

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
HONORABLE DAVID O. CARTER, JUDGE PRESIDING

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ECHOSTAR SATELLITE)	
CORPORATION, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	No. SACV 03-0950-DOC
)	
NDS GROUP PLC, et al.,)	
)	Day 6, Volume II
Defendants.)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Jury Trial

Santa Ana, California

Thursday, April 17, 2008

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Federal Official Court Reporter
United States District Court
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I N D E X

EXAMINATION

Witness Name	Direct	Cross	Redirect	Recross
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RUBIN, DOV

(Excused until 4/22/08)

NORRIS, JOHN

By Mr. Klein

9

EXHIBITS

Exhibit	Identification	Evidence
Defense No. 601		31
Defense No. 1121		43
Defense No. 1366-003		48
Defense No. 1366-004		41
Defense No. 1366-008		50
Defense No. 1366-009		52
Defense No. 1366-010		47
Defense No. 1366-011		45
Defense No. 1443		59
Defense No. 1452		55
Defense No. 1453		35
Defense No. 1588		63

1 SANTA ANA, CALIFORNIA, THURSDAY, APRIL 17, 2008

2 DAY 6 - VOLUME II

3 (10:39 a.m.)

4 (The following proceedings is taken outside
5 the presence of the jury.)

6 DOV RUBIN, DEFENDANTS' WITNESS, RESUMED

7 THE COURT: We are on the record outside the
8 presence of the jury.

9 Mr. Snyder?

10 MR. SNYDER: Thank you, your Honor.

11 The Court and plaintiffs have been aware for some
12 time of Mr. Rubin's strong -- the Court and the plaintiffs
13 have been aware for some time of Mr. Rubin's desire to be
14 with his family for the Jewish holidays and his need to fly
15 to Israel. We were told, originally when we discussed
16 Mr. Rubin's testimony and were advised for the first time he
17 was being called out of order, that it would take
18 approximately 20 minutes, and it would be limited to the
19 issue of authenticating Exhibit 1510 through evidence from
20 DirecTV. We've gone substantially beyond that. The length
21 of the examinations has already been more than double the
22 amount of time that was represented, and we object to any
23 effort by the plaintiffs to interfere with Mr. Rubin's
24 family plans.

25 THE COURT: Well, we can simply do this.

1 First of all, the Court has no desire to interfere
2 with a religious holiday, so you are going to be free to go
3 at anytime you'd like.

4 Second, the time estimates were made, you know, in
5 good faith by both parties, but each side has violated,
6 including cross-examination, which was estimated to be two
7 hours by one witness, without pointing out the counsel,
8 almost four hours. So it just depends upon who is violating
9 those time estimates at the time, because I didn't cause a
10 timed trial, Mr. Snyder. Before we throw a stone, we should
11 look at our own house.

12 So, therefore, Mr. Rubin, you are free to go, but
13 you will be returning next Tuesday.

14 THE WITNESS: I will, absolutely.

15 THE COURT: And I will inform the jury that
16 Mr. Rubin will be recalled.

17 Now, next this is a corporate representative.
18 When the gentleman testifies on behalf of the corporation, I
19 would expect that some of these answers would be known, and
20 if not, then we climb the ladder until they are known.

21 So in the meantime, you are the corporate rep, you
22 speak for the corporation.

23 THE WITNESS: Yes, I do.

24 THE COURT: You should know these dates and times.
25 And if not, then we'll find somebody above you who does.

1 And that will apply also to your corporate rep,
2 and if we have to climb all the way to the top, that's what
3 we'll do to find out these answers.

4 Now, what's concern is that multinational
5 corporations, passing over national and international
6 boundaries, have apparently had between the two of you some
7 problem with discovery, materials, and probably an attitude
8 that just because the Court is being one of United States
9 jurisdiction and we are dealing with multinational entities,
10 that some people just haven't been paying attention,
11 unfortunately, across the world.

12 You've also heard my constant admonition, and you
13 may talk to your clients beforehand. Unfortunately, I've
14 been around as trial counsel a long time. Words like "to
15 the best of my recollection," "maybe," or a series of "I
16 can't recalls" when the person is in the position of
17 responsibility, including corporate reps, are going to cause
18 an adverse inference from the Court.

19 Now, that will be general. It will not be
20 pinpointed. I expect that that's occurred before, and it
21 will continue to occur, but apparently, this must have
22 started at depositions where people thought that they could
23 answer questions in these ways without specificity. So
24 please talk to your clients about this and your witnesses,
25 because if you don't, on each occasion, I am going to step

1 in when I hear those words, and be forewarned, leaves that
2 responsibility with counsel. These hedge answers and
3 unqualifying answers are not fit for this jury. They have
4 the right to hear concrete answers by both sides.

5 And as corporate rep and the future corporate reps
6 on the other side, you should know these answers, sir.

7 THE WITNESS: I do.

8 THE COURT: Now, get Mr. Murdoch in here or get
9 Mr. Peled in here. Mr. Ergen's been here, and I expect that
10 Kudelski should be here. But I am not forcing that. I
11 understand my humble jurisdiction, but I hope that message
12 is very strong and very clear. This jury should have the
13 best evidence available, and I'm afraid that what's going to
14 occur is that the impression is going to be made that many
15 witnesses are being evasive. They may, in fact, know the
16 answers, but unless they are well-prepared, and counsel to
17 ask the question -- or answer the question directly, I think
18 that this is going to be a poor impression on this jury.

19 So enough now, Counsel.

20 Mr. Rubin, I'll explain to the jury, has -- will
21 return to us next week.

22 MR. SNYDER: Thank you, your Honor.

23 THE COURT: Thank you.

24 Sir, thank you very much.

25 THE WITNESS: Thank you very much.

1 MR. WELCH: Thank you, sir.

2 THE COURT: Now, if you'd get Mr. Norris and put
3 him back on the stand, please.

4 Thank you, Mr. Norris. If you'd be kind enough to
5 retake the stand, sir.

6 JOHN NORRIS, PLAINTIFFS' WITNESS, RECALLED

7 THE COURT: Thank you, Counsel, and thank you very
8 much for your courtesy. If you'd please be seated.

9 (The following proceedings is taken in the
10 presence of the jury.)

11 THE COURT: The jury is present, all counsel are
12 present.

13 Once again, I apologize for that 8-minute delay.
14 That's totally my responsibility. It should not reflect
15 upon counsel.

16 Mr. Rubin has been excused from the remainder of
17 the direct examination on today's date, but he will resume
18 the stand promptly on Tuesday for the continued direct
19 examination.

20 And Counsel, I'll let you retrace, because of that
21 passage of time, some of the questions you traced through
22 today so that the jury has some continuity with that break.

23 MR. WELCH: Thank you, your Honor.

24 THE COURT: Therefore, we are going back, now, to
25 the cross-examination of Mr. Norris. You heard Mr. Norris's

1 direct examination this morning. The gentleman who will be
2 examining Mr. Norris on behalf of NDS is Mr. --

3 MR. KLEIN: Ken Klein, your Honor.

4 THE COURT: Mr. Klein.

5 This is cross-examination by NDS, Mr. Klein.

6 CROSS-EXAMINATION

7 BY MR. KLEIN:

8 Q Good morning, Mr. Norris.

9 A Good morning.

10 Q I'm going to go and give a little background before we
11 get to some of the issues raised by counsel.

12 Are you married?

13 A Yes.

14 Q How long have you been married?

15 A Forty years.

16 Q Have any children?

17 A Yes.

18 Q How many?

19 A Two.

20 Q Grandchildren?

21 A Yes.

22 Q How many?

23 A Two.

24 Q I know this is going to go back a ways, but what year
25 did you graduate from high school?

1 A 1963.

2 Q Did you serve in the military?

3 A Yes.

4 Q What years?

5 A 19 -- 1966 to 1972, '73.

6 Q What branch in the military?

7 A Army.

8 Q When you were in the army, did you have an area of
9 specialization?

10 A Yes.

11 Q And what was that?

12 A Military intelligence.

13 Q Did you serve in Vietnam?

14 A Yes.

15 Q What years?

16 A 1967 and 1968.

17 Q And what were your general duties there?

18 A I was a combat intelligence officer and a platoon
19 leader.

20 Q And were you honorably discharged from the military?

21 A Yes.

22 Q What year were you honorably discharged?

23 A 1973.

24 Q And when you were discharged, what was your rank?

25 A Captain.

1 Q When you left the military, where did you go to work?

2 A In San Diego for a company called Wickes Corporation.

3 Q And in general, what did they do?

4 A They were involved in retail manufacturing,
5 conglomerate business.

6 Q What was your position with Wickes?

7 A I was manager of corporate security.

8 Q And as manager of corporate security, in general, what
9 did you do?

10 A Developed procedures and -- to implement procedures on
11 security policy to protect company assets.

12 Q To investigate crimes against the company?

13 A Yes.

14 Q And when you were at Wickes protecting corporate
15 assets, investigating crime, did you have occasion to work
16 with law enforcement?

17 A Yes.

18 Q And did there come a time when you left Wickes?

19 A Yes.

20 Q Why was that?

21 A The company went into bankruptcy.

22 Q Where did you next go?

23 A I think I went to Fluor Corporation.

24 Q And at Fluor Corporation, do you recall what your title
25 was?

1 A Field superior of investigations.

2 Q And as field supervisor of investigations, what did you
3 do?

4 A Investigated crimes against Fluor Corporation and
5 internal allegations of misconduct.

6 Q And when you were doing that for Fluor Corporation, did
7 you once again have an opportunity to work with law
8 enforcement?

9 A Yes, I did.

10 Q And there came a time when you left Fluor?

11 A Yes, I did.

12 Q Why was that?

13 A I was recruited by a company that was based in
14 San Diego called Furnishings 2000.

15 Q They sold furniture?

16 A Yes.

17 Q What was your title there?

18 A I started as director of security and later promoted to
19 vice president of security.

20 Q And in general, what were your duties as director of
21 security at The Brick?

22 A Security company assets, implementing procedures based
23 on company security policy.

24 Q And once again, did you have opportunities to work with
25 law enforcement there?

1 A Yes.

2 Q Why did you leave that job?

3 A They went bankrupt.

4 Q You seem to have run into a bad street, there.

5 Where did you next go?

6 A Went to work for a company called General Instrument
7 VideoCipher Division in San Diego.

8 Q And what did the VideoCipher Division of General
9 Instrument do?

10 A They provided encryption technology to the C band
11 satellite dish industry, the large -- the large dish
12 industry.

13 Q What was your job title there?

14 A First, I was field supervisor of security, maybe field
15 supervisor of investigations, then later, manager of
16 security.

17 Q And when you were at General Instrument as manager of
18 security, did you have occasion to get involved in satellite
19 piracy?

20 A Yes.

21 Q And what was -- what was your role there with respect
22 to satellite piracy?

23 A To try to stop it, to combat it, investigate it,
24 prosecute it.

25 Q And did you have occasion at General Instrument to once

1 again work with law enforcement agencies?

2 A Yes, I did.

3 Q And when you were at General Instrument and you were
4 working in an anti-satellite-type (sic) job, did you have
5 occasion to testify as a government witness in either
6 federal court or before federal grand juries?

7 A Yes, in anti-piracy investigations; yes, I did.

8 Q How many times did you testify in federal court when
9 you were at General Instrument?

10 A 10 times, approximately 10 times.

11 Q And -- and those 10 times, were you a witness for the
12 government?

13 A Yes.

14 Q And they were prosecuting satellite pirates?

15 A Yes.

16 Q And did you also have occasions to testify -- about --
17 about how many times in front of the federal grand juries
18 when you were at General Instrument?

19 A A dozen, perhaps 15, 18 times.

20 Q And once again, you were testifying as a government
21 witness?

22 A Yes, sir.

23 Q Now, was there a -- a break in your employment where
24 you left General Instrument for a -- for a period of time
25 and then came back?

1 A I left for two years.

2 Q And when you left for two years -- first of all, why
3 did you leave?

4 A I was laid off.

5 Q And when you were laid off by General Instrument, where
6 did you work for those two years?

7 A I was hired as chief of security for Miramar Naval Air
8 Station Navy Exchange Retail System.

9 Q And what was your duty when you were working for the
10 Navy?

11 A I ran a staff of about 60 people to protect assets for
12 the Navy retail resale operations at Miramar Naval Air
13 Station and Naval Airfield, El Centro.

14 Q Did you once again work with law enforcement?

15 A Yes.

16 Q And eventually you left the Navy and went back to
17 General Instrument?

18 A Yes.

19 Q And why did you leave the Navy?

20 A VideoCipher Division General Instrument Corporation
21 came back to me and recruited me back to work for them.

22 Q Did -- then there came a time when you began working
23 for NDS?

24 A Yes.

25 Q When was that?

1 A After I left General Instrument, I began working as a
2 consultant for NDS in 1996, I believe it was.

3 Q How did it come about that you began working as a
4 consultant for NDS?

5 A I was referred to NDS by DirecTV security management.

6 Q And did there come a time when you began working full
7 time for NDS?

8 A Yes.

9 Q When was that?

10 A Approximately six months after I consulted to NDS.

11 Q And what year are we talking about now?

12 A 1996.

13 Q When you began working full time for NDS, what was your
14 job title?

15 A Director of special projects.

16 Q What did you do as director of special projects?

17 A I developed a team policy protocol for anti-piracy
18 protection of company assets and staff.

19 Q And did you do that full time?

20 A Yes.

21 Q Are you still doing that?

22 A (No audible response.)

23 Q So are you still doing that same type of work?

24 A Yes, I am.

25 Q Has your title changed?

1 A Yes, it has.

2 Q What is your title now?

3 A Vice -- vice president of security or special projects.

4 Q Now, you've been at NDS a little bit over 10 years.

5 During those 10 years at NDS, have you had occasion to work
6 with law enforcement agencies to combat piracy --

7 A Yes, I have. Sorry.

8 Q Can you give us some understanding of which law
9 enforcement agencies you've worked with over those 10 years
10 to combat pirate -- satellite piracy?

11 A It's been about 12 years I've worked with most, if not
12 all, of the federal investigative agencies, the FBI, U.S.
13 Customs, IRS, Royal Canadian Mounted Police, the PGR, which
14 is -- I couldn't pronounce it, but it's the Mexico --
15 Mexican equivalent of the FBI in -- in Mexico, Canadian
16 Customs, Revenue Canada, numerous local, state law
17 enforcement agencies.

18 Q Now, during all the years that you've been in law
19 enforcement related jobs, have there been occasions where
20 you've been asked to either speak to or train employees,
21 agents of law enforcement agencies?

22 A Yes, there has.

23 Q Tell us a little about that.

24 A I've been invited to speak to large gathering --
25 gatherings of FBI agents. It's referred to as in-service

1 training. My department, my staff and I have trained in
2 excess of 500 various law enforcement agents informally or
3 formally.

4 We've appeared -- I've appeared before trade
5 organizations of security directors involved with
6 subscription television in the cable and satellite industry.

7 Q With respect to speaking to training law enforcement
8 employees, have you also done that for law enforcement
9 employees of foreign countries?

10 A Yes, I have.

11 Q Who -- give us just a little taste of what you've done
12 with respect to foreign countries, employment -- in training
13 employment -- employees of -- of law enforcement agencies.

14 A The PGRs I mentioned, which is the investigative -- the
15 federal investigative branch and their equivalent of United
16 States or assistant United States attorneys, their federal
17 attorneys, prosecutors, their evidence technicians. We held
18 a seminar that I spoke at and my technical people spoke at
19 for maybe approximately 60 -- 60 members of the law
20 enforcement organizations in Mexico City.

21 Q Now, when you've provided this training for employees
22 of law enforcement agencies, can you give us an
23 understanding of the topics that you've given the training,
24 especially the topics relating to satellite piracy.

25 A My technical staff would address how software was

1 modified and worked within a conditional access card, a
2 DirecTV card that contained NDS technology. I would address
3 some of the methods that pirate organizations would operate,
4 their methods of operation, their methods of exchanging
5 money, historical examples of evidence that have been seized
6 and technology that was available by the pirate -- by the
7 pirate industry.

8 Q What was the most recent occasion where you trained
9 federal agents with respect to anti-piracy?

10 A I was in Canada late last year, and we met with the
11 headquarters representatives of the Royal Canadian Mounted
12 Police. The Industry Canada Group, which is the equivalent
13 of our FCC in the United States, who I've also worked with,
14 Canadian Customs and Revenue Canada was present, I believe,
15 at their -- at one of the headquarters buildings in -- in
16 Ottawa, I believe it was.

17 Q And -- and when you've spoken before these government
18 agents about anti-piracy, are these situations where you
19 asked them to let you come and -- and speak or where they
20 invite you?

21 A Often we are invited, but we've also volunteered our
22 services.

23 Q Now, while you've been employed by NDS, have you
24 testified in government prosecutions, United States
25 government prosecutions involving satellite piracy?

1 A Yes, I have.

2 Q Have you testified in federal court?

3 A Yes, I have.

4 Q Have you testified before grand juries?

5 A Yes, I have.

6 Q And in each of those occasions, were you a witness for
7 the United States government?

8 A Yes, I was.

9 Q Have you ever testified in federal court and been
10 qualified as an expert witness with respect to the subject
11 of satellite piracy?

12 A Yes, I have.

13 Q How many times?

14 A Every time, sir.

15 Q And can you give us about -- an idea of how many times
16 you've testified as an expert in federal court and been
17 qualified as an expert?

18 A 15 times, approximately.

19 Q And what were the specific subjects that you testified
20 about in federal court where you were qualified as an expert
21 witness?

22 A The piracy of my employers' technology and our work on
23 behalf of the industry to combat this piracy, and our
24 knowledge of the methods of operating by the pirate groups
25 that were being prosecuted.

1 Q Has there ever been an occasion where a federal court
2 did not qualify you to testify as an expert on the subject
3 of satellite piracy?

4 A No, sir.

5 Q Now, while you've been at NDS, have there been
6 occasions where a federal law enforcement or state law
7 enforcement agency asked you to participate when they were
8 executing a search warrant involving satellite piracy?

9 A Yes, sir.

10 Q About how many times has that happened?

11 A More than 100, less than 500 times.

12 Q Can you give us some idea of the different agencies
13 that have asked you or NDS to participate when they were
14 executing search warrants involving satellite piracy?

15 A The agencies I've already mentioned, FBI, U.S. Customs,
16 IRS, Royal Canadian Mounted Police, Revenue Canada, Canadian
17 Customs, FCC.

18 Q Now, on those occasions where you were requested to
19 accompany federal agents in executing search warrants, what
20 task were you asked to perform?

21 A Once the law enforcement agencies had secured the area,
22 I was asked to come in and identify evidence that was
23 applicable to our technology, and in identifying that
24 evidence, recommend whether the evidence that was being
25 seized would require laboratory analysis, or if it was

1 evidence that wouldn't require laboratory analysis, to help
2 them with the amount of evidence that was seized, being
3 shipped at a later date.

4 Q Now, while you've been in your position at NDS, have
5 you been involved in joint anti-pirate operations with
6 federal agencies?

7 A Yes, I have.

8 Q About how many times has that happened?

9 A More than 50, less than a hundred.

10 Q And without going through the list, is that the same
11 list of organizations, federal agencies that you've already
12 given us as to -- as to the ones that you've had joint
13 operations with?

14 A Yes, sir.

15 Q Have you had joint operations with the United States
16 Customs?

17 A Yes, sir.

18 Q The FBI?

19 A Yes, sir.

20 Q Have any of these joint operations resulted in
21 prosecutions?

22 A Yes, sir.

23 Q Have any of these joint operations with NDS and federal
24 agencies resulted in convictions?

25 A Yes, sir.

1 Q Have people gone to jail as a result of them?

2 A Yes, sir.

3 Q Now, with respect to these joint operations, have there
4 been operations with federal agencies where satellite
5 pirates were intentionally given either NDS or DirecTV cards
6 or devices?

7 A Yes, sir.

8 Q Did you ever hear of Operation Smart Card?

9 A Yes, sir.

10 Q What was that?

11 A It was approximately a year-long operation headed by
12 United States Customs out of Washington State. At the time
13 I read a customs document, it was the largest fraud
14 investigation in United States Customs not related to drugs.

15 Q Was this operation in about the year 2000, somewhere
16 around there?

17 A Yes, sir.

18 Q Okay. Why don't you tell us, without making it too
19 long, what the operation entailed and what happened.

20 A Operation Smart Card was focused on identifying and
21 prosecuting large distributors of pirated DirecTV, NDS
22 technology within the borders of the United States. NDS
23 provided intelligence and assistance on this operation in
24 addition to technology that we provided to U.S. Customs.

25 Q Well, as part of this operation were -- NDS gave access

1 cards or pirated DirecTV access cards to -- to customs
2 agents?

3 A Yeah -- yes, we did.

4 Q And did customs agents distribute this in some way?

5 A Yes, they did.

6 Q To whom did they distribute it?

7 A To large card purchasers, large volume card purchasers
8 who made these purchases from an undercover customs
9 operation through the internet.

10 Q Okay. So when we talk about large purchases, we're
11 talking about satellite pirates who were buying large
12 numbers of cards to then distribute, is that what you are
13 referring to?

14 A That's correct.

15 Q Okay. And once these pirated cards that were given to
16 customs agents by NDS were distributed to these pirates,
17 what happened next?

18 A Cases were formulated with -- within the justice
19 department. The individuals who purchased and then
20 distributed these cards were identified and prosecuted by
21 the government.

22 Q Do you have -- do you have a recollection as to how
23 many of these large distributors were actually -- where
24 charges were filed against in -- in this operation?

25 A I don't know the exact number. It was more than 10,

1 less than 30.

2 Q Now, when the Operation Smart Card that you just
3 described was being planned, were there some concerns that
4 if -- if these cards were given to these pirates, that the
5 pirates could then copy the cards and give them to other
6 pirates, and it would just be making a bigger problem?

7 A Yes.

8 Q And how was that problem resolved?

9 A Software was designed, and the hardware -- the hardware
10 was designed in such a way that it would -- not any of the
11 known attacks on the cards that we knew of to that date
12 would be able to take out or to copy the software that was
13 in those pirate cards that we provided to Customs.

14 Q And was it NDS that created that software?

15 A Correct.

16 Q And who at NDS worked on that?

17 A It was led by Chris Tarnovsky.

18 Q Now, was there also concern with respect to Operation
19 Smart Card that the cards would continue to operate even
20 after the -- the sting ended?

21 A Yes.

22 Q How was that concern dealt with?

23 A An effort was made to write software that could be
24 downloaded from the satellite to the footprint on -- in the
25 United States that would deactivate or disable those

1 specific Smart Cards.

2 Q And is that commonly referred to as an electronic
3 countermeasure, or an ECM?

4 A Yes.

5 Q The ECM would disable the cards that Customs had
6 distributed; is that what you are saying?

7 A Correct.

8 Q And was -- who -- who actually developed that software,
9 that ECM, to make sure that the -- that the cards could be
10 turned off at the proper time?

11 A It was developed by Chris Tarnovsky, then went through
12 our testing process before -- before any cards were released
13 to Customs.

14 Q Do you believe that Operation Smart Card was a success?

15 A Yes.

16 Q Did you ever hear of a device called a Camid,
17 C-a-m-i-d?

18 A Yes, I did.

19 Q What's that?

20 A Camid is a tool that NDS developed for our internal
21 investigators and government investigators during the course
22 of their investigation of piracy of DirecTV access cards.

23 Q Now, you say it was developed by NDS. Was there a
24 particular person at NDS who -- who developed it?

25 A Yes.

1 Q Who was that?

2 A It was Chris Tarnovsky.

3 Q Okay. And give us some idea of just what the Camid --
4 how that was used.

5 A It -- it's probably best described as a black plastic
6 box with a -- a window on it that words would come up on an
7 LED screen with a keypad. The investigator, U.S. Customs,
8 had them in Memphis, Miami, at import locations, could take
9 Smart Cards that were in packages or during a field
10 investigation, insert the Smart Card, and with the number of
11 queries, identify whether that card had been illicitly or
12 illegally modified or if the card was in its original OEM
13 condition or if the card had been modified, but disabled by
14 an electronic countermeasure.

15 Q So would enable the customs agents to rather quickly
16 determine if they were dealing with a -- a pirate card, as
17 opposed to a legitimate card?

18 A Yes.

19 Q Now, before the Camid was developed by Mr. Tarnovsky,
20 what did these customs agents at these points of entry have
21 to do in order to determine if a card was a -- was a pirate
22 card?

23 A They would either have to send them to a lab or our
24 lab, or our engineers would have to go to their location
25 with equipment to test the cards at the particular

1 investigative agency's location.

2 Q Now, you said that Mr. Tarnovsky was the one who
3 actually worked on it and created the Camid. Whose idea was
4 it that -- to create such a -- a device?

5 A It was my idea.

6 Q And -- and how did you come up with it? Why did that
7 come to you?

8 A I was watching Cops one night.

9 Q And what happened; what made you think of it?

10 A I saw them putting drugs in a little bag, and they
11 identified at the police car that it had -- it was drugs.
12 And I thought, "Jeez, if we could come up with something
13 like that for law enforcement or for investigations, that
14 would" -- "that would be pretty good."

15 Q And then you spoke to Mr. Tarnovsky about it, and
16 that's how it came out?

17 A NDS got a patent on the device.

18 Q Now, have you ever heard the name "Ron Ereiser"?

19 A Yes.

20 Q Who is he?

21 A He's a Canadian.

22 Q Is he a satellite pirate?

23 A Yes, he was.

24 Q Was there an operation conducted by NDS that involved
25 Mr. Tarnovsky meeting with Mr. Ereiser and others in

1 Mr. Ereiser's organization in Calgary, Canada?

2 A Yes.

3 Q Do you recall when that occurred?

4 A I don't recall the date.

5 Q Are we talking '90s, 2000s?

6 A Probably late 1990, sir.

7 Q And as part of that operation, did Mr. Tarnovsky
8 actually go to Canada and -- and meet with Mr. Ereiser and
9 others in his organization?

10 A Yes, he did.

11 Q Did NDS, as part of that operation, gain any valuable
12 information?

13 A Yes, we did.

14 Q What?

15 A We identified -- Tarnovsky was able to obtain software
16 that had been developed by two Bulgarian scientists who we
17 were later able to recruit, and whose technology we were
18 able to counter before it was released to the public.

19 Q What advantage did it give NDS by getting ahold of that
20 software before it was released to the public; and by "the
21 public," you mean satellite -- other satellite pirates?

22 A Correct.

23 Q Yeah, and what was -- why was that helpful?

24 A It was a fairly substantial blow against the Ereiser
25 organization.

1 Q Now, when Mr. Tarnovsky traveled to Canada and met with
2 Mr. Ereiser and his organization, did they know that he was
3 working for NDS?

4 A No.

5 Q He was undercover?

6 A Yes.

7 Q Did you consider it a dangerous operation?

8 A Yes.

9 Q Why?

10 A There had been a number of threats against people's
11 safety in Canada and the United States. Some were
12 attributed to this group.

13 Q Did you ever hear of an operation called Operation
14 Johnny Walker?

15 A Yes.

16 MR. KLEIN: I'd ask that the witness be shown
17 Exhibit 601.

18 BY MR. KLEIN:

19 Q Did you receive a copy of Exhibit 601?

20 A Yes, I did.

21 Q And does Exhibit 601 accurately set forth what -- what
22 was said at the meetings concerning Operation Johnny Walker?

23 A Yes.

24 Q Was it kept in the regular course of business, that
25 document?

1 A Yes.

2 MR. KLEIN: Your Honor, I would ask that
3 Exhibit 601 be received in evidence.

4 THE COURT: Any objection?

5 MR. NOLL: No objection.

6 THE COURT: Received.

7 (Defendants' Exhibit No. 601 is received into
8 evidence.)

9 BY MR. KLEIN:

10 Q Now, can you give us your recollection of -- of just
11 what Operation Johnny Walker entailed.

12 A Tarnovsky was working in an undercover capacity
13 developing intelligence on the Ereiser Group as well as
14 other groups in Canada, Europeans that came to the United
15 States in support of these pirate operations.

16 In order to maintain his persona as a talented software
17 hacker, it was decided that software would be developed by
18 Tarnovsky, tested by our engineers and provided to the
19 pirates in Canada under a controlled number of uses, and
20 that software, again, could be later disabled by electronic
21 countermeasure similar to other operations that we've done.

22 Q Had Mr. Ereiser requested this software from
23 Mr. Tarnovsky?

24 A Yes.

25 Q And so the operation was to give Mr. Ereiser what he

1 had asked for, but do it in a way that NDS was controlling?

2 A NDS and DirecTV, yes.

3 Q Now, as I asked you before, it's really the same
4 question, was there concern when you gave this software to
5 Mr. Ereiser that somehow he would copy what was given him,
6 the software, and all of a sudden all the -- all the pirates
7 in Canada would have this -- this pirate software?

8 A Yes, it was a concern.

9 Q How did you deal with it?

10 A I didn't, but the engineers dealt with it technically
11 to keep that from happening.

12 Q And was Chris Tarnovsky involved in that?

13 A Yes.

14 Q And did they devise a way so that the software given to
15 Mr. Ereiser could not be copied by Mr. Ereiser and given to
16 other satellite pirates?

17 A That's correct.

18 Q And the other question I raised before, I'll ask you
19 about that one again, also. Did you have some concern, and
20 was there concern that if this software was given to
21 Mr. Ereiser and his organization and they created pirate
22 DirecTV cards, was there a concern that you wouldn't be able
23 to turn off these pirated DirecTV cards?

24 A Yes.

25 Q And how was that dealt with?

1 A Electronic countermeasures were developed before the
2 software was ever released with our knowledge that when we
3 needed to disable that software, it could be disabled.

4 Q And who developed the electronic countermeasures with
5 respect to Operation Johnny Walker?

6 A It was led by Chris Tarnovsky and other engineers.

7 Q Did you consider Operation Johnny Walker to be a
8 success?

9 A Yes.

10 Q And just to be clear, with respect to Operation Johnny
11 Walker, as well as Operation Smart Card that we talked about
12 a little while ago, in each case, were the pirated cards
13 that were given to the satellite pirates, were they DirectTV
14 cards?

15 A In operation smart -- I'm sorry, in Operation Johnny
16 Walker, it was software. In Operation Smart Card, it was
17 DirectTV Smart Cards.

18 Q And for the software that was given in Operation Johnny
19 Walker, was it software that related to DirectTV cards?

20 A Yes, sir.

21 Q Now, over the years that you've been at NDS, have there
22 been occasions when customs agents have come to NDS with
23 devices that were taken from satellite pirates?

24 A We've received thousands of devices. I don't know
25 that -- I don't recall that an agent actually came to NDS.

1 An agent came and asked our presence at DirectTV, that I
2 recall, one time.

3 Q Were there occasions over the years where customs
4 agents would somehow get devices to NDS and say -- and ask
5 for NDS's help?

6 A Yes.

7 Q Did that also happen with FBI agents over the years?

8 A Yes.

9 Q Now, when -- when these devices were brought to NDS by
10 FBI, customs agents, what typically was NDS asked to do?

11 A We were asked to prepare a report, an analysis report,
12 which we internally referred to as an evidence report.

13 We would examine the product that was sent to us. We
14 would prepare -- my lab manager or staff would prepare
15 analysis reports and return the evidence in custody to the
16 requesting agency for use in their investigation or their
17 prosecution.

18 Q And who was the person at NDS who typically did the
19 work on these pirate devices that came in and needed to be
20 analyzed?

21 A Typically, that would have been -- that is Geoffrey
22 Kilfoyle.

23 Q And did Chris Tarnovsky have any -- any role in that?

24 A Occasionally, Chris would give counsel to Kilfoyle
25 during the examination if there were problems or questions

1 that he needed clarified.

2 MR. KLEIN: Your Honor, I would ask that
3 Exhibit 1453 be shown to the witness.

4 THE WITNESS: Thank you.

5 Okay.

6 BY MR. KLEIN:

7 Q Have you had a chance to look at Exhibit 1453?

8 A Yes, I have.

9 Q Now, it says it's from john4surf@aol.com; who is that?

10 A That's me.

11 Q How did you get that name?

12 A My family lives on the coast, and we surf.

13 Q Did you write this document?

14 A Yes, I did.

15 Q Was it created in the regular course of business?

16 A Yes, it was.

17 MR. KLEIN: Your Honor, I would ask that
18 Exhibit 1453 be received in evidence.

19 MR. NOLL: No objection.

20 THE COURT: Received.

21 (Defendants' Exhibit No. 1453 is received
22 into evidence.)

23 BY MR. KLEIN:

24 Q In general, what is Exhibit 1453 discussing?

25 A This is information that was derived from Tarnovsky in

1 his undercover -- undercover capacity about a group of
2 people, a hackers' convention, pirates that were reportedly
3 going to attend a meeting at the Marriott Hotel in Toronto.

4 Q Now, when you say "a hackers' convention," are we
5 talking about lots of small-time hackers, or are we talking
6 about more of the elite hackers?

7 A These are more of the elite pirates.

8 Q And I would direct your attention to the first
9 paragraph. It talks about a photo of Chris G.; do you see
10 that?

11 A Yes, I do.

12 Q Who is Chris G.?

13 A Chris G., I was referring to Chris Gerlinsky. He is
14 a -- a talented -- was a talented pirate, technical guy that
15 worked for and with Ron Ereiser.

16 Q And in the next to last paragraph, beginning with
17 "David Brian Johnson has a number of visits going off today.
18 If you would let him know, there will be a lot of fish in a
19 single pond in about two weeks," and when you said, "a lot
20 of fish in a single pond," what were you referring to?

21 A I was referring to pirates were going to be located in
22 a single area there at the Marriott Hotel, and that Brian
23 Johnson, a sergeant investigating piracy of DirectTV and NDS
24 technology, should be made aware of this convention.

25 Q And then the next sentence says "Anything we can do

1 from down here would be immediately agreed to if there are
2 aids, needs or assistance."

3 Now, who were you talking about providing aids, needs
4 or assistance to?

5 A Talking about my operational security group as a whole,
6 all -- all members.

7 Q Okay. And were there any outside individuals who are
8 listed in the -- the two in that Exhibit 1453?

9 A Yes, undercover operation for U.S. Customs, their
10 undercover address at that time is no longer operational,
11 tssmontana.com, so --

12 Q TSS -- tssmontana.com means you were sending this
13 e-mail to U.S. Customs?

14 A Correct.

15 Q And then after that, it says "dstruck@mbsympatico.ca."

16 A Another sergeant with the RCMP who's now retired, David
17 Struck.

18 Q Okay. So you were also sending this e-mail to the
19 Royal Canadian Mounted Police?

20 A Correct.

21 Q And were you offering to provide any assistance that
22 they needed?

23 A Yes.

24 Q Now, Mr. Tarnovsky, did he also attend a conference in
25 Toronto, Canada?

1 A Yes, he did.

2 Q Do you know if it was this conference he attended or
3 another one?

4 A I think it was another one. I'm sorry, I -- I believe
5 it was another one.

6 Q Okay. And with respect to the conference that
7 Mr. Tarnovsky attended, was that also in Toronto, Canada?

8 A Yes, it was.

9 Q Okay. And was that also one where there were a lot
10 of -- of elite hackers present?

11 A Correct.

12 Q Now, did you authorize him to attend that?

13 A I did.

14 Q Why did you authorize Mr. Tarnovsky to attend a
15 conference in Toronto, Canada with -- with known hackers?

16 A Part of his undercover persona would have required him
17 to be there and to further identify individuals in the
18 occurrence of the events that were going on.

19 Q And -- and did he, in fact, attend?

20 A Yes, he did.

21 Q And when he returned, did he provide information to
22 you?

23 A Yes.

24 Q And did NDS find the information provided by
25 Mr. Tarnovsky to be valuable?

1 A Yes.

2 Q Can you give us some understanding of how it was
3 valuable?

4 A As with the earlier conference, individual Stanley F.,
5 Stanley Frost, was identified at the conference in Toronto
6 and his technical individual, Loren Melnick (phonetic), also
7 known as "Zorack." They were put in the secondary by U.S.
8 Customs and Immigration, and within months, Mr. Frost was, I
9 believe, arrested and prosecuted, found guilty for piracy of
10 our technology in Florida federal court.

11 Q Now, was -- we've heard a lot about Mr. Menard. Was
12 Mr. Menard at this conference?

13 A Yes, he was.

14 Q And did Mr. Tarnovsky provide you as a result of this
15 conference with any information about Mr. Menard or his
16 website that you didn't have before?

17 A Yes, he did.

18 Q What did he provide you?

19 A He identified the providers of his website, his travel
20 between Toronto back to -- back to Edmonton, which we
21 provided to the RCMP.

22 Q When you said -- he provided you information about
23 the -- the providers of Mr. Menard's website?

24 A Correct.

25 Q What do you mean by that?

1 A This is the company -- actually, the individual who
2 Mr. -- Mr. Menard had his www.dr7.com website located at,
3 the service that provided the internet service to DR7.

4 Q And before Mr. Tarnovsky gave you that information, did
5 you know who the provider was for Mr. Menard's pirate
6 website?

7 A No, I didn't.

8 Q Once Mr. Tarnovsky gave you the provider for
9 Mr. Menard's pirate website, what, if anything, did NDS do
10 with that information?

11 A Well, NDS and DirectTV were co-plaintiffs with a cease
12 and desist through our outside law firm of Wilsdon. Myself
13 and Scott Wilsdon went to New York City and met with the
14 provider and his attorney, and he was -- at the end of the
15 meeting, agreed to shut -- shut down the website.

16 Q And was Mr. Menard's website www.dr7.com shut down
17 after that meeting?

18 A Yes, it was.

19 Q Is NDS currently engaged in any ongoing anti-piracy
20 operations with any federal or local government agencies?

21 A Yes, we are.

22 MR. KLEIN: Your Honor, I would ask that the
23 witness be shown Exhibit 1366-004.

24 THE WITNESS: Thank you.

25 MR. KLEIN: Okay. For the record, just to be

1 clear, it's Exhibit 1366, and then there is a number of
2 pages. This particular page is 004.

3 THE WITNESS: I see it, sir.

4 BY MR. KLEIN:

5 Q Do you recognize the individual in that photograph?

6 A I do.

7 Q Who is that?

8 A Canadian David Dawson.

9 Q And was Mr. Dawson a satellite pirate pursued by NDS?

10 A Yes, he was.

11 MR. KLEIN: Your Honor, I would ask that
12 Exhibit 1366-004 be received in evidence.

13 THE COURT: Any objection?

14 MR. NOLL: No objection.

15 THE COURT: Received.

16 (Defendants' Exhibit No. 1366-004 is received
17 into evidence.)

18 BY MR. KLEIN:

19 Q Now, was Mr. Dawson indicted by the United States
20 government?

21 A Yes, he was.

22 Q What were the nature of the charges against him?

23 A He was shipping DirecTV access cards and illicit
24 DirecTV technology into the United States. We coordinated
25 with U.S. Customs in Memphis at the FedEx hub, and the

1 product he was sending was misidentified, misvalued, and it
2 was being smuggled into the U.S.

3 Q Did NDS make some kind of an undercover purchase in
4 that situation?

5 A Yes, we did.

6 Q What exactly did you purchase?

7 A My staff were the lead investigators in support of the
8 U.S. Customs operation. My manager of security, retired
9 special agent in charge of U.S. Secret Service, ran this
10 operation for NDS.

11 Q Now, was there also a civil lawsuit filed against
12 Mr. Dawson?

13 A Yes, by DirecTV and NDS.

14 Q And what was the general nature of that lawsuit?

15 A We sued them, we won, and we shut down his business.

16 MR. KLEIN: Now, your Honor, I would ask the
17 witness be shown Exhibit 1121.

18 THE WITNESS: Thank you.

19 BY MR. KLEIN:

20 Q Do you recognize Exhibit 1121?

21 A Yes.

22 Q And is that an e-mail you sent to Mr. Guggenheim?

23 A It is.

24 Q And Mr. Guggenheim was the CEO of NagraStar?

25 A Correct.

1 MR. KLEIN: Your Honor, I would ask that
2 Exhibit 1121 be received in evidence.

3 THE COURT: Any objection?

4 MR. NOLL: No objection.

5 THE COURT: It's received.

6 (Defendants' Exhibit No. 1121 is received
7 into evidence.)

8 BY MR. KLEIN:

9 Q What's the date that you sent this e-mail to
10 Mr. Guggenheim?

11 A August 2000.

12 Q Why did you write this e-mail to Mr. Guggenheim?

13 A I was alerting Guggenheim to information we discovered
14 on the internet regarding EchoStar technology reporting to
15 Mr. Guggenheim who these -- who the person was and who the
16 person was associated with in this particular -- in this
17 particular case.

18 Q Now, I want to focus -- maybe we can enlarge -- enlarge
19 it where it says "Stoxx," S-t-o-x-x, "is actually a Canadian
20 stockbroker named Ed Bruce in British Columbia. Stoxx is
21 also believed to be behind Dave Dawson, and is" -- I think
22 it should be "apparently active with one of the Harley
23 Davidson motorcycle clubs in Canada"; do you see that?

24 A Yes.

25 Q Now, when you say that Stoxx is behind Dave Dawson, can

1 you give us an understanding of just what the situation was
2 you were trying to inform Mr. Guggenheim about?

3 A Ed Bruce used the nickname "Stoxx." Ed Bruce was a
4 stockbroker at the time in British Columbia, and according
5 to U.S. documented informants, was involved with the Hells
6 Angels out of British Columbia. In fact, this particular
7 informant reported that the Hells Angels, in their
8 appreciation for the piracy support that Dawson gave to the
9 club or the organization, they provided a Harley Davidson
10 motorcycle to Dave Dawson.

11 Q Did Mr. Guggenheim ever contact you after you sent that
12 letter to him?

13 A I don't recall.

14 MR. KLEIN: I'd like to show the witness, your
15 Honor, Exhibit 1366-011.

16 BY MR. KLEIN:

17 Q Do you recognize the individual in that exhibit?

18 A Yes, I do.

19 Q Was Mr. Ereiser a satellite pirate pursued by NDS?

20 A Yes, he was.

21 MR. KLEIN: All right. Your Honor, I would ask
22 that Exhibit 1366-011 be received in evidence.

23 THE COURT: Any objection?

24 MR. NOLL: No objection.

25 THE COURT: It will be received.

1 (Defendants' Exhibit No. 1366-011 is received
2 into evidence.)

3 BY MR. KLEIN:

4 Q That's Mr. Ereiser in that picture?

5 A It is.

6 Q Is -- is Mr. Ereiser a consultant for EchoStar?

7 A I understand he is.

8 Q Do you have knowledge as to whose house is in the
9 picture?

10 A Is Mr. Ereiser's house.

11 Q Was NDS involved in a civil lawsuit against
12 Mr. Ereiser?

13 A Yes, we were.

14 Q Was NDS the plaintiff in that lawsuit?

15 A With DirecTV, we were.

16 Q What was the general -- what were the general nature of
17 the claims that NDS made against Mr. Ereiser in that
18 lawsuit?

19 A The piracy of our technology and violations of our
20 right to conduct business without our technology being
21 pirated by Mr. Ereiser.

22 Q What was the result of the lawsuit?

23 A We -- we won. We settled with Mr. Ereiser.

24 Q Was it a money settlement?

25 A I believe it was.

1 Q Now, was there also a criminal prosecution against
2 Mr. Ereiser?

3 A Yes.

4 Q Tell us a little about that.

5 A Testified before a grand jury in Montana --

6 Q You said, "testified before a grand jury"?

7 A I testified before a grand jury in Montana where
8 Mr. Ereiser was indicted for -- for piracy of DirecTV cards
9 and NDS technology.

10 Q I think you have to keep your voice up.

11 A I'm sorry.

12 Q Did NDS -- in that criminal indictment, did NDS provide
13 any aid or analysis to the United States government?

14 A Yes.

15 Q Can you tell us a little bit about that.

16 A We would -- we -- we examined the technology that
17 Mr. Ereiser sent in to Montana, provided an evidence report
18 to the justice department and coordinated and assisted U.S.
19 Customs with their investigation of Mr. Ereiser's conduct.

20 Q And you were a grand jury witness in that case?

21 A Yes, I was.

22 MR. KLEIN: Your Honor, I would ask that the
23 witness be shown Exhibit 1366-010.

24 BY MR. KLEIN:

25 Q Do you recognize the person in that photograph?

1 A Yes, I do.

2 Q Who is that?

3 A It's Reggie Scullion.

4 Q Was Mr. Scullion a satellite pirate pursued by NDS?

5 A Yes, he was.

6 MR. KLEIN: Your Honor, I would ask that
7 Exhibit 1366-010 be received in evidence.

8 THE COURT: Any objection?

9 MR. NOLL: No objection.

10 THE COURT: Received.

11 (Defendants' Exhibit No. 1366-010 is received
12 into evidence.)

13 BY MR. KLEIN:

14 Q Did Mr. Scullion work as a consultant to EchoStar?

15 A Yeah, I understand he did.

16 Q What, if any, role did NDS have in the criminal
17 prosecution of Mr. Scullion?

18 A My manager of investigations in Canada assisted the
19 RCMP with undercover purchases, and later the -- was a
20 participant or in support of an RCMP search warrant of
21 Mr. Scullion's businesses and residence.

22 Q And did federal agents in Canada raid Mr. Scullion's
23 business and residences?

24 A Yes, they did.

25 Q I'd like to show you Exhibit 1366-003.

1 Do you recognize that photo?

2 A Yes, I do.

3 Q What's that photo?

4 A It's a newspaper photograph of RCMP and evidence that
5 was collected from the search warrant of the Reggie Scullion
6 operation.

7 MR. KLEIN: I would ask that Exhibit 1366-003 be
8 received in evidence.

9 THE COURT: Any objection?

10 MR. NOLL: No objection.

11 THE COURT: Received.

12 (Defendants' Exhibit No. 1366-003 is received
13 into evidence.)

14 BY MR. KLEIN:

15 Q Now, you said that there was a raid on Mr. Scullion's
16 business and home. What, if any, information did NDS
17 provide with respect to that raid?

18 A We would have -- we provided intelligence. We provided
19 technology and/or third-party funding to purchase contraband
20 from Mr. Scullion's operation.

21 Q And -- and when the agents went on that raid, they were
22 looking for anti -- for pirate -- satellite pirate-type
23 devices?

24 A That's correct.

25 Q Did they find those type devices?

1 A Yes, they did.

2 Q And in addition to those devices, they found the
3 weapons in that picture?

4 A That's correct.

5 Q Now, was there a criminal prosecution of Mr. Scullion?

6 A Yes, there was.

7 Q And was there a civil case against Mr. Scullion?

8 A Yes, there was.

9 Q Who sued him?

10 A DirecTV was plaintiff in this -- or this lawsuit.

11 Q What was the general nature of the lawsuit?

12 A Piracy of their signal, violations of our intellectual
13 property, piracy of our technology.

14 Q What was the result of the lawsuit?

15 A Mr. Scullion settled with both companies.

16 MR. KLEIN: I'd ask, your Honor, that
17 Exhibit 1366-008 be shown to the witness.

18 BY MR. KLEIN:

19 Q Do you recognize the person in that photograph?

20 A Yes, I do.

21 Q Who is that?

22 A Martin or Marty Mullen.

23 Q Was he a satellite pirate pursued by NDS?

24 A Yes, he was.

25 MR. KLEIN: Your Honor, I would ask that

1 Exhibit 1366-008 be received in evidence.

2 THE COURT: Any objection?

3 MR. NOLL: No objection.

4 THE COURT: It will be received.

5 (Defendants' Exhibit No. 1366-008 is received
6 into evidence.)

7 BY MR. KLEIN:

8 Q Was Mr. Mullen, in that photograph, was he an EchoStar
9 consultant?

10 A He was.

11 Q Did NDS have any involvement in any criminal
12 prosecution of Mr. Mullen?

13 A We did.

14 Q Could you tell us about that?

15 A My staff and our consultants, or field staff and
16 operational security, monitored Mr. Mullen in Canada and
17 discovered that he was going to reenter the United States
18 using false documents, and we provided the U.S. government
19 the intelligence which resulted in his arrest for -- amongst
20 piracy, for coming into the United States illegally.

21 Q Did you provide the federal government information as
22 to when and where Mr. Mullen planned to reenter the United
23 States?

24 A We gave them the flight number and time of arrival.

25 Q And that's when they arrested him?

1 A That's correct.

2 Q And was there a criminal prosecution against
3 Mr. Mullen?

4 A There was.

5 Q And did that prosecution involve charges including
6 satellite piracy?

7 A Yes, sir.

8 Q Was Mr. Mullen either convicted, or did he plead
9 guilty?

10 A Correct, sir.

11 Q Was he sent to jail?

12 A Seven years in the penitentiary.

13 Q Is he still there?

14 A He is still there.

15 Q Did NDS have a civil lawsuit against Mr. Mullen?

16 A We did.

17 Q Who -- who was the plaintiff in that lawsuit?

18 A NDS Americas.

19 Q Anybody else?

20 A Bell ExpressVu in Canada.

21 Q And how did that civil lawsuit end up?

22 A Seizures of contraband were taken from Mr. Mullen's
23 businesses and residence. At one business, they had an
24 Atlas moving van they filled up with evidence that was
25 confiscated.

1 Q And in the civil lawsuit, what was the general nature
2 of the claims made against Mr. Mullen?

3 A Piracy against NDS technology and harm to Bell
4 ExpressVu, the service provider in Canada.

5 Q And did Bell ExpressVu and NDS obtain a judgment in
6 that civil case against Mr. Mullen?

7 A We did.

8 MR. KLEIN: Your Honor, I would ask to show
9 Exhibit 1366-009 to the witness.

10 BY MR. KLEIN:

11 Q Do you recognize the individual in Exhibit 1366-009?

12 A Yes, I do.

13 Q Who is that?

14 A Paul Maxwell King, a United Kingdom citizen.

15 Q And was he a satellite pirate pursued by NDS?

16 A Yes, he was.

17 MR. KLEIN: Your Honor, I would ask that
18 Exhibit 1366-009 be received in evidence.

19 THE COURT: Is there any objection?

20 MR. NOLL: No objection.

21 THE COURT: Thank you.

22 It's received.

23 (Defendants' Exhibit No. 1366-009 is received
24 into evidence.)

25 THE COURT: Did you say his name is Paul Maxwell

1 King?

2 THE WITNESS: Yes, sir.

3 THE COURT: Thank you.

4 BY MR. KLEIN:

5 Q Now, do you know if the United States government
6 prosecuted Mr. King?

7 A Yes, sir.

8 Q Do you know what they prosecuted him for?

9 A It was for piracy, piracy of the DirectTV television
10 system and NDS technology.

11 Q And did any -- NDS have any role in the prosecution of
12 Mr. King?

13 A Yes, we did.

14 Q What was that role?

15 A Our role was mostly -- primarily in the investigative
16 side providing intelligence, movement and modus operandi of
17 Mr. Maxwell King. This photograph was provided to U.S.
18 Customs before they initiated extradition so they would know
19 what he looked like.

20 Q And did somebody from NDS take that photograph?

21 A That's correct.

22 Q Did you -- do you know an individual named Dean Love?

23 A Yes, I do.

24 Q I think his name might have been mentioned in the -- in
25 counsel's examination of you. Who's Mr. Love?

1 A Mr. Love is a Canadian citizen in Winnipeg, Canada,
2 that was involved in piracy at the time of my contact with
3 him.

4 Q Did NDS play any role in a civil lawsuit against
5 Mr. Love?

6 A Yes, we were -- we were co-plaintiffs with Bell
7 ExpressVu in Canada in civil seizures of equipment from
8 Mr. Love's business, and I believe residence.

9 Q What was the general nature of the claims made by Bell
10 ExpressVu and NDS against Mr. Love?

11 A The claims involved his piracy or pirate activities of
12 NDS technology and shipping it into the United States,
13 advertising and making it available to the United States
14 while concurrently damaging Bell ExpressVu's ability to
15 compete in Canada against a pirate system.

16 Q Was that case settled?

17 A It was.

18 Q Did Mr. Love pay some amount of money?

19 A He did.

20 Q Now, we've heard testimony from a gentleman named
21 Mr. Saggiori. Have you ever heard of him?

22 A I have.

23 Q Did NDS ever go after him?

24 A NDS sued Mr. Saggiori civilly, and we observed and
25 monitored Mr. Saggiori for several years.

1 Q And what was the result of NDS's lawsuit against
2 Mr. Saggiori?

3 A Mr. Saggiori settled with NDS.

4 MR. KLEIN: Now, I'd like -- I'd ask the witness
5 be shown Exhibit 1452, your Honor.

6 THE WITNESS: Okay, sir.

7 BY MR. KLEIN:

8 Q Now, do you recognize Exhibit 1452?

9 A Yes, I do.

10 Q And it has you cc'ed. Did you, in fact, receive a cc
11 of that e-mail?

12 A I was cc'ed later in the thread. I did receive a copy
13 of it by cc.

14 Q Yeah. And was that exhibit created in the regular
15 course of business?

16 A Yes, it was.

17 MR. KLEIN: Your Honor, I would ask that
18 Exhibit 1452 be received in evidence.

19 THE COURT: Any objection?

20 MR. NOLL: No objection.

21 THE COURT: Received.

22 (Defendants' Exhibit No. 1452 is received
23 into evidence.)

24 BY MR. KLEIN:

25 Q I -- I'd like you -- as you said, it's a thread of

1 e-mails. Now, if you go back to the -- the last page of the
2 exhibit, there is an e-mail. It says "From David Mordinson,
3 Wednesday June 27th, 2001, to George Michael"; do you see
4 that?

5 A Yes, I do.

6 Q Now, first of all, we've heard testimony George Michael
7 is -- is Mr. Tarnovsky?

8 A That's correct.

9 Q Now, Mr. Mordinson is -- is an NDS employee, correct?

10 A That's correct.

11 Q So why is Mr. Mordinson referring to Mr. Tarnovsky as
12 George Michael?

13 A It's Michael George. We -- because of the common -- or
14 uncommon last name, Tarnovsky, and the recognition of that
15 name in the pirate community, we felt it was better that
16 Mr. Tarnovsky be given a pseudonym to use in our company.

17 Q So even in your own company, you felt that for security
18 purposes you didn't want his -- his real name to be out?

19 A We felt there was a -- a significant risk to him if his
20 name got out into the population.

21 Q And when you say "a significant risk," are -- are we
22 talking about a risk to Mr. Tarnovsky?

23 A That's correct.

24 Q Now, focusing you on the -- the e-mail from
25 Mr. Mordinson, June 27th, 2001, that first sentence

1 beginning with "finally," "Finally, I got a bit less busy,
2 so I realized that once I've been invited to visit to CA,"
3 and he says, "not conditional access, obviously." Do you
4 understand what he's saying there?

5 A Yes.

6 Q What he's saying?

7 A Mr. Mordinson is an Israeli citizen, and his humor was
8 to make a joke -- he has a smiley face behind it -- that
9 he's coming to CA, not to conditional access, but to
10 California.

11 Q So the letters "CA," he was pointing out he meant
12 California, not conditional access?

13 A That's correct.

14 Q And that was his idea of a joke?

15 A He has a smiley face. He thought it was cute.

16 Q Okay. And what do you understand, in general, this
17 back-and-forth of these e-mails between Mr. Tarnovsky and
18 Mr. Mordinson to be -- to be planning; what were they
19 planning here?

20 A There was going to be an opportunity for Mr. Mordinson
21 to come and visit Mr. Tarnovsky at his lab in California.

22 Q And I would direct your attention to -- to the first
23 page of the exhibit. There is an e-mail from Mr. Mordinson
24 sent June 27th, 2001 at 3:30 p.m. to Michael George, do you
25 see that, "Re: visit to United States"?

1 A Yes, I do.

2 Q And it says "Okay, so we've" -- it looks like --

3 A "Sealed."

4 Q -- "sealed on August 1st." What did you understand
5 that to mean?

6 A That's when they've agreed that he would visit
7 California. They've sealed the deal. They've committed to
8 the deal.

9 Q Now, the date of this e-mail is -- is June 27th, 2001.
10 Do you have an understanding as to whether Mr. Mordinson had
11 visited Mr. Tarnovsky in California prior to this -- this
12 trip they are discussing for August of 2001?

13 A He didn't visit Mr. Tarnovsky prior to this.

14 MR. KLEIN: Okay. Now, your Honor, I would ask
15 that Exhibit 1443 be shown to the witness.

16 THE WITNESS: Thank you.

17 Okay, sir.

18 BY MR. KLEIN:

19 Q And do you recognize that document?

20 A Yes.

21 Q And it was sent to you from Michael George, also known
22 as Mr. Tarnovsky?

23 A Correct.

24 Q Okay. And you received it in the regular course of
25 business?

1 A Correct.

2 MR. KLEIN: Your Honor, I would ask that
3 Exhibit 1443 be received in evidence.

4 THE COURT: Any objection?

5 MR. NOLL: No objection.

6 THE COURT: Received.

7 (Defendants' Exhibit No. 1443 is received
8 into evidence.)

9 BY MR. KLEIN:

10 Q Now, I'd like you to focus in on the very first
11 sentence. Mr. Tarnovsky writes to you, "John, this week has
12 been spent with David, but I have had time to work other
13 issues"; do you see that?

14 A Yes, I do.

15 Q What did you understand that to mean?

16 A He hosted Mordinson's visit to his lab, and he's making
17 a report of his work for that week, a summary of his work
18 that week, which would, in turn, be forwarded from me to our
19 engineers in Israel.

20 Q And the -- the e-mail, 1433, is dated August 10th,
21 2001. Is -- is that on or about the time that you
22 understood Mr. Mordinson to be visiting with Mr. Tarnovsky?

23 A Correct.

24 Q And do you know of any other trip to California that
25 Mr. Mordinson made prior to August 10th, 2001?

1 A No.

2 Q Do you know Mr. JJ Gee?

3 A Yes, I've met him.

4 THE COURT: Excuse me.

5 THE WITNESS: Bless you.

6 THE COURT: Thank you.

7 BY MR. KLEIN:

8 Q How do you know him?

9 A He was -- I first met him when I was speaking --
10 lecturing a group of security executives at a satellite
11 conference, or perhaps a cable conference, anti-piracy.

12 Q So you were giving a speech?

13 A I was giving a talk, yes.

14 Q And how did you meet him there?

15 A I was introduced to him by Alan Guggenheim.

16 Q And were they attending?

17 A Yes, they were.

18 Q Now, I want to direct your attention to last year,
19 2007. Did Mr. Gee speak to you?

20 A He did.

21 Q Where?

22 A Down in the lobby.

23 Q This courthouse?

24 A Yes, sir.

25 Q What did he say?

1 A I was putting on my shoes. He came up and introduced
2 himself to me. I didn't recognize him, and he congratulated
3 NDS, and me in particular, on a recent successful operation
4 we performed on behalf -- or with the FBI in North Carolina.
5 He talked about it a little bit. He said he was asked to
6 come and address damages to EchoStar, I believe, by the FBI
7 and the prosector in this particular case.

8 Q You mean the case that you -- that he was
9 congratulating you for?

10 A Yes, sir.

11 Q So the case that he was congratulating you for involved
12 piracy of EchoStar?

13 A Piracy of EchoStar, yes, sir.

14 Q Now, we also heard testimony in this trial by -- by
15 Mr. Charles Ergen, the CEO of EchoStar. Do you know who he
16 is?

17 A Yes, I do.

18 Q Did you ever have a conversation with him?

19 A I have.

20 Q Approximately when?

21 A Late 1990s, sir.

22 Q How did that come about?

23 A He came up to me and introduced himself to me and shook
24 my hand.

25 Q Was there any more conversation between the two of you?

1 A Later there was a phone -- several phone conversations
2 with him.

3 Q Well, let's back up. The first time he met you, did he
4 have a conversation with you then?

5 A Yes, sir.

6 Q Did he ask you to do anything?

7 A Yes, sir.

8 Q Tell us what he said and what you said.

9 A He -- he commented that he knew that NDS, my group,
10 were doing a good job of dealing with piracy of DirecTV. He
11 mentioned he knew they, the pirates, were looking at his
12 technology, and he asked me if anything came to my
13 attention, to let him know.

14 Q Was that the gist of the conversation?

15 A Yes, he gave me his phone number.

16 Q He gave you his phone number?

17 A Yes, sir.

18 Q Did you write it down?

19 A Yes, sir.

20 MR. KLEIN: Your Honor, I would ask that
21 Exhibit 1588 be shown to the witness.

22 BY MR. KLEIN:

23 Q Do you recognize that document?

24 A Yes, I do.

25 Q What is that?

1 A It's a photocopy of my telephone book I had at the
2 time -- my address book, I'm sorry.

3 Q Is it a number of years old?

4 A It's before my Treo and before Palm.

5 Q And when you said you wrote down the phone number that
6 Mr. Ergen gave you, did you write it in -- in that address
7 book?

8 A Yes, I did.

9 MR. KLEIN: Your Honor, I would ask that
10 Exhibit 1588 be received in evidence.

11 THE COURT: Any objection?

12 MR. NOLL: No objection.

13 THE COURT: All right. Received.

14 (Defendants' Exhibit No. 1588 is received
15 into evidence.)

16 THE COURT: But I think this, we -- put this up on
17 the board and then continue on. I don't know all the names,
18 although I recognize many of the names from this page that
19 purports to come from Charlie Ergen's phone book. Because I
20 don't know those names, I suggest that counsel only put
21 forth those names when the jury finally receives this that
22 are important to the case. In other words, I don't want
23 private citizens' phone numbers as a matter of public
24 record, unless it's necessary.

25 MR. KLEIN: I -- I agree, but I think the Court

1 misspoke and said it came from Charlie Ergen's phone book.

2 THE COURT: No, I'm sorry. From Mr. Norris' phone
3 book.

4 Well, Mr. Norris, do you care?

5 THE WITNESS: I don't mind at all, sir.

6 THE COURT: We'll go through these anyway if there
7 are private citizens here that have nothing to do with the
8 case. These documents will become a matter of public record
9 eventually, and I think it would be wise to protect their
10 privacy.

11 THE WITNESS: Yes, sir.

12 THE COURT: So I'll go through those this evening
13 with counsel, and I'd like to see you about 6:00 this
14 evening, okay? You're ordered to be present.

15 Thank you.

16 BY MR. KLEIN:

17 Q Okay. And in that phone book, Exhibit 1588, do you
18 see -- and you don't have to say the number, but do you see
19 where you wrote Mr. Ergen's number?

20 A Yes, I do.

21 Q And is that what you wrote when you met him and he
22 asked you to keep him informed?

23 A Yes, sir.

24 Q Okay. Now, did there come a time when you took him up
25 on that request and --

1 THE COURT: Now, Counsel, I'm going to kid both of
2 you for a moment. Are we going to call that number now and
3 find out?

4 (Laughter.)

5 THE COURT: Counsel, can we stipulate that this is
6 Mr. Ergen's cell phone number, and the other --

7 MR. WELCH: Your Honor, the number on the left is
8 his direct dial at his office.

9 THE COURT: Direct dial at his office? How about
10 the cell?

11 MR. WELCH: I -- I've got Charlie's number. If
12 it's a long time ago --

13 THE COURT: Well, time out.

14 Why don't you just call Mr. Ergen --

15 MR. WELCH: It's not his cell phone number.

16 THE WITNESS: Sir, that's Charlie Sandefur for the
17 FBI.

18 THE COURT: Oh.

19 THE WITNESS: It's a different -- different
20 Charlie.

21 THE COURT: A different Charlie. There are two
22 Charlies?

23 THE WITNESS: Yes, sir.

24 THE COURT: So I'm only looking at the left side;
25 is that correct?

1 MR. WELCH: Right.

2 THE COURT: Then why don't we blow up that number
3 for a moment.

4 And Counsel, can each of you stipulate that that's
5 Charlie Ergen's direct number at his office?

6 MR. WELCH: Yes, sir.

7 MR. NOLL: So stipulated.

8 MR. WELCH: We agree to that.

9 THE COURT: All right. Ladies and gentleman,
10 that's a binding stipulation. That's Mr. Ergen's direct
11 phone number into his office until after this lawsuit. I'm
12 sure he'll be changing it.

13 (Laughter.)

14 THE COURT: All right, Counsel.

15 BY MR. KLEIN:

16 Q Now, did there ever come a time when you called
17 Mr. Ergen on the phone number he gave you?

18 A Yes, sir.

19 Q And why did you call him?

20 A He said, "If you hear of anything regarding our
21 technology, give me a call at this number; I pick it up.
22 Nobody else picks up this number but me."

23 I called him when I was apprised of the high-tech SAT
24 or the DR7 or the other posts in the internet about the
25 card, and we had information that it appeared that there was

1 a problem for Mr. Ergen, "The cat's out of the bag."

2 I called him and let him know.

3 Q And did you talk to him?

4 A I did.

5 Q And as best you can recall, what did you say to him,
6 and what did he say to you?

7 A I told him about this site and information came to our
8 attention. He asked me to hold -- put me on hold a moment,
9 connected -- introduced me over the phone. I had not Mr. --
10 I had not met Mr. Guggenheim at that -- at that point --
11 introduced me to Mr. Guggenheim, who had joined in on the
12 conversation. And he asked me to recount or to tell
13 Mr. Guggenheim what I had just told him about the EchoStar
14 technology being posted in the internet, which I did.

15 Q And was anything else said between either you and
16 Mr. Ergen or you and Mr. Guggenheim at that time?

17 A "Please give us a call if you hear anything else."

18 Q Okay. Now, did there come another occasion when you
19 used that phone number and called Mr. Ergen?

20 A Yes.

21 Q And about how much time had elapsed between the first
22 call and the second call?

23 A It was months, maybe six months or more later. I don't
24 recall, specifically.

25 Q Okay. And why did you call Mr. Ergen the second time?

1 A It was brought to my attention that cards were
2 available or being sold or the technology has been further
3 compromised, and called Mr. Ergen to tell him the news that
4 he may want to focus on that particular area, and again,
5 it's my recollection that I was put on hold.

6 Mr. Guggenheim came on the line. I explained what we
7 had by way of information, and that was a conclusion of the
8 call. They thanked me, and that was it.

9 Q Now, did there ever come a time when you received a
10 phone call from Mr. Guggenheim?

11 A Yes.

12 Q And can you give us some idea when that call came?

13 THE COURT: I'm sorry, I missed something. Did
14 you ever speak directly -- I missed the -- I have the second
15 call. On the first call, did you speak to Mr. Ergen?

16 THE WITNESS: Yes, sir.

17 THE COURT: Thank you.

18 THE WITNESS: Yes, sir.

19 BY MR. KLEIN:

20 Q Let's just make that clear. The first call you spoke
21 to Mr. Ergen, correct?

22 A Correct.

23 Q What did you say to him, and what did he say to you on
24 that first phone call?

25 A On the first phone call, he thanked me for the

1 information that I told him or reported to him about his
2 technology appearing on the internet. He thanked me. He
3 asked me to go on hold.

4 Mr. Guggenheim came on the line. Mr. Guggenheim and
5 Mr. Ergen spoke to me, which -- about what we had discovered
6 on the internet at NDS and were providing them. At the
7 conclusion of the conversation, we thanked each other -- or
8 he thanked me and asked me to keep him apprised of any other
9 surprises or any more information came to our attention
10 regarding their technology.

11 THE COURT: And that's what I -- that's what I had
12 missed. I missed the first phone in my notes.

13 THE WITNESS: Okay, sir.

14 THE COURT: That was Mr. Ergen you spoke to?

15 THE WITNESS: Yes, sir.

16 THE COURT: On the second phone call, you stated
17 you spoke to Mr. Guggenheim, who's going to be testifying in
18 a few moments, but was Mr. Ergen also involved in that phone
19 call?

20 THE WITNESS: Yes, sir. I called Mr. Ergen's
21 office number, his private office number the second time,
22 too.

23 THE COURT: Oh, I know you did. Was he on the
24 phone with you and Mr. Guggenheim?

25 THE WITNESS: Yes, sir.

1 THE COURT: He was part of that conversation?

2 THE WITNESS: Yes, sir.

3 THE COURT: That's what I missed. Thank you very
4 much.

5 Counsel.

6 MR. KLEIN: Do I need to ask him about the
7 substance of the second conversation, or do you think that's
8 clear on the record at this point?

9 THE COURT: I just wanted to make sure. I had
10 missed it; it's my apology. I know the jury didn't. I -- I
11 didn't know that Mr. Ergen was involved in the second phone
12 call. I simply heard that he phoned Mr. Ergen's office,
13 spoke to Allen Guggenheim.

14 Apparently, Mr. Ergen, according to your
15 testimony, was involved in that phone call, also?

16 THE WITNESS: Yes, sir.

17 THE COURT: Thank you very much.

18 BY MR. KLEIN:

19 Q Just to be clear, the second phone call, briefly, what
20 was the second phone call about when Mr. Ergen was on the
21 phone line?

22 A It was similar to the first call in that we had seen
23 additional or new postings involving EchoStar piracy, and I
24 called to -- to apprise Mr. Ergen of what we had observed.
25 He put me on hold.

1 Mr. Guggenheim came on the line and -- Mr. Guggenheim
2 and Mr. Ergen. I explained it again. They thanked me, and
3 that was the end of the phone call.

4 Q And that was the second phone call?

5 A That was the second call.

6 Q Now, did there come a time subsequent to those two
7 phone calls when you received the phone call from
8 Mr. Guggenheim?

9 A Yes.

10 Q Can you give us some approximation of when that
11 occurred?

12 A I remember the call. I remember where I was. I
13 remember everything. I couldn't tell you the date, but it
14 was about six months or less after my second conversation
15 with -- with Mr. Guggenheim and Mr. Ergen.

16 Q Do you know if we are talking in the '90s or after
17 2000?

18 A I believe it was after -- it was after 2000.

19 Q Now, when Mr. Guggenheim called you, what did he tell
20 you?

21 A He explained -- summarized, I suppose, they did have a
22 problem. And he was reaching out for ideas or assistance
23 what they should do, what he should do now that they have
24 this problem.

25 Q What did you tell him?

1 A I gave him a tutorial of what I would do in his case
2 and offered to send him a redacted copy of an evidence
3 report that my lab had prepared for the FBI. Part of the
4 tutorial was "You need to identify what the piracy is in a
5 written format and make it explainable so the agents would
6 understand that you are a victim of a crime, and provide
7 that report or that analysis to the FBI or customs," whoever
8 he decided to work with. And I offered to give him a
9 sample, possibly samples, of evidence reports we had
10 prepared for law enforcement.

11 I returned from Montana, my office in California. I
12 took at least one report, redacted the agency, the agents'
13 names, the case numbers out of it, and I faxed these to
14 Mr. Guggenheim in the 310, the Los Angeles area, where he
15 had an office at the time.

16 Q And the area where -- where he was -- was requesting
17 help involved a satellite piracy issue with respect to
18 EchoStar, is that -- is that what it was about?

19 A That's correct.

20 MR. KLEIN: Your Honor, at this point, I'm going
21 to get into another area. Does the Court want me to start
22 that, or do you want to --

23 THE COURT: Continue.

24 MR. KLEIN: Okay.

25

1 BY MR. KLEIN:

2 Q Now, let's talk a little about Chris Tarnovsky.

3 At the time Mr. Tarnovsky was hired, were you aware
4 that he had engaged in satellite piracy activities?

5 A Yes.

6 Q What effect, if any, did that have on your decision as
7 to whether to hire him?

8 A The level of his skill and talent was substantial, and
9 we thought it would be better to try and control him in our
10 environment and get him out of the pirate environment.

11 Q Were there any particular factors that weighed on the
12 side of -- of hiring him, as opposed to not doing so?

13 A Well, investigation, my knowledge of him went back to
14 the days I was at General Instrument, and I knew he was in
15 the military. I know -- I knew then that he had gotten out
16 of the military with an honorable discharge. He held
17 clearances as a cryptographer. I knew that he was working
18 in New England in a computer environment, and I knew that he
19 was creating a lot of problems for our engineering group and
20 our customer, DirecTV, because of his skills.

21 Q Well, what did the fact that he was in the military
22 have to do with whether you should hire him?

23 A He wasn't a criminal, he wasn't a lowlife. He was a
24 geek, he was a nerd, somebody that was very talented, and I
25 thought maybe we could work him into our organization and

1 control his -- his -- his hobby.

2 Q Did you -- was part of the condition under which you
3 hired him that he move to California?

4 A Yes.

5 Q All right. Why did you want to have him move to
6 California?

7 A When you're working with somebody that is an informant
8 or you plan to use an informant, I wanted to get him into an
9 environment that I could control, and I relocated him from
10 New England to southern California, his family, where we
11 were able to monitor Mr. Tarnovsky the first year or so very
12 closely, and then monitor him again throughout his
13 employment, not quite as extensively.

14 THE COURT: Can you remind the jury of the year
15 again by asking Mr. Norris.

16 BY MR. KLEIN:

17 Q Please tell us, what year was he hired.

18 A Late 1990s, '98, '97, perhaps. I'm sorry, I don't
19 remember the date.

20 THE COURT: And once again, could we -- you ask
21 Mr. Norris his employment at the time. Was he working for
22 DirecTV or NDS?

23 MR. KLEIN: Mr. Norris' employment?

24 THE COURT: Yes.

25

1 BY MR. KLEIN:

2 Q Who were you working for when you hired --

3 A I was work -- I'm sorry. I was working for NDS
4 Americas.

5 Q Were you ever working for DirecTV?

6 A I was, as a consultant, yes.

7 Q For which you worked for a time. You were working for
8 NDS all the time?

9 A Yes, sir.

10 Q And you've worked for NDS for approximately the last
11 12 years?

12 A Yes, sir.

13 THE COURT: Was that why you answered, then, that
14 Tarnovsky was creating problems for DirecTV, because you
15 were a consultant to DirecTV?

16 THE WITNESS: Well, sir, when I was a consultant,
17 he was creating problems, and then when I joined NDS, he was
18 still a problem for us.

19 THE COURT: But you understand the confusion --

20 THE WITNESS: I -- I do, sir. I apologize.

21 THE COURT: -- or surprise that when you were
22 working for NDS, and then you said Tarnovsky was creating
23 problems for DirecTV, it made it sound like -- now, the jury
24 understands you had a consulting relationship also with
25 DirecTV.

1 THE WITNESS: Yes, sir.

2 THE COURT: Thank you.

3 THE WITNESS: Thank you, sir.

4 THE COURT: Okay.

5 BY MR. KLEIN:

6 Q Just to clarify, when you were working for NDS, did the
7 fact that Mr. Tarnovsky was creating problems for DirectTV,
8 was that a problem for you?

9 A Yes.

10 Q Why?

11 A It was our technology that was failing because of his
12 skills, and it was a very difficult position, because we're
13 providing as strong of technology as we can for the money
14 that's being, you know, paid for the technology.

15 Q Now, at the time that you hired Mr. Tarnovsky, did he
16 have any kind of criminal record?

17 A No, sir.

18 Q Never been convicted, nothing like that?

19 A That's correct, sir.

20 Q Now, when Mr. Tarnovsky was hired, what was he hired to
21 do?

22 A He was hired for two purposes. One, to provide us
23 intelligence on our anti-piracy efforts in the United States
24 and Canada. And secondly, to provide and impart his
25 knowledge of our system and how he attacked our system out

1 of the box, so to speak.

2 Q Now, when you say he was hired to provide intelligence,
3 can you -- can you be more specific. What kind of
4 intelligence was he supposed to provide, and how was he
5 supposed to get it?

6 A Mr. Tarnovsky's aliases, his "biggun" or "Von" was well
7 known during the P1, or the first generation DirectTV card
8 hack. He was famous amongst the pirate community.

9 Q And this is for -- for hacking DirectTV?

10 A That's correct.

11 Q Please continue.

12 A His -- his skills were such that we needed to somehow
13 neutralize them. I reported his name and information regard
14 him -- regarding him to U.S. Customs, and I -- I recall at
15 the time, I wanted to make a run at Tarnovsky to see if I
16 could possibly recruit this guy, he could be of value to us.
17 Plus, he could provide us intelligence on other members or
18 other pirates involved in the DirectTV piracy business.

19 Q And how did you expect when you hired him, how was he
20 going to obtain the intelligence and the information about
21 the pirates that was going to help you? How was he going to
22 get it; what was your understanding?

23 A Well, we sent him on several of these missions or trips
24 to Toronto or to Calgary to maintain a persona with
25 different individuals in the pirate community that we knew

1 he had a relationship with, and he maintained that persona
2 in a counterintelligence or anti-piracy effort.

3 Q Was he -- were there also -- did he have a role that
4 involved him being on the internet?

5 A Yes.

6 Q What was that aspect of his -- his job?

7 A Well, he was already on the internet as "Von," V-o-n,
8 "biggun" or "BG" and other aliases. And he maintained his
9 persona in an undercover capacity creating -- creating a
10 persona that was advantageous to NDS and DirecTV in order
11 for us to monitor and learn about the pirate operations in
12 the United States and Canada.

13 Q And did that, in fact, happen?

14 A Oh, yeah.

15 Q Now --

16 THE COURT: Counsel, why don't we pause here for
17 lunch.

18 You are admonished not to discuss this matter
19 amongst yourselves, nor to form nor express any opinion
20 concerning this case.

21 Today I'd like to have you come back at 1:15. We
22 seem to be a little bit late on each occasion, so you might
23 as well have a nice lunch, okay? I'll see you at 1:15.

24 THE WITNESS: 1:15, sir?

25 THE COURT: 1:15. Thank you very much.

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(The following proceedings is taken outside
the presence of the jury.)

THE COURT: Thank you, sir. If you'd return at
1:10 and please be seated.

THE WITNESS: Yes, sir.
Counsel, we'll see you at 1:10. Have a nice
lunch.

(Recess.)

-oOo-

1 -oOo-

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 18, 2008

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14 _____
15 JANE C.S. RULE, U.S. COURT REPORTER

16 CSR NO. 9316
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