

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

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ECHOSTAR SATELLITE CORP., et)	
al.,)	
)	
Plaintiffs,)	
)	
vs.)	No. SACV 03-950 DOC
)	Day 6, Volume III
NDS GROUP PLC, et al.,)	
)	
Defendants.)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Jury Trial

Santa Ana, California

Thursday, April 17, 2008

Debbie Gale, CSR 9472, RPR
Federal Official Court Reporter
United States District Court
411 West 4th Street, Room 1-053
Santa Ana, California 92701
(714) 558-8141

EchoStar 2008-04-17 D6V3

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APPEARANCES:

FOR PLAINTIFF ECHOSTAR SATELLITE CORPORATION, ET AL.:

T. WADE WELCH & ASSOCIATES

BY: CHAD M. HAGAN

CHRISTINE D. WILLETTS

WADE WELCH

Attorneys at Law

2401 Fountainview

Suite 700

Houston, Texas 77057

(713) 952-4334

FOR DEFENDANT NDS GROUP PLC, ET AL.:

O'MELVENY & MYERS

BY: DARIN W. SNYDER

DAVID R. EBERHART

Attorneys at Law

275 Embarcadero Center West

Suite 2600

San Francisco, California 94111

(415) 984-8700

-and-

HOGAN & HARTSON

BY: RICHARD L. STONE

KENNETH D. KLEIN

Attorneys at Law

1999 Avenue of the Stars

Suite 1400

Los Angeles, California 90067

(310) 785-4600

ALSO PRESENT:

David Moskowitz

Dov Rubin

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I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
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NORRIS, John

By Mr. Klein

4

72

By Mr. Noll

41

ORBAN, Paul Walter

By Ms. Willetts

81

EXHIBITS

(Not applicable)

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

2 DAY 6, VOLUME III

3 (1:22 p.m.)

4 (In the presence of the jury.)

5 THE COURT: We're back in session. The jury is
6 present. All counsel are present.

7 Thank you for your courtesy. Please be seated.

8 JOHN NORRIS, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

9 RESUMED THE STAND

10 THE COURT: And this is the continued
11 cross-examination.

12 MR. KLEIN: Thank you, Your Honor.

13 CROSS-EXAMINATION (Continued)

14 BY MR. KLEIN:

15 Q. Good afternoon, Mr. Norris.

16 A. Good afternoon.

17 Q. Now, this morning you testified that you had pursued
18 and been involved in criminal or civil prosecutions against
19 Mr. Mullen, Mr. Ereiser, Mr. Scullion, Mr. Saggiori, all of
20 whom were EchoStar consultants.

21 Just to be clear, did you go after them just because
22 they were EchoStar consultants?

23 A. I don't believe they were EchoStar consultants. Some
24 of them weren't EchoStar consultants when we sued or
25 participated in criminal investigations. I think they

1 became consultants later -- some.

2 Q. When you decide who to go after, to criminally or
3 civilly pursue with respect to piracy of NDS, do you have
4 any kind of criteria?

5 A. No. We go after people that attack our system that are
6 just, you know, significant distributors or sellers of
7 pirate technology.

8 Q. Let the chips fall where they may?

9 A. More or less.

10 Q. Now, there was testimony about Bell ExpressVu and the
11 fact that with respect to some civil cases, NDS was a
12 plaintiff along with Bell ExpressVu. Do you recall that?

13 A. Yes, sir.

14 Q. Who is Bell ExpressVu?

15 A. It's a Canadian direct-to-home satellite subscription
16 service provider. Similar to DirecTV or EchoStar, but their
17 market is Canada.

18 Q. Are they aligned with DirecTV, or are they aligned with
19 EchoStar?

20 A. Well, they use EchoStar receivers, as I understand, and
21 Nagra Smart Cards, Nagra technology.

22 Q. Okay. And there was also some testimony about a case
23 in North Carolina where Mr. Gee spoke to you at this
24 courthouse and congratulated you. Do you recall that?

25 A. Yes.

1 Q. Without going into all the details, what was that case
2 about?

3 A. It was -- we worked with the FBI to identify and
4 investigate and prosecute the distributor of a free-to-air
5 box called or referred to as the Dreambox.

6 Q. What was the Dreambox?

7 A. The Dreambox is considered or regarded by some as being
8 one of the more, if not the most, sophisticated free-to-air
9 receiver available on the market.

10 Q. And what does "free-to-air" mean?

11 A. Free-to-air is -- this technology involves a receiver
12 that is about the size of a VCR. In the matter of our case
13 in North Carolina with the FBI, a consumer doesn't need an
14 EchoStar card or an EchoStar receiver or an EchoStar dish
15 antenna or an EchoStar remote or a low noise blocker,
16 anything from EchoStar.

17 The consumer only needs to buy the receiver and have a
18 program put into the receiver which can be hooked up to the
19 Internet to view EchoStar's services or Bell ExpressVu
20 services.

21 Q. And is free-to-air at this time a problem for DirecTV?

22 A. No.

23 Q. You were asked some questions about something called
24 the Headend Report this morning. Do you recall that?

25 A. Yes, sir.

1 Q. Okay. Before this lawsuit had you ever heard of the
2 Headend Report?

3 A. No.

4 Q. Before this lawsuit did you ever read an NDS technical
5 report that discussed reverse engineering of any EchoStar
6 device --

7 A. No --

8 Q. -- or chip?

9 A. No, sir.

10 Q. And would it be within your job duties to read NDS
11 reverse-engineering reports?

12 A. I'm not technical. It wouldn't be within my
13 responsibilities.

14 Q. Now, before we left for lunch, you talked about the
15 fact that Mr. Tarnovsky was doing undercover work, correct?

16 A. Correct.

17 Q. And he was also monitoring the Internet?

18 A. Yes, sir.

19 Q. And you were asked by counsel whether he received any
20 formal training. And I believe you said he didn't.

21 A. Correct.

22 Q. Is there any formal training that you would give
23 anybody, whether it's Mr. Tarnovsky or somebody else, to do
24 the kind of jobs he was doing?

25 A. No. There's not really a position description for what

1 he was doing.

2 Q. Now, what, if anything, did you do to monitor
3 Mr. Tarnovsky during the time period he worked for you?

4 A. Well, as I mentioned earlier, he relocated from the
5 East Coast to Southern California, about 10, 15 miles away
6 from where I live. We talked on the phone frequently,
7 perhaps daily. We shared e-mails daily throughout the day.
8 We traveled together to the Middle East. We spoke on the
9 phone.

10 I supervised him as much as possible, as it was needed
11 to perform his responsibilities in his undercover capacity.

12 Q. Did you have any kind of way to sort of check what he
13 was telling you he was doing on the Internet to satisfy
14 yourself that he was giving you correct information?

15 A. Yes.

16 Q. What did you do?

17 A. We knew of the various aliases that he used in the
18 Internet. And we have a group in the Middle East, in
19 Jerusalem, and possibly in Europe that monitor the Internet
20 as well. And it wasn't uncommon for me to get a report from
21 Tarnovsky of what he discovered or an e-mail and get
22 something that's similar in content from one of our analysts
23 in Israel, for instance, or from the United Kingdom.

24 Q. Did Mr. Tarnovsky know that you were checking what he
25 was saying against what other analysts were telling you?

1 A. I don't believe he did.

2 Q. Now, you say you knew his aliases. Did you ever ask
3 him what all his alias names are?

4 A. At a point I stopped because there was so many aliases.
5 But, yes, I asked him his aliases in the past.

6 Q. Did you know every one of his aliases?

7 A. No.

8 Q. So you -- how did you -- withdrawn.

9 You said your analysts knew his aliases. How did they
10 know his aliases?

11 A. They knew what aliases he provided because when he sent
12 me an e-mail consisting of his identities or his "nicks,"
13 that would be forwarded on to Israel.

14 Q. Now, was it a coincidence that he lived 10 or 15 miles
15 from you?

16 A. No.

17 Q. Why did that happen?

18 A. Chris was going to be doing some pretty important work
19 for us. He did have a past of helping the pirates in the
20 first generation DirectTV Smart Card, counters to our
21 electronic countermeasures. And I felt that the closer we
22 are together, the more I could supervise his work and try to
23 monitor what he was doing.

24 Q. Now, this morning you testified that Mr. Tarnovsky
25 reverse-engineered some EchoStar devices. What were you

1 referring to?

2 A. Well, I think the example that comes to mind is where
3 he downloaded files off of the Internet that were reported
4 to be EchoStar pirate code and where the claims were made
5 that this EchoStar pirate code could be put into an NDS or
6 DirectTV card and work in an EchoStar system.

7 So he would take code or files off the Internet. He
8 would pull code off of devices to see what, if any, code
9 applied to NDS technology or NDS access cards.

10 Q. Was the extent to which he did any of this work limited
11 to what came over the Internet?

12 A. No.

13 Q. Was he given assignments by NDS with respect to reverse
14 engineering?

15 A. Yes.

16 Q. What kind of assignments?

17 A. If we received evidence that had code in a security
18 chip, an Atmel or a Dallas, different manufacturers of Smart
19 Card -- not Smart Card but integrated circuits -- I would
20 have my evidence technician and Mr. Tarnovsky examine
21 similar devices -- not the specific evidence -- and
22 decapsulate and pull out code from these devices in order to
23 understand what the code is inside these devices.

24 If it applied to our technology, Tarnovsky and our
25 engineers in Israel would hopefully develop a countermeasure

1 to knock that technology out, to stop it from functioning.

2 Q. If it didn't apply to your technology, would

3 Mr. Tarnovsky have any duties?

4 A. Not that I -- not that I recall. I don't believe so.

5 Sorry, sir. No.

6 MR. KLEIN: Could the witness please be shown
7 Exhibit 51, which I believe is in evidence at this time.

8 (Document displayed.)

9 BY MR. KLEIN:

10 Q. It's on the screen if you're not finding the exhibit.

11 A. Got it. Okay, sir.

12 Q. Okay. Now, the last paragraph I'd like you to focus
13 on, beginning with "perhaps a little off topic."

14 A. Yes, sir.

15 Q. And counsel asked you this. It says, "Perhaps a little
16 off topic, but when I was at Mike's yesterday, he took an
17 EchoStar hacked file from the Internet, put it in a" --

18 A. Could you start again?

19 Q. Do you see the paragraph, it's the last paragraph,
20 beginning with "Perhaps a little"?

21 A. Yes, sir.

22 Q. Okay. Instead of me reading it, tell us what happened.
23 What was that about?

24 THE COURT: That's okay, Counsel. Just read it
25 but read it slower --

1 MR. KLEIN: Okay.

2 THE COURT: -- so I have a record.

3 BY MR. KLEIN:

4 Q. "Perhaps a little off topic, but when I was at Mike's
5 yesterday, he took an EchoStar hack file from the Internet,
6 put it in a PO1, put the PO1 into an EchoStar receiver and
7 got all programming. Says the same thing can be done with
8 the PO2. We are seeing a lot of requests for PO1's in the
9 Internet now."

10 Do you see that?

11 A. Yes, I do.

12 Q. You wrote that, correct?

13 A. Yes, I did.

14 Q. Now, first tell us exactly what you're describing.
15 What happened there?

16 A. According to our monitoring of the Internet, in the
17 pirate forums, in the pirate community, there were a growing
18 number of requests for DirectTV P1, or PO1; and DirectTV P2,
19 or PO2 access cards.

20 My assignment to my staff was: Why do they want these
21 cards? We've already turned those off. What's up?

22 During the analysis and review of the Internet
23 environment, it was discovered that this file, this EchoStar
24 file, was discovered and that if you took this EchoStar hack
25 file and put it in a DirectTV P1 or DirectTV P2 access card,

1 that access card would work in an EchoStar receiver.

2 Q. Now, when you say -- the P1, the card that was being
3 used, was that an EchoStar card or an NDS card?

4 A. It was an NDS card manufactured for DirecTV.

5 Q. Okay. So what -- and did you learn about this over the
6 Internet? Is that where you found it out?

7 A. Yes, sir.

8 Q. Okay. So if I understand you, NDS became aware of the
9 fact that if somebody took the NDS P1 card and used some
10 file they could get from over the Internet, they could put
11 it in an EchoStar receiver and get all the programs for
12 free?

13 A. That's correct.

14 Q. Now, did Mr. Tarnovsky in his monitoring of the
15 Internet come across this?

16 A. Yes, he did.

17 Q. So why, then -- once you found out about it, why did
18 you let him actually do it?

19 A. We wanted to validate the claim, if it was possible or
20 not.

21 Q. Why was that of interest to you?

22 A. Our cards are custom cards. The hardware in those
23 cards is custom-designed for DirecTV customers or our
24 DirecTV customer. And, first of all, I didn't believe it,
25 but I saw it with my own eyes, that what was reported in the

1 Internet was truthful or accurate, that a pirate program for
2 EchoStar would actually function in one of our cards.

3 Q. And to the extent that Mr. Tarnovsky did what is set
4 forth in Exhibit 51, you were aware of it and authorized it?

5 A. Yes, sir.

6 MR. KLEIN: Now, another exhibit I would ask that
7 be shown to the witness, Your Honor, it's already been
8 marked in evidence, is Exhibit 41.

9 BY MR. KLEIN:

10 Q. Now, I want to direct your attention to the first
11 paragraph under the, "From George Michael to John Norris: I
12 am guessing that there are at least a hundred thousand
13 original cards, professional E3M'd or EchoStar 3M."

14 Do you see that?

15 A. Yes, I do.

16 Q. Okay. Now, what is your understanding as to why
17 Mr. Tarnovsky was writing that e-mail to you?

18 A. He was trying to come up with an estimate or a
19 guesstimate of the pirate card population at the request of
20 Ms. Beth Erez, our VP of marketing, who put out the request:
21 Anybody have any idea what the number of cards might be in
22 the population?

23 And he several times mentions "I guess," "I would guess
24 that there must be." So he's making a guesstimate of what
25 he thought could be the number of Smart Cards in the

1 population at that time.

2 Q. Did you consider his guess anything that you would ever
3 rely on?

4 A. No.

5 Q. Why not?

6 A. I couldn't use a guess as evidence or in a capacity
7 that I could substantiate or refute.

8 Q. Now, we heard some testimony of about approximately
9 \$20,000 being sent to Mr. Tarnovsky. Were you aware of the
10 fact that \$20,000 was sent to Mr. Tarnovsky from somebody?

11 A. I was aware that money was being sent to him over a
12 period of a year or more by someone -- or by Ereiser, yes.

13 Q. And how did you know? How did you know that was
14 happening?

15 A. Mr. Tarnovsky told me about it.

16 Q. And what did he tell you? Why was he getting this
17 money?

18 A. He told me that the group that we were monitoring when
19 he was up in Calgary offered him money for his work on
20 behalf of the group during the P1 pirate -- DirectTV P1
21 pirate days when he was supporting that group. He said they
22 offered him \$10,000. And then they offered him an
23 additional amount of money for him to continue to help them
24 while he was up in his undercover capacity in Canada.

25 Q. Okay. So money had been originally offered to

1 Mr. Tarnovsky before he began working for NDS?

2 A. That's my understanding.

3 Q. Okay. And it was for two types of services?

4 A. That's my understanding.

5 Q. First type of service was services already performed?

6 A. That's correct.

7 Q. And were those services performed before he worked for
8 NDS?

9 A. Correct.

10 Q. And the second 10,000, that was for future services?

11 A. That's my understanding, yes, sir.

12 Q. And to your knowledge, did Mr. Tarnovsky tell you about
13 this \$20,000 in a timely manner?

14 A. Yes, sir.

15 Q. And was the -- was some amount of money, approximately
16 \$20,000, actually sent to him?

17 A. Eventually. That's my understanding, yes.

18 Q. And where was it sent to?

19 A. It was sent to his mailbox address in Virginia, his
20 undercover address in Virginia.

21 Q. And did it come all at once or over a period of time?

22 A. It came over a year or longer period, as I recall.

23 Q. Okay. And you were aware during that time that money
24 was being sent to him?

25 A. Yes.

1 Q. And how did it come? I mean, what form?

2 A. It was shipped to him from Mr. Ereiser, concealed in
3 electronics, in small amounts, each shipment, over this
4 period of time.

5 Q. And ultimately it was your understanding that
6 approximately \$20,000 was the total?

7 A. 18,000 or 20,000. I've heard both numbers.

8 Q. Did you tell any of your superiors at NDS about this?

9 A. Yes.

10 Q. Who did you tell?

11 A. Talked to my boss, Mr. Hasak.

12 Q. Now, there was testimony this morning that
13 Mr. Tarnovsky was allowed by you to hold the money in his
14 possession; is that true?

15 A. That's correct.

16 Q. Okay. Well, first of all, as far as you could tell,
17 could this \$20,000 be traced back to any particular victim?

18 A. No.

19 Q. As far as you could tell, could the \$20,000 be traced
20 back to any group of victims?

21 A. No.

22 Q. Why did you allow Mr. Tarnovsky to maintain possession
23 of the 20,000 -- of the approximately \$20,000?

24 A. I was hopeful that we could use it in an operation back
25 against this group in our -- either our lawsuit or our

1 prosecution of them.

2 Q. By "against this group" meaning Mr. Ereiser?

3 A. Correct.

4 Q. Did you monitor to make sure the money was there every
5 day?

6 A. No.

7 Q. Why not?

8 A. Mr. Tarnovsky reported to me the first eight -- seven,
9 eight number of times that the money came in. And I didn't
10 feel I had to monitor. I felt he was being truthful with
11 me.

12 Q. Did you have any understanding as to what eventually
13 would happen to the money if you didn't use it for that
14 sting that you were considering?

15 A. There was no understanding.

16 Q. Did you think there was any person or governmental
17 agency or company that had a valid claim to that money?

18 A. No.

19 Q. Now, Mr. Hasak, when you told him about the \$20,000,
20 did you also inform him that you were going to allow
21 Mr. Tarnovsky to keep it in his possession?

22 A. Yes.

23 Q. Now, you were asked at some point during counsel's
24 examination whether you told the U.S. Attorney about that
25 money. Do you recall?

1 A. Correct.

2 Q. Was anything asked of you with respect to that money
3 when you spoke to the U.S. Attorney? I guess my question
4 is: Did you intentionally conceal it from the U.S.
5 Attorney?

6 A. No, no.

7 Q. Now, we also heard testimony with respect to
8 approximately \$40,000 going to Texas. And we've heard
9 testimony from a Lieutenant Cumberland, a police officer
10 from Texas, who testified that he and his people intercepted
11 two packages containing a total of \$40,100 mailed to a post
12 office box in Texas belonging to Mr. Tarnovsky.

13 Were you aware that occurred?

14 A. At some point I was.

15 Q. How did you learn about it?

16 A. I was told about it at some point months afterwards.

17 Q. By whom?

18 A. Mr. Tarnovsky.

19 Q. And you're saying he didn't tell it to you immediately
20 when he found out?

21 A. That's correct.

22 Q. Did you discuss with him why he didn't tell you right
23 away that two packages had been intercepted like that?

24 A. Yes.

25 Q. What did he say?

1 A. He said he was afraid.

2 Q. What did he say he was afraid about?

3 A. He was afraid of me.

4 Q. Was he more specific as to why he was afraid of you?

5 A. He was afraid to tell me that the packages came to that
6 mailbox, that he didn't know who the packages were from and
7 that he had received a notice from a District Attorney or a
8 county attorney that those packages were received at that
9 mailbox and they were opened because of a drug investigation
10 or a drug dog involvement. And he was afraid.

11 Q. And a number of months later, he did tell you about it?

12 A. Correct.

13 Q. Now, when he told you about it, were you were concerned
14 about it?

15 A. Yeah.

16 Q. Did you consider terminating him over it?

17 A. I was pretty upset.

18 Q. Did you consider termination?

19 A. I thought about it.

20 Q. I take it you decided not to terminate him?

21 A. Correct.

22 Q. Why not?

23 A. We reviewed everything that we were made aware of at
24 the time, the allegations of drug -- drug abuse; talked with
25 my HR executive. And he agreed to go to Scripps Hospital

1 and take a drug exam.

2 Q. Mr. Tarnovsky?

3 A. I'm sorry. Mr. Tarnovsky did. Passed it. No evidence
4 of any drug abuse.

5 Mr. Tarnovsky denied that he was expecting those
6 packages. He showed on the document they were not addressed
7 to him. They were addressed to an alias company or
8 business, that he had never received the packages.

9 And when he was notified that the packages were seized,
10 he had the option of checking off a box of making a claim or
11 disavowing ownership of that. He sought counsel from a
12 local attorney in San Diego, what he should do. The counsel
13 told him, if it's not yours and you didn't expect it, then
14 you check that box and mail it back, which is what he told
15 me he'd done.

16 Q. In analyzing whether to terminate him or not, did you
17 take into consideration the work he had done for you over
18 the years?

19 A. Yes.

20 Q. And what were your thoughts about -- about that, and
21 how did that figure in your decision not to terminate him?

22 A. Well, I had worked with him six or seven years, and I
23 didn't -- I believed what he said, that he didn't expect or
24 know who the money was sent from.

25 The amount of the money was very similar to an amount

1 of money, \$41,000, that was offered to a U.S. Customs
2 documented informant in Canada in another operation we were
3 involved with up in Manitoba. And it seemed like there was
4 a number of plausible reasons to believe Chris, plus I
5 trusted him, and I believed him when he said he wasn't
6 expecting it.

7 Q. Did he have any explanation for you as to how it was
8 that \$40,100 happened to be mailed to a mailbox that had his
9 name on it?

10 A. He opined that he may be -- it may have been set up by
11 somebody in Canada.

12 Q. Well, did he give you a scenario for being set up that
13 you considered to be reasonable?

14 A. Yes.

15 Q. What was the scenario?

16 A. Well, the packages came from British Columbia. And
17 that's where -- as I understand, Ron Ereiser had sold his
18 home in Kerrobert, Saskatchewan and located to Vancouver.
19 The packages were sent in a similar manner in which Chris
20 had described when he received the \$18,000 from the Calgary
21 operation that he was on. In other words, Ereiser had sent
22 him cash hidden inside electronics with fictitious return
23 addresses.

24 It was plausible. It was believable.

25 Q. Now, we've also heard testimony this morning that there

1 was a meeting that you attended after this with the United
2 States Attorney's Office?

3 A. Yes, sir.

4 Q. And there was some kind of an investigation going on,
5 and you were there and you said Mr. Stone was there and some
6 others were there with the U.S. Attorney?

7 A. Yes, sir.

8 Q. Now, with respect to these packages, the \$40,100, then
9 followed up by this meeting with the U.S. Attorneys, after
10 all that, was there ever a prosecution by the United States
11 Attorney's Office or any government agency of Mr. Tarnovsky?

12 A. No, sir.

13 Q. Were there ever -- was there ever a prosecution with
14 respect to all of this -- the \$40,100, the meeting you had
15 with the U.S. Attorney's office, was there a prosecution of
16 NDS?

17 A. No, sir.

18 Q. Were there any charges filed by the U.S. Attorney or
19 Texas or any other jurisdiction against Mr. Tarnovsky
20 arising out of this \$40,100?

21 A. No, sir.

22 Q. Were there any charges against NDS arising out of this
23 \$40,100?

24 A. No, sir.

25 Q. As far as you know, was Mr. Tarnovsky ever arrested

1 with respect to this \$40,100?

2 A. No, sir.

3 MR. KLEIN: Your Honor, I would ask that the
4 witness be shown Exhibit 1268.

5 BY MR. KLEIN:

6 Q. Now, looking at Exhibit 1268, was this a letter sent by
7 the Department of Justice to counsel for NDS?

8 A. Yes, sir.

9 Q. And did you have occasion in your position to review
10 this letter on or about February 3rd of 2004?

11 A. Yes, sir.

12 Q. Was it received in the regular course of business?

13 A. Yes, sir.

14 MR. KLEIN: Your Honor, I would ask that 1268 be
15 received into evidence.

16 THE COURT: Any objection?

17 MR. NOLL: We object. Hearsay, Your Honor.

18 THE COURT: We'll take it up outside the presence
19 of the jury.

20 BY MR. KLEIN:

21 Q. As far as you know, after the meeting that you attended
22 in the U.S. Attorney's Office, was there any further action
23 ever taken with respect to the subjects discussed by that
24 U.S. Attorney?

25 A. No, sir.

1 Q. Now, this morning you were shown Exhibit 77.

2 MR. KLEIN: And I would ask that the witness be
3 shown Exhibit 77, please.

4 MR. O'DONNELL: (Complies.)

5 THE WITNESS: Yes, sir.

6 BY MR. KLEIN:

7 Q. Now, it says in Exhibit 77 "this Von is they [sic] guy
8 who also popped the Nagra and did all the Swiss cheese crap
9 that was released through dr7."

10 Do you see that?

11 A. Yes, sir.

12 Q. And that was sent on December 7th, 2000.

13 Now, you testified this morning that the person who
14 sent that, whose name is NorthSat, is, in fact, an
15 individual named Dean Love, correct?

16 A. Correct.

17 Q. Did you, when you saw Exhibit 77, commence an
18 investigation into what Mr. Love was saying?

19 A. No, sir.

20 Q. Why not?

21 A. We had completed a search warrant of Mr. Love's
22 business and seizures. And at his attorney's office, he
23 stated the person responsible for Nagra was -- first he said
24 it was is Chris Gerlinsky; then he changed it to "J," or
25 Jeff, from Edmonton. He may have then changed to another

1 person.

2 And I think possibly this came in after the search
3 warrants, after I was back. And it was clear to me that he
4 had no idea and that he was reading what was being posted on
5 the Internet with all kinds of allegations floating around
6 at the time.

7 Q. So you didn't give it much credibility?

8 A. That's correct.

9 Q. Now, you also were asked this morning about an e-mail,
10 Exhibit 113. That's the one with the subject "cat's out of
11 the bag."

12 A. Okay, sir. Yes, sir.

13 Q. Now, when you received Exhibit 113 where Mr. Tarnovsky
14 wrote the subject "cat's out of the bag, there's a public
15 file on the Internet I saw via www.interestingdevices.com,
16 as well as www.dr7.com, and it's the syntax to dump any
17 ROM 3 NagraVision card" -- when you saw that, were you in
18 any way surprised that Mr. Tarnovsky would be relaying
19 information to you that he received over the Internet?

20 A. No, sir.

21 Q. Why not?

22 A. That's what he did as part of his job.

23 Q. Now, there did come a time when you terminated
24 Mr. Tarnovsky, correct?

25 A. Yes.

1 Q. Now, how is it that you went through this whole process
2 at the time you found out about the two packages sent to his
3 Texas mailbox, and you went through the whole process and
4 explained to us why you didn't terminate him; and then in
5 2007, right before he's supposed to be deposed in this case,
6 he gets terminated. How did that happen?

7 A. Our lawyers -- our law firm, other law firm had
8 received evidence from the EchoStar law firm that had a
9 report from, I think, Canadian law enforcement, that there
10 was a palm print or a fingerprint inside one or both of the
11 packages that belonged to an associate of Allen Menard.

12 Q. Okay. Let's see if we can make this clear.

13 We're talking about one or both of the packages that
14 Lieutenant Cumberland testified he intercepted back in 2001,
15 correct?

16 A. Correct.

17 Q. And -- I'm sorry, 2000 -- no -- 2000. Actually, I'm
18 not sure at this moment whether it was 2000, 2001. We'll
19 just leave that.

20 Talking about the packages that were intercepted by
21 Lieutenant Cumberland, correct?

22 A. Correct.

23 Q. Now, at the time you found out that these two packages
24 were intercepted, were you aware of any fingerprints or
25 thumbprints or anything else being found on any of the

1 devices in those packages?

2 A. No, sir.

3 Q. Prior to 2007 were you aware of any fingerprints or
4 thumbprints being found in either of those packages?

5 A. No, sir.

6 Q. And at some point you find out through counsel, who
7 found out through EchoStar's counsel, that, in fact, there
8 were some kind of prints found in those packages?

9 A. I found out from our counsel.

10 Q. Now, when you found out about the prints -- and these,
11 again, are the prints that were in one or both of the
12 packages that were intercepted by Lieutenant Cumberland that
13 were sent to a mailbox in Texas that Mr. Tarnovsky had --
14 that was his mailbox, correct?

15 A. He rented that mailbox, correct.

16 Q. All right. So, then, how much time elapsed between
17 when you found out about these prints and when you actually
18 terminated Mr. Tarnovsky?

19 A. 24 hours.

20 Q. And what was it about finding out about these prints
21 that caused you to terminate Mr. Tarnovsky in 2007 when you
22 hadn't terminated him back when the incident occurred?

23 A. He was terminated because he wasn't candid where the
24 money came from, in my opinion.

25 Q. And when you say he wasn't candid where the money came

1 from, what exactly do you mean?

2 A. He told me that he didn't know who had sent the money,
3 and yet this money came from an associate or somebody known
4 to associate with Al Menard. I couldn't believe that any
5 longer. I felt he lied to me.

6 Q. Now, did you come to the conclusion once you found out
7 those prints were in the package that Mr. Tarnovsky had
8 indeed hacked EchoStar?

9 A. No.

10 Q. Do you believe he hacked EchoStar?

11 A. No, sir.

12 Q. Why not?

13 A. That's not what he -- that's not what Tarnovsky was
14 about. He was -- he was passionate about fighting piracy.
15 That was his job for eight years, for the length of his
16 employment. It was -- it was his job, and he was passionate
17 about performing those responsibilities to fight piracy, not
18 to cause piracy.

19 Q. To this day have you ever seen any evidence that you
20 consider credible, as opposed to rumors on the Internet --
21 have you ever seen any credible evidence that indicate to
22 you and satisfy you, based on your 30 years in law
23 enforcement, that Mr. Tarnovsky did indeed hack EchoStar?

24 A. I've seen nothing.

25 Q. Let's talk about Mr. Menard for a moment.

1 Counsel, when he questioned you this morning, pointed
2 out that you never prosecuted Mr. Menard, correct?

3 A. Correct.

4 Q. I think you testified earlier today, even though you
5 didn't prosecute him, you did shut him down, correct?

6 A. Correct.

7 Q. Did you eventually recommend that Mr. Menard be hired
8 as a consultant to NDS?

9 A. Yes.

10 Q. And at the time you recommended that he be hired as a
11 consultant to NDS, you knew that he had operated
12 www.dr7.com, which is a pirate website, correct?

13 A. Correct.

14 Q. Why would you recommend that NDS hire someone who had
15 operated a pirate website?

16 A. He was closed down -- operating a site and selling
17 pirate technology are two different things. He operated a
18 site that people would come and take files or leave files
19 on. I don't know, they may have paid a subscription, or he
20 was making his money from advertising banners. He was out
21 of the business.

22 I met with Mr. Menard and one of our attorneys in
23 Canada. And in the debriefing Mr. Menard provided some
24 expertise that solved a significant problem for us and for
25 DirecTV. And based on his expertise and what I believe was

1 his candor at the time, I suggested we bring him into our
2 camp and have him help us fight piracy in the Internet.

3 Q. What was his area of expertise?

4 A. Technical involving Internet, the World Wide Web and
5 computers.

6 Q. Be a little more specific. What could he do for NDS
7 that was valuable?

8 A. Well, when he met with myself and the attorney, we were
9 faced with a number of very sensitive stamped "secret" and
10 stamped "confidential" documents that had been posted on the
11 Internet. They were very sensitive documents between
12 DirecTV, our customer's CEO's, and NDS's CEO, Dr. Abe Peled.
13 And my concern at the time was: Do I have a leak in NDS?
14 My personal concern is: There goes my job if we do.

15 When we met with Mr. Menard, he was one -- actually he
16 was the only person at that time that was able to capture
17 copies of those documents before they were taken down. And
18 he explained to the attorney, who was a former assistant
19 U.S. Attorney, how to identify the person or persons or
20 company that made the copies of these secret documents.

21 And damned if he didn't do it. And it worked. And the
22 individual was identified by the FBI and prosecuted.

23 Q. Once you hired Mr. Menard, what kind of work did he do
24 for you that you needed him as opposed to just hiring
25 somebody else?

1 A. He has skills that I've not found in anyone else. Some
2 skills I don't really understand. But he had the ability to
3 mirror or copy Internet sites globally that dealt with
4 piracy of NDS technology regardless of our customer.

5 He monitored sites for us, computerized it, in the
6 Middle East, in Eastern Europe, Europe, the United States,
7 North and South America, Asia.

8 And he was able to reduce these files and
9 cross-reference the manner in which people would write or
10 misspell words and cross-index identities who might appear
11 in England because of the way he misspelled certain words;
12 may come up with a different idea in Canada, for instance.

13 So he had these skills of developing these databases
14 and monitoring the piracy of our technology on a global
15 basis. He also presented an idea to NDS how we might be
16 able to take out these significant numbers of posters that
17 are clustered offshore and are most likely being run either
18 by Americans or Canadians, North Americans, but are avoiding
19 detection.

20 And he was able to cluster approximately 230, 250
21 different websites in the Bahamas, in Malaysia, in the
22 Cayman Islands. And we turned it over to our law firm,
23 Wilsdon, who shut 'em down. And they've never come back.

24 Q. Was there something about his ability to locate and
25 identify those websites that you couldn't get someone else

1 to do for you?

2 A. We saw a report by another company that tried to do
3 that for our customer. And they were well below the numbers
4 that Mr. Menard had identified. We went with Mr. Menard's
5 numbers.

6 Q. Now, it was pointed out by counsel that at the time you
7 hired Mr. Menard, the lawsuit in this litigation had already
8 been filed. The fact that there were allegations in the
9 complaint in this case about Mr. Menard, did that affect
10 your decision whether to hire him?

11 A. It was -- it was a consideration, yes.

12 Q. Okay. And how did you come to the conclusion that
13 despite the fact that these claims were made in this very
14 lawsuit about Mr. Menard, that you were gonna still hire
15 him? How did you get to that decision?

16 A. Well, it was at the same time, in the same time frame
17 of this money that had been sent to Tarnovsky. And there
18 was an investigation, and our counsel assured us that we
19 wouldn't be obstructing any other official investigation if
20 we hired Mr. Menard. Our counsel spoke with the Assistant
21 U.S. Attorney in charge of looking into Mr. Tarnovsky back
22 during that time frame.

23 And if we weren't prohibited or if it was not -- if it
24 had been recommended don't do that, we wouldn't have done
25 it. But we were told it was okay.

1 Q. And when you say it was okay, you mean hiring
2 Mr. Menard?

3 A. As a consultant, yes, sir.

4 Q. During the time that Mr. Menard had been employed as a
5 consultant by NDS -- withdrawn.

6 During the time Mr. Menard had been employed by NDS,
7 did he do any work directly with law enforcement?

8 A. Yes, he did.

9 Q. What was that?

10 A. Well, he provided us intelligence which we shared
11 indirectly. He also traveled and met with the high tech
12 crimes group and the U.S. Secret Service in the U.S. and
13 tutored or gave assistance to their official investigations
14 that have resulted in the arrest of a Canadian on U.S. soil.

15 Q. So Mr. Menard worked with the United States Secret
16 Service?

17 A. Yes, sir.

18 Q. Now, there's been testimony about the fact that
19 Mr. Menard and Mr. Tarnovsky were friendly, correct?

20 A. Correct.

21 Q. And they were friendly even before Mr. Menard was hired
22 by NDS, correct?

23 A. Correct.

24 Q. And you as the person to whom Mr. Tarnovsky reported
25 knew that there was some kind of a friendship here?

1 A. That was Chris' assignment, Tarnovsky's assignment when
2 he was investigating Internet activities and we were
3 developing targets in Canada. He was to become friendly
4 with targets in Canada. Mr. Menard, he became friendly
5 with.

6 Q. And did you have any concern that maybe Mr. Tarnovsky
7 would become too friendly with Mr. Menard and his loyalties
8 would be to Mr. Menard as opposed to NDS?

9 A. I don't know that I would say concern. I don't believe
10 I was worried about it. I believed the loyalties from
11 Mr. Tarnovsky were for our department and our effort. He
12 communicated with me regularly regarding Mr. Menard's
13 activities.

14 Q. And was there ever any instance -- withdrawn.
15 When you ultimately shut down Mr. Menard, the
16 information that was given to you that led to that -- his
17 website being shut down, who did that come from?

18 A. It came from Tarnovsky.

19 Q. Now, in Mr. Tarnovsky's consulting services agreement,
20 Exhibit 115 -- maybe --

21 A. Mr. Tarnovsky's?

22 Q. I'm sorry, Mr. Menard's consulting services agreement,
23 Exhibit 115. Perhaps you could take a look at that.

24 MR. O'DONNELL: We don't have it.

25 THE COURT: You can put that up. It was already

1 received. If you want to put it on the board.

2 MR. KLEIN: That's fine. Thank you, Your Honor.

3 THE WITNESS: Thank you, sir.

4 BY MR. KLEIN:

5 Q. What I wanted to direct your attention to was, you were
6 asked some questions about the fact that it says,
7 "Consultant will maintain an accurate and detailed log of
8 hours spent in fulfilling consulting obligations under this
9 agreement. A certified monthly copy of this log will be
10 made available to company upon written request."

11 Now, this morning you were asked by counsel whether you
12 ever made the written request for that log. Do you recall
13 that?

14 A. Yes.

15 Q. And you said you had not.

16 A. That's correct.

17 Q. Why not?

18 A. It wasn't necessary.

19 Q. Why wasn't it necessary?

20 A. The volume of traffic, the hours of e-mails between
21 Mr. Menard and our intelligence analyst and Internet analyst
22 in Israel showed me right off the bat he was spending
23 considerably more than 120 hours per month on these
24 functions.

25 Q. So you know from your own experience that you were

1 getting your money's worth?

2 A. Yes.

3 Q. Now, I'd like to direct your attention to another
4 document that was received in evidence this morning, which
5 is Exhibit 1568.

6 A. Yes, sir.

7 Q. Now, you were asked some questions by counsel about
8 this document. Do you remember that?

9 A. Yes, sir.

10 Q. Did you write this document?

11 A. No, sir.

12 Q. Do you know who wrote it?

13 A. No, sir.

14 Q. Do you know to whom it was sent?

15 A. No, sir.

16 Q. If it hadn't been that counsel showed you the
17 information that's on the next to last page, would you know
18 when it was created?

19 A. No, sir.

20 Q. What's that?

21 A. No, sir.

22 Q. Now, it says it was created in -- on August 23rd, 1998.
23 Do you see that?

24 A. Yes, sir.

25 Q. Can you tell us how it could be that there would be a

1 document on your computer created in August of 1998 and you
2 don't know anything about it?

3 A. Yes, sir.

4 Q. Please.

5 A. Back in this time frame our IT group -- our first or
6 second IT group were having problems or difficulties with
7 PGP, which is a form of encrypting electronic e-mails.

8 At this time, in order to open up an e-mail that one
9 would receive that had been encrypted, whether you're --
10 it's addressed to you or if you're a cc to the e-mail or if
11 you're a blind cc to the e-mail, in order to open that
12 document, unlike today, you had to take that PGP document or
13 that PGP e-mail and put it on your hard drive; and once it
14 was on your hard drive, then open that PGP e-mail on your
15 hard drive in order to read it, which created an unencrypted
16 e-mail on your hard drive in addition to the encrypted
17 e-mail.

18 In that there was not an unencrypted e-mail on my hard
19 drive, I either didn't keep it, I read it or I didn't read
20 it or I don't recall the document. It may or may not have
21 been addressed to me. I don't recall it. But that's how it
22 would be on my hard drive.

23 In order to look at an e-mail, I had to save it, open
24 it, put in a password, look at it, and either reply to it,
25 delete it or leave it for the future if there was some need

1 for it in the future.

2 In this case the unencrypted document was deleted.
3 This document stayed there. And I don't recall -- I
4 couldn't tell you who sent it. I don't know why it doesn't
5 say who sent it or why -- the address. Our system allows
6 that now, but back then it did not.

7 Q. Now, are you suggesting that this document was not sent
8 to you?

9 A. I don't recall this document being sent to me.

10 Q. But are you disputing that it was sent to you?

11 A. No. If it was on my hard drive, it would be logical
12 that it's on my hard drive, it was either sent to me as a
13 "to," a cc or a bcc.

14 Q. And over the years that you've worked at NDS, how many
15 different operations have you had?

16 A. Well, in excess of a thousand.

17 Q. And as you read Exhibit 1568 today, ten years after it
18 was created, do you have any kind of recollection as to
19 which of those operations this related to?

20 A. I don't know that it related to an operation at all. I
21 don't know that it related to me at all. It's technical on
22 EPROM and ROM, and I don't recall the document.

23 Q. Now, there was testimony this morning about
24 Mr. Tarnovsky was asked to set up an account on a pirate
25 website. Does that concern or surprise you?

1 A. No.

2 Q. Why not?

3 A. That was part of his job. In order to participate in a
4 forum, you had to join the forum, register your identity,
5 develop a password. And that was part of his job.

6 Q. Did you ever engage in satellite piracy of EchoStar or
7 NagraStar?

8 A. No.

9 Q. Did you ever engage in satellite piracy of any NDS
10 competitor?

11 A. No.

12 Q. Yesterday we heard some testimony about rumors, hearsay
13 that you had in some way engaged in hacking of a company
14 call Canal+. Did you have -- did you ever engage in any
15 hacking of Canal+?

16 A. No, sir.

17 Q. Did you ever do anything to help anyone else commit
18 satellite piracy of EchoStar and NagraStar?

19 A. No, sir.

20 Q. Did you ever do anything to help anyone else commit
21 satellite piracy of any company?

22 A. No, sir.

23 Q. As you sit here today, do you have any doubt whether
24 Mr. Tarnovsky was Nipper or NipperClause or any of those
25 names?

1 A. I don't have any information that he was Nipper,
2 NipperClause or names like that.

3 Q. Have you ever seen any credible evidence -- not rumors,
4 credible evidence that led you to believe Mr. Tarnovsky was
5 Nipper or NipperClause?

6 A. No, sir.

7 Q. Did you ever receive a file of Canal+ code from
8 anybody?

9 A. (No audible response.)

10 Q. Did you ever receive a file containing code of Canal+?

11 A. No, sir.

12 Q. Did you ever give any file to Mr. Tarnovsky that was a
13 Canal+ code?

14 A. No, sir.

15 Q. Have you always done your absolute best to combat
16 satellite piracy?

17 A. Yes, sir.

18 MR. KLEIN: No further questions, Your Honor.

19 THE COURT: This would be redirect by Mr. Noll.

20 MR. NOLL: Yes, sir.

21 THE COURT: Thank you.

22 REDIRECT EXAMINATION

23 BY MR. NOLL:

24 Q. Mr. Norris, I want to start by focusing you on
25 Exhibit 51.

1 MR. NOLL: Can you put Exhibit 51 up, Clint.

2 (Document displayed.)

3 BY MR. NOLL:

4 Q. Focus on the language in the center. You recall this
5 e-mail, Mr. Norris? You just got through talking about it
6 with your counsel, correct?

7 A. Yes.

8 Q. This is the e-mail where you said that Mr. Tarnovsky
9 took an EchoStar hack off the Internet, correct?

10 A. That's correct.

11 Q. Is that an illegal file that Mr. Tarnovsky took off the
12 internet, sir?

13 A. We wouldn't have known until we tested it.

14 Q. Have you ever known EchoStar to post files of hacks of
15 its system on the Internet?

16 A. No, sir.

17 Q. All right. So it's your best guess that that was an
18 illegal file that was posted on the Internet by a satellite
19 pirate?

20 A. That's what we were trying to determine.

21 Q. And let me ask you, sir, is it legal to access
22 EchoStar's satellite signals without paying for them?

23 A. No, sir.

24 Q. And that's, in fact, what you and Mr. Tarnovsky did on
25 that particular date; isn't that correct, sir?

1 A. Yes, we did, in his lab.

2 Q. And so you witnessed Mr. Tarnovsky committing an
3 illegal act in his lab in California; isn't that correct,
4 sir?

5 A. I think we were validating that it was an illegal hack.

6 Q. But in order to do that, you yourself committed an
7 illegal act, correct?

8 A. No, I didn't.

9 Q. It's not illegal if you take EchoStar's programming off
10 the Internet and you don't pay for it?

11 A. We validated or were going to refute that this program
12 worked or didn't work. And we had a right, I believe, to
13 determine that since it involved our technology. I don't
14 believe it was an illegal act.

15 Q. You opened up EchoStar's programming on the set-top box
16 that -- you did this with Mr. Tarnovsky at his house,
17 correct?

18 A. No. Mr. Tarnovsky did.

19 Q. And you watched it?

20 A. Correct.

21 Q. Now, talking about the money that Mr. Tarnovsky
22 received from some pirates in Canada, you knew Chris was
23 getting the money, correct?

24 A. He told me that money was going to be sent to him,
25 correct.

1 Q. Then you testified in your cross-examination with your
2 counsel that the money was offered before Mr. Tarnovsky came
3 to work for NDS, correct?

4 A. For work he had done before, yes.

5 Q. You say Mr. Tarnovsky went legit after he joined NDS,
6 correct?

7 A. That's correct.

8 Q. You said he was undercover, right?

9 A. Yes.

10 Q. You let him keep the money for prior acts of piracy,
11 right, sir?

12 A. I told him to put it into an account and not to spend
13 it.

14 Q. And this money that we're talking about came to the
15 Manassas, Virginia mailbox, correct?

16 A. Correct.

17 Q. And that was a mailbox that NDS paid for; isn't that
18 correct?

19 A. That's correct.

20 Q. You didn't give the money to the police, did you?

21 A. No.

22 Q. You didn't give it to any form of law enforcement, did
23 you?

24 A. No.

25 Q. And I believe you testified, when your counsel was

1 questioning you, that there was seven to eight times that
2 money was sent to this mailbox; is that correct?

3 A. That's my recollection, correct.

4 Q. Up to this point, up to today, all we've known about is
5 one shipment of \$20,000 cash. Is there more that we need to
6 know about, Mr. Norris?

7 A. No, sir.

8 Q. Well, how do you figure -- if there's seven to eight
9 shipments, all we know about is the 20,000 that Tarnovsky
10 received. Why don't you tell us about the rest?

11 A. I believe there's seven or eight shipments of money
12 totaled approximately \$20,000. It was not a single shipment
13 of \$20,000, to my memory.

14 Q. I believe you testified that you didn't know who to
15 give the money to; is that right?

16 A. That's correct.

17 Q. It's found money that Mr. Tarnovsky just received in
18 the mail. Is that your position, sir?

19 A. No, sir.

20 Q. How do you explain that, sir?

21 A. How do I explain what, sir?

22 Q. How do you explain that you didn't know who to give the
23 money to?

24 A. I didn't have an idea of anybody having a claim on
25 those funds. And we had hoped to use those funds in an

1 operation back against this same group.

2 Q. You hoped to use the money in prosecution of
3 Ron Ereiser, correct?

4 A. Or his group.

5 Q. NDS -- while we're talking about it, NDS tried to
6 recruit Ron Ereiser; isn't that correct?

7 A. We tried at one time, correct.

8 Q. And Mr. Ereiser declined NDS's recruitment, correct?

9 A. That's correct.

10 Q. You filed a lawsuit against Mr. Ereiser once he made
11 that declination to come with NDS, correct?

12 A. We joined a lawsuit with DirectTV; that's correct.

13 Q. And in NDS's efforts to prosecute Mr. Ereiser, you
14 never turned that money that Mr. Tarnovsky had received over
15 to the prosecution; isn't that correct?

16 A. I'm not sure I understand what you just said.

17 Q. You just testified that the money that Chris Tarnovsky
18 got may be used to help prosecute Ron Ereiser, right?

19 A. That's correct, or his group.

20 Q. But you never took that money from Chris and used it to
21 prosecute Mr. Ereiser, correct?

22 A. Every time -- that's correct.

23 Q. And to your knowledge, that money was never disclosed
24 in that civil prosecution, correct?

25 A. In what civil prosecution, sir?

1 Q. Against Ron Ereiser.

2 A. It was Ron Ereiser and his group that were prosecuted
3 civilly.

4 Q. Now, this money that Chris got or Mr. Tarnovsky got at
5 his Manassas, Virginia mailbox, that money came over the
6 course of a year; is that correct?

7 A. That's my recollection.

8 Q. And isn't it also your recollection that \$10,000 of
9 that money was for future piracy acts by Mr. Tarnovsky?

10 A. That's what they had hoped to achieve by recruiting
11 Mr. Tarnovsky to help them. That's correct.

12 Q. Don't you think, Mr. Norris, if Mr. Tarnovsky truly
13 didn't continue his pirating activities during this one-year
14 period, the Canadians would have never sent him the last two
15 shipments of cash?

16 A. I don't have an opinion. I don't think I understand
17 what you're asking, sir.

18 Q. Well, you say that Mr. Tarnovsky received -- you
19 know -- you've testified about \$20,000, correct?

20 A. It was about 20,000. It may have been 18,000. I'm a
21 little gray on the numbers there.

22 Q. And you know that he was going to continue to be paid
23 for future acts of piracy, correct?

24 A. That was what the plan was when he was in his
25 undercover capacity in Calgary, meeting with this group of

1 pirates.

2 Q. Now, couldn't you have taken the money, the 18 to
3 \$20,000, and given it to the copyright holders of the
4 programming that Mr. Tarnovsky was aiding others in
5 stealing?

6 A. It's possible. It hadn't occurred to me.

7 Q. That's possible, right?

8 A. That's possible.

9 Q. But you didn't do that?

10 A. No.

11 Q. Do you know whether Mr. Tarnovsky ever put that money
12 on his tax return?

13 A. He was instructed to declare any interest that he
14 gained from any of these funds.

15 Q. Let's talk about the Texas mailbox for a minute.

16 I believe you just testified that you thought it was
17 plausible that Mr. Tarnovsky did not know who had sent him
18 the cash that was stuffed in the electronic equipment,
19 correct?

20 A. Correct.

21 Q. And I believe you said that you gave Mr. Tarnovsky a
22 drug test -- you tested him after this cash came to make
23 sure he wasn't taking drugs, right?

24 A. After we read that there may have been drugs involved,
25 then we asked Mr. Tarnovsky to take a drug test. That's

1 correct.

2 Q. Drug use violates NDS's policies, correct?

3 A. Correct.

4 Q. You recall sending Mr. Tarnovsky to Canada in 2000 to
5 meet with Al Menard and Stanley Frost? Do you recall that,
6 sir?

7 A. That's correct.

8 Q. They had a meeting, a pow-wow, these pirates in Canada?

9 A. Yep.

10 Q. And you recall that Mr. Tarnovsky took drugs at that
11 meeting in Canada, correct?

12 A. I remember Mr. Tarnovsky saying that they were passing
13 around marijuana in Toronto.

14 Q. You didn't require him to take a drug test after that,
15 did you, sir?

16 A. No, sir.

17 Q. You didn't terminate him either, did you, sir?

18 A. No, sir.

19 Q. And it violated NDS's policy, then; isn't that correct?

20 A. That's one way of looking at it.

21 Q. What's the other way of looking at it?

22 A. He was in his undercover capacity, and if he had
23 passed, it would not have been conducive to the operation he
24 was participating in.

25 Q. So as long as Mr. Tarnovsky's in his undercover

1 capacity, he's got a king's X, he's got his hand on home
2 plate, he can't be touched; is that right?

3 A. That's my understanding it's not illegal to smoke
4 marijuana in Canada.

5 Q. There Tarnovsky can behave however he wants as long as
6 he's in his undercover capacity in Canada. Is that your
7 testimony, sir?

8 A. No, sir.

9 Q. You also said it's plausible that Mr. Ereiser might
10 have sent him the cash to the Texas mailbox; is that right?

11 A. That's correct.

12 Q. And if Mr. Ereiser sent that cash, how would that be
13 any different from the cash that we know Chris Tarnovsky
14 received in Manassas, Virginia from Mr. Ereiser?

15 A. Tarnovsky did not anticipate that cash. And as far as
16 we knew, Tarnovsky didn't know who sent him the cash.

17 Q. So because the cash sent to the Texas mailbox was
18 unanticipated and then was later found out, you had a
19 problem with it. Is that your testimony?

20 A. Of course.

21 Q. But the cash that you knew about, the Manassas,
22 Virginia, but that nobody else knew about, that we know you
23 didn't tell any government officials about, that cash was
24 okay, right, sir?

25 A. That cash was part of an operation. That was okay.

1 Q. Now, you also said that maybe it was a set-up, the
2 Texas mailbox cash. Do you recall that?

3 A. Sure.

4 Q. And if I recall correctly, the amounts that were sent
5 to the Texas mailbox were two shipments totaling 40,100,
6 correct?

7 A. That's correct.

8 Q. If it was a set-up, couldn't it have been done
9 with \$5,000, \$7,000? Why did it have to be \$40,000, sir?

10 A. I didn't send it. I have no idea.

11 Q. And I believe you testified that the cash came from
12 British Columbia area; is that correct?

13 A. That's what I understand, correct.

14 Q. Isn't it true, sir, that Mr. Menard lived in the
15 British Columbia area at this time?

16 A. He lived in Edmonton, and he lived in British Columbia,
17 and I'm not sure at what time he relocated, so I don't know.

18 Q. Regarding Exhibit 113 -- that's the cat's out of the
19 bag e-mail -- do you recall that exhibit?

20 A. Yes, sir.

21 MR. NOLL: You can put it up, Clint.

22 (Document displayed.)

23 BY MR. NOLL:

24 Q. You weren't surprised when you got this e-mail; is that
25 right, Mr. Norris?

1 A. Yes, I was.

2 Q. I believe you testified earlier with your counsel that
3 you weren't surprised to see this e-mail, cat's out of the
4 bag. Are you changing that now?

5 A. No, I wasn't surprised that the system was further
6 hacked.

7 Can I see the date on that?

8 (Technician complies.)

9 THE WITNESS: Okay. This is a later posting or a
10 different hack from what we first saw posted on the Internet
11 as far as I recall.

12 So the fact that the pirates were working on the
13 EchoStar technology wasn't a surprise to me. And when it
14 appeared, it's like the cat's out of the -- out of the bag.
15 The cat's out of the bag. It's escaped. It's public.
16 Look, it's public. It's posted on this -- on these
17 websites.

18 BY MR. NOLL:

19 Q. You fired Mr. Tarnovsky in 2007, correct?

20 A. Correct.

21 Q. You found a fingerprint on something that EchoStar
22 produced that linked Christopher Tarnovsky to Al Menard,
23 correct?

24 A. Did you say I found a fingerprint?

25 Q. Yeah.

1 A. (No audible response.)

2 Q. Did you find a fingerprint?

3 A. No, sir.

4 Q. On a document that EchoStar produced that linked
5 Christopher Tarnovsky to Al Menard?

6 A. (No audible response.)

7 Q. Okay. You don't understand. Let me change the
8 question.

9 Did you come to understand that there were fingerprints
10 of somebody named Mervin Main linking Christopher Tarnovsky
11 to Al Menard?

12 A. No. It linked Mervin Main to Al Menard, not
13 Mervin Main to Chris Tarnovsky.

14 Q. Okay. And Mr. Tarnovsky, as you know, was an associate
15 of Al Menard, right?

16 A. Associate? I don't think that's -- I don't think
17 that's accurate.

18 Q. Well, how would you describe it?

19 A. Well, Mr. Tarnovsky is an employee of NDS. Mr. Menard
20 was a consultant of our operational security group.

21 Q. So the link is actually stronger than what I said.
22 It's really you have a consultant of NDS and an employee of
23 NDS. So it's actually not an association, it's a -- I mean,
24 these guys are in business together, right?

25 A. They both participated in our antipiracy efforts.

1 That's correct.

2 Q. And as I understood your testimony, this is the first
3 time someone outside of NDS was able to link Mr. Menard to
4 Mr. Tarnovsky relating to illegal conduct; is that correct?

5 A. It related to the linking of Mr. Menard's associate to
6 Mr. Menard, which we took the leap that it's too
7 coincidental that the packages apparently came from Menard,
8 which was our basis for terminating Mr. Tarnovsky.

9 Q. And I believe you testified that Mr. Tarnovsky was
10 fired at counsel's office; is that right?

11 A. Yes.

12 Q. O'Melveny & Myers here in Newport Beach, correct?

13 A. That's correct.

14 Q. These lawyers sitting right over here, correct?

15 A. That's correct.

16 Q. In fact, is it your testimony the person who told
17 Mr. Tarnovsky that he was fired was Darin Snyder, counsel
18 for NDS?

19 A. The question was?

20 Q. Did Darin Snyder tell Mr. Tarnovsky -- in a meeting
21 that you just testified to, with your counsel, did Darin
22 Snyder tell Mr. Tarnovsky that he was fired?

23 A. That's correct.

24 Q. All the money that Chris received was no big deal,
25 right? That didn't cause him to be fired by NDS?

1 A. Wrong.

2 Q. Why didn't you fire him when he received the cash from
3 the DirectTV operation?

4 A. That was part of the undercover operation he was
5 participating in.

6 Q. Keeping the cash was part of the operation?

7 A. That was the instruction that Chris was given.

8 Q. Who gave him that instruction?

9 THE COURT: You understand that "Chris" is
10 Mr. Tarnovsky?

11 THE WITNESS: I'm sorry. Yes, sir.

12 THE COURT: It's not your fault. And I'm --
13 counsel was starting to use the word "Chris."

14 MR. NOLL: Sorry. Mr. Tarnovsky.

15 THE COURT: Thank you.

16 BY MR. NOLL:

17 Q. Now, was Mr. Tarnovsky given the instruction to keep
18 the cash by you, or was it by the lawyers?

19 A. Are you talking about the \$18,000 that Mr. Ereiser sent
20 him?

21 Q. Yes, sir.

22 A. It was by me.

23 Q. And Chris, for clarity's sake, still has that cash
24 today -- Mr. Tarnovsky has that cash today, right?

25 A. As far as I know.

1 Q. You testified a moment ago that Mr. Menard has special
2 Internet skills, correct?

3 A. Correct.

4 Q. Is it your testimony, sir, that Mr. Menard was better
5 at saving websites to his computer than anyone else you know
6 of?

7 A. Anyone I had ever dealt with, he was, that's correct.

8 Q. And concerning Mr. Menard, I believe you testified
9 earlier, if I understand your testimony correctly, the
10 lawyers said to hire Mr. Menard; is that right?

11 A. No.

12 Q. You testified that you consulted with attorneys before
13 hiring Mr. Menard in 2003?

14 A. The lawyer didn't tell me to hire Mr. Menard. I wanted
15 to hire Mr. Menard. But I didn't want to obstruct justice
16 or an investigation or do something improper. And I was
17 given an okay by our lawyers that there was not a problem
18 with any prosecutor that they were dealing with if we
19 retained the services of Mr. Menard.

20 Q. Okay. So the lawyers told you it was okay to hire
21 Mr. Menard, correct?

22 A. Correct.

23 Q. These lawyers?

24 A. That's correct.

25 Q. Okay. Now, earlier you testified that you never read

1 the Headend Project Report, correct?

2 A. That's correct.

3 Q. Did you ever have physical possession of the Headend
4 Project Report?

5 A. I have during this lawsuit. I looked at a document --
6 I think you gave me a document to look at. I don't -- it's
7 all technical. It's not something I'm familiar with.

8 Q. And did you ever have possession of the Headend Project
9 Report before the year 2000?

10 A. No, sir.

11 Q. I believe you testified in your cross-examination that
12 you didn't know Christopher Tarnovsky's Internet aliases,
13 correct?

14 A. I don't think I testified -- I knew a number of his
15 aliases that he told me, but I don't recall that I knew all
16 of 'em or would recall them.

17 Q. Okay. So you're not changing your earlier testimony
18 when I asked you whether you knew Tarnovsky's --
19 Mr. Tarnovsky's Internet aliases, wherein you said no.
20 You're sticking to that; is that right?

21 A. Now -- now I'm getting confused.

22 Q. Okay. Let me break it down.

23 A. Okay. Sure.

24 Q. When I questioned you this morning, do you recall
25 answering my question that you did not know Mr. Tarnovsky's

1 Internet aliases? Do you recall that?

2 A. I did not know all of his aliases. I believe I said
3 that.

4 Q. And you also testified you don't recall any lists that
5 you were provided with of any of Mr. Tarnovsky's Internet
6 aliases, right?

7 A. I don't recall receiving a list of Mr. Tarnovsky's
8 Internet aliases.

9 Q. And you never asked Mr. Tarnovsky for any lists of his
10 aliases, right?

11 A. That's correct.

12 Q. Now, you testified through your counsel about Ron
13 Ereiser. Do you recall that?

14 A. Yes.

15 Q. And you said Mr. Ereiser is a Canadian satellite
16 pirate, correct?

17 A. That's correct.

18 Q. And you testified about an operation where
19 Mr. Tarnovsky was sort of infiltrating Mr. Ereiser's pirate
20 organization. Do you recall that?

21 A. Yes.

22 Q. And you testified that Mr. Tarnovsky was able to
23 intercept certain codes before they were released by
24 Mr. Ereiser's group, correct?

25 A. That's correct.

1 Q. And you testified that that was a blow to that pirate
2 organization right?

3 A. I believe it was a blow, correct.

4 Q. If that pirate organization's codes would have been
5 exposed, it would have been a blow to NDS and DirecTV,
6 correct?

7 A. It would have been harmful.

8 Q. Would have been the same blow that EchoStar suffered as
9 a result of its codes being posted on the Internet, correct?

10 A. I -- whenever there's piracy published, it's harmful to
11 the company, your company, or my company -- your client's
12 company or my company.

13 Q. You also testified that Mr. Ereiser, to your knowledge,
14 is a consultant of NagraStar, correct?

15 A. That's correct.

16 Q. You don't understand Mr. Ereiser to be a consultant of
17 EchoStar, right?

18 A. I believe -- I believe it's NagraStar.

19 Q. Okay. And your counsel put some pictures of
20 Mr. Ereiser up and various other satellite pirates. Do you
21 recall that?

22 A. Yes.

23 Q. But Mr. Ereiser did not become a consultant of
24 NagraStar until several years after NDS prosecuted him;
25 isn't that correct?

1 A. Correct.

2 Q. So for clarity's sake, when you say Mr. Ereiser is a
3 consultant of NagraStar, that wasn't until after NDS had
4 already prosecuted these people for satellite piracy, right?

5 A. Correct.

6 Q. You don't want to mislead the jury in your testimony
7 here today, do you, sir?

8 A. Of course not.

9 Q. Now, we talked a little bit about an operation called
10 Operation Johnny Walker. Do you recall that?

11 A. Yes, I do.

12 Q. And you said Mr. Tarnovsky had a persona to be
13 maintained, correct?

14 A. Correct.

15 Q. So Mr. Tarnovsky developed software in this Operation
16 Johnny Walker in order to provide to Mr. Ereiser, correct?

17 A. Mr. Tarnovsky and other engineers, correct.

18 Q. And you said Mr. Tarnovsky had -- he had a lot of
19 skills when it comes -- came to software in developing
20 software in the satellite industry, right?

21 A. That's correct.

22 Q. But you disagree -- let me back up.

23 Mr. Tarnovsky knew how to mask code so that it would
24 not be identified with him. Would you agree with that, sir?

25 A. I don't have any knowledge of what that means.

1 Q. Turn to Exhibit 1453, please.

2 MR. NOLL: Go ahead and put it up, Clint. I think
3 it's already in evidence.

4 (Document displayed.)

5 BY MR. NOLL:

6 Q. Do you recall testifying about this document earlier
7 today, Mr. Norris?

8 A. I do.

9 Q. And is this the meeting of the more elite pirates as
10 you testified to?

11 A. No, I don't believe it is. I think this was a
12 different meeting in Canada, not the one that Mr. Tarnovsky
13 went to.

14 Q. But that wasn't my question.

15 A. Okay.

16 Q. Was this Exhibit 1453 talking about a meeting of elite
17 pirates? I believe that's what you testified to earlier.

18 A. That's correct.

19 Q. Now, focus your attention on a gentleman named
20 Stanley F., aka "Wheels." Do you see that?

21 A. Yes, I do.

22 Q. Is that Stanley Frost?

23 A. At the time -- I've got a question mark in there -- I
24 didn't know, but now I do believe it to be Stanley Frost.

25 Q. Okay. Mr. Frost -- his moniker or nickname is

1 "Wheels"; is that correct?

2 A. That's correct.

3 Q. And Mr. Frost, according to you, is an elite pirate in
4 the community, correct?

5 A. He was an elite pirate; that's correct.

6 Q. And you were aware of his relationship with
7 Christopher Tarnovsky, correct?

8 A. Chris attempted to monitor Mr. Frost and Mr. Melnick,
9 his partner.

10 Q. Are you aware of any other relationship outside of
11 that?

12 A. I don't recall. There was an operation of identifying
13 these guys, and I don't recall -- subsequent or after this
14 meeting, Mr. Frost had this other meeting in Toronto with
15 another group of people that Mr. Tarnovsky attended. I
16 don't believe Mr. Tarnovsky attended this particular
17 meeting.

18 Q. But there was a subsequent pow-wow, satellite pirates
19 in Canada that Mr. Tarnovsky went to, correct?

20 A. Correct.

21 Q. And Mr. Frost was the one who put that meeting
22 together, correct?

23 A. That's correct.

24 Q. And you never told Mr. Tarnovsky not to have a
25 relationship with Mr. Frost, right?

1 A. Correct.

2 Q. Let's focus on Exhibit 1568.

3 THE COURT: I'm sorry. Would you put 1453 back
4 up.

5 MR. NOLL: Sure.

6 THE COURT: This might be confusing to the jury.
7 Would counsel stipulate that "LNU" means "last name
8 unknown"?

9 MR. SNYDER: Yes.

10 MR. HAGAN: Yes.

11 THE COURT: All right. Okay.

12 Counsel, we'll take a brief recess.

13 You're admonished not to discuss this matter
14 amongst yourselves nor form or express any opinion
15 concerning the case.

16 Why don't we meet about ten after the hour.

17 Counsel, have a nice recess.

18 (Recess held at 2:55 p.m.)

19 (Proceedings resumed at 3:16 p.m.)

20 THE COURT: All right. We're back in session.

21 The jury's present. All counsel are present.

22 Thank you for your courtesy.

23 This is a continued Redirect Examination by
24 Mr. Noll on behalf of EchoStar and NagraStar.

25 MR. NOLL: Thank you, Your Honor.

1 REDIRECT EXAMINATION (Continued)

2 BY MR. NOLL:

3 Q. Mr. Norris, you recall testifying in your
4 cross-examination about Mr. Ereiser, Mr. Mullen, and
5 Mr. Scullion? Do you recall that?

6 A. Yes.

7 Q. And some pictures of these men were put up on the
8 monitors, correct?

9 A. Correct.

10 Q. I just want to make clear you're not saying in your
11 testimony that NagraStar was behind any of the acts that NDS
12 claimed that these satellite pirates committed against NDS,
13 correct?

14 A. That's correct.

15 Q. It's your understanding that they received no
16 assistance from NagraStar in whatever acts they may or may
17 not have done, correct?

18 A. I have no knowledge of that happening.

19 Q. You also have no knowledge of any promotion, any piracy
20 by NagraStar, against NDS's system, correct?

21 A. Correct.

22 Q. Now, you also talked about several phone calls that you
23 had with Mr. Ergen and also with Mr. Guggenheim. Do you
24 recall that?

25 A. Yes.

1 Q. Mr. Guggenheim is the former CEO of NagraStar, correct?

2 A. Correct.

3 Q. And at the time of these phone calls, you didn't know
4 who was behind the EchoStar Internet postings, right?

5 A. That's correct.

6 Q. You didn't tell Mr. Ergen or Mr. Guggenheim who you
7 believed was behind the EchoStar Internet postings, correct?

8 A. I had no information at the time of the call who was
9 behind any posting, sir.

10 Q. You just called them to let them know that there was
11 some piracy of their system going on, right?

12 A. That's correct.

13 Q. And as you sit here today, sir, you still don't know
14 who was behind the EchoStar hack, correct?

15 A. That's correct.

16 Q. Now, you also testified about Mr. Tarnovsky -- when you
17 hired him, he was -- you knew he was a satellite pirate,
18 correct?

19 A. Correct.

20 Q. And to use your words, you said he has -- he had a
21 level of skill and talent that was substantial, right?

22 A. Correct.

23 Q. And you hired him to try to control him and to get him
24 out of the pirating environment, right?

25 A. That's correct.

1 Q. And you also said that Mr. Tarnovsky was not a criminal
2 or a low-life; is that right?

3 A. I think I said that he was not a criminal or a
4 low-life.

5 Q. But satellite piracy, sir, is illegal; isn't that
6 right?

7 A. That's correct.

8 Q. And you knew Mr. Tarnovsky was behind the DirecTV hack
9 when you hired him, correct?

10 A. No, sir.

11 Q. You knew Mr. Tarnovsky was engaging in illegal acts at
12 the time you hired him, correct?

13 A. We knew that he was writing code to counter our
14 electronic countermeasures.

15 Q. So you took a known risk when you put a criminal on the
16 NDS payroll, correct?

17 A. I would say so.

18 Q. You played with fire when you hired Mr. Tarnovsky;
19 isn't that correct, sir?

20 A. I suspect it's like your hiring Mr. Ereiser. You take
21 a risk, and you value -- or you weigh that risk.

22 Q. You testified about these other satellite pirates.
23 Some of them you've thrown in jail. Marty Mullen -- he's in
24 jail, correct?

25 A. I didn't throw him in jail, sir.

1 Q. NDS prosecuted him civilly; is that right?

2 A. That's correct.

3 Q. NDS referred him for a criminal prosecution, correct?

4 A. That's correct.

5 Q. Mr. Mullen is in jail, correct?

6 A. He's in prison.

7 Q. You also prosecuted Reg Scullion, right?

8 A. We sued him civilly.

9 Q. Sued him civilly.

10 You sued Jan Saggiori civilly?

11 A. That's correct.

12 Q. You sued Ron Ereiser civilly?

13 A. That's correct.

14 Q. Sued Paul Maxwell King civilly?

15 A. Correct.

16 Q. Sued Dean Love civilly?

17 A. That's correct.

18 Q. But you didn't sue Mr. Tarnovsky?

19 A. That's correct.

20 Q. And you didn't sue Mr. Tarnovsky 'cause he was too good
21 at what he did; isn't that right, sir?

22 A. We felt Mr. Tarnovsky would bring value to us; that's
23 correct.

24 Q. NDS believed that Mr. Tarnovsky was the best satellite
25 hacker -- pirate -- in the world, and the temptation was one

1 that NDS could not resist in hiring Mr. Tarnovsky; is that
2 right, sir?

3 A. I don't know that anyone at NDS calls him the best
4 satellite hacker in the world, but he was certainly very
5 talented.

6 Q. He's one of the best, isn't he?

7 A. He's certainly very talented.

8 Q. And we talked a little bit earlier about an e-mail
9 between you and Dean Love, correct?

10 A. Correct.

11 Q. And Mr. Love, if you recall, mailed you and told you
12 that Mr. Menard and Tarnovsky were behind the EchoStar
13 piracy, right?

14 A. That's correct.

15 Q. And Mr. Love told you that he had evidence on his
16 computers that proved Mr. Menard and Mr. Tarnovsky were
17 behind the EchoStar piracy, correct?

18 A. I don't believe that's correct.

19 Q. Did you send one of your employees out to Dean Love's
20 residence or his establishment in order to inspect his
21 computers?

22 A. His computers were seized from his establishment. He
23 met with his lawyers in Winnipeg after these seizures were
24 made.

25 Q. You sent an NDS employee to inspect his computer,

1 correct?

2 A. At his lawyer's, yes, sir.

3 Q. And that NDS employee goes by the alias "Joe Z"; is
4 that right?

5 A. That's correct.

6 Q. And "Joe Z" happens to be George Tarnovsky,
7 Chris Tarnovsky's father; isn't that correct, sir?

8 A. That's correct.

9 Q. Could have sent any other NDS employee to look at
10 Dean Love's computers once he'd made these allegations
11 against Chris, Mr. Tarnovsky, and Mr. Menard, but you sent
12 Mr. Tarnovsky's father, right?

13 A. We sent a number of engineers including Mr. Tarnovsky's
14 father, sir.

15 Q. Isn't it suspicious that you'd send Mr. Tarnovsky's
16 father to investigate -- Joe -- to investigate Dean Love's
17 computers?

18 A. No.

19 Q. Now, Dov Rubin testified earlier today. Do you report
20 to Dov Rubin here in the United States?

21 A. Yes, I do.

22 Q. Did you ever tell Dov Rubin that Christopher Tarnovsky
23 received cash for his work in DirectTV piracy?

24 A. No.

25 Q. Why not?

1 A. Mr. Rubin is our general manager and administrator for
2 NDS Americas. My operational reporting relationship is
3 directly to Reuven Hasak in Israel under the operational
4 security group.

5 Q. Did you ever tell Abe Peled that Mr. Tarnovsky received
6 cash payments in the mail for his piracy of DirecTV system?

7 A. I don't typically talk to Mr. Abe Peled --
8 Dr. Abe Peled -- so the answer is no.

9 Q. Did you ever tell Rupert Murdoch that Mr. Tarnovsky was
10 receiving cash payments for DirecTV piracy?

11 A. No, sir.

12 Q. And as it relates to Mr. Tarnovsky, he said that you
13 put him in an environment that you could control, right?

14 A. That's correct.

15 Q. You didn't install any monitoring equipment in
16 Mr. Tarnovsky's laboratory, did you, sir?

17 A. I didn't, no, sir.

18 Q. Did anyone at NDS?

19 A. Mr. Tarnovsky put in alarm systems and CCTV systems to
20 secure his lab area.

21 Q. So no one could break in from the outside?

22 A. That's correct.

23 Q. But you didn't have any formal monitoring so that NDS
24 could keep track of what a well-known satellite pirate and
25 hacker was doing, right?

1 A. No.

2 Q. Right or wrong?

3 A. Wrong.

4 Q. What did you do to install monitoring systems on
5 Mr. Tarnovsky?

6 A. I'm sorry. You said did we monitor him. We monitored
7 him daily through e-mails, phone calls, and reports. We
8 monitored him frequently, including daily.

9 Q. You didn't install any software on his computers to
10 monitor him, correct?

11 A. That's correct.

12 Q. You didn't install any softwares -- software on his
13 NDS-issued computers either, correct?

14 A. No, sir.

15 Q. You knew Mr. Tarnovsky had computers that were his own
16 at his house, correct?

17 A. Correct.

18 Q. And you knew he had NDS-issued computers, right?

19 A. Correct.

20 Q. You didn't monitor either of those computers, correct?

21 A. Correct.

22 Q. So Mr. Tarnovsky could have posted anything on the
23 Internet relating to piracy without being run through NDS's
24 servers, correct?

25 A. That's correct.

1 MR. NOLL: Pass the witness.

2 THE COURT: Recross?

3 MR. KLEIN: Yes, Your Honor.

4 RECROSS-EXAMINATION

5 BY MR. KLEIN:

6 Q. I'll be very brief, Mr. Norris.

7 First, with respect to that \$20,000: If the \$20,000
8 was given to some entity or person, would that have
9 jeopardized Mr. Tarnovsky's undercover identity?

10 A. Yes, sir.

11 Q. How?

12 A. We would have had to disclose where the money came from
13 if we had put it into a formal business account. It would
14 have potentially put him at risk of being identified as an
15 undercover operative for NDS in our efforts to fight piracy
16 in Canada.

17 Q. Okay. Secondly, Mr. Menard -- his contract was signed
18 on April 1st, 2003. Does that sound about right?

19 A. Yes, sir.

20 Q. The packages that were sent to Texas, the two packages
21 with the \$40,000, they were sent prior to April 1st, 2003?

22 A. Yes, sir.

23 Q. Years before?

24 A. Yes, sir.

25 Q. Lastly, you were asked questions about Mr. Ereiser and

1 the fact that he's now a consultant for EchoStar. As you
2 sit here today, do you know if Mr. Ereiser ever stopped
3 being a satellite pirate?

4 A. No, sir.

5 MR. KLEIN: Thank you. No further questions.

6 THE COURT: Could I ask you to excuse yourself for
7 just a very few minutes.

8 Would you be kind enough to take the jury out to
9 the jury room. We'll come and get them for just a moment.

10 THE CLERK: Sure.

11 (The jury exits the courtroom.)

12 (Outside the presence of the jury.)

13 THE COURT: The jury is no longer present.

14 Through the course of the proceedings, not
15 necessarily connected to you or finding fault with either
16 side, this Court has formed the opinion that much of the
17 discovery that was to have passed between the parties over
18 the last couple years has either been conveniently lost,
19 misplaced, or there hasn't been an effort to find it. And
20 I'm being very blunt about that.

21 I've just set a general record that there's been
22 equality amongst the parties; although, by the end of the
23 case, there may be an imbalance for one side or the other.
24 I don't know.

25 And I've expressed to counsel in some of our

1 Saturday sessions and during the last three years that we've
2 been together as a judge and counsel how exemplary I think
3 the counsel in my Court have been, but I've really placed
4 the responsibility on the corporate entities. And in
5 corporate entities, sometimes we have somebody at this
6 level, who is not responsible, but somebody else at a
7 different level. And in the corporate structure, at least
8 in the past history of my courtroom, oftentimes it's hard to
9 find exactly what orders are given or documents are lost,
10 et cetera.

11 I'm becoming more and more concerned after the
12 trial started that there are documents in the control of
13 each party that are material, and they may have in fact been
14 lost, misplaced, and truly may be in a form that can't be
15 retrieved, or people honestly just don't know or recall.

16 But it's become so profuse watching these
17 multinational companies, you know, going over distances from
18 Israel to Switzerland, whether it's the Kudelski Group, the
19 Haifa group with NDS.

20 I want to keep this neutral right now as a
21 statement that I'm becoming more and more concerned and will
22 probably give what I call an adverse inference instruction;
23 that is, if there's a material document in a party's
24 possession where that party was to maintain or should have
25 maintained control of that type of document, that the jury

1 can view that as a conscious effort to suppress evidence
2 that should be coming to them.

3 I'm going to do everything to encourage you. I
4 encouraged the Kudelski Group and EchoStar on the last
5 occasion -- I think it was with Exhibit 816.

6 MR. WELCH: 816.

7 THE COURT: 816, and counsel brought to the
8 Court's attention attachments for 511, which haven't been
9 produced. Frankly, we've gotten more discovery in the last
10 month than I think counsel have in the last three years.

11 THE WITNESS: I can't speak to that.

12 THE COURT: Nothing like a trial to do that.

13 THE WITNESS: Yes, sir.

14 THE COURT: Outside your presence, I've
15 continually expressed my dissatisfaction, and through the
16 excellent efforts of counsel this case really started in a
17 posture where most of this case was going to be tried by
18 snippets of depositions. In other words, somebody would fly
19 up and try to depose Mr. Ereiser on one side or another
20 gentleman, Mr. Menard, or whomever.

21 And the pirates, being outside the jurisdiction of
22 the United States, would either refuse to testify at a
23 deposition, you know, knowing a Court didn't have power
24 beyond the jurisdictional limits of this country and,
25 frankly, no power outside 150 miles of this Court to cause a

1 subpoena, to literally answer the questions that they wanted
2 to, if they would even speak to them, and just ignore
3 others.

4 And that's a difficult thing, I think, for our
5 jury system to try to have a fair result under. Because
6 each company, in a sense, each of the plaintiffs and
7 defendants are simply choosing, you know, who they want to
8 put on.

9 And the pirates are dictating, well, EchoStar and
10 NagraStar, NDS, News Corp., DirectTV, whomever, are dictating
11 how the case goes with the information that they're choosing
12 to present to the jury.

13 I've been subtly and brazenly applying pressure to
14 all of the parties to present evidence. I think of those 18
15 or so depositions, we're down to now 14 of those people are going
16 to appear who were previously refusing to appear. And it
17 was, obviously, in the interests of different parties, in my
18 opinion, not to have people appear, quite frankly.

19 THE WITNESS: I see.

20 THE COURT: You're one of those people who have
21 voluntarily appeared. Thank you.

22 Now, you have a couple documents. One is 1516,
23 (sic) and you can't recall where you obtained that document.

24 THE WITNESS: You said 1568, sir?

25 THE COURT: I mean, 1568.

1 THE WITNESS: Yes, sir.

2 THE COURT: I'm going to show you that document,
3 and your testimony was -- I'm going to read to you from my
4 notes. My notes are not accurate, obviously, but the e-mail
5 comes from Mr. Norris. It's between you and a gentleman
6 named Chaim Shen-Orr. And basically I roughed out your
7 request is, Chaim, "the field," told our contact of your
8 requirements for a second image of the code. First, I need
9 another image of a second CAM. Second, I need to know what
10 IRD number goes, and then remember I cut off the info.

11 It goes on to say they need to be absolutely
12 certain that there is not the hidden possibility of
13 identifying the ID of the E card, that their code comes from
14 some kind of fingerprint or receiver.

15 Now, remember I'm writing as fast as I can --

16 THE WITNESS: Yes, sir.

17 THE COURT: -- watching you, looking at evidence,
18 so I don't purport that that's accurate. It's a summary in
19 my notes.

20 Respecting but not become satisfied with some of
21 the answers by other witnesses unconnected with you, I would
22 encourage you, if you have any ability to retrieve any
23 additional information from your computer, take any kind of
24 forensic search, to do so.

25 THE WITNESS: Sir, I had a number of experts come

1 in and take possession, believe me.

2 THE COURT: I'm sure. I'm just going to counsel
3 you.

4 THE WITNESS: Yes, sir.

5 THE COURT: Because the results are going to be
6 devastating. I'm going to encourage you to go back, make
7 the effort.

8 THE WITNESS: Yes, sir.

9 THE COURT: Because I'm going to allow counsel to
10 argue on both sides and give them free rein that not only
11 the responsibility for satellite piracy on one side
12 allegedly as accusing NDS, and NDS's counter-accusation that
13 EchoStar is stealing 26,000 pages of documents is fair game.

14 THE WITNESS: Yes, sir.

15 THE COURT: In other words, I'm going to turn
16 counsel loose because of what I consider, frankly,
17 unwillingness to comply with the earlier discovery orders.
18 And in watching some of the depositions, I'm absolutely
19 astounded that some of these people who thought that this
20 was a game didn't understand that when it got to federal
21 court, the chickens were coming home to roost.

22 THE WITNESS: No games here.

23 THE COURT: No games. But you understand that
24 from your background. I don't think a lot of these people
25 have.

1 These inferences will be absolutely deadly. In
2 other words, it will allow counsel from NDS to stand up and
3 argue that certain documents weren't attached and at what
4 stage, and EchoStar can stand up and argue, Gee, in this
5 gentleman's case, Mr. Norris, this document suddenly appears
6 on his computer. There's no date, no person. It's kind of
7 strange from their perspective. I mean, you can unravel
8 that argument yourself.

9 THE WITNESS: Sure.

10 THE COURT: I can't go out there and police this
11 outside the court. I'm just saying to you and I think now
12 it's co-equal because I've dealt with NDS with the same
13 issue -- I mean, EchoStar with the same issue. I'm coming
14 back with the same opportunity of saying to NDS --

15 THE WITNESS: Yes, sir.

16 THE COURT: You can expect this argument. If
17 there's some additional effort, I'll leave that to you. I'm
18 ordering nothing. I'm just forewarning you.

19 THE WITNESS: Yes, sir.

20 THE COURT: Bring the jury back in, would you,
21 please.

22 THE WITNESS: Here, sir.

23 THE COURT: Thank you very much.

24 (In the presence of the jury.)

25 THE COURT: Thank you very much. Appreciate the

1 courtesy.

2 All right. The jury's present. All counsel are
3 still present. The witness is present.

4 Thank you, Mr. Norris.

5 Counsel, thank you for your courtesy. If you
6 would please be seated.

7 (To the witness:) Mr. Norris, in the presence of
8 the jury I'm going to order you to remain present within 48
9 hours of the call from the Court. In other words, if a call
10 is placed, you're to be back in this Court within 48 hours.
11 If not timely, I'll attach an adverse inference that you're
12 unwilling to appear.

13 I'm going to say that I think we're on schedule,
14 although it's a little hard to tell. And the case should
15 conclude in the early part of May, in my opinion. That was
16 the four-week estimate, but you never know.

17 THE WITNESS: Yes, sir.

18 THE COURT: I'm going to be overly cautious and
19 say that you're to remain available until June 15th. At
20 that time, you're free.

21 THE WITNESS: Yes, sir.

22 THE COURT: Thank you very much, sir. You may
23 step down.

24 (Witness steps down subject to recall.)

25 THE COURT: Counsel, your next witness.

1 MR. HAGAN: Thank you, Your Honor.

2 Plaintiffs call Paul Orban.

3 THE COURT: Thank you, sir.

4 Would you raise your right-hand, sir.

5 PAUL WALTER ORBAN, PLAINTIFF'S WITNESS, SWORN

6 THE WITNESS: I do.

7 THE COURT: Thank you, sir. Would you be kind
8 enough to be seated in the witness box to my left.

9 And, sir, would you be kind enough to state your
10 full name for the jury.

11 THE WITNESS: It's Paul Walter Orban.

12 THE COURT: Would you spell your last name, sir.

13 THE WITNESS: O-R-B-A-N.

14 THE COURT: Thank you.

15 And this is direct examination.

16 MR. NOLL: Yes, Your Honor.

17 MS. WILLETTS: Yes, Your Honor.

18 Christine Willetts on behalf of plaintiffs
19 EchoStar and NagraStar.

20 THE COURT: Thank you.

21 DIRECT EXAMINATION

22 BY MS. WILLETTS:

23 Q. Good afternoon, Mr. Orban. Can you please tell the
24 jury a little bit about yourself?

25 A. I work at EchoStar. And I'm about to be the proud

1 father of triplets, so very excited about that.

2 Q. Great. So we'll try and keep this brief today so we
3 can get you back to your family.

4 So you said you work for EchoStar. What type of
5 business is EchoStar in?

6 A. We're in the satellite TV business.

7 Q. And when did you start working for EchoStar?

8 A. I started in January of 1996.

9 Q. And what do you do for them?

10 A. I am their corporate controller.

11 Q. And how long have you held that position at EchoStar?

12 A. I believe I've been the controller for about six or
13 seven years.

14 Q. Can you tell the jury what you did before you became
15 controller for EchoStar?

16 A. I held various positions, including manager of SEC
17 Reporting, director of corporate accounting -- and I believe
18 those are the only two positions actually.

19 Q. And what did you do prior to coming to work for
20 EchoStar in '96?

21 A. I worked for Arthur Andersen as an auditor.

22 Q. And do you have any degrees?

23 A. Yes, I have a bachelor of science in accounting.

24 Q. Can you tell us a little bit about your
25 responsibilities for the general accounting in EchoStar,

1 what that involves?

2 A. Well, basically I'm responsible for the overall
3 accounting for the company and making sure that our
4 financial statements are properly stated in accordance with
5 GAAP, which is generally accepted accounting principles.

6 Q. Do you have any responsibilities as it relates to
7 reporting to government agencies at all?

8 A. Yes. As part of my overall corporate controller role,
9 I'm responsible for the SEC reporting. We currently today
10 have three SEC registrants where we have to file 10-Ks,
11 which are annual reports, or 10-Qs, which are quarterly
12 reports, with the SEC.

13 Q. And does that responsibility fall with you, the SEC
14 reporting -- or your team?

15 A. Yeah, from the standpoint of the accounting parts of
16 it, yes.

17 Q. Now, can you explain in just general terms how
18 EchoStar's business model works in terms of acquiring new
19 subscribers for the DISH Network programming?

20 A. Well, our business model is that we up front incur a
21 substantial what we call subscriber acquisition costs. We
22 spend anywhere between 6 or 700 hours today to acquire a
23 subscriber. And what happens after the time they're a
24 subscriber with us, we earn back that money via the margins
25 on the programming or the ARPU, and then if they stay long

1 enough, we actually will make money on the subscriber.

2 Q. And can you tell the jury what ARPU stands for?

3 A. That's average revenue per user.

4 Q. And if I understood you correctly, the way the model
5 works is, the longer you keep a subscriber, the more
6 profitable EchoStar is on that particular subscriber. Is
7 that correct?

8 A. Correct. We need to first recover our SAT costs, our
9 up-front costs, and once we recover those, then we make
10 margin or we have profit on that subscriber.

11 Q. Okay. Now I want to talk a little bit about EchoStar's
12 programming.

13 Do you know how EchoStar protects that programming,
14 just generally?

15 A. Yes. We have a conditional access system that encrypts
16 the programming.

17 Q. And how do EchoStar's paying subscribers actually
18 receive that programming?

19 A. Well, in the set-top boxes or the receivers that are at
20 the customer's house, there's Smart Cards or smart chips in
21 them, and that, I guess, decrypts the programming and allows
22 the user to see the programming that they pay for.

23 Q. And it's your understanding that NagraStar is the
24 entity that provides those Smart Cards?

25 A. Yes.

1 Q. Now, I want to focus a little bit on the allegations in
2 this particular case that we're here for today.

3 Do you have a general understanding of what the claims
4 are that EchoStar has brought against the defendant, NDS?

5 A. Yes.

6 Q. And what's your understanding?

7 A. My understanding is that they hacked our system and
8 they put the information that you would need to pirate the
9 system out on the Internet.

10 Q. And do you have an understanding of the type of harm
11 that was caused by those acts?

12 A. Yes.

13 Q. And what's your understanding of that?

14 A. Well, as a result of our system being hacked, we had to
15 replace all of the Smart Cards that are in all the set-top
16 boxes for all of our customers.

17 Q. And is that generally referred to as a card swap?

18 A. Yes.

19 Q. Now, other than the cost of the card swap, was there
20 any other types of harm that were caused by what we've
21 alleged the defendants to have engaged in?

22 A. Yes. We would have lost profit on subscribers that
23 were pirating our service. We would no longer have gotten
24 the margin on those subscribers. We incurred costs to
25 prosecute people who were pirating our service as well as we

1 would incur costs to perform countermeasures that help to
2 limit the amount of piracy that was going on.

3 Q. So can you explain to the jury what it is that we mean
4 when we're referring to card swap -- what that refers to?

5 A. Well, what we had to do is -- again, every set-top box
6 has a Smart Card or a smart chip in it, and what we had to
7 do was we had to send a Smart Card to every subscriber for
8 every box in their home. And they physically had to take
9 out the old one and put the new Smart Card in their system
10 to resecure the system.

11 Q. Were you involved in any way in the implementation of
12 that card swap?

13 A. Yes.

14 Q. How were you involved?

15 A. I was involved from the accounting perspective from
16 tracking the costs, what it cost us, and properly accounting
17 for it.

18 Q. So when did that card swap begin, to your knowledge?

19 A. I believe we started the mass swap in 2004.

20 THE COURT: 2004?

21 THE WITNESS: Yes.

22 THE COURT: Thank you.

23 Counsel, what month?

24 BY MS. WILLETTS:

25 Q. Do you know what month the card swap began, the mass

1 swap began in 2004?

2 THE WITNESS: It was either the second or third
3 quarter, some time in that time frame, of 2004.

4 THE COURT: That's a six-month time frame.

5 When was it?

6 THE WITNESS: Off the top of my head, I couldn't
7 answer that with a hundred percent certainty.

8 BY MS. WILLETTS:

9 Q. And from -- you were simply involved from an accounting
10 perspective; isn't that correct, Mr. Orban?

11 A. Yes.

12 Q. And when did EchoStar first begin tracking that card
13 swap?

14 A. We would have started tracking those costs just about
15 the time the mass swap started, so roughly the same time
16 frame.

17 Q. So was anything implemented prior to that time, prior
18 to 2004, with what you're referring to as a mass swap?

19 A. (No audible response.)

20 Q. Was EchoStar undertaking to -- any actions other than a
21 mass swap that you know of that -- to begin testing cards in
22 the field?

23 A. Yeah, prior to the mass swap, we were actually swapping
24 out the Smart Cards in units that we received back in our
25 service organization. We -- if a receiver breaks at a

1 person's household, we swap out the receiver, give them one
2 that works, they send us back the old one, and when we were
3 repairing them, we would replace the old Smart Card or the
4 pirated Smart Card with the new one when we were actually
5 handling the unit.

6 Q. And do you have any understanding as to why EchoStar
7 did not actually begin what you're calling the mass swap
8 until 2004?

9 A. I believe the infrastructure and all the technology
10 that was needed to do it was not ready.

11 Q. So they had to incur -- it took time to develop the new
12 card, to your knowledge?

13 A. Yes. As well as the infrastructure that you need to go
14 to the next platform in the new system.

15 Q. Can you tell us a little bit about the types of things
16 that EchoStar had to do to get ready to implement this card
17 swap?

18 A. From what perspective?

19 (Live reporter switch.)

20 (Further proceedings reported by Sharon
21 Seffens in Volume IV.)

22 -oOo-

23

24

25

1 -oOo-

2
3 CERTIFICATE

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

11
12 Date: April 18, 2008

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15 _____
16 DEBBIE GALE, U.S. COURT REPORTER

17 CSR NO. 9472, RPR
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