we fund film teams, partnerships, and language
10 translations, that type of thing.

11 MR. WELCH: Okay. And you said your wife also
12 works. Does she do the exact same thing that you do?

13 PROSPECTIVE JUROR CANNAVINO: Right. She does,
14 yeah.

15 MR. WELCH: What is it you like about your job?

16 PROSPECTIVE JUROR CANNAVINO: Well, I was a
17 salesman most of my life and became a Christian late in
18 life. So what I enjoy most about it is serving God. But I
19 enjoy the relational aspects of the ministry, working with
20 people that have a heart for doing what we're doing.

21 MR. WELCH: Has anybody else in the jury panel
22 done volunteer type work or nonprofit type work? Mr.
23 Nguyen.

24 PROSPECTIVE JUROR NGUYEN: I went to the
25 Philippines for short-term mission, two months. And I went

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1 back to Vietnam for medical mission.

2 MR. WELCH: And when was that, sir?

3 PROSPECTIVE JUROR NGUYEN: It was in the year 2000
4 I went back to Vietnam for the medical mission. In 1992 I
5 went to the Philippines to help people in rescue camps.

6 MR. WELCH: How did you like that experience?

7 PROSPECTIVE JUROR NGUYEN: It was awesome.

8 MR. WELCH: Is there anybody else that has had any
9 experience helping other individuals, whether it be

10 nonprofit or just lending assistance? Yes, Ms. Symonds.

11 PROSPECTIVE JUROR SYMONDS: We are currently
12 participating with Habitat for Humanity and building a home
13 for a family in Santa Ana, not too far from here actually.
14 I did fund raising and actual building.

15 MR. WELCH: I didn't get the last part. You did
16 fund raising --

17 PROSPECTIVE JUROR SYMONDS: Fund raising and
18 actual building on the house.

19 MR. WELCH: So you got out there with the hammer
20 and the nails?

21 PROSPECTIVE JUROR SYMONDS: Actually, painting.

22 MR. WELCH: Painting. Has anybody else done
23 things where they've helped in the community, helped your
24 neighbors?

25 PROSPECTIVE JUROR TYNAN: Are you talking like

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1 coaching sports and things like that?

2 MR. WELCH: Yes. That would be one example.

3 PROSPECTIVE JUROR TYNAN: For 12 years I coached
4 baseball, basketball, and soccer for youth in the local
5 Anaheim area where I live.

6 MR. WELCH: I think we had some other people that
7 also had helped out in the community?

8 PROSPECTIVE JUROR HOWELL: Yes, through scouting,
9 when I was in scouts.

10 MR. WELCH: In scouts?

11 PROSPECTIVE JUROR HOWELL: Projects for the
12 community, things of that nature. That was a long time ago,
13 though.

14 MR. WELCH: How long did you do that for? Mr.
15 Howell, how long did you do that for with the scouting?

16 PROSPECTIVE JUROR HOWELL: Four or five years.

17 MR. WELCH: Okay. I think Mr. Paff?

18
19 my son's team for several years. I was a bowling coach for
20 the junior program at a facility that no longer exists, and
21 I am a cancer support group facilitator for our church at my
22 home.

23 MR. WELCH: Okay. We talked about people that
24 have spouses that work at home. Do those spouses -- are
25 they monitored or supervised -- anybody -- do you

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1 understand? The concept I am talking about here is if
2 somebody works from home and actually works for somebody
3 else. Does anybody have a situation like that? Mr.
4 Cannavino?

5 PROSPECTIVE JUROR CANNAVINO: My wife works out of
6 the home, and there is really not supervision.

7 MR. WELCH: There's not really supervision?

8 PROSPECTIVE JUROR CANNAVINO: Right.

9 MR. WELCH: Okay. Does anybody have any thoughts
10 or any feelings about if you have an employee that works
11 from home and you have the supervisor, the employer? Does
12 anybody have any strong feelings on how much supervision
13 that employer should have on that employee? Should they be
14 monitoring them weekly, daily, getting reports? Or should
15 they just be letting them do their job? Anybody have any
16 feelings one way or the other on that?

17 PROSPECTIVE JUROR TYNAN: I work in a highly
18 regulated industry, so, yeah, I would be monitoring them,
19 expecting, you know, updates very routinely, weekly at the
20 outside.

21 MR. WELCH: Okay. I want the rest of you to think
22 about that concept. Does anybody have the same view that
23 Mr. Tynan has? Ms. Symonds?

24 PROSPECTIVE JUROR SYMONDS: Yes. I mean, I
25 believe honestly that you need to hold your staff

1 accountable, so there has to be monitoring involved in that.

2 MR. WELCH: Okay.

3 PROSPECTIVE JUROR SYMONDS: Obviously they have
4 certain responsibilities to carry out, so obviously you want
5 to manage that.

6 MR. WELCH: And what type of management do you
7 think that a company should do?

8 PROSPECTIVE JUROR SYMONDS: You mean frequency or
9 just how to?

10 MR. WELCH: Frequency and what type.

11 PROSPECTIVE JUROR SYMONDS: I would say probably
12 weekly, and that could be electronic or it could be one on
13 one or however you would want to go about doing that.

14 MR. WELCH: Okay. You don't have any strong
15 feeling about the type of supervision? Just basically
16 getting an e-mail report, you find that sufficient?

17 PROSPECTIVE JUROR SYMONDS: Yes, I would.

18 MR. WELCH: Okay. Mr. Evans, do you have an
19 opinion on that?

20 PROSPECTIVE JUROR EVANS: Basically the same. You
21 know, you have got tasks to get done or you may have
22 schedules, deadlines, goals, those things that are required.
23 And, you know, depending on the task at hand would determine
24 the frequency, but at least weekly, yes.

25 MR. WELCH: Okay. Mr. Cannavino?

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1 PROSPECTIVE JUROR CANNAVINO: I think it's
2 probably dependent on the type of business. I was a
3 director of sales for a packaging company, and I had sales
4 guys in two or three cities around the country and a couple
5 here in Southern California. And I really based it on their

6 performance. I wasn't a very hands-on manager. If they
7 were performing well and they would send me a report once a
8 week on just what they were doing, that was adequate for me.

9 MR. WELCH: Okay. Has anybody in any of their
10 work experience had situations where there were employees
11 that were involved in misconduct? Yes, Mr. Paff.

12 PROSPECTIVE JUROR PAFF: I have had to fire
13 several employees for viewing pornography on the internet.
14 I had to terminate an employee for stealing components out
15 of servers. That's basically it.

16 MR. WELCH: Was that pretty easy for you to do?
17 Are you kind of one of those --

18 PROSPECTIVE JUROR PAFF: No. It's very difficult
19 to do. You don't want to terminate somebody, and it's
20 frustrating that you have to go through all that work to
21 deal with that kind of behavior.

22 MR. WELCH: Anybody else have a view on that?
23 Back to Ms. Symonds.

24 PROSPECTIVE JUROR SYMONDS: I have had to
25 terminate people for taking drugs on the job, alcohol, and

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1 also falsifying patient records; basically not doing their
2 work, which in this case could be life-threatening. So I
3 have had to do that more than once or twice.

4 MR. WELCH: How did you feel about that?

5 PROSPECTIVE JUROR SYMONDS: I felt very justified
6 in terminating that person because I felt that we were
7 dealing with human lives here, so I thought that was fairly
8 serious.

9 MR. WELCH: Okay. Now, if it just comes to money,
10 does your view change on that? When we're not talking about
11 human lives and let's say that there was just the employee
12 had done some type of misconduct that was just monetary in
13 harm?

14
15 depend on the circumstance and the person. But do I believe
16 in right and wrong? Yes, absolutely I do.

17 THE COURT: Counsel, you have two more minutes.

18 MR. WELCH: Okay. On that subject about right and
19 wrong, sometimes people can look at things and there is
20 gray-area people and there is hard-and-fast people. How
21 many of you would say that your a gray-area person where you
22 want to sit back and take a look at it and take it all in?
23 Mr. Howell. Does anybody else have a different view on
24 that?

25 PROSPECTIVE JUROR SYMONDS: I think it depends on

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1 the circumstances.

2 MR. WELCH: How many of you would consider
3 yourself artistic? Yes, Mr. Howell. What are your hobbies?

4 PROSPECTIVE JUROR HOWELL: I do oil painting and
5 musical composition and recording.

6 THE COURT: On that note, counsel, thank you very
7 much. Let me ask Mr. Tynan. Counsel had asked you a
8 question, and you informed me that you are involved in a
9 large-animal industry in a sense. Are you involved in the
10 San Joaquin Valley concerning this beef issue?

11 PROSPECTIVE JUROR TYNAN: No, I'm not.

12 THE COURT: Okay. That would certainly be a
13 public health issue.

14 Mr. Cannavino, do you have an acquaintance or a
15 friend named Roy Facell?

16 PROSPECTIVE JUROR CANNAVINO: No.

17 THE COURT: I haven't met you socially; have I?

18 PROSPECTIVE JUROR CANNAVINO: No, I don't believe
19 so.

20 THE COURT: Okay. I will turn to NDS. And,
21 counsel, would you introduce yourself to the jury. You have
22 20 minutes, please.

23 MR. STONE: Thank you, Your Honor.

24 THE COURT: Use the microphone so my court
25 reporter can hear you.

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1 MR. STONE: Thanks, Your Honor. Good morning
2 again. My name is Richard Stone, and I represent NDS in
3 this case. I know you folks haven't heard any evidence.
4 But as you sit here without having heard any evidence, do
5 any of you have any opinion that reverse engineering is
6 wrong or have an opinion that reverse engineering is right?
7 Could I have a show of hands. Mr. Howell.

8 PROSPECTIVE JUROR HOWELL: well, I think on the
9 part of the people who are doing it, it's very clever. But
10 when it's used for financial gain to profit off of the
11 intellectual property of someone else, then I don't think
12 it's the right thing to do. And even to propagate that for
13 the purpose of violating someone else's intellectual
14 property, I don't like that idea.

15 MR. STONE: Have you ever used it in your work?
16 Have you ever taken something apart and looked at it as part
17 of your job duties?

18 PROSPECTIVE JUROR HOWELL: No. That's never been
19 one of my responsibilities either programming or managing
20 any commerce.

21 MR. STONE: Have you ever heard the term or the
22 phrase in programming "the buffer overflow"?

23 PROSPECTIVE JUROR HOWELL: Yes, I have.

24 MR. STONE: And how did that come to your
25 attention in your job duties?

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1 PROSPECTIVE JUROR HOWELL: I was a web programmer

2 for a while, so I understand how that would work with
3 respect to hacking to overrun the buffer and then start
4 inserting instructions that the application receiving it
5 would have to enact and allow the hacker access.

6 MR. STONE: It sounds like you know it better than
7 I do.

8 PROSPECTIVE JUROR HOWELL: Never tried it, though.

9 MR. STONE: Mr. Tynan, I recall that you were a
10 plaintiff -- with a company that was a plaintiff in a case
11 recently?

12 PROSPECTIVE JUROR TYNAN: Yes. Like I said, I
13 make sterile products. Part of our process twice a year is
14 to take what is supposed to be sterile media, simulate our
15 manufacturing process to duplicate what we do every day. We
16 purchased media from the third largest media supplier in the
17 U.S. who claimed to have made a sterile product. They
18 actually never made the product before.

19 They were testing their sterilization system on
20 it, and we were the guinea pig. So I used it, contaminated
21 my system, and we were shut down for 10 weeks trying to
22 recover.

23 MR. STONE: And was there anything about that
24 experience you had that gave you any sour feeling about the
25 court system in any way?

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1 PROSPECTIVE JUROR TYNAN: A little bit, yeah.
2 There were 12 counts. We won 11. The judge gave us the 12,
3 and we barely recovered our legal fees.

4 MR. STONE: So you came away with that not
5 satisfied with how the process works?

6 PROSPECTIVE JUROR TYNAN: Not very happy,
7 especially when it was my plant that was down for that long.

8 MR. STONE: What newspapers do you regularly read?

9 PROSPECTIVE JUROR TYNAN: I subscribe to the

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10 Orange County Register, but I don't read it very often.

11 MR. STONE: Ms. Symonds, how about you? Is there
12 anything that you read for pleasure outside of the
13 newspapers?

14 PROSPECTIVE JUROR SYMONDS: I read a lot of both
15 fiction and nonfiction, yes, I do.

16 MR. STONE: Is there any genre you particularly
17 prefer or like to read?

18 PROSPECTIVE JUROR SYMONDS: No. You know,
19 whatever interests me. And I obviously read books on
20 leadership, et cetera, for my work.

21 MR. STONE: Right. Any magazines that you
22 regularly read?

23 PROSPECTIVE JUROR SYMONDS: Time.

24 MR. STONE: What are your thoughts, if you have
25 any, about competition and whether that's a good thing for

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1 consumers, bad thing?

2 PROSPECTIVE JUROR SYMONDS: I think it's an
3 excellent thing.

4 MR. STONE: Why is that?

5 PROSPECTIVE JUROR SYMONDS: well, obviously when
6 you have competition, that drives down the cost of things,
7 and I think it's healthy. I think it's a healthy thing. I
8 just think it's an excellent thing.

9 MR. STONE: Mr. Nguyen, do you have any strong
10 feelings one way or the another about competition? I sense
11 you're in a fairly competitive business.

12 PROSPECTIVE JUROR NGUYEN: I agree with her. The
13 consumer will pay less if there is not a monopoly in the
14 market. And it's not going to be good for the economy and
15 nothing good for everyone.

16 MR. STONE: Mr. Paff, do you have any particular
17 thoughts about competition, whether it's good or bad or good
18 for consumers?

19 PROSPECTIVE JUROR PAFF: I believe competition is
20 good. I believe it inspires innovation and brings down
21 costs, and the consumers get a better overall product in the
22 end at a better price.

23 MR. STONE: Now, when you went through the process
24 of terminating some employees, I take it you tried your best
25 to get all the facts and fairly evaluate the situation

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1 before you were forced to make the final decisions that you
2 did?

3 PROSPECTIVE JUROR PAFF: Unfortunately we live in
4 California here, and we have laws that are trying to tie my
5 hands as a manager. In these cases if it's brought to my
6 attention, I have to act on it. So otherwise I put the
7 company at risk, and therefore I did what my job was to do,
8 was to notify HR and let them take it from there. And
9 everything turned out to be as it was communicated to me.

10 MR. STONE: Now, what kind of things do you search
11 when you go on the internet? What kind of sites do you like
12 to go to?

13 PROSPECTIVE JUROR PAFF: Mostly consumer sites. I
14 like electronics, but I wouldn't say I am real savvy at
15 utilizing all their functionality. Pretty much sports,
16 electronics, you know, consumer sites.

17 MR. STONE: Is there anything that you
18 particularly don't like about the internet that kind of bugs
19 you about the internet -- other than pop-up ads?

20 PROSPECTIVE JUROR PAFF: Pop-ups are definitely
21 something I don't like. I don't know. It's not so much the
22 internet as -- well, I don't like the ability for people to
23 -- we got hit with a -- we've protected ourselves since, but
24 we got hit with a pretty bad bug, and it overrode our entire
25 outlook or exchange system.

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1 So, yeah, those kinds of things I don't like. I
2 don't like people who do that. It's destructive. It's
3 wrong. But it provides a lot of good, too, you know. It's
4 not just all bad.

5 MR. STONE: Do you have any friends or close
6 relatives who are in law enforcement?

7 PROSPECTIVE JUROR PAFF: My neighbor works for
8 Westminster Police Department. Other than that I don't have
9 any -- I don't know of any people close to me that work in
10 the law enforcement.

11 MR. STONE: Do any of you work at companies where
12 you are occasionally called to work with law enforcement to
13 help prosecute people who might have done something that was
14 criminal? Would any of you have any problems evaluating a
15 company that gets involved with law enforcement to go after
16 people who engage in satellite piracy, for example?

17 Mr. Cannavino, I meant to ask you: Do you have
18 any strong feelings one way or the other about competition,
19 whether it's good or bad for consumers?

20 PROSPECTIVE JUROR CANNAVINO: I think competition
21 is good for, as he mentioned, innovation and also price,
22 keeps things competitive.

23 MR. STONE: And other than your work that I know
24 probably consumes a lot of time, do you have any sort of
25 outside hobbies, sports, reading?

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1 PROSPECTIVE JUROR CANNAVINO: I hurt my back, but
2 before that I was kayaking a lot just on a lake, and that's
3 about it, you know. I travel a lot for work, so --

4 MR. STONE: It kind of becomes your hobby going
5 through airport security?

MR. STONE: Ms. Huizenga, can you tell us what types of reading materials you do for pleasure?

PROSPECTIVE JUROR HUIZENGA: Well, it used to be a lot of business magazines, but I've kind of dumped those and am more in maybe to cooking and recreation and that type of thing. Sometimes a fictional book for entertainment, especially on a plane.

MR. STONE: I know your husband is the main one that fixes the computers and stuff at home. Do you personally go on the internet very often?

PROSPECTIVE JUROR HUIZENGA: Seldom, but I do go if I'm looking for a product or I want to check something out. I am capable of doing that.

MR. STONE: And is there anything that particularly bugs you about the internet?

PROSPECTIVE JUROR HUIZENGA: Well, there's a lot. When it doesn't work right, I get real irritated.

MR. STONE: Like me. Do any of you have friends or relatives that go on, like, the MySpace websites, you

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know, the networking websites? Mr. Howell.

PROSPECTIVE JUROR HOWELL: Have friends that use social networking sites, yes.

MR. STONE: Any particular thoughts or opinions you have about those sites?

PROSPECTIVE JUROR HOWELL: I could say a lot about that, but --

MR. STONE: In 25 words or less.

PROSPECTIVE JUROR HOWELL: I think in general it can be a positive thing, but a lot of people tend to abuse that and try to take advantage of folks. I think people -- I am concerned about the youngest generation that's coming up and their constant exposure to media and being always on camera and what that will do to our society as they grow

15 older.

16 MR. STONE: And the video games?

17 PROSPECTIVE JUROR HOWELL: Well, I am a gamer, so
18 I can't say much about that.

19 MR. STONE: You and my son would get along. Trust
20 me. Mr. Evans, I know you read the Orange County Register,
21 I think is what you said; correct?

22 PROSPECTIVE JUROR EVANS: Yes.

23 MR. STONE: Do you read any other materials for
24 pleasure or for work?

25 PROSPECTIVE JUROR EVANS: Golf magazine, science

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1 fiction.

2 MR. STONE: Are you an avid golfer?

3 PROSPECTIVE JUROR EVANS: I try to be.

4 MR. STONE: How often do you get out and play?

5 PROSPECTIVE JUROR EVANS: Lately not much, but
6 usually about two or three times a week.

7 MR. STONE: In your line of work are you ever
8 called upon to provide studies to help your employer compete
9 against other companies?

10 PROSPECTIVE JUROR EVANS: I have been involved
11 with proposals for different product lines, yes.

12 MR. STONE: Can you tell us a little bit more
13 about that?

14 PROSPECTIVE JUROR EVANS: Basically we deal with
15 aerostructure. So as we bid for different aircraft
16 components, we would have to go out and do proposals and
17 submit that to the customer.

18 MR. STONE: In doing that, do you ever sort of
19 keep tabs on the competition so you know what kind of
20 products they're offering or what kind of sales pitches
21 they're making so that you can better compete?

22 PROSPECTIVE JUROR EVANS: I don't get involved at

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23 that level. Basically ours is to present our technology in
24 a manner that makes it viable for the customer to buy into.

25 MR. STONE: Have any of you folks been involved in

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1 sort of like a competitive bidding process where you had to
2 go try to get one customer versus another competitor and
3 make presentations or have worked on any such presentations?
4 Mr. Cannavino.

5 PROSPECTIVE JUROR CANNAVINO: Are you saying on
6 the presenting side?

7 MR. STONE: Correct, yes.

8 PROSPECTIVE JUROR CANNAVINO: I sold plastic
9 packaging, so we would have to make presentations to
10 clients. We weren't ever there with our competitors. We
11 were there at a different time. But we made a presentation;
12 our competitor would -- that type of thing.

13 MR. STONE: And then you would hear from the
14 customer, gee, your competitor just said they can do X, Y,
15 and Z. Why can't you guys? It was that kind of stuff?

16 PROSPECTIVE JUROR CANNAVINO: Exactly.

17 MR. STONE: Right. In your work did you ever have
18 to, like, go to a customer and say, well, that competitor
19 says they can do X, Y, and Z, but we know they can only do X
20 and Y and they can't do Z, something along those lines?

21 PROSPECTIVE JUROR CANNAVINO: No, never really had
22 to do that.

23 MR. STONE: Do you have a problem with that, with
24 folks out in the marketplace saying, you know, you might
25 want to think twice before using that competitor; our

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1 product is better; theirs might have some problems?

value of our products and never really talked too much about
our competitors' products.

MR. STONE: So the idea was to push your product
and explain the virtues of it?

PROSPECTIVE JUROR CANNAVINO: Right.

MR. STONE: Now, I am going to ask each of you a
question. It's kind of a funny question, and I will start
with Ms. Symonds and kind of go around here so that we --
you know it's coming. Excluding any relatives, can you tell
me who one of your heroes might be? See, it's tough.

PROSPECTIVE JUROR SYMONDS: That's a tough one.

MR. STONE: Sports, politics, government?

PROSPECTIVE JUROR SYMONDS: Tiger woods.

MR. STONE: Just briefly, why would Tiger woods be
one of your heroes?

PROSPECTIVE JUROR SYMONDS: I admire the way he
plays golf. I am a golfer myself, so, you know. I think
not only that but his ethnicity and coming up. I think all
of those things, and the fact that he is obviously a very
nice man as well.

MR. STONE: Great. Thank you. Ms. Huizenga.

PROSPECTIVE JUROR HUIZENGA: One of my heroes is
not well known, and that would be someone who mentored me in

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the corporate world, whose ethics were very high and who
taught me a lot about that.

MR. STONE: That's what you admired about them was
their standard of ethnics?

PROSPECTIVE JUROR HUIZENGA: One of the things,
yes. Well, work ethic. Just taught me a lot about the
business world in general, too.

MR. STONE: Mr. Cannavino.

PROSPECTIVE JUROR CANNAVINO: I would have to say
Bill Bright. He was the founder of Campus Crusade for

11 Christ on the UCLA campus back in the '50s. And he was a
12 successful business guy who gave up essentially his business
13 and his life to serve God, and he just is a man of virtue,
14 and I really respect him.

15 MR. STONE: It sounds like he has had a strong
16 influence on you as well.

17 PROSPECTIVE JUROR CANNAVINO: Yes.

18 MR. STONE: Very good. Thank you. Mr. Paff.

19 PROSPECTIVE JUROR PAFF: I would say Ronald Reagan
20 for what he stood for, for his ability to stand up for
21 what's right in the midst of all the pressure to cave in. I
22 just think he had a great way about bringing people together
23 and unifying people.

24 MR. STONE: Thank you. Mr. Tynan.

25 PROSPECTIVE JUROR TYNAN: For me it would be

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1 teachers. I have a daughter with some mental and physical
2 handicaps, and we had a teacher encourage her in the sixth
3 grade. We were told she wouldn't get out of the eighth
4 grade literally, wouldn't get a high school education.

5 She now has a master's in education solely due to
6 that teacher, so it's kind of personal, but teachers and
7 what they do.

8 MR. STONE: Thank you. Mr. Howell.

9 PROSPECTIVE JUROR HOWELL: It's really tough. If
10 I could pick an author, I guess, that had an influence on my
11 life -- I read a lot -- would be Philosopher Lao Tzu and his
12 work, just influenced my way of thinking and approaching my
13 life.

14 MR. STONE: Thank you. Mr. Nguyen.

15 PROSPECTIVE JUROR NGUYEN: I don't have one. But
16 just like he said, influence my life, just the Bible.

17 MR. STONE: Thank you, sir. Mr. Evans.

18 PROSPECTIVE JUROR EVANS: Again I thought of an

19 author as well, Frank Herbert. He was able to place the
20 human condition in different environments to make you think
21 about the interactions that we all go through. It's just
22 the way he makes you think about things and take the step
23 back and really understand how we deal with things.

24 MR. STONE: Okay. Thank you. One final round of
25 questioning. Have any of you ever worked with law

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1 enforcement, worked with prosecutors or worked with police,
2 FBI, customs, in any capacity? Any friend -- Mr. Tynan.

3 PROSPECTIVE JUROR TYNAN: More as the end result
4 of customs. A lot of the raw materials I use to make some
5 of my products are imported, so I deal with customs and FDA
6 almost weekly.

7 MR. STONE: But in sort of a business regulation?

8 PROSPECTIVE JUROR TYNAN: More of a business
9 regulation aspect, yes.

10 MR. STONE: So it would be with export/import
11 controls and what not?

12 PROSPECTIVE JUROR TYNAN: Exactly.

13 MR. STONE: Okay. Well, thank you very much. I
14 appreciate you all taking the time to talk to me.

15 THE COURT: Thank you. The first peremptory
16 passes to the plaintiff. Counsel, in making that decision,
17 about one minute at the very most.

18 MR. WELCH: Your Honor, we would like to thank and
19 excuse Mr. Evans.

20 THE COURT: Mr. Evans, thank you very much, sir.
21 would you go back and check with Millie, who is our jury
22 commissioner. See if any further service is needed today.
23 If so, good luck. If not, thank you for serving, sir.

24 would you call an additional juror, Kristee.

25 THE CLERK: Susan Harris.

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1 THE COURT: Now, for the remaining jurors this is
2 going to go very quickly, so you will see in just a moment.
3 I am going to ask Ms. Harris just a few questions. They
4 won't be 20 minutes apiece. There'll probably be just one
5 or two minutes for counsel's questions to follow up, and
6 that will be it. So we'll have a jury very quickly.

7 Ms. Harris, how are you today?

8 PROSPECTIVE JUROR HARRIS: Good.

9 THE COURT: You've heard all of the other
10 questions I've asked. Without repeating any of those, what
11 would you like to comment upon?

12 PROSPECTIVE JUROR HARRIS: I work for AT&T. We
13 offer DISH service. Don't ask me anything about it. I
14 don't know how much it costs. I don't have it. I have Time
15 Warner.

16 THE COURT: That's good. You can see where we are
17 going with this. I am going to get you talking first
18 instead of asking the same questions again. Just a couple.
19 If you're married, what does your spouse do?

20 PROSPECTIVE JUROR HARRIS: He is in aerospace. He
21 is the only one who uses the computer at home. I am too
22 frustrated with it. I can't figure it out. I don't like to
23 get on the internet. I don't find that entertaining. I
24 don't trust it to do my banking or buy stuff, access my
25 brokerage accounts. I don't want my social security number

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1 in there. So I don't do any transactions everybody else
2 nowadays does over the internet.

3 THE COURT: Have you ever been a juror before?

4 PROSPECTIVE JUROR HARRIS: Several times in civil
5 and criminal cases. They have all reached verdicts.

6 THE COURT: Okay. I don't want to know what those

7 verdicts are. Those, I assume, were over in the state court
8 --

9 PROSPECTIVE JUROR HARRIS: Correct.

10 THE COURT: -- across the street or in one of the
11 outlying courts in the county or in Los Angeles?

12 PROSPECTIVE JUROR HARRIS: Right.

13 THE COURT: Do you feel you could be fair and
14 impartial to both sides?

15 PROSPECTIVE JUROR HARRIS: Yes.

16 THE COURT: Okay. Would you follow the law?

17 PROSPECTIVE JUROR HARRIS: Yes.

18 THE COURT: Okay. Once again, Congress can
19 rewrite the law in this area, but it's fairly well defined.

20 PROSPECTIVE JUROR HARRIS: Yes.

21 THE COURT: Counsel, if you have a few questions.

22 MR. WELCH: Yes, I do, Your Honor.

23 THE COURT: All right, counsel. Probably two
24 minutes at the most.

25 MR. WELCH: Ms. Harris, one of the things you just

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1 talked about is that you were kind of distrusting of the
2 internet and things like that. What led to that? Could you
3 tell us about that?

4 PROSPECTIVE JUROR HARRIS: Reading articles,
5 seeing things on the news. And then our computer has had so
6 many viruses that we had to buy a new one. And, you know,
7 it was just a big problem that went on forever, and we
8 finally had to just get a new one. And then all the things
9 about the scam artists trying to get information through
10 your e-mail and all this stuff, because they come in through
11 the back doors. They don't put in your account numbers,
12 don't, you know, do anything. I just don't trust it.

13 MR. WELCH: Okay. Have you had a personal
14 experience with that, or is it just stuff that you read?

15
16 MR. WELCH: Okay.

17 PROSPECTIVE JUROR HARRIS: I have never done any
18 transactions. My husband has bought books over the
19 internet, but I kind of told him to stop putting in his
20 debit card.

21 MR. WELCH: Okay. What do you think about
22 companies that are involved in spreading viruses and things
23 like that?

24 PROSPECTIVE JUROR HARRIS: You mean the ones who
25 make them?

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1 MR. WELCH: Yeah.

2 PROSPECTIVE JUROR HARRIS: I hate them.

3 MR. WELCH: Okay. If they just generate the virus
4 but other people use it, do you still find those people at
5 fault that generate the virus?

6 PROSPECTIVE JUROR HARRIS: Of course.

7 MR. WELCH: Okay. I don't have any further
8 questions. Thank you, Ms. Harris.

9 THE COURT: Thank you, counsel. Turn the
10 questions back to Mr. Stone with NDS. Just a couple
11 minutes, Mr. Stone. Probably no more than two minutes.

12 MR. STONE: Good morning, Ms. Harris.

13 PROSPECTIVE JUROR HARRIS: Good morning.

14 MR. STONE: I caught that you were worked at AT&T,
15 but I didn't catch what exactly you do in your job.

16 PROSPECTIVE JUROR HARRIS: Actually I am in the
17 technical field. I maintain the network, so I work on the
18 equipment. I don't know how the stuff works. I don't know
19 what you guys are talking about. Everybody tells me that
20 everything is encoded; don't worry about it.

21 we hook up -- we are going to start selling our
22 own video. I don't think we are going to be using DISH
23 anymore. Internet, phone, and video all on one line to the

24 customer, and that's the equipment I maintain in the central
25 office.

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1 MR. STONE: Got it.

2 PROSPECTIVE JUROR HARRIS: But I don't have to
3 know how this stuff works. I just have to make sure I know
4 how the equipment is connected peripherally.

5 MR. STONE: Make sure it is working?

6 PROSPECTIVE JUROR HARRIS: Yeah.

7 MR. STONE: What do you think about competition?
8 Good for consumers? Bad for consumers? No feelings?

9 PROSPECTIVE JUROR HARRIS: I work for AT&T.

10 MR. STONE: Good point. Fair point. Who would
11 you say -- not a relative, but who would you say was one of
12 your heroes?

13 PROSPECTIVE JUROR HARRIS: I'm sorry. I didn't
14 hear you.

15 MR. STONE: Who is one of your heroes, excluding
16 relatives?

17 PROSPECTIVE JUROR HARRIS: You know what? I
18 couldn't come up with that one when I was sitting in there.
19 I don't know.

20 MR. STONE: It seems like an easy question;
21 doesn't it? But it's kind of tough when you're --

22 PROSPECTIVE JUROR HARRIS: I couldn't think of
23 anybody. When I go home, I will.

24 MR. STONE: When you come back, you can tell us.
25 Have you heard anything so far that makes you feel like you

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1 wouldn't be a particularly good juror for this case? Do you
2 think you could be fair and impartial to both sides?

3 PROSPECTIVE JUROR HARRIS: I just don't know
4 because my company offers DISH network, but I don't have the
5 service. I don't know how this stuff works. I don't want
6 to know how it works.

7 MR. STONE: And would anything about that
8 influence your decision in this case one way or the other?

9 PROSPECTIVE JUROR HARRIS: I think that it
10 wouldn't give DISH an advantage. I don't feel like we are
11 partners or anything.

12 MR. STONE: So you'd want to hear all the evidence
13 from both sides before you made any decision in this case;
14 is that fair?

15 PROSPECTIVE JUROR HARRIS: Right.

16 MR. STONE: All right. Thanks very much. I
17 appreciate it.

18 THE COURT: Thank you.

19 The peremptory now passes to NDS. About 30
20 seconds to a minute, please.

21 MR. STONE: Thanks, Your Honor. Defendants would
22 like to thank and excuse juror number 4, Mr. Tynan.

23 THE COURT: Mr. Tynan, thank you very much, sir.
24 would you go back and check with Millie, who is our jury
25 commissioner. You met her this morning. See if there is

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1 another case. If not, I want to thank you for your jury
2 service here.

3 would you call another juror, please, Kristee.

4 THE CLERK: Harriet Malmon, M-a-l-m-o-n.

5 THE COURT: Ms. Malmon, how are you? You can see
6 how quickly this is going to go now. We'll have the jury in
7 just a few moments.

8 Let me begin. You have heard all the prior
9 questions by me and by both counsel. Are there any of those
10 questions you would like to comment upon specifically, any

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questions that I have asked?

12 PROSPECTIVE JUROR MALMON: Something that I have a
13 particular interest in, you mean?

14 THE COURT: Yes -- anything you would like to tell
15 us.

16 PROSPECTIVE JUROR MALMON: well, I do think
17 competition is good, for the reasons stated.

18 THE COURT: Okay.

19 PROSPECTIVE JUROR MALMON: And it makes us better
20 if we are involved in it. I am not particularly computer
21 savvy although I do use them at work and at home. I own a
22 store, and I owned a business before that with my husband.

23 THE COURT: What do you do by way of profession?

24 PROSPECTIVE JUROR MALMON: I own a retail store.

25 THE COURT: Retail. And your husband, was he

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1 involved in the same business?

2 PROSPECTIVE JUROR MALMON: No. He has now become
3 warehouse manager. But, no. He's a dentist, and we had a
4 large office that I ran.

5 THE COURT: I see. Have you ever been a juror
6 before?

7 PROSPECTIVE JUROR MALMON: I have not.

8 THE COURT: And reading material, what do you like
9 to read for leisure?

10 PROSPECTIVE JUROR MALMON: well, if I had more
11 leisure, I could probably answer that question. I have so
12 little time for it that -- if I go on a trip, I usually read
13 fiction, usually. I will pick up a magazine.

14 THE COURT: Do you know anything about what I am
15 going to call the hacker community or NDS or EchoStar --

16 PROSPECTIVE JUROR MALMON: Absolutely nothing.

17 THE COURT: -- any of these parties involved?

18 PROSPECTIVE JUROR MALMON: Absolutely nothing.

19 THE COURT: Okay. Do you think you could be fair

20 and impartial to both sides in this case?

21 PROSPECTIVE JUROR MALMON: Well, I think I could.

22 THE COURT: I think you will find counsel utterly
23 charming and the case fascinating once we begin -- which we
24 will do today, believe it or not.

25 PROSPECTIVE JUROR MALMON: I do believe you.

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1 THE COURT: Okay. Would you follow the law at the
2 end of the case that I instruct you on?

3 PROSPECTIVE JUROR MALMON: I'm sorry?

4 THE COURT: Would you follow the law at the end of
5 the case that I instruct you on?

6 PROSPECTIVE JUROR MALMON: Yes.

7 THE COURT: Okay. I will turn you over to counsel
8 for EchoStar. Would you reintroduce yourself just by name?
9 I know who you are, certainly.

10 MR. WELCH: Wade Welch. Thank you, Your Honor.
11 Ms. Malmon, you said that you think competition is healthy.
12 Do you think that competition can go too far and that there
13 is a line that can be passed?

14 PROSPECTIVE JUROR MALMON: Well, of course, like
15 anything.

16 MR. WELCH: Could you tell me what you feel about
17 that?

18 PROSPECTIVE JUROR MALMON: Well, I think within
19 the bounds of ethics, competition is good.

20 MR. WELCH: Okay. Do those ethics have to be
21 written down somewhere, or do you think that companies
22 should look at an employee's conduct and do not a
23 bright-line test but just basically a gut feel?

24 PROSPECTIVE JUROR MALMON: Somehow I think it's
25 understood, right and wrong.

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1 MR. WELCH: Now, have you ever had -- you talked
2 about the fact that you owned a retail store. Have you ever
3 had to hire or actually terminate employees?

4 PROSPECTIVE JUROR MALMON: I have not in this
5 business, but I have in the past.

6 MR. WELCH: Okay. What type of business was that?

7 PROSPECTIVE JUROR MALMON: My husband and I had a
8 large -- I should say it was his license and his name on the
9 door, but we had 53 employees. It was a large dental
10 practice.

11 MR. WELCH: Okay. And what was the situation
12 where you had to terminate employees in a dental practice?

13 PROSPECTIVE JUROR MALMON: You know, it's funny.
14 At this very moment I can't remember the specifics. I can
15 only tell you that it had to do with dishonesty.

16 MR. WELCH: Okay. Was that an easy decision or
17 was it a hard decision?

18 PROSPECTIVE JUROR MALMON: That was not a
19 difficult decision.

20 MR. WELCH: Not a difficult decision?

21 PROSPECTIVE JUROR MALMON: It was difficult to do
22 it.

23 MR. WELCH: But you still went ahead and did it?

24 PROSPECTIVE JUROR MALMON: I did.

25 MR. WELCH: Okay. What type of hobbies do you

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1 have?

2 PROSPECTIVE JUROR MALMON: Hobbies? I don't have
3 much time for hobbies to be honest. I am a sole proprietor,
4 and I just work so hard. By the time I get my family and my
5 household in, not too much time for hobbies. But I love my
6 work.

community service type work?

PROSPECTIVE JUROR MALMON: I don't at this point
in my life. I did when I was younger.

MR. WELCH: Okay. Thank you, Ms. Malmon.

THE COURT: Thank you. Questions will be turned
over to NDS.

MR. STONE: Thanks, Your Honor. Good morning, Ms.
Malmon. How are you?

PROSPECTIVE JUROR MALMON: Fine, thanks.

MR. STONE: What kind of reading material do you
enjoy?

PROSPECTIVE JUROR MALMON: Well, as I said, I
don't -- I let my husband do the reading for us. I don't
have that much time. So when I do, it's usually fiction,
nothing specific.

MR. STONE: Just kind of light stuff to take your
mind off work?

PROSPECTIVE JUROR MALMON: Not too light but

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fiction.

MR. STONE: Do you go on the internet much at all?

PROSPECTIVE JUROR MALMON: Much? I go on the
internet. I use e-mail daily both at work and at home. And
I do do certain things on the internet but not a lot.

MR. STONE: Have you ever had the occasion to be
involved in litigation as a witness or a party?

PROSPECTIVE JUROR MALMON: I haven't, no.

MR. STONE: Now, in your business I take it it's
highly competitive?

PROSPECTIVE JUROR MALMON: It is.

MR. STONE: So do you do things to try to stay
abreast of what the competition is doing, how they are
reacting to market forces?

PROSPECTIVE JUROR MALMON: Of course.

16 MR. STONE: And then you try to react in return to
17 what your competitors are doing to kind of stay ahead of the
18 curve?

19 PROSPECTIVE JUROR MALMON: It's difficult to
20 answer that with a yes or no. I do it, but I do it the way
21 I feel is the way to do it. I don't necessarily do what
22 they're doing.

23 MR. STONE: You don't copy them? You come up with
24 your own --

25 PROSPECTIVE JUROR MALMON: Not necessarily.

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1 MR. STONE: Have you ever worked with the folks in
2 law enforcement?

3 PROSPECTIVE JUROR MALMON: No, I haven't.

4 MR. STONE: Is there anything you have heard so
5 far about this case that makes you think you couldn't be
6 fair and impartial to one side and the other?

7 PROSPECTIVE JUROR MALMON: I understand so little
8 that, no, I don't think so.

9 MR. STONE: All right. Thank you very much.

10 THE COURT: Counsel, the peremptory would now pass
11 back to the plaintiff.

12 MR. WELCH: Your Honor, we would like to thank and
13 excuse Mr. Nguyen.

14 THE COURT: Mr. Nguyen, thank you very much, sir.
15 If you would go back also and please check with the jury
16 commissioner, Millie, and see if there is another case that
17 you need to be assigned out. If not, sir, thank you very
18 much for your jury service.

19 THE CLERK: Martin Webb, w-e-b-b.

20 THE COURT: Thank you. Mr. Webb, how are you,
21 sir?

22 PROSPECTIVE JUROR WEBB: Fine.

23 THE COURT: Good.

24

25 The problem is that by the time you all get out and come

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1 back in, we could have this gentleman suffer.

2 why don't we take the seven of you back in the
3 jury room. There's a facility there. why don't all of you
4 go use the restroom. We are literally within minutes I
5 think of getting a jury. So let's take a 15-minute break,
6 and if you will all be in your seat, I promise you we'll
7 have a jury within minutes.

8 (Recess.)

9 (Vol. II reported by Debbie Gale.)

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I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.

Date: April 9, 2008

Sharon A. Seffens 4/9/08

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