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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

HONORABLE DAVID O. CARTER, JUDGE PRESIDING

- - - - -

ECHOSTAR SATELLITE CORP.,)	
et al.,)	
Plaintiffs,)	
)	
vs.)	No. SACV-03-950-DOC
)	DAY 3, Vol. III
NDS GROUP PLC, et al.,)	
)	
Defendants.)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
Santa Ana, California
April 11, 2008

SHARON A. SEFFENS
Federal Official Court Reporter
United States District Court
411 West 4th Street, Room 1-053
Santa Ana, California 92701
(714) 543-0870

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12:53:32 1 SANTA ANA, CALIFORNIA; FRIDAY, APRIL 11, 2008; 1:30 P.M.
2 (Jury present.)
3 MR. NOLL: The jury is present. Counsel are
4 present. The parties are present.
5 Counsel, have you finished your direct
6 examination?
7 MR. NOLL: Your Honor, I do have another document
8 to show him, but I will do that in the redirect.
9 THE COURT: Do you want to reopen or wait until
10 redirect?
11 Do you have any preference, Mr. Snyder?
12 MR. SNYDER: I have no questions, Your Honor.
13 MR. NOLL: Okay. Then I will do it now.
14 THE COURT: Okay, you can reopen.
15 AHARON SEGOLY, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN
16 DIRECT EXAMINATION (Reopened)
17 BY MR. NOLL:
18 Q Good morning, Mr. Segoly.
19 A Good afternoon.
20 Q I am going to hand you what has been marked as Exhibit
21 1027.
22 Before we go into that document, sir, are you aware

23 April 11, 2008 Volume 3 Segoly Cumberland Mordinson Rubin, D.txt
whether or not NDS had some standards of business conduct?

24 A I assume they have. I'm not sure about particular
25 documents.

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12:53:53 1 Q Have you ever seen a document that has listed standards
2 for NDS's business conduct?

3 A Not as far as I recall.

4 Q Have you ever seen a document that has News Corp.'s
5 standards for business conduct?

6 A No, sir.

7 Q In your employment at NDS, were you ever given an
8 employee handbook?

9 A I was given such a document with such a title, but it
10 was in '94. I'm not sure of the content of it.

11 Q Okay. Take a look at what I have had handed to you as
12 Exhibit 1027, sir. Let me know if you have ever seen this
13 document before.

14 A Not as far as I recall. I don't remember.

15 Q So it's your testimony that you are unaware of whether
16 or not NDS has standards for business conduct? Is that what
17 you are testifying to today?

18 A I'm assuming that. I don't remember. I haven't seen
19 it as far as I remember.

20 Q Do you know whether NDS has any standards for the way
21 that NDS conducts its business practices?

22 A I don't remember such a document.

23 Q What's your position currently at NDS?

24 A My current role is technical director for standard
25 coordination, so I coordinate NDS activities for various

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12:53:53 1 standard organizations globally.

2 Q Where do you work out of?

3 A The Jerusalem office.

4 Q Do you have any people that report to you?

5 A No.

6 Q Who do you report to?

7 A The VP or chief architect of the company who is Dewitt

8 Jessick (phonetic).

9 Q What other positions have you held at NDS besides
10 technical director?

11 A I joined NDS in November '94. Until the beginning of
12 '97 or '98, I was a security officer as we described before.
13 In '97 or '98, I became a group leader for a group that is
14 called Integration & Test working within a customer in the
15 UK. In 2000, I traveled to China, and I was a technical
16 director for NDS in Beijing. In 2003, I traveled to Hong
17 Kong, and I was NDS Technical Director for the Eastern
18 Pacific. In September, I came back to Israel.

19 Q Look back at -- I am going to ask you to read to
20 yourself Exhibit 1027, page 12, the bottom section, Section
21 4 -- actually, it's Section 6 at the bottom. Let me know
22 when you have read it.

23 A I have.

24 Q Okay. Turn to the next page, and I want you to read
25 the top paragraph to yourself.

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12:53:53 1 A I have.

2 Q Does that refresh your recollection as to whether you
3 are aware whether NDS had some standards for business
4 conduct that it abides by?

5 A I didn't see this document. I'm not sure I saw similar
6 documents when I was working in Israel.

7 Q Mr. Segoly, I will represent to you that this is a
8 document that I got off of NDS's website.

9 Do you ever go to NDS's website?

10 A Rarely.

11 THE COURT: What's unclear I think for the jury
12 and for the Court certainly is -- you are representing that
13 this document was obtained recently?

14 MR. NOLL: Yes, in this case, and it was
15 produced --

16 THE COURT: I don't know that this document
17 existed or when it existed, in '98, for instance, or 2000 or
18 2001. So, therefore, if you don't know, who would know?

19 THE WITNESS: I believe people that maintain the
20 site window.

21 THE COURT: Who because we need to know who to
22 bring them in here.

23 THE WITNESS: I don't know. I can find out.

24 THE COURT: Okay. Thank you very much.

25 BY MR. NOLL:

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8

12:53:53 1 Q If you can't identify this document, sir, that will be
2 the end of my examination.

3 THE COURT: Perhaps the two of you can reach a
4 stipulation later on, but, otherwise, the gentleman is
5 ordered to remain.

6 Do you have any questions?

7 MR. SNYDER: No questions.

8 THE COURT: The confusion concerning this document
9 is if it's relevant, if it's in the time period -- it may
10 not be -- but no instruction was implemented. This
11 gentleman may be at a real disadvantage in that sense.
12 Maybe this document was implemented in 1997, but if it was
13 implemented in 1998 to 2004, let's say, shouldn't we know
14 about that? So be aware of what you decide, and we just
15 don't with this gentleman.

16 Sir, you at the head of investigations or
17 security?

18 THE WITNESS: I was.

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19 THE COURT: I bet you could find out for us.

20 THE WITNESS: Yes.

21 THE COURT: Thank you.

22 THE WITNESS: It will only take half an hour.

23 THE COURT: You might contact that person and tell
24 him he is coming to court wherever they are in the world.

25 We're waiting. Thank you.

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12:53:53 1 Counsel, you may call your next witness.

2 MR. HAGAN: We call Lieutenant Mark Cumberland
3 from the Hays County Narcotics Task Force.

4 THE COURT: Sir, if you would step forward between
5 the double doors. After you have done so, would you be kind
6 enough to raise your right hand, and, Kristee, our clerk,
7 will administer the oath to you.

8 MARK WILLIAM CUMBERLAND, PLAINTIFFS' WITNESS, SWORN

9 THE COURT: Would you be seated in the witness
10 box. I want to thank you for your patience. I know you
11 have been standing out in that hallway, and we are going to
12 get you back home today.

13 would you state your full name for the jury,
14 please.

15 THE WITNESS: Mark william Cumberland,
16 C-u-m-b-e-r-l-a-n-d.

17 THE COURT: This is direct examination by Mr.
18 Hagan on behalf of EchoStar.

19 DIRECT EXAMINATION

20 BY MR. HAGAN:

21 Q Good afternoon, Lieutenant Kommerling.

22 A Good afternoon.

23 Q Can you tell the ladies and gentlemen of the jury what
24 you do on a day-to-day basis for Hays County?

25 A I am currently a patrol lieutenant assigned to the

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12:53:53 1 Patrol Division. I oversee eight sergeants who supervise 40
2 patrol deputies. I deal mostly with personnel issues and
3 hiring and firing at this point.

4 Q Where is Hays County located?

5 A It's directly between Austin and San Antonio on I-35 in
6 Texas.

7 Q Lieutenant Cumberland, prior to getting promoted to the
8 position of lieutenant, did you hold any other positions or
9 titles within Hays County?

10 A I was a patrol sergeant for six years. Prior to that,
11 I was a detective assigned to the Narcotics Task Force.
12 Prior to that, I was a patrol deputy.

13 Q At some point in time, you served as a detective for
14 the Hays County Narcotics Task Force?

15 A Yes.

16 Q Can you tell the jury what that task force was designed
17 to do?

18 A It's a task force consisting of the Hays County
19 Sheriff's Office and San Marcus Police Department. We
20 handle all narcotics case that are generated within the
21 county or within the city of San Marcos.

22 Q What period of time were you employed by the Hays
23 County Narcotics Task Force as a detective?

24 A Roughly from 1999 to 2001.

25 Q What types of cases did you investigate when you were a

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12:53:53 1 detective for the Hays County Task Force?

2 A The majority of the cases that I investigated were
3 narcotics-related: marijuana or cocaine-type cases.

4 Q Now, Lieutenant Cumberland, did you ever have an
5 occasion during that time period where you investigated an
6 individual named Christopher Tarnovsky?

7 A Yes. I did work a case on Christopher Tarnovsky.

8 Q Do you recall approximately when that investigation
9 started?

10 A Late August 2000.

11 Q How did that investigation begin?

12 A We received information at the task force about some
13 suspicious packages being mailed through a business called
14 Mail and More in San Marcos.

15 Q And do you recall the name of the individual who
16 contacted the Hays County Narcotics Task Force?

17 A He was a manager by the name of Ben Muess (phonetic).

18 Q Once you received that phone call, what did you do?

19 A Myself and other members of the task force went down to
20 examine the packages -- or the package that had been sent
21 through Mail and More.

22 Q When you got down to the Mail and More account, did you
23 have an opportunity to speak with Mr. Muess?

24 A Yes.

25 Q Did he disclose to you any information about

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12:53:53 1 Christopher Tarnovsky's account there?

2 A He advised it didn't make sense that he was receiving
3 packages from all over and then having them directly turned
4 around and mailed to a location in San Marcos at a cost to
5 himself. There was really no reason to have them sent to
6 San Marcos, Texas, first.

7 Q According to your investigation, where did Christopher
8 Tarnovsky live during the time that this was occurring?

9 A San Marcos, California.

10 Q According to your investigation, do you recall
11 approximately when Chris Tarnovsky set up this Mail and More
12 account in Texas?

13 A I believe it was late July of 2000.

14 Q Now, Lieutenant Cumberland, once you got down to the

15 April 11, 2008 Volume 3 Segoly Cumberland Mordinson Rubin, D.txt
16 Mail and More account and you spoke with Mr. Muese, can you
17 walk us through what you did next?
18 A The third package he received was from Luling, Texas,
19 which is roughly 20 miles from San Marcos, Texas. We
20 checked the address and the phone number on the shipping
21 labels and neither one of them checked out true and correct
22 address or phone number.
23 Q Did you discover through your investigative efforts
24 that Mr. Tarnovsky was receiving any additional packages
25 through this mail account in Texas?
A We were advised he was receiving them probably every

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12:53:53 1 other day.
2 Q Since he set the account up?
3 A Yes, sir.
4 Q You testified earlier that some of those packages came
5 from all over; is that correct?
6 A Yes.
7 Q Did some of those packages come from outside of the
8 United States?
9 A Two of the packages we dealt with came from British
10 Columbia.
11 Q That's in Canada?
12 A Yes, sir.
13 Q How did it come about that you investigated those two
14 particular packages?
15 A After the first packages, we asked Mr. Muese to call us
16 again if he received any other packages for Chris Tarnovsky,
17 and the next day another one came in. It was a much
18 different package. It was a CD player, a large box with a
19 CD player inside of it.
20 Q Now, Mr. Muese notified you of this activity, but isn't
21 it true that part of the goal of the Hays County Narcotics
22 Task Force was to educate business owners in the Hays County
23 area about suspicious conduct, suspicious activity, and how

24 to notify law enforcement?

25 A Yes, sir.

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14

12:53:53 1 Q And Mr. Muese, as far as you knew, received this type
2 of educational information?

3 A Yes, sir.

4 Q When he called you again the next day, what did you do?

5 A Again, we went down to examine the package. Like I
6 said, it was a much different package. It was a CD player.

7 Q Do you recall who that package was shipped from?

8 A That package was shipped from a company called Regency
9 Audio.

10 Q And that was in Canada?

11 A Yes, sir.

12 Q Did your investigation uncover any facts or evidence
13 that linked that particular address to an individual named
14 Allen Menard or a business operated by Allen Menard?

15 A I don't know that, sir.

16 Q You didn't handle the Canadian part of the
17 investigation did you?

18 A No, sir, I did not.

19 Q Now, you went down there, and you looked at this second
20 package. What did you do next?

21 A We called for two police canines who worked for the San
22 Marcos Police Department to come and search the package and
23 see if they would alert on it.

24 Q Did the officers bring those canines down to the mail
25 account?

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12:53:53 1 A Yes, and both canines gave a positive alert to the
2 package.

3 Q Did you have that particular package with other
4 packages in the mail account?

5 A Yes. Six or seven other packages were set next to that
6 package.

7 Q And you ran the dogs through each of those packages?

8 A Yes.

9 Q And the dogs hit on that particular package from
10 Canada?

11 A Yes, sir.

12 Q Do you recall where that package was going to be
13 forwarded to once it got to the mail account in San Marcos,
14 Texas?

15 A CT Electronics in San Marcos, California, is where it
16 was supposed to be forwarded to.

17 Q Did your investigation uncover a link between where
18 that package was going and the mail account there and an
19 individual named Christopher Tarnovsky in San Marcos,
20 California?

21 A Yes. He is the one that rented the mailbox.

22 Q And you had an opportunity to look at his mailbox
23 rental agreement, correct?

24 A Yes.

25 Q It included a copy of his driver's license; is that

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16

12:53:53 1 right?

2 A Yes, sir.

3 Q And his signature on the application?

4 A Yes, sir.

5 Q And we will look at your report in just a minute, but
6 at the time that you got a hit with the dogs on this
7 package, could you think of any particular reason why Mr.
8 Tarnovsky was having shipments from Canada go through this
9 mail account in Texas before being forwarded over to
10 San Marcos, California?

11 April 11, 2008 Volume 3 Segoly Cumberland Mordinson Rubin, D.txt
MR. SNYDER: objection, calls for speculation.

12 THE COURT: Overruled. You can answer the
13 question.

14 THE WITNESS: I couldn't think of a legitimate
15 reason for that.

16 THE COURT: I am allowing that as an opinion. He
17 is a narcotics officer. Obviously he was suspicious in that
18 regard. That doesn't mean that he is casting an opinion why
19 this was occurring. It's just it came to his attention.
20 Obviously he was suspicious.

21 BY MR. HAGAN:

22 Q what did you do after the two detection canines
23 registered a hit on this particular package from Canada to
24 Mr. Tarnovsky?

25 A We secured the package and obtained a search warrant

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12:53:53 1 for that package.

2 Q Can you walk the jury through the process that you went
3 through to obtain that search warrant?

4 A I wrote a probable cause affidavit and then submitted
5 it to a county court law judge in San Marcos, and he signed
6 off on it, which gave us permission to search the package.

7 Q Once you had that warrant, you had the ability to
8 execute that warrant and inspect the parcel?

9 A Yes.

10 Q Where did that inspection take place?

11 A The San Marcos Police Department where our office was.

12 Q Were you personally present during the inspection of
13 that package?

14 A Yes, sir.

15 Q Was there anyone else present there with you?

16 A Other members of the task force were there.

17 Q Do you recall any of their names?

18 A Sergeant Chase Stack I know was there.

19 Q Walk the jury through the process that you went through

20 to inspect the package.

21 A Once we obtained the search warrant, we just opened the
22 box and found a CD player inside and nothing usual on the
23 outside. So we dismantled it, and inside we located a brown
24 envelope that was taped to the wires inside, and it
25 contained money.

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12:53:53 1 Q How much money was in that envelope taped inside the
2 circuitry?

3 A \$20,100.

4 Q Was that in U.S. currency or Canadian currency?

5 A U.S.

6 Q Were they all \$100 bills?

7 A I don't remember what the denominations were.

8 Q What did you do once you discovered this cash concealed
9 inside the shipment?

10 A We continued on with the investigation, but then we
11 also continued on with the seizure of the money by turning
12 it over to the District Attorney's Office in Hays County.

13 Q Did you provide any instructions to Mr. Muese or other
14 folks at the Mail and More account there in Texas?

15 A We advised him that if Chris Tarnovsky received any
16 further packages to let us know, which he did.

17 Q When was that?

18 A The day after the first seizure.

19 Q Did you go back down there again with the other
20 officers?

21 A Yes, sir, same procedure. We went down and examined
22 the package.

23 Q Did you have the Canine Detection Unit come down as
24 well?

25 A We had just one canine on that occasion.

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12:53:53 1 Q Did they run the dog through the other packages in the
2 store?
3 A The exact same way, yes, sir.
4 Q Did the Canine Detection Unit put a hit on that second
5 package?
6 A Yes.
7 Q What did you do next?
8 A Again, we took custody of the package, and I obtained a
9 search warrant for the package.
10 Q Same process? You filled out the probable cause
11 affidavit?
12 A Yes, sir.
13 Q And then you executed that search warrant?
14 A Yes.
15 Q Where did that take place?
16 A Again, at the San Marcos Police Department at our Task
17 Force Office.
18 Q Who was that second package sent from?
19 A Again, Regency Audio, Vancouver.
20 Q Up in Canada?
21 A Yes, sir.
22 Q And it was sent to that mail account in San Marcos in
23 Texas that was set up by Mr. Tarnovsky?
24 A Yes.
25 Q Who was it being forwarded to?

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12:53:53 1 A Chris Tarnovsky in San Marcos, California.
2 Q When you executed the search warrant on the second
3 package, what did you find?
4 A The only difference was this was a DVD player. It was
5 packaged the same way. When we executed it and opened it
6 up, nothing was out of the ordinary on the outside. When we

April 11, 2008 Volume 3 Segoly Cumberland Mordinson Rubin, D.txt
7 took it apart, inside it was the exact same thing, same type
8 of envelope taped to the circuitry the same way, and when we
9 opened it up, there was cash inside that DVD also.

10 Q How much cash was concealed inside the second package?

11 A \$20,000.

12 Q So in total, you intercepted \$40,100 through Mr.
13 Tarnovsky's mail account?

14 A Yes.

15 Q And both of those packages were coming from Canada
16 through Texas?

17 A Yes, sir.

18 Q What did you do next?

19 A Again, we turned the money over to the District
20 Attorney's office, And we logged the electronics into
21 evidence to be fingerprinted.

22 Q Now, during the course of your investigation, is it
23 common protocol and procedure for you and the other officers
24 working on that investigation to keep notes and generate an
25 official report?

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12:53:53 1 A Yes, sir.

2 Q Have you seen a copy of that report before?

3 A Yes.

4 Q Did you participate in preparing that report?

5 A Yes, sir.

6 MR. HAGAN: Kristee, if you can show Lieutenant
7 Cumberland of what has been marked trial Exhibit 1034.

8 BY MR. HAGAN:

9 Q Lieutenant Cumberland, the first part of this document
10 is an affidavit by Lynn Leuders. Who is Mr. Leuders?

11 A Lynn Leuders is a detective also assigned to the Hays
12 County Narcotics Task Force.

13 Q It's your understanding that he prepared this affidavit
14 just to authenticate the documents that are in the report?

15 A Yes, sir.

16 MR. HAGAN: Your Honor, we offer plaintiffs'
17 Exhibit 1034 into evidence.

18 MR. SNYDER: No objection.

19 THE COURT: Received.

20 (Exhibit 1034 received.)

21 BY MR. HAGAN:

22 Q Lieutenant Cumberland, does this appear to be a true
23 and correct copy of the investigative file that the Hays
24 County Narcotics Task Force developed in connection with the
25 investigation of Chris Tarnovsky?

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12:53:53 1 A Yes, sir, it does.

2 Q If you will turn to the sixth page of the document.
3 There is a stamp on the bottom. It's ESC 171885.

4 A I have got it.

5 Q This particular page -- and it's representative of
6 several pages in there. Is this what your official reports
7 and case files look like for the Narcotics Task Force?

8 A Yes.

9 Q And you participated in the preparation of these
10 reports?

11 A Yes.

12 Q To the best of your knowledge, did these reports that
13 the Hays County and you created contain all of the
14 information that you gathered during the investigation of
15 Chris Tarnovsky?

16 A Yes, sir.

17 Q And as best you can recall or as best you know, all the
18 information that you and the other officers included in here
19 was truthful and valid?

20 A Oh, yes, sir.

21 Q Now, after you intercepted the second package and you
22 handed that over to the District Attorney's Office, did you
23 have occasion to assist any other government agencies in the

25 A We requested assistance from the DEA Office out of

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12:53:53 1 Austin due to the different locations. San Marcos,
2 California, is out of our jurisdiction, and obviously Canada
3 is out of our jurisdiction, so we needed assistance. We
4 called the DEA out of Austin.

5 THE COURT: Tell the jury what "DEA" stands for.

6 THE WITNESS: The Drug Enforcement Administration.

7 BY MR. HAGAN:

8 Q Given that the packages had come from Canada and into
9 the United States, did you or anyone working on the
10 investigation contact any of the Canadian authorities?

11 A Yes. We requested obviously the DEA, and they got
12 Customs involved, and Customs was in California and up in
13 Canada also.

14 Q To your recollection, did the RCMP or the Royal
15 Canadian Mounted Police assist in any way in this
16 investigation?

17 A Yes. They assisted running a fingerprint that was
18 lifted off of one of the electronics that was in evidence.
19 They ran it through their AFID system, which is an Automatic
20 Fingerprint Identification System up in Canada.

21 Q Were the Canadian authorities, the RCMP, able to
22 identify a match from those fingerprints lifted off of the
23 shipments to Chris Tarnovsky?

24 A They got a hit off of Mervin Main was his name.

25 MR. HAGAN: Christine, if you would please turn

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24

12:53:53 1 the exhibit to ESC 171914.

2 BY MR. HAGAN:

3 Q Do you have the document from the Royal Canadian

4 Mounted Police in front of you?

5 A Yes.

6 Q If you will flip to the very next page, it's a letter
7 from the Hays County Narcotics Task Force; is that correct?

8 A Yes, it is.

9 Q Detective Lynn Leuders, that's the individual that
10 assisted you in parts of the investigation into Chris
11 Tarnovsky?

12 A Yes.

13 Q Is that the letter that was sent to the RCMP with
14 the -- the request for them to run a fingerprint analysis on
15 the packages?

16 A Yes.

17 Q Now, the RCMP responded in the letter we just looked
18 at, and they advised you and the other officials working on
19 the investigation that they had a match to Mervin Main; is
20 that correct?

21 A Yes, sir.

22 Q Now, did your investigation uncover any links between
23 Mervin Main whose fingerprints were on these packages to
24 Chris Tarnovsky and an individual named Allen Menard?

25 A I don't know any of that.

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12:53:53 1 Q If you look at the next page from where you are at, the
2 letter from the Hays County Narcotics Task Force, there is a
3 handwritten notation at the bottom. It says, "Possible
4 suspect Allen Menard in British Columbia, Canada."

5 Does that refresh your recollection as to whether any
6 particular link was made -- it may not be conclusive -- but
7 was any link between the packages and Mervin Main going to
8 Chris Tarnovsky and Allen Menard?

9 A I don't remember Allen Menard.

10 Q It's been several years.

11 Other than the RCMP and U.S. Customs and the Drug

12 Enforcement Agency, did you have an opportunity to work with
13 any other agencies or officers or agents in connection with
14 the investigation into Chris Tarnovsky?

15 A Just mostly those government agencies you mentioned.

16 Q Did you learn from those other government agents that
17 they were investigating Mr. Tarnovsky on any other
18 allegations or charges?

19 A Yes, sir, Customs.

20 Q What were those allegations or charges?

21 MR. SNYDER: Hearsay.

22 THE COURT: Counsel, it's technically hearsay.
23 That's easy. Just get the Royal Canadian Mounted Police
24 down. It's not an issue.

25 BY MR. HAGAN:

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12:53:53 1 Q Did your investigation uncover any link between
2 Christopher Tarnovsky and satellite piracy or signal theft?

3 A I was advised by Customs that that's what was going on.

4 Q You didn't participate in that investigation of Chris
5 Tarnovsky?

6 A No.

7 Q And you have no personal knowledge about the U.S.
8 Customs investigation into Chris Tarnovsky's involvement in
9 satellite piracy?

10 A No, sir.

11 Q Did there come an occasion where you sent all of your
12 intel and information to other government agencies?

13 A Yes. We initially forwarded the majority of it to the
14 DEA out of San Diego.

15 Q Do you recall the agent or representative that was
16 heading that investigation?

17 A My contact in California was an agent named Beretta.

18 Q Special Agent Beretta?

19 A Yes, sir.

20 Q Did you work with any representatives from the AUSA,
21 the Assistant United States Attorney's Office, in connection
22 with the investigation into Chris Tarnovsky?

23 A No, sir, I did not.

24 Q Now, when you were conducting your investigation into
25 Mr. Tarnovsky, did you have an opportunity to obtain

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12:53:53 1 shipping and receiving records related to that mail account
2 that he set up?

3 A Yes, sir. We subpoenaed all the records from Mail and
4 More, which they did provide for us.

5 Q Do you recall from reviewing those records and your
6 investigation that Chris Tarnovsky was using any aliases
7 other than his name?

8 A I took for granted that CT Electronics stood for
9 Christopher Tarnovsky.

10 Q Did you also happen to come across the alias Von that
11 Mr. Tarnovsky used in connection with this account?

12 A Von was on the first package that was sent to
13 San Marcos to be forwarded to San Marcos, California. That
14 was the sender.

15 Q Now, if you will look at labeled ESC 0171932 -- do you
16 have that page in front of you?

17 A 1932 is the last four?

18 Q Yes.

19 A Yes.

20 Q Is this one of the shipping records that you obtained
21 through your investigation into Mr. Tarnovsky in this mail
22 account?

23 A Yes, sir, it is.

24 Q This is a shipping record that shows a package going
25 from Canada to CT; is that correct?

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12:53:53 1 A Yes, sir.
2 Q That package went from Canada to CT in California, but
3 it was routed through that mail account in San Marcos,
4 Texas?
5 A Yes, sir, it was.
6 Q This particular package was not one of the ones that
7 you and the other officials intercepted; is that right?
8 A Correct.
9 Q So you never had an opportunity to inspect that
10 package?
11 A No, sir, we did not.
12 Q Or to run the drug dogs around that package?
13 A That's correct.
14 Q It's fair to say that if you flip through here there
15 are several other shipping records that were sent --
16 packages from Canada to Tarnovsky that you were not able to
17 investigate?
18 A Yes, sir.
19 Q Now, I will represent to you that Mr. Tarnovsky has
20 testified in deposition that he did in fact receive the
21 package that's identified on this page. Do you have any
22 reason -- withdrawn.
23 Did you have an opportunity to inspect that package
24 after Chris Tarnovsky received it in California?
25 A No, sir.

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12:53:53 1 Q So you don't know what was in that particular package;
2 is that right?
3 A Correct.
4 Q If you look at the shipping records, the description of
5 that package says it contains a Sony PlayStation, a Sony
6 controller, and a Sony CD player. Do you see that?
7 A Yes.

8 Q One of the packages that you did intercept, though,
9 contained electronic equipment -- actually both of them did?

10 A Two of them did.

11 Q One of those packages was a CD player?

12 A Yes, sir.

13 Q That was the package that when you opened it you found
14 \$20,100 cash?

15 A Yes, sir. It was the first package.

16 MR. HAGAN: Pass the witness.

17 THE COURT: Cross-examination by Mr. Snyder on
18 behalf of NDS.

19 CROSS-EXAMINATION

20 BY MR. SNYDER:

21 Q Just a very few questions, Lieutenant Cumberland.

22 As part of your investigation, you only seized two
23 packages?

24 A Yes, sir.

25 Q Those are the two packages that you described?

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12:53:53 1 A Yes.

2 Q One contained a DVD player and one contained a CD
3 player?

4 A Yes, sir.

5 Q Just so everybody understands, you said that dogs were
6 brought in for each of those packages and hit on those
7 packages?

8 A Yes, sir.

9 Q What were those dogs trained to hit on?

10 A The odor of narcotics.

11 Q They were drug dogs?

12 A Yes, sir.

13 Q They weren't trained to hit on the smell of Smart
14 Cards; were they?

15 A No, sir.

16 Q Did you find anything in either one of those packages
17 that was connected to satellite television in any way?

18 A No, sir.

19 Q Did you find anything in either of those packages to
20 indicate any evidence of involvement in satellite piracy?

21 A No, sir.

22 Q Did you find anything during any part of your
23 investigation that indicated involvement in satellite
24 piracy?

25 A Just the information we received from Customs out in

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12:53:53 1 California.

2 Q That's what another investigatory agency told you?

3 A Yes.

4 Q But as part of your investigation, did you find
5 anything indicating involvement by anybody in satellite
6 piracy?

7 A No, sir.

8 Q Just a couple more questions. As part of your
9 investigation after those two packages were seized, were any
10 more search warrants issued?

11 A By me, sir?

12 Q Yes, sir.

13 A No. I just conducted those two search warrants.

14 Q As part of your investigation, were any arrests made?

15 A No, sir.

16 Q As part of your investigation, were there any charges
17 filed against anybody?

18 A Not by myself, no.

19 Q As part of your investigation, were any charges filed?

20 A Not that I am aware of.

21 Q Were any indictments issued as a result of your
22 investigation?

23 A In Texas, I didn't know.

24 Q Was anybody convicted of any crimes as a result of your

25 investigation?

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12:53:53 1 A Not in Texas that I am aware of, no.

2 MR. SNYDER: Thank you very much. I appreciate
3 your time.

4 THE COURT: Redirect.

5 MR. HAGAN: Nothing further. We want to thank
6 Lieutenant Cumberland for being here.

7 THE COURT: I am placing all of the witnesses on
8 call. You are in a little different situation because I
9 know you will respond immediately. I can't imagine, though,
10 why you would be back testifying in my court. I am going to
11 have you go about your professional responsibilities. If
12 you have a planned vacation, take it. If we need you, we
13 can find you. We will be courteous and give you plenty of
14 time to return to court. I doubt you will be one of the few
15 witness who will be in that position potentially. I will
16 have you remain on call, though -- we're actually ahead of
17 schedule -- I would say until about May 15, but I am saying
18 June 15 to everybody else.

19 Counsel, your next witness, please.

20 MR. HAGAN: The plaintiffs will call Eric Lebson
21 by video deposition clips.

22 THE COURT: It will be a video deposition of the
23 next witness being called by EchoStar. This person's name
24 is Eric Lebson. The first name is spelled E-r-i-c, last
25 name, L-e-b-s-o-n.

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12:53:53 1 Counsel, you may play that video deposition.

2 (Portion of videotaped deposition played.)

3 THE COURT: This will be Exhibit 260. In the

4 deposition, what it is referred to?

5 MR. HAGAN: Exhibit 27.

6 THE COURT: Thank you. So you are about to hear
7 some testimony in the deposition involving what they will
8 refer to as Exhibit 260. That is your exhibit. You have
9 already received or should have in your possession
10 Plaintiffs' Exhibit 27. Okay.

11 (Videotape continued to be played.)

12 THE COURT: I want to make sure the jury
13 understands Exhibit 247 will be your Exhibit 19. Let the
14 jury get that for just a moment.

15 (Videotape continued to be played.)

16 MR. HAGAN: The defendants have some additional
17 clips they would like to play.

18 THE COURT: That concludes the plaintiffs'
19 designation of Mr. Lebson's tape.

20 Do you want to play some additional designations
21 of 106 at this time?

22 MR. SNYDER: Yes.

23 THE COURT: These will be some remaining portions
24 of Mr. Lebson's testimony.

25 (Videotape continued to be played.)

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12:53:53 1 THE COURT: Is this a good time for a recess?
2 Before we take a recess, there was another
3 gentleman sitting back there.

4 MR. HAGAN: I will go get him.

5 THE COURT: This is a good time to take a break.
6 We will come back in about 20 minutes.

7 Do not discuss this matter amongst yourselves nor
8 form or express any opinion concerning the case.

9 (Jury not present.)

10 THE COURT: Counsel, with your permission, I would
11 like to include the Lebson depo, 106, and the

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cross-designations that you played in my transcript. That
13 way any reviewing court has it all in one place at one time.
14 I would like to follow that process and procedure.

15 Is that acceptable?

16 MR. WELCH: That's fine.

17 MR. SNYDER: That's fine.

18 THE COURT: Most Courts don't do that, but if I
19 was in the Circuit, I would appreciate the fact that I have
20 all of this without searching through a multitude of
21 documents.

22 (Recess.)

23 (Jury present.)

24 THE COURT: We are back in session. The jury is
25 present. The parties are present. Counsel are present.

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12:53:53 1 We are going to continue playing the clip of Mr.
2 Lebson.
3 Counsel, if you would like to continue playing the
4 clip.
5 (Videotape continued to be played)
6 MR. KLEIN: This is Exhibit 247 previously
7 admitted.
8 THE COURT: This is Exhibit 247, which is your
9 Exhibit 19.
10 MR. SNYDER: That concludes the designations, Your
11 Honor.
12 THE COURT: Thank you very much.
13 Then, counsel, you would like to recall a witness
14 by stipulation of both parties. Is that correct?
15 MR. HAGAN: That's correct.
16 THE COURT: That witness is Mr. Mordinson.
17 MR. HAGAN: David Mordinson, yes.
18 THE COURT: David Mordinson. If you would please
19 summon him.
20 THE COURT: Mr. Mordinson, the interpreter is with

21 you. If you would be seated. Counsel has stipulated to
22 recall you on today's date. They hope to get you back on
23 the plane. Both parties do. Let's see if we can accomplish
24 that so you can return to Israel.

25 This is Mr. Mordinson. Once again, ladies and

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12:53:53 1 gentlemen, instead of Tuesday, both parties have stipulated
2 to proceed today to see if we can conclude with the
3 gentleman.

4 This will be Mr. Hagan on behalf of EchoStar, and
5 then we will turn to Mr. Snyder on behalf of NDS. That will
6 be the last round, counsel.

7 MR. HAGAN: Thank you.

8 DAVID MORDINSON, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN
9 RE-REDIRECT EXAMINATION

10 BY MR. HAGAN:

11 Q Mr. Mordinson, good afternoon. Thank you for staying
12 with us today. There are a couple of additional issues that
13 I would like to cover with you.

14 When we took your deposition earlier in the case, you
15 understood at that time that you were being designated by
16 the NDS defendants as a corporate representative; is that
17 correct?

18 A During my deposition, yes.

19 Q And, sir, there were a couple of topics I think from a
20 list that we sent over that you were designated as the
21 company's representative to testify about. Do you recall
22 that?

23 A Yes.

24 Q And you understood at that time that the company was
25 putting you up as their most knowledgeable witness on those

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12:53:53 1 particular topics; is that correct, sir?

2 A I believe so.

3 Q Now, earlier in your testimony this afternoon and
4 yesterday, we talked a little bit about the hack methodology
5 that you developed and the one that was posted on the
6 internet. I just wanted to cover a couple of things on that
7 so that we can use that to refresh our recollection later in
8 the trial.

9 In the Haifa report, the methodology that you
10 developed, you discovered the key or the phrase "Nipper" in
11 your reverse engineering of EchoStar's code; is that
12 correct?

13 A It appeared in Smart Card EEPROM, yes.

14 Q And in Exhibit 998 -- can we take a look at that,
15 please?

16 A Yes.

17 Q It's one of the exhibits that we looked at earlier.
18 That also had reference to the word "Nipper"?

19 A Yes.

20 Q You also testified yesterday that as part of your work
21 for the Headend Project you developed certain software
22 applications?

23 A Yes.

24 Q And you developed those applications specifically in
25 your work for the defendants?

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12:53:53 1 A Yes.

2 Q And some of those related just to the EchoStar hacking
3 project?

4 A Yes.

5 Q And one of those software applications that you
6 developed you called Get ATR?

7 A Yes.

- 8 Q And if you look at Exhibit 998, it also has a reference
9 at the top to Get ATR; correct?
- 10 A I recognize it.
- 11 Q And ATR is answer to reset?
- 12 A Yes. It's a standard message sent by any Smart Card as
13 a response to a signal.
- 14 Q As part of your work with the EchoStar hack project,
15 you analyzed what EchoStar called the ROM 3 card?
- 16 A Yes. It's written in EchoStar code actually in ROM.
- 17 Q So when you pulled the code out, you were able to see
18 it said ROM 003?
- 19 A I think, yes.
- 20 Q And you will agree with me looking at the methodology
21 -- the post from the internet, Exhibit 998, also references
22 the Nagra ROM 3; is that correct?
- 23 A Yes, I recognize it.
- 24 Q One of the portions of your report and one of the
25 portions of your earlier testimony was that you were able to

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- 12:53:53 1 develop a way to dump or extract the EEPROM from the ROM 003
2 card for EchoStar; correct?
- 3 A Yes.
- 4 Q And you will see that at the top of Exhibit 998, the
5 internet posting, it also deals with the -- references the
6 entire EEPROM; is that correct?
- 7 A Yes.
- 8 Q Now, you also testified yesterday about some technical
9 things, and I think you did a great job of explaining it,
10 but I want to make sure we have a record.
- 11 If I understood your testimony correctly, you
12 discovered something in the EchoStar card, the ROM 3 card,
13 called an IO buffer overflow vulnerability; is that correct?
- 14 A Yes.
- 15 Q And you also agreed with me this morning that the
16 vulnerability that was exploited in the internet posting,

17 Exhibit 998 -- one of those vulnerabilities was the IO
18 buffer overflow?

19 A Yes.

20 Q Now, in the Haifa Headend Project, you also discovered
21 something -- a quality of EchoStar's ROM 3 card called RAM
22 ghost effect or address alias. I think those terms are
23 interchangeable. Is that correct?

24 A Yes.

25 Q If I understood your testimony from this morning, the

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12:53:53 1 methodology posted on the internet, Exhibit 998, also
2 exploits or utilizes the RAM ghost effect or address
3 aliasing; is that correct?

4 A Yes.

5 Q You also testified that as part of the research you did
6 in the Headend Project you were able to determine that there
7 was a characteristic in NagraStar or EchoStar's ROM 3 card
8 where you could actually execute code in the RAM portion of
9 the memory; is that correct?

10 A Yes.

11 Q And you agreed with me this morning that in the Nipper
12 post, Exhibit 998 -- also utilized the ability to execute
13 code in that RAM portion of the memory?

14 A Yes.

15 Q Now, I understand, Mr. Mordinson, that -- your earlier
16 testimony was there are some technical differences in the
17 hack methodology that you developed for the defendants for
18 EchoStar's system and the hack methodology that was posted
19 on the internet, Exhibit 998; correct?

20 A Yes.

21 Q But you would also agree, sir, that there are some
22 fundamental similarities in those two hack methodologies?

23 A Yes.

24 Q You also testified a little bit about the defendants'

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12:53:53 1 engineer other competitors of NDS; correct?
2 A Yes.
3 Q And one of those competitors was Canal+?
4 A Yes.
5 Q Another one of those competitors was the plaintiff
6 NagraStar?
7 A Yes.
8 Q And the Haifa team -- or at least part of the Haifa
9 team for the defendants conducted that reverse engineering;
10 is that right?
11 A Yes.
12 Q And two of the principal engineers that participated in
13 that reverse engineering for the Canal+ system was Zvi
14 Shkedy, the hardware, and then you, Mr. Mordinson, looked at
15 the software; is that correct?
16 A Yes.
17 Q Those are the same two engineers -- in other words, you
18 and Mr. Shkedy were also the principal engineers for the
19 defendants that participated in the hack for EchoStar or the
20 reverse engineering for EchoStar?
21 A Yes.
22 Q Both of those projects that you and Mr. Shkedy engaged
23 in for the defendants, when you looked at the Canal system
24 and the NagraStar system -- on both of those projects, you
25 created some written reports; correct?

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12:53:53 1 A Yes.
2 Q And in both circumstances, at least part of that
3 information was shared with individuals for the defendants

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4 who were previously involved in hacking or piracy; is that

5 correct?

6 A Can you be specific about Nagra and Canal+?

7 Q Sure. I believe there may be some disconnect between
8 you and Mr. Shkedy, but if I understand your testimony, you
9 believe that Mr. Shkedy shared part of the Canal+ result,
10 part of the research that you gentlemen did, with an
11 individual named Oliver Kommerling; is that correct?

12 A Yes.

13 Q And you understood that Mr. Kommerling who you
14 testified about yesterday was previously involved in piracy
15 and hacking before he came to NDS?

16 A Yes. He was pirating NDS products.

17 Q Now, you also shared at least some of the information
18 in the Headend Report that was created for the NagraStar
19 hack project -- you shared some of that information with
20 Christopher Tarnovsky; is that correct?

21 A Can you repeat that? I lost you.

22 Q If I understood your testimony from earlier today, you
23 and Mr. Tarnovsky had a conversation, and during that
24 conversation at his house, which is an NDS office, you
25 printed at least a few pages, two or three -- you don't

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12:53:53 1 recall -- but some of the pages from the Headend Report,
2 Exhibit 98, that we looked at earlier?

3 A Yes.

4 Q You also agreed with me earlier this morning that the
5 Canal+ code -- part of that code was published on the
6 internet; correct?

7 A Yes.

8 Q And it's your understanding that the date and time
9 stamp on that particular posting is the same as the date and
10 time stamp on the code extraction that was done at NDS
11 Haifa?

12 A Yes.

13 Q You also understand looking at Exhibit 998 that part --
14 at least some type of methodology to hack EchoStar's system,
15 NagraStar's system, was also published on the internet? And
16 it may have actually been the xbr21 posting that you looked
17 at earlier with Mr. Snyder. Do you recall the "dr7" logo on
18 the top of that exhibit?

19 A Yes.

20 THE COURT: That's two questions.

21 BY MR. HAGAN:

22 Q If I understand your testimony correctly, is it your
23 understanding that in fact an issue in this lawsuit deals
24 with the publication of a methodology to hack EchoStar's
25 security system on the internet?

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12:53:53 1 A Yes.

2 MR. HAGAN: Your Honor, I would move --

3 THE COURT: No, these are for argument. These
4 don't come into evidence.

5 MR. HAGAN: Not as evidence but preserve them
6 as --

7 THE COURT: Take them down, and you can preserve
8 them.

9 MR. HAGAN: Demonstratives 6 and 7.

10 THE COURT: We will see these again I am sure.

11 what counsel has done is gone through a summary,
12 but it's not -- you are going to determine the facts in this
13 case. He is trying to point out if there are similarities
14 or not. You will probably see these charts again, and you
15 are going to see and hear other experts also about this.

16 BY MR. HAGAN:

17 Q Mr. Mordinson, as part of your work for the Headend
18 Project, you also created what's called in the hacking
19 industry or the piracy industry a 3M code or a modified
20 EEPROM code?

21 A Yes.

22 Q And what was the purpose of creating that code as it
23 relates to the EchoStar hacking project?

24 A The purpose of creating this code was to test findings
25 that we had come to in the course of our project.

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12:53:53 1 Q Now, this 3M code that you created, was this the code
2 that was used to load onto the EchoStar Smart Card when you
3 and Mr. Shkedy went to Canada and used the sniffer device?

4 A I think -- I should it explain my way maybe. 3M is a
5 method or is a way to modify a subscription written in the
6 card. In this way, it can be proven that our understanding
7 of how the conditional access systems works will come out.
8 The method that we used to load those changes into the card
9 is called IO buffer overflow and utilizes a memory ghost
10 effect.

11 Q Was that particular 3M code -- that was used by you as
12 part of the EchoStar hacking project?

13 A As a part of the Headend Project, yes.

14 MR. HAGAN: Christine, could you show Mr.
15 Mordinson what has been premarked as Trial Exhibit 1569?

16 BY MR. HAGAN:

17 Q Mr. Mordinson, you have in front of you a document
18 labeled Trial Exhibit 1569, and I will represent to you that
19 this was one of the documents produced by your counsel in
20 this action.

21 Does this document, Exhibit 1569, represent the 3M code
22 that you developed for the EchoStar ROM version 003 card?

23 A What I can see in this document is the image file or
24 EEPROM content which I believe was used by me during the
25 testing in Canada.

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12:53:53 1 Q Mr. Mordinson, are you familiar with the term "domino
2 effect"?

3 A Yes.

4 Q Can you please explain to the ladies and gentlemen of
5 the jury what that term means as it relates to a Conditional
6 Access System or security system?

7 A "Domino effect" is a term for phenomenon which exists
8 in a Conditional Access System which not protected against
9 -- if a conditional access vendor uses the same card or the
10 same chip for every customer, hackers can compromise just
11 one Conditional Access System on just one of the -- and then
12 apply the knowledge that they got from breaking into the
13 system from compromising this Conditional Access System to
14 the other systems due to the fact that this system used the
15 same Smart Card with the same platform.

16 Q Now, the domino effect, is that something that you
17 considered or that you determined, formed any opinion on,
18 about the EchoStar security system during your work for the
19 defendants on the EchoStar project?

20 A Yes. We figured out that NagraStar -- or Nagra
21 Vision's Conditional Access System is a subject for a domino
22 effect.

23 MR. HAGAN: We are going to look at one more
24 document, but before we do, I would like to offer Trial
25 Exhibit 1569 into evidence. This is the 3M code that Mr.

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12:53:53 1 Mordinson just testified about.

2 MR. SNYDER: No objection.

3 THE COURT: Received.

4 (Exhibit 1569 received.)

5 MR. HAGAN: Christine, can you hand Mr. Mordinson
6 a copy of Trial Exhibit 75?

7 BY MR. HAGAN:

8 Q Mr. Mordinson, we have handed you a copy of what has

9 been previously marked as Trial Exhibit 75. I will
10 represent to you that this is another document that was
11 produced during the discovery phase of this litigation from
12 your counsel.

13 This document discusses -- as you look at it now, this
14 document discusses what you were testifying about, the
15 domino effect; is that correct?

16 A Yes.

17 Q Now, just looking at -- five paragraphs down the
18 heading says "The Case of EchoStar." Let me know when you
19 have found that particular place in the document.

20 A Yes.

21 Q Now, the second sentence says "Nagra Systems" -- when
22 it says "Nagra," you understood that to be referring to
23 Nagra Vision's technology?

24 A Yes.

25 Q The competitor of NDS.

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12:53:53 1 "Nagra's systems remained unhacked for some years."

2 Do you know what the date of this document --
3 approximately when this document was created?

4 A I'm sorry. I didn't hear your question.

5 Q Do you know approximately -- looking at this NDS
6 Operational Security Group document, do you know
7 approximately when it was created?

8 A No.

9 Q Have you ever seen this document before?

10 A No.

11 Q I will move on then. Let me ask you one question and
12 see if you agree with this. There is a statement in the
13 document that says --

14 MR. SNYDER: Objection, Your Honor.

15 MR. HAGAN: I am just asking if it's consistent
16 with his definition of "domino effect."

18 Q On the second page, there is a reference to an
19 "accelerated domino effect." In the second paragraph down,
20 it says "almost immediately upon the release of the EchoStar
21 hack, the two other North American broadcasters using
22 Nagra's CAS," or Conditional Access System, and then it
23 lists those, "Sky Vista and Express View. Those systems
24 were hacked as well."

25 Now, Mr. Mordinson, is that consistent with your

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12:53:53 1 understanding of the domino effect as it relates to the
2 plaintiffs' security system?

3 A Actually I don't know what card is used by Sky Vista.
4 Express View used the same type of Smart Card as EchoStar.
5 It's possible that EchoStar and Express View are subject for
6 a domino effect.

7 Q So at least as that sentence relates to Express View --
8 and that's the Canadian satellite provider -- you agree with
9 it, that immediately upon the release of the EchoStar hack,
10 Express View was hacked as well?

11 A I don't really know about the hack of Express View. A
12 domino effect could have taken place. I just can't
13 speculate about it.

14 Q Mr. Mordinson, just a couple of more questions. I
15 appreciate your time. I asked you certain things in your
16 deposition. I just want to make sure that I cover those.

17 You testified this morning that if someone had tech
18 savvy knowledge, and if they had a copy of your Headend
19 Report, Exhibit 98, and they had EchoStar's code, the secret
20 code from the card, and they had knowledge about the
21 processor used in that card, the little chip on the back --
22 it's your testimony that that person could create or develop
23 the hack methodology that was posted on the internet that we
24 looked at as Exhibit 998; is that correct?

25 A With the exception of necessary to the Headend Report,

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12:53:53 1 yes.

2 Q Other than NDS, you are not aware of anyone else in the
3 world that had a copy of your Headend Report prior to the
4 Nipper publication in December 2000; correct?

5 A Can you repeat that?

6 Q Other than NDS, the defendant, are you aware of anyone
7 else in the world who had a copy of the Headend Report in
8 December of 2000?

9 A No, I'm not aware.

10 Q Other than NDS, you are not aware of anyone else in the
11 world who had a copy of EchoStar's code in December of 2000?

12 A No, I'm not aware.

13 Q Other than NDS, you are not aware of anyone else in the
14 world that knew of the vulnerabilities in EchoStar's access
15 card prior to December 2000; correct?

16 A I'm not aware.

17 Q And other than NDS, you are not aware of anyone else in
18 the world who understood the IO buffer overflow and its
19 relationship to the RAM ghosting effect for EchoStar's
20 security system prior to the posting in December 2000;
21 correct?

22 A I'm not aware.

23 MR. HAGAN: Thank you, Mr. Mordinson.

24 THE COURT: This will be re-recross. Mr. Snyder
25 on behalf of NDS.

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12:53:53 1 RE-RE-CROSS-EXAMINATION

2 BY MR. SNYDER:

3 Q Just a few questions. Mr. Hagan just asked you a few
4 questions about whether you were aware of other people who

5 knew things about the EchoStar card.

6 Were you in a position to know what other people in the
7 world knew about EchoStar's card?

8 A No.

9 Q Were you in a position to know who else in the world
10 might know about the RAM ghost effect?

11 A No.

12 Q Were you in a position to know who else in the world
13 might know about the buffer overflow vulnerability?

14 A No.

15 Q would you have any way of knowing who else in the world
16 might have EchoStar's code?

17 A No.

18 Q Now, Mr. Hagan did a chart, and part of his chart was
19 pointing out that for the NagraStar system you showed some
20 pages of your Headend Report to a former hacker, Chris
21 Tarnovsky. Do you recall that part of his chart?

22 A Yes.

23 Q He took the chart down, but I think we all remember it.

24 A Yes.

25 Q When was that?

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12:53:53 1 A It was in -- during my visit to Chris Tarnovsky's house
2 in August 2001.

3 Q The next line of Mr. Hagan's chart was that code was
4 posted on the internet. Do you recall that part of his
5 chart?

6 A Yes.

7 Q And he referred you back to what we have had in the
8 case as Exhibit 511-A, the dr7 posting dot com site. Do you
9 recall when he asked you about that?

10 MR. SNYDER: Can we bring up 511-A, please?

11 That's not -- we will get you a copy, Mr. Mordinson.

12 BY MR. SNYDER:

13 Q What is the date of that posting, the xbr21 posting
14 that has the code?
15 A The posting of the xbr21 posting is dated the 23rd of
16 December 2000.
17 Q So that was about eight months or so before you met
18 with Chris Tarnovsky in August of 2001?
19 A More than eight months, yes.
20 Q Now, Mr. Hagan also had another chart where he wanted
21 to show similarities between Haifa and the posting. He
22 listed a bunch of things. The first one he mentioned was
23 the reference to "Nipper."
24 Is the word "Nipper" something that's in the EchoStar
25 card?

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12:53:53 1 A Yes.
2 Q So anyone who looks at the code in the EchoStar ROM 3
3 card will see the word "Nipper"?
4 A In the E square or EEPROM of the card, yes.
5 Q In the E square, the EEPROM, of the EchoStar card,
6 anybody who looks at that code will see the word "Nipper"?
7 A Yes.
8 Q And the next thing he identified was ATR. What is ATR?
9 A "ATR" stands for answer to reset. It's a term that's
10 used in the Smart Card industry.
11 Q So anyone who is dealing with a Smart Card, including
12 an EchoStar Smart Card, there is going to be ATR present?
13 A Absolutely.
14 Q What is get? Is that a standard programming term?
15 A Get I believe is an English word for obtaining
16 something or getting a position.
17 Q The next thing he listed was ROM 3. Do you recall
18 where the reference to ROM 3 was in the card?
19 A It was in the card -- I am pretty sure -- I think it
20 was present in ATR. I'm not sure, but it's present in the
21 card.

22 Q So anyone who looks at the contents of the card will
23 see that reference to "ROM 3"?

24 A Yes.

25 Q Now, the next thing you mentioned was dumping the

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12:53:53 1 double EEPROM.

2 Now, the double EEPROM is in every single EchoStar card
3 as well?

4 A Yes.

5 Q And the next thing you have mentioned was the buffer
6 overflow vulnerability.

7 Now, was the buffer overflow vulnerability something
8 that you created in the card?

9 A First of all, "buffer overflow vulnerability" or
10 "buffer overflow attack" is a common term used, and this
11 technique is well known. In every EchoStar card, this
12 technique would work.

13 Q The next thing you listed was the RAM ghost effect.

14 Did you introduce the RAM ghost effect into the card?

15 A No. I believe it's a byte design of the Smart Card for
16 this particular microcomputer.

17 Q So would every EchoStar Smart Card of this type have
18 that RAM ghost effect?

19 A Yes.

20 Q And the last thing you listed was the ability to
21 execute in RAM.

22 Was that something that you created in the card?

23 A No. It's a standard feature of this hardware.

24 Q So every single EchoStar card of that type would also
25 have the ability to execute in RAM?

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12:53:53 1 A Yes.

2 MR. SNYDER: Thank you, Mr. Mordinson. No more
3 questions.

4 THE COURT: Mr. Mordinson, thank you. We are
5 going to leave you on call as we are all of the other
6 witnesses, including Mr. Shkedy. I doubt that you will be
7 returning to court, but I need to know that you are
8 available. If you are needed back to court, believe me, it
9 will be because we need you.

10 This is a hard-working jury. They are not to be
11 inconvenienced. Therefore, you will be on a 72-hour call,
12 but I firmly believe that this case will finish in four
13 weeks. We are actually ahead of schedule, but I am being
14 very cautious in saying June 15 so I don't have to call out
15 again and change my dates. If there is not a return by any
16 witness on behalf of NDS or EchoStar, I am going to give the
17 jury an adverse inference, and that would be very damaging
18 to the party. Do you understand that?

19 THE WITNESS: Yes.

20 THE COURT: Thank you. You may step down.

21 Counsel, we are going to resolve one other issue
22 this evening, and that is the gentleman and the date of the
23 exhibit before we send of the jury home. How are we going
24 to resolve that? This is foundational. It concerns --

25 MR. HAGAN: Mr. Segoly.

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12:53:53 1 THE COURT: I suggest you two reach a quiet
2 accommodation in the back, or Mr. Segoly will be with me
3 until Tuesday.

4 They will reach an agreement in just a moment.
5 They can do this very quickly.

6 (Off the record.)

7 THE COURT: We are back on the record. All
8 counsel are present. Thank you for your courtesy, counsel.

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what is your method of proceeding?

10 MR. SNYDER: Your Honor, I believe that the
11 plaintiffs have agreed that Mr. Segoly can be released, and
12 we will discuss that document or a related document with
13 another witness.

14 THE COURT: No. This frightens me. Reach a
15 decision about how this is going to come in. If not, we
16 will put the gentleman on the stand tonight that you
17 represented to me was available. It's one of the two.

18 MR. SNYDER: Mr. Rubin can take the stand.

19 THE COURT: Mr. Rubin, would you step forward,
20 please, and raise your right hand. Thank you.

21 DOV RUBIN, PLAINTIFFS' WITNESS, SWORN

22 THE COURT: Sir, please be seated.

23 Now, Mr. Rubin may be coming back later to
24 testify. This is very limited testimony concerning this one
25 document, which is the business ethics paper allegedly taken

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12:53:53 1 off the NDS website.

2 We need to know what date that document existed.
3 Was it back in 1996 or '97 when Mr. Segoly went to work? Is
4 it a recent document in 2007? What's the evidence? Was it
5 caused by this lawsuit? Was it caused by a general company
6 policy? We don't know that. I need to know that before I
7 receive it.

8 Mr. Noll.

9 DIRECT EXAMINATION

10 BY MR. NOLL:

11 Q Good afternoon, Mr. Rubin.

12 What's your position at NDS?

13 A I am the vice-president and general manager of NDS
14 Americas.

15 Q So you work here in California?

16 A Yes.

17 Q How long have you been in that position, sir?

18 A Ten years.

19 Q Is that how long you have been with the NDS?

20 A No.

21 Q How long have you been with NDS?

22 A I am one of the co-founders of NDS. I have been with
23 NDS since the beginning.

24 Q You are well aware of NDS's standards of business
25 practice; is that correct?

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12:53:53 1 A I am aware of it, yes.

2 Q As a vice-president, that's something that you have an
3 obligation to be aware of?

4 A Yes.

5 Q I am going to have you focus your attention on Exhibit
6 1027, please.

7 Do you see the front page of 1027? On the top left, it
8 says "News Corporation"?

9 A Yes.

10 Q You have seen this document before; is that correct?

11 A I don't recall the specific document, but I have seen
12 similar ones.

13 Q Go ahead and take a second to flip through it. I want
14 you to satisfy yourself that is one of the documents or a
15 similar document to one you believe you have seen in the
16 past.

17 A It is. I have looked through it before.

18 Q You have no reason to believe that this is not a true
19 and correct copy of what it purports to be?

20 A That's correct.

21 MR. NOLL: At this time, plaintiffs offer Exhibit
22 1027.

23 THE COURT: Not yet. We still need to know the
24 time period.

25 How long has this been in existence?

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12:53:53 1 THE WITNESS: This document was produced sometime
2 in 2004/2005.

3 THE COURT: Then the obvious question for each of
4 you should be was there another document that preceded this?
5 BY MR. NOLL:

6 Q Was there another document that preceded this document?

7 A There were documents. I don't have them handy. I have
8 not done any of that research. I am happy to do that for
9 the Court.

10 THE COURT: We will get them in the future. At
11 least as far as this document, 2004/2005, it's received. If
12 you would be kind enough to go back and do the research.
13 You will be back on the stand either called by EchoStar or
14 NDS. That way we can send the jury on their way.

15 (Exhibit 1027 received.)

16 Mr. Rubin, I apologize. Your full name is?

17 THE WITNESS: Dov Rubin, D-o-v, R-u-b-i-n.

18 THE COURT: Thank you very much. We will see you
19 later during the trial.

20 All right, ladies and gentlemen, we will see you
21 at 8:00 on Tuesday. I want to thank you for being so prompt
22 and hard working.

23 Make that call to get your hours changed, Juror

24 No. 1.

25 Please drive safely. I can inform you that we are

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12:53:53 1 ahead of schedule. How significantly and how the case goes,
2 you never know, but we are ahead of schedule. If we keep
3 going, we should have this case to you in a block of time.

4 Also, would you check about your presentation. In

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other words, if it's in the afternoon, maybe we can have a
6 Monday or morning session. If it's in the morning, maybe we
7 can have an afternoon session. Maybe I get half a day
8 Monday. Maybe I switch 30 cases. Maybe we can do that. On
9 Tuesday, tell me when that presentation is. The more I
10 think about it I would like you to keep that date because
11 changing the date might put you at a disadvantage. We don't
12 know. that's a big contract for you.

13 I also know about next Friday. I think you told
14 Chrisy you need to recess by 1:00. We will go through the
15 lunch hour, and there is a memorial service for a loved one.
16 Take than to the bank. You are going.

17 Don't form or express any opinion about this case.
18 Don't go to the Internet. Don't go to any press,
19 newspapers. Don't discuss this case with anyone. Leave it
20 alone. Have a nice time. We will see you at 8:00 promptly
21 Tuesday.

22 (Thereupon, court was adjourned.)

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2 CERTIFICATE

3
4 I hereby certify that pursuant to Section 753,
5 Title 28, United States Code, the foregoing is a true and
6 correct transcript of the stenographically reported
7 proceedings held in the above-entitled matter and that the
8 transcript page format is in conformance with the
9 regulations of the Judicial Conference of the United States.

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11 Date: April 11, 2008

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