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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

HONORABLE DAVID O. CARTER, JUDGE PRESIDING

- - - - -

EHOSTAR SATELLITE CORP.,)
et al.,)
Plaintiffs,)
vs.)
NDS GROUP PLC, et al.,)
Defendants.)

No. SACV-03-950-DOC
DAY 8, Vol. IV

REPORTER'S TRANSCRIPT OF PROCEEDINGS
Santa Ana, California
April 22, 2008

SHARON A. SEFFENS
Federal Official Court Reporter
United States District Court
411 West 4th Street, Room 1-053
Santa Ana, California 92701
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SHARON SEFFENS, U.S. COURT REPORTER

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15:08:22 1 SANTA ANA, CALIFORNIA; TUESDAY, APRIL 22, 2008; 3:15 P.M.

2 (Jury present.)

3 THE COURT: The jury is present. Counsel are
4 present. The parties are present. This is the continued
5 cross-examination by Mr. Snyder of Mr. Ereiser.

6 (Continued) CROSS-EXAMINATION

7 BY MR. SNYDER:

8 Q Mr. Ereiser, when we left off, I believe you had
9 testified that at some point you realized that the e-mails
10 that you were given by Mr. Kaehlin were all internal NDS
11 documents.

12 A That's correct, sir.

13 Q And you realized that they were all from a single
14 computer?

15 A Eventually -- no, I don't know if I ever realized that
16 they were all from a single computer but from a single
17 person, to or from.

18 Q Did you contact anybody at NDS to let them know that
19 you had this material?

20 A No, I did not.

21 Q Instead you contacted Mr. Gee and Mr. Guggenheim?

22 A Yes.

- 23 Q At NagraStar?
24 A Yes.
25 Q And you told them that you had these NDS internal

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15:08:37 1 e-mails?

2 A No. I told them that I might have some e-mails of
3 interest.

4 Q You didn't tell them that they were NDS e-mails?

5 A I didn't use the words "NDS internal e-mails." I said
6 I had some e-mails of interest, and they're NDS e-mails,
7 yes.

8 Q Okay, but when -- you told them that you had NDS
9 internal e-mails?

10 A No. You have asked me that three times in a different
11 way, and I'm telling you I never said that they were
12 internal e-mails.

13 MR. SNYDER: Mr. O'Donnell, could you please show
14 his Honor deposition page 601, lines 9 to 22.

15 THE COURT: You may read those lines.

16 BY MR. SNYDER:

17 Q Mr. Ereiser, during your deposition last night, were
18 you asked these questions and did you give these answers?

19 "Question: So when you first talked to Mr. Gee and Mr.
20 Guggenheim about the CDs, did you raise the subject or did
21 they?

22 "Answer: I probably did.

23 "Question: And what did you say?

24 "Answer: I said that I have these documents.

25 "Question: What do you mean, these documents?

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15:08:37 1 "Answer: These e-mails, NDS internal e-mails.

2 "Question: And you said that before Mr. Gee and Mr.
3 Guggenheim came to the Vancouver airport?

4 "Answer: Correct.

5 "Question: And what did Mr. Gee and Mr. Guggenheim say
6 when you told them that you had these NDS e-mails?

7 "Answer: They were interested in seeing them."

8 Now, you testified earlier, Mr. Ereiser, that there
9 wasn't anything secret about you giving these e-mails to Mr.
10 Gee and Mr. Guggenheim. Do you recall that testimony?

11 A No, I don't recall it, but I will believe you.

12 Q That was earlier today. You don't recall that
13 testimony?

14 A Not the exact words, no.

15 Q Well, after you had this conversation with Mr. Gee and
16 Mr. Guggenheim and told them about these internal NDS
17 e-mails, you didn't put them in a FedEx package or something
18 and send them to them did you?

19 A No, I did not.

20 Q And you didn't get on an airplane and take them to them
21 did you?

22 A I went on an airplane and met them, yes.

23 Q You went on an airplane and you met them at the
24 Vancouver airport?

25 A That's correct, sir.

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15:08:37 1 Q And they flew across national boundaries to Canada to
2 get them from you; isn't that right?

3 A I guess that's the only way of getting there, yes.

4 Q And you handed them the CDs, but you didn't tell them
5 where they came from?

6 A No, I did not.

7 Q And they didn't ask you?

8 A No, they did not.

9 Q But you believed that you had received them from Mr.
10 Kaehlin, and it was perfectly appropriate for him to possess

11 them?

12 A Yes. I had no reason to believe that he didn't get
13 them through a Court order.

14 Q And you thought it was perfectly appropriate for you to
15 possess them?

16 A Yes.

17 Q And you gave a copy to the CEO of NagraStar?

18 A Yes.

19 Q But you didn't tell him where you got them?

20 A No.

21 Q You didn't say it's okay. I got them from Mr. Kaehlin.
22 He's allowed to have them, and I'm allowed to have them, and
23 you're allowed to have them?

24 A No, I never said that.

25 Q You didn't say anything about it?

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15:08:37 1 A No.

2 Q And they didn't ask?

3 A No.

4 Q In fact, when your deposition was taken, you were asked
5 questions about where the documents came from, and you
6 refused to answer then as well; correct?

7 A We went over that.

8 Q You refused to answer those questions because that was
9 the instruction from your attorney, correct?

10 A And it was against the -- help me out on the word.

11 Q Mr. Ereiser, that was the instruction from your
12 attorney?

13 A Yes, but for a reason.

14 Q And your attorney was being paid for by NagraStar?

15 A I believe so, yes.

16 Q Now, you testified earlier today that you were willing
17 to say where you had gotten the documents, but your attorney
18 told you not to because of something involving the consent

19 order?

20 A Yes, the consent order. It was over the scope of the
21 consent order.

22 Q Did you informally tell Mr. Guggenheim, who wasn't a
23 party to the consent order, where you had gotten the
24 documents?

25 A No.

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9

15:08:37 1 Q Did you informally tell Mr. Gee where you had gotten
2 the documents?

3 A No.

4 Q Did you tell NDS where you had gotten the documents?

5 A No.

6 Q You didn't tell anybody?

7 A No.

8 Q You didn't tell anybody until you came here last night
9 and had to answer questions under oath in your deposition;
10 correct?

11 A That's correct.

12 Q Now, Mr. Ereiser, you don't have copies of those
13 e-mails anymore; do you?

14 A No, I do not.

15 Q You erased them from your computer?

16 A That's correct.

17 Q You erased them from your computer about a week and a
18 half before your deposition?

19 A Before the first deposition, I believe it was, yes.
20 There's been so many. Yes.

21 Q Back in July?

22 A Yes.

23 Q So about a week and a half before your deposition in
24 this case, you erased all evidence of those e-mails from
25 your computer?

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15:08:37 1 A Yes. When I was ordered to erase them, I erased them.
2 I took the original copies and gave them to my lawyer in
3 Victoria.

4 Q Now, when you say you were ordered to erase them, you
5 mean you were told by your lawyer, correct?

6 A Yes.

7 Q This was the lawyer that NagraStar was paying for?

8 A Yes.

9 Q So if somebody wanted to go to your computer and see
10 what evidence there was of when you received the documents
11 or what documents you looked at or what you did with the
12 documents, all that evidence was gone, correct?

13 A Yes.

14 Q And that was as a result of the instructions to you
15 from your NagraStar paid lawyer?

16 A Yeah, I believe it was from Steve Kelleher, but I
17 believe he was instructed by somebody to get rid of them as
18 well if I'm not mistaken.

19 Q Somebody told Mr. Kelleher, your lawyer, to do that?

20 A Yeah. I believe it was --

21 Q It wasn't his idea?

22 A No. I believe it was you guys if I am not mistaken.

23 Q Okay. I'm sure everyone believes that.

24 Now, Mr. Ereiser, you also testified about
25 responsibility for the EchoStar postings earlier today. Do

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15:08:37 1 you recall that?

2 A Responsibility -- yes. Okay.

3 Q Now, isn't it true that Mr. Tarnovsky has never told
4 you that he used the alias Nipper?

5 A Let me think about that for a second. I believe he may
6 have used Nipper. When we talked about DirectTV stuff, it

7 was kind of a nick that he used.

8 Q Did Mr. Tarnovsky ever tell you that he was responsible
9 for the Nipper posting?

10 A No, he did not. Dave Dawson told me he was
11 responsible, and Darrell Gray thought he was responsible on
12 his site for the posting, but I never heard it from Chris
13 Tarnovsky directly.

14 Q The only person you heard it from was Darrell Gray?

15 A And Dave Dawson.

16 Q Darrell Gray was a pirate?

17 A He ran a pirate website. I don't know if he pirated
18 anything.

19 Q Dave Dawson was a pirate?

20 A Yes, he was.

21 Q And they didn't tell you why they thought that Mr.
22 Tarnovsky was responsible in some way for the Nipper
23 posting?

24 A Well, I assume Darrell Gray since he ran the website
25 could probably see the IP.

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15:08:37 1 Q Mr. Ereiser, I am asking what you know, not what you
2 assume or what you think somebody might know. Mr. Gray is
3 not here. Mr. Dawson is not here.

4 A Okay. Then it's irrelevant to ask me the question if I
5 can't --

6 Q Mr. Dawson never told you why he thought Chris
7 Tarnovsky was Nipper?

8 A No.

9 Q And Darrell Gray never told you why he thought Chris
10 Tarnovsky was Nipper?

11 A No.

12 Q And Chris Tarnovsky never told you that he was Nipper?

13 A No.

14 Q He never told you that he was responsible for the

15 NipperClause posting?

16 A No.

17 Q He never told you that he was responsible for the

18 Nipper 2000 posting?

19 A No.

20 Q He never told you that he was responsible for a posting

21 by xbr21?

22 A No.

23 Q In fact, he never told you that he was responsible for

24 putting any EchoStar code on the Internet, correct?

25 A Correct.

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15:08:37 1 Q Now, you listed all of the aliases that you're aware of
2 for Mr. Tarnovsky earlier today. You listed Von, variations
3 of Von, Big Gun -- you also mentioned he used the alias
4 Coleman once, correct?

5 A Yes, and I wouldn't say that's a full list. That's the
6 ones that come to mind right now. Give me a while and I'm
7 sure I can come up with some more.

8 Q But at no time, just so we're clear, did Mr. Tarnovsky
9 ever tell you that he was responsible for putting any
10 EchoStar code on the Internet; isn't that right?

11 A Correct.

12 Q Now, one more subject, Mr. Ereiser. You, as part of
13 your work for NagraStar, have also purchased some pirate
14 devices for them, correct?

15 A That's correct.

16 Q You purchased some pirated cards for them, correct?

17 A Correct.

18 Q You purchased some pirated cards for EchoStar from Dave
19 Dawson?

20 A Yes -- way, way, way back. That was not part of the
21 work I was doing for Nagra at that point.

22 Q You also --

23 A That was something that they asked me to do, and I said

24 I would order a couple of cards from a couple of dealers.
25 That was probably around the 2001 era.

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14

15:08:37 1 Q Did you ever try to purchase any EchoStar cards from Al
2 Menard?

3 A No, I did not.

4 Q Did you ever succeed in purchasing any EchoStar cards
5 from Al Menard?

6 A No. If I never tried, I never succeeded.

7 Q Okay. So during the entire time that you were
8 providing information to NagraStar, you never tried to
9 purchase a pirate EchoStar device from Al Menard?

10 A No, but you're making it sound like I was trying to get
11 cards from all these people. They asked me to get a couple
12 of cards from certain people, and I did it. I wasn't
13 working for them. I was not a consultant at the time or
14 anything like that.

15 Q Well, then, let's be fair. You were never asked by
16 NagraStar to try and purchase any pirate cards from Al
17 Menard?

18 A No.

19 Q You were never asked to try and purchase any pirate
20 cards from Chris Tarnovsky?

21 A No.

22 Q Now, you were asked by EchoStar or NagraStar to
23 purchase a pirate device for them, correct?

24 A Correct.

25 Q It's called the black box?

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15:08:37 1 A Call it what you wish. It was a programmer.

2 Q Okay. What did you call it?

3 A A programmer.
4 Q All right. And you succeeded in purchasing the
5 programmer?
6 A That's correct.
7 Q You purchased it from someone named Omar?
8 A That's correct.
9 Q And Omar was in Mexico?
10 A That's correct.
11 Q No indications whatsoever that Omar was connected to
12 NDS in any way; isn't that right?
13 A No, none that I am aware of.
14 Q Okay. No indications that Omar was connected in any
15 way to Chris Tarnovsky?
16 A None that I know of.
17 Q And this purchase from Omar was in October of 2000?
18 A I am not exactly sure. You have a record of that I
19 think by the invoice. It would be before the invoice
20 obviously.
21 MR. SNYDER: Could you show the witness Exhibit
22 1088, please?
23 THE WITNESS: Yes, I see it. October 18th is when
24 it's dated, so obviously it was shortly before that
25 probably.

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15:08:37 1 BY MR. SNYDER:
2 Q Okay. well, let's try and take it a piece at a time.
3 A Sure.
4 Q What is Exhibit 1088?
5 A It's an invoice for a programmer and four Echo cards.
6 Q This is an invoice by you to NagraStar?
7 A Correct.
8 MR. SNYDER: I move Exhibit 1088, Your Honor.
9 THE COURT: Any objection?
10 MR. NOLL: No objection.

11

12

(Exhibit 1088 received.)

13

MR. SNYDER: If you could blow up the date.

14

BY MR. SNYDER:

15

Q It's October 18th, 2000, Mr. Ereiser?

16

A Yes.

17

Q And you've addressed this invoice to Nagra?

18

A That's correct.

19

Q And if you could go down further to the description of

20

the purchases.

21

A Yes.

22

Q It says four Echo cards, and then it says one Echo

23

Express Vu programming box?

24

A Correct.

25

Q \$65,000?

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15:08:37

1

A Yes.

2

Q And you didn't -- and this was the box you purchased

3

from Omar?

4

A Correct.

5

Q Now, you didn't go to Mexico to pick up the box from

6

Omar?

7

A No.

8

Q Omar, whatever his last name is, came to Canada to

9

deliver the box to you?

10

A Correct.

11

Q And after you got the box, you sent it to NagraStar?

12

A He actually met me in Saskatoon I believe and picked up

13

the box.

14

Q I see. You didn't have to send it to NagraStar?

15

A No, not the first time.

16

Q They came and got it?

17

A Yes.

18

Q They must have been pretty excited about this box.

19

A I guess you'd have to ask them. I'm sure they were.

20 Q Well, we will.

21 So they came to Canada and got the box, and then did
22 they send it to Switzerland?

23 A I don't know.

24 Q After you sent that box to NagraStar, NagraStar issued
25 an electronic countermeasure or ECM, correct?

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18

15:08:37 1 A Correct.

2 Q And then they sent the box back to you?

3 A That's correct.

4 Q And they sent the box back to you because they wanted
5 you to send the box back to the person who created it to see
6 if they could modify it to account for the new ECM; isn't
7 that right?

8 A Yeah. I don't know if it's the person that created it,
9 but they wanted it modified, so it was sent back to the
10 person who sold it. Whether it was created there or not is
11 another story.

12 Q Now, you didn't send it to Mexico, though, correct?

13 A No. I contacted Omar, and he gave me an address in
14 Ontario somewhere. I just don't remember the address.
15 That's where it was sent to.

16 Q It was in Ontario?

17 A Yes.

18 Q Ontario is in Eastern Canada?

19 A Yes, it is.

20 Q Barrie is one of the cities in Ontario?

21 A Yes, it is, one of the many.

22 Q You didn't send it to somewhere in Western Canada?

23 A No. Ontario.

24 Q You didn't send it to California? I just want to make
25 sure. This is important.

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15:08:37 1 A Well, I can only answer Ontario, you know, the only way
2 I know how. It was sent to Ontario, Canada.
3 Q And then wherever it was in Ontario, Canada, in Eastern
4 Canada, they sent it back to you?
5 A That's correct.
6 Q And this is all still in approximately October of 2000?
7 A I couldn't say that for sure, when it was.
8 Q All right. The invoice that you looked at is dated in
9 October, October 19th?
10 A October 18th.
11 Q October 18th, yes. Thank you.
12 Approximately how long after you purchased the device
13 did you send it to Ontario?
14 A This is just a guess, one month.
15 Q And then wherever you sent it in Ontario it was sent
16 back to you?
17 A Correct.
18 Q And then you sent it to NagraStar?
19 A Correct.
20 Q And NagraStar issued another ECM?
21 A Yes.
22 Q And they sent the box back to you?
23 A Yes, I believe so.
24 Q And they sent the box back to you so that you could
25 send it back to Ontario?

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15:08:37 1 A Correct.
2 Q And that's what you did with the box?
3 A Yes.
4 Q You didn't send it to Al Menard?
5 A No. Ontario, Canada.
6 Q You didn't send it to California?

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Repeat the question, and then you answer.
BY MR. SNYDER:
Q After you got the box back a second time from
NagraStar, you sent it to Ontario, correct?
A Correct.
Q You didn't send it to Al Menard?
A No.
Q You didn't send it to Chris Tarnovsky?
A No.
Q You sent it to Ontario?
A Yes.
Q And during that entire exchange when you sent -- got
the box from Omar, sent the box twice to Eastern Canada, was
there any indication whatsoever of involvement by NDS?
A None that I seen, no.
Q And was there any indication whatsoever of involvement
by Chris Tarnovsky?
A None that I seen, no.

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MR. SNYDER: No further questions.
THE COURT: Redirect.
MR. NOLL: Thank you, Your Honor.
REDIRECT EXAMINATION
BY MR. NOLL:
Q I have a few follow-up questions for you, Mr. Ereiser.
Hopefully not too long.
A It's okay.
Q Earlier you testified when Mr. Snyder was asking you
questions that Chris Gurlinski and Tony Dionisi were
consultants of NagraStar. Do you recall that?
A Yes, I do.
Q Are you aware of NagraStar ever asking these
consultants to commit acts of piracy?
A Sorry. Will you repeat that?

16 Q Yeah. You said that Gurlinski and Dionisi were
17 consultants of NagraStar through your company, GES, correct?
18 A Yes.
19 Q Are you aware of NagraStar ever asking these
20 consultants to commit acts of piracy?
21 A Never.
22 Q Are you aware of whether these two consultants, Mr.
23 Gurlinski and Mr. Dionisi, were ever asked by NagraStar to
24 look at competitors' technology?
25 A Never.

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15:08:37 1 Q You just testified when Mr. Snyder asked you that you
2 had bought pirate devices and pirate cards as a consultant
3 for NagraStar. Do you recall that?
4 A Yes. It's essential if you're trying to figure out
5 what the pirates are doing. You have to buy their cards and
6 see what they're doing.
7 Q Did these cards all relate to the EchoStar Conditional
8 Access System?
9 A Yes, EchoStar and/or Bell.
10 Q Did they ever relate to NDS's system?
11 A Never.
12 Q Did they ever relate to DirectTV?
13 A Never.
14 Q Now, earlier Mr. Snyder showed you an exhibit that was
15 marked 1123, and it was the default judgment that was
16 entered against you. Do you recall that?
17 A Yes, I do.
18 Q I think he directed you to the dollar amount in
19 document 1123 that said that a judgment was found against
20 you for approximately \$14 million. Do you recall that?
21 A Yes.
22 Q Do you know what a default judgment is, Mr. Ereiser?
23 A Well, I understood that if you didn't show up and fight

24 it they'd come up with a default judgment.

25 Q Is that what happened in that case? You didn't show

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15:08:37 1 up, and you didn't fight the case; therefore, NDS was given
2 a judgment by the Court; is that correct?

3 A That's exactly correct.

4 Q Okay.

5 A And I might add, too, on the -- let me try to find it.

6 The other legal document that they had in Montana, the
7 indictment -- there was an indictment there on a conspiracy
8 with me and three other guys, and I didn't know the three
9 other people.

10 Q Okay. And you recall that there was another document,
11 1137, which was a permanent injunction that Mr. Snyder
12 showed you. Do you recall that?

13 A Correct.

14 Q That injunction in essence says that you can't reverse
15 engineer or hack or work on DirecTV or NDS's Conditional
16 Access System; is that correct?

17 A That's correct, sir.

18 Q And since the date that that injunction has entered,
19 have you done anything to look at, reverse engineer, or work
20 on NDS's Conditional Access System?

21 A No, I have not.

22 Q It's your testimony here today that you have complied
23 with that injunction?

24 A I have complied with it. I am sure if I wouldn't have,
25 I would have some troubles.

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15:08:37 1 Q Now, earlier you indicated that you didn't really care
2 for John Norris.

3 A That's true.

4 Q Is there a particular reason that you want to share
5 with the jury why you don't like Mr. Norris?

6 A Well, there are several stories. I started with the
7 one where we had first met in Saskatoon where he offered for
8 me to inform on somebody. He'd pay me to continue piracy.
9 I just thought that really wasn't the right thing to do.

10 I don't know if I told you about, you know, what I read
11 in the e-mails with the thing he had with the sergeant or
12 the corporal in Manitoba. I think I told that story; did I
13 not?

14 Q Yeah, you did.

15 A Okay.

16 Q I just wanted to make sure that you had a fair
17 opportunity to tell the jury --

18 A And then there was a --

19 THE COURT: You're talking over the top.

20 THE WITNESS: I'm sorry. There was another story
21 where Herb Huddleston, who I was involved with on the P1
22 card, the Version 1 card for DirectTV -- Herb was from the
23 Cayman Islands, and he had a secretary working for him.
24 John Norris -- I don't know if the secretary was mad at Herb
25 or John called her. How they got together I don't know, but

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15:08:37 1 John offered her money to steal information off the computer
2 at Herb's office, which was the accounting for the battery
3 cards, which is a crime in the Cayman Islands.

4 Lisa or somebody -- I think Herb got wind of it,
5 and they called John back and said they needed -- or she
6 called John back and said she needed more money, and she
7 didn't want to pay income tax on this. John suggested to
8 her that, well, do you have a driver's license under your
9 maiden name? She said yeah. He said, well, open up an
10 account with that maiden name, put the money in, take it
11 out, and nobody will ever know the difference.

12 The police were informed on the island, and John
13 left shortly thereafter, and I'm sure if he ever shows up
14 again, he will be arrested.

15 Q Okay. Now I want to focus you again just for a second
16 on this piracy device, the reprogrammer that you bought for
17 \$65,000. We just looked at the document. Do you recall
18 that?

19 A Yes, I do. October 18th was the invoice.

20 Q Now, your purchasing this piracy device, was this part
21 of an investigation by NagraStar into who was behind the
22 creation of that device --

23 A Yes.

24 Q -- the piracy of NagraStar's system?

25 A They realized there was a device out there that was

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15:08:37 1 being sold, marketed, and they wanted to get their hands on
2 it. By getting their hands on it, they're able to see
3 what's programmed on the card, which allows them to then
4 send down an electronic countermeasure to shut all the cards
5 off that have been programmed by this device, so it was very
6 important for them.

7 Q Did NagraStar reimburse you for that \$65,000 payment?

8 A Yes, they did.

9 Q Now, also Mr. Snyder asked you about \$10,000 that was
10 paid to you for arranging a meeting with Al Menard. Do you
11 recall that?

12 A Yes, I do.

13 Q Now, was your arranging that meeting with Mr. Menard
14 and NagraStar in furtherance of NagraStar's piracy
15 investigation into Menard and NDS?

16 A Yes, I believe so.

17 Q Turn to Exhibit 438, please, sir.

18 A Yes. Go ahead, sir.

19 Q Okay. Do you recall Exhibit 438?

20 A Yes, somewhat.
21 Q Let me refresh your memory. I believe there was
22 something that you wanted to explain that Mr. Snyder said
23 that I should have you explain when I was speaking to you,
24 so --
25 A Okay. Maybe you can refresh my memory as to what we

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15:08:37 1 are talking about.
2 Q well, I believe that you were pointed to a section in
3 there where it's a dialogue between you and Mr. Tarnovsky.
4 Do you recall that?..
5 A Oh, yes. I think we were talking where I am saying I
6 have got the code and I've got the lab in Taiwan or
7 whatever. It was just all banter at that point. I am
8 trying to get information out of him. I never ever once
9 sent any card to any lab anywhere in the world to get
10 reverse engineered an EchoStar card ever.
11 Q And why is that? I mean, you were involved in DirectTV.
12 why weren't you interested in EchoStar's system?
13 A Personally I didn't like the EchoStar system, the way
14 the receivers operated. I didn't think it would sell as
15 well, and DirectTV was a nicer system. Everybody was used to
16 it.
17 Q Okay, let's go to Exhibit 439, please. This is an
18 exhibit that Mr. Snyder showed you --
19 A Sure.
20 Q -- during your examination as well. He showed you page
21 1 where it says "I have the ROM now," and he pointed you to
22 that. Do you recall that?
23 A Yes.
24 Q Okay. Now, let's turn to page 2, and I am going to
25 focus your attention on the top of page 2, the top third of

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15:08:37 1 the page.

2 A Okay, sure.

3 Q And we know that Artie is Chris Tarnovsky; correct?

4 A Correct.

5 Q And you're Tron; correct?

6 A Yes. That day, yes.

7 Q Okay. And Artie says, "Show me some ROM, dude. Let
8 three bytes, please, pretty please. This one could be the
9 biggest brain teaser for normie he has ever seen. Let me
10 guess. You don't have ROM yet, dude. You don't even know
11 how hard this processor is to dump. Even the kraut went
12 sour trying to extract. I wish I had more from it. Whoever
13 pulled whatever is good, let me tell you."

14 Then you say, "I made a serious pledge to myself that I
15 would be very careful with who I gave any of this to, even
16 to look at, since I don't understand code. I don't know
17 what I'm giving away, so I will wait until I have an
18 engineer nailed down first." And then you say, "Oliver also
19 has this ROM."

20 Then Chris Tarnovsky says, "Ah, but no EEPROM." And
21 then he says, "Well, technically EEPROM is the hardest to
22 dump."

23 THE COURT: Counsel, what exhibit are you reading
24 from?

25 MR. NOLL: I'm reading from Exhibit 439.

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15:08:37 1 BY MR. NOLL:

2 Q Do you see that?

3 A Yes.

4 Q Did you understand that EEPROM was the hardest thing to
5 dump from a card?

6 A No.

7 Q why?

8 A Maybe it is and maybe it isn't. I am not technical
9 enough to tell you that. I don't dump cards.

10 Q Okay. Let's go to the third page of Exhibit 439,
11 please, and I will focus you on the center portion. Clint
12 is going to blow it up.

13 A Okay.

14 Q The language I will read for you --

15 MR. NOLL: Can you highlight it, Clint? He knows
16 where I'm going.

17 BY MR. NOLL:

18 Q It's Artie, which is Chris Tarnovsky, saying, "Do you
19 have any EchoStar cards at home?" You respond, "well, I
20 paid you 14,000 Canadian for a reprogrammer that I might
21 have programmed 150 new cards from, and it doesn't work."
22 Then there's an expletive. Then Tarnovsky says, "Look,
23 looking for Canadian EchoStar." Then he says an expletive
24 himself, and then you say, "100 Echo cards."

25 A Okay. well, first of all, I paid \$14,000 for a

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15:08:37 1 programmer. That was a programmer for P2 cards. When he is
2 saying he's looking for Canadian E, he's looking for Bell
3 Express Vu cards.

4 Q Okay.

5 A His expletive, his little line there is -- I said I
6 only programmed 150 cards, and it doesn't work. He didn't
7 believe that.

8 Q Okay. Now, focus your attention at the bottom of page
9 3. It's five lines up from the bottom, and it's Chris
10 Tarnovsky under the alias Artie. He says, "Now, show me ten
11 bytes, or you're lying and the ROM lands on the net in the
12 morning." Do you see that?

13 A Yes, I do.

14 Q Was Chris Tarnovsky talking about the ROM that you
15 testified here today that you were bluffing him that you

16 had?

17 A That's correct. He is talking about the ROM from the
18 Echo card.

19 Q Is this one of the documents that lead you to believe
20 that Chris Tarnovsky had the EchoStar ROM?

21 A Yes.

22 Q Now, Mr. Snyder asked you about your depositions in
23 this case and what you did with the allegedly stolen CDs.
24 Do you recall that?

25 A Yes.

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15:08:37 1 Q Okay. And you recall you testified that you erased the
2 evidence of the e-mails that you had on your computer
3 system, correct?

4 A Yes, that's correct.

5 Q And you understood from your attorney that you were
6 supposed to erase these e-mails, correct?

7 A Yes, that's correct.

8 Q And you understood that you were supposed to erase all
9 copies and to give any originals that you had to your
10 attorney; is that right?

11 A That's correct, and that's what I did.

12 Q Is it your understanding, sir, that NDS wanted you to
13 destroy all copies and give the originals to your attorney?

14 A That was my understanding.

15 Q Now, earlier you also testified when Mr. Snyder was
16 questioning you about whether or not you ever posed as a
17 pirate. Do you recall that?

18 A Yes.

19 Q Did you ever pose as a pirate when you were in your
20 consulting relationship with NagraStar?

21 A I didn't have the wooden leg and the parrot. I mean,
22 pose as a "pirate," it's such a broad term.

23 Q We have seen documents and e-mails. We have seen
24 postings on the Internet throughout this case.

25 Did you ever do anything like that -- send an e-mail,

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15:08:37 1 post on the Internet, or trade any documents -- where you
2 were posing as a pirate on behalf of NagraStar?

3 A Yes.

4 Q Which instances were those?

5 A There would be several instances. When you're trying
6 to get information out of somebody regarding piracy on a
7 system, you have to talk the talk. I mean, you're not going
8 to get answers coming in without talking the talk no matter
9 whether it's in an e-mail, an Internet C chat, or what have
10 you.

11 THE COURT: Counsel, concerning your questions,
12 you keep asking you understood that you were supposed to
13 erase all copies and to give any originals that you had to
14 your attorney. Then you follow up with it's your
15 understanding that NDS wanted you to destroy all copies and
16 give the originals to your attorney.

17 It's unclear to this Court and the jury what that
18 understanding means. There's no specific person. There is
19 no linkage. Unless that's clarified, I am going to strike
20 the answer to the question.

21 MR. NOLL: All right.

22 BY MR. NOLL:

23 Q Let's go back to the CDs and e-mails.

24 A Sure.

25 Q Tell the jury what your understanding is --

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15:08:37 1 THE COURT: I want to know and the jury wants to
2 know who he got this direction or conversation from, not
3 this nebulous question of some understanding.

4 MR. NOLL: Fine.

5 BY MR. NOLL:

6 Q who told you to erase the e-mails and to give the
7 originals to your lawyer?

8 A My lawyer told me that.

9 THE COURT: what's your lawyer's name?

10 THE WITNESS: Steve Kelleher.

11 BY MR. NOLL:

12 Q And what did Steve Kelleher tell you as to what NDS
13 wanted done with its allegedly stolen material?

14 A My lawyer told me that they requested exactly what he
15 requested me to do, to give them -- to give him the e-mails
16 and destroy anything I had in my computer.

17 Q And you complied with that; is that correct?

18 A I complied with it.

19 MR. NOLL: All right, pass the witness.

20 THE COURT: Recross, counsel?

21 RE-CROSS-EXAMINATION

22 BY MR. SNYDER:

23 Q Mr. Ereiser, your lawyer told you that NDS wanted you
24 to destroy all copies of the documents that had been stolen
25 from them?

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15:08:37 1 A I don't think he worded it that way. what he told me
2 was, "Ron, they requested that you bring me the original
3 copies of your CDs and erase anything you have on your
4 computer." I did it.

5 Q Your lawyer didn't tell you that NDS had filed motions
6 with this Court to preserve all evidence related to those
7 stolen documents?

8 A No, I never heard that.

9 Q Your lawyer didn't tell you that NDS's attorneys had
10 contacted him and had advised him that he should and you
11 should preserve all evidence related to those stolen

12 documents?

13 A No.

14 Q Instead he told you that you should give him a copy of
15 those documents and erase all evidence of them from your
16 computer?

17 A No, he didn't say give me a copy of the documents. He
18 said give me the originals, which I did.

19 Q But the original documents were in electronic form,
20 correct?

21 A The original documents were on CD. That's what I gave
22 him.

23 Q So you gave those CDs to your lawyer, the original CDs?

24 A Yes.

25 THE COURT: Is that CD lodged with the court?

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15:08:37 1 THE WITNESS: Yes.

2 BY MR. SNYDER:

3 Q Your lawyer gave that CD to whom?

4 A I don't know. The lawyer still has them. I don't know
5 if you've received them or what, but my lawyer has them in
6 Victoria, B.C.

7 Q He has the original CDs that you received from Mr.
8 Kaehlin?

9 A Yes, that's correct.

10 Q Before you gave him those CDs, you had copied those
11 documents onto one or more of your computers?

12 A One of my computers.

13 Q And about the time that you gave Mr. Kelleher, your
14 attorney, those CDs, you erased all evidence of those
15 documents from your computer?

16 A That's correct.

17 Q Again, Mr. Kelleher was being paid by NagraStar?

18 A I assume so, yes.

19 Q Now, if you could turn back to Exhibit 439. This is
20 the chat between you and Chris Tarnovsky?

21 A Sure.

22 Q Is it your testimony now that basically in this chat
23 you are just posing?

24 A Yes.

25 Q You're trying to extract information from Mr.

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15:08:37 1 Tarnovsky?

2 A That's correct.

3 Q So we shouldn't take as true the things that you said
4 in those postings?

5 A That's correct. I've never had the ROM. I never had
6 the EEPROM for any EchoStar card ever in my life, so yes.

7 Q And you have no reason to believe, do you, Mr. Ereiser,
8 that Mr. Tarnovsky wasn't also posing when he had this chat
9 with you?

10 A Well, he didn't show me any code.

11 Q So he very well could have been posing; is that right?

12 A I guess he could have been.

13 Q He could have been working undercover for NDS trying to
14 get information out of you, correct?

15 A Well, I don't know why NDS would be trying to get the
16 EchoStar code.

17 Q Mr. Ereiser, this exchange was in 1998?

18 A Yes, it appears so.

19 Q And in 1998, you were actively engaged in satellite
20 piracy; isn't that right?

21 A That's correct.

22 Q So it's not far-fetched to believe that in 1998
23 operatives for NDS might try and get information from you
24 about your involvement in satellite piracy is it?

25 A I am sure they would try to get information about

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15:08:37 1 satellite piracy for their own company. I can't see that
2 they would try to get information from me about EchoStar.
3 Q Now, Mr. Ereiser, you said that you reverse engineer
4 pirate devices as part of your work for NagraStar?
5 A Yes, sir.
6 Q How many EchoStar pirates have you helped law
7 enforcement prosecute as a result of your work?
8 A I couldn't tell you. We give information on people
9 that we find on forms, businesses selling cards and stuff.
10 what they do with it from there on in, I don't know.
11 Q So you're not aware and you cannot tell this jury of
12 even one satellite pirate that has been prosecuted by law
13 enforcement as a result of this reverse engineering of
14 pirate devices that you have been doing for NagraStar; isn't
15 that right?
16 A No, but a great big Internet site was just taken down
17 by the name of ROM 10-X. We gave a lot of information on
18 over 60 people to JJ Gee about people on ROM 10-X. What's
19 happening with them now I don't know.
20 Q Let me try and ask my question again, Mr. Ereiser.
21 You're not aware of any EchoStar pirates that have been
22 prosecuted as a result of your reverse engineering of pirate
23 devices; isn't that right?
24 A I know people that have been charged.
25 Q Anyone other than ROM 10-X?

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15:08:37 1 A No. That was the biggest site so far.
2 Q Now, finally you were asked some questions about this
3 box that you sent to Ontario.
4 A Yes.
5 Q That was part of NagraStar's investigation into its
6 piracy, correct?
7 A Yes.

8 Q And you sent that box back to Barrie, Ontario. Isn't
9 that the city?

10 A I am not exactly sure on Barrie, but somewhere in
11 Ontario, yes.

12 Q It might have been Barrie?

13 A It could have been I guess, yeah. That's one of those
14 cities in Ontario. It's not in California.

15 Q And you understood at the time that that box was
16 connected to EchoStar's piracy problems?

17 A Yes. It was the first one that was being marketed.

18 Q That was the very first programmer that was being
19 marketed?

20 A Yes, for sale.

21 Q And there were only a few of them, correct?

22 A I don't know how many sold at the beginning, whether it
23 was five, ten, or whatever. I don't know. They may
24 advertise three but sell 30. It's hard to tell.

25 Q But they were all coming from the same place in

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15:08:37 1 Ontario?

2 A I couldn't say for sure. I know that the one I got
3 came from Ontario.

4 Q Did anyone at NagraStar ever tell you that the code
5 inside that box was similar to the code in the NipperClause
6 postings or the December 2000 postings?

7 A No. I never asked and they never offered the
8 information.

9 Q Okay. Did anybody ever tell you that those postings
10 were related to the piracy that was being conducted in
11 Ontario?

12 A Sorry?

13 Q Did anybody ever tell you that the code in that box was
14 related to their piracy problems -- EchoStar's?

15 A If a box is being sold and people are programming
16 cards, it's a piracy problem.

17 MR. SNYDER: No more questions.
18 THE WITNESS: Just one of many.
19 THE COURT: We are placing all of the witnesses on
20 72-hour call. If you are needed back in court, you will
21 have 72 hours from the time counsel contact you. Otherwise,
22 an adverse inference will be drawn against the party..
23 MR. NOLL: Thank you.
24 THE COURT: You may step down.
25 Counsel, call your next witness.

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15:08:37 1 MS. WILLETTS: The plaintiffs call Anthony
2 Dionisi.
3 ANTHONY DIONISI, PLAINTIFFS' WITNESS, SWORN
4 THE COURT: When you are seated in the witness
5 box, would you state for the jury your full name.
6 THE WITNESS: Anthony M. Dionisi.
7 THE COURT: And spell your last name.
8 THE WITNESS: D-i-o-n-i-s-i.
9 THE COURT: Thank you.
10 Counsel, this is direct examination.
11 DIRECT EXAMINATION
12 BY MS. WILLETTS:
13 Q Good afternoon, Mr. Dionisi. Thank you for coming down
14 from Canada here to speak with us today.
15 Can you tell the jury a little bit about yourself.
16 A I am from Toronto, Ontario, Canada; born and raised
17 there. I am 43 years old. I currently work for two
18 companies, Brentview Electronics and Global Encryption
19 Services in Victoria.
20 Q And is Global Encryption Services -- is that long for
21 GES?
22 A Yes.
23 Q And I think the other company you said you worked for
24 was Brentview Electronics.

25 A Yes.

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15:08:37 1 Q Can you tell the jury what you do for Brentview
2 Electronics?

3 A I'm a custom home-theater installer.

4 Q And approximately how long have you held that position?

5 A It's a new job. I just started in January.

6 Q And your other position is with GES. Can you tell us
7 what you do for GES?

8 A I do website research, gathering information related to
9 satellite piracy.

10 Q Can you tell us generally the type of business GES is?

11 A Generally, we gather information regarding the current
12 status of satellite piracy, current ongoing events, as well
13 as different hardware devices and software used to pirate
14 satellite television.

15 Q Do you know who GES's clients are?

16 A The only one I know of right now is NagraStar.

17 Q So as part of your position, you do Internet research
18 for piracy devices related to NagraStar's system?

19 A That's correct.

20 Q What did you do prior to going to work for GES and
21 Brentview Electronics?

22 A I worked at a company called McNalley Auto Service,
23 which is an auto repair shop.

24 Q Okay. And you testified that you're currently
25 investigating piracy.

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15:08:37 1 Can you tell us what you mean by the term "satellite
2 piracy"?

3 A Satellite piracy is the ability to receive free

4 television.

5 Q And have you ever been personally involved yourself in
6 satellite piracy?

7 A Yes.

8 Q Can you tell us about that?

9 A Early on I was involved in the piracy of DirectTV and
10 then later on EchoStar as well.

11 THE COURT: DirectTV and who?

12 THE WITNESS: EchoStar.

13 BY MS. WILLETTS:

14 Q When did you first become involved in piracy of
15 DirectTV?

16 A It would be the late '90s. I would say '98, '99.

17 Q And can you tell us the extent of your involvement in
18 DirectTV piracy?

19 A It was more of a hobby basically to get friends and
20 family free television.

21 Q You reprogrammed access cards?

22 A That's correct.

23 Q Can you tell us approximately how many you think that
24 you may have reprogrammed for DirectTV?

25 A 50 to 100.

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15:08:37 1 Q And would that be the same for EchoStar as well?

2 A That's correct.

3 Q So you're familiar with the company known as DISH
4 Network; correct?

5 A Yes.

6 Q And what's your understanding of what DISH Network
7 provides or their business?

8 A DISH Network provides satellite broadcast television in
9 the U.S.

10 Q Are you also familiar with a company known as Bell
11 Express Vu?

12 A Yes.

13 Q What is your understanding of the type of services they
14 provide?

15 A The equivalent services but in the Canadian market.

16 Q And have you ever actually seen an EchoStar Smart Card?

17 A Yes, I have.

18 Q Can you describe for the jury what it looks like?

19 A Well, it's a Smart Card which is basically the size of
20 -- it's plastic and the size of a credit card, and it also
21 has in this case a DISH Network logo on it.

22 Q And you previously testified that you had actually
23 reprogrammed some DirectTV and EchoStar access cards.

24 Can you describe for the jury what a reprogrammed Smart
25 Card -- what that means?

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15:08:37 1 A This Smart Card has a processor on it, and that
2 processor contains code. A pirated Smart Card is a card
3 that the code has been altered in order to allow for the
4 channels to be received.

5 Q So a pirated Smart Card and a reprogrammed Smart Card,
6 they're the same in your mind?

7 A Correct.

8 Q Now, during the time that you were involved in
9 satellite piracy of DirectTV and EchoStar, did you have an
10 opportunity to become acquainted with other individuals who
11 were involved in satellite piracy?

12 A Yes.

13 Q Can you tell us -- well, are you familiar with an
14 individual named Allen Menard?

15 A Yes.

16 Q When did you first become acquainted with Mr. Menard?

17 A I met Mr. Menard through the Internet IRC channels,
18 again in the late '90s -- '98, '99.

19 Q And on the occasions when you interacted with Mr.
20 Menard, did he use an alias?

21 A Yes. Everyone used an alias on the Internet.
22 Q So you used one?
23 A That's correct.
24 Q What was the alias that you used?
25 A Vettr, v-e-t-t-r..

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15:08:37 1 Q what was the alias that you recall Mr. Menard using?
2 A Dr7.
3 Q Do you know if Mr. Menard ran a website?
4 A Yes. There was a website dr7.com.
5 Q Did you visit that website?
6 A Yes.
7 Q What type of information was available on dr7.com?
8 A It was information related to satellite piracy in North
9 America as well as some information for satellite piracy in
10 Europe. There was general information. There were download
11 sections for files. There was also what's called a
12 satellite -- a website forum where people could go on, ask
13 questions, and also answer questions that other people had
14 asked.
15 Q Did Mr. Menard advertise any products on his website?
16 A There were advertisements on the website. I couldn't
17 tell you what they were.
18 Q Okay. And from your experience in visiting Mr.
19 Menard's websites, did he have sections on his dr7 website
20 that dealt with EchoStar piracy?
21 A Not in the late '90s, but later on, yes.
22 Q Can you tell us when you first began seeing the
23 sections on EchoStar piracy?
24 A It would have been in the year 2000.
25 Q To your knowledge, was Mr. Menard engaging in any form

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15:08:37 1 of satellite television piracy activities through his dr7
2 website?

3 A Well, there were what's called freeware files that were
4 downloadable from the download section of his website, yes.

5 Q Can you explain to the jury what a freeware file is?

6 A A freeware file is a file that's available to anybody
7 that attends the website, any website. Most websites have a
8 download file whether it's for software application,
9 satellite piracy, so on and so forth.

10 Q So they're files that assist people in engaging in
11 piracy; is that correct?

12 A In this case, yes.

13 Q And did the freeware files that were available on Mr.
14 Menard's website at some point in time relate to EchoStar?

15 A Yes.

16 Q During approximately what time were the EchoStar
17 freeware files available on Mr. Menard's website?

18 A That would have also been in the year 2000.

19 Q Did you ever have an occasion to download any freeware
20 files from Mr. Menard's website?

21 A Yes.

22 Q Can you tell us about when you did that?

23 A At the beginning of the EchoStar piracy, there were
24 files available for what was called at the time a battery
25 card, which is a hard circuit board-type card that would be

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15:08:37 1 inserted in a set-top box in replacement of the original
2 plastic access card.

3 Q So this was one of the freeware files that you
4 downloaded?

5 A That's correct, yes.

6 Q Were there others that you downloaded from Mr. Menard's
7 website?

8 A There were others in the DirectTV days, but for

9 EchoStar, that's the only one I remember at the moment.

10 Q Can you describe for me the file that you recall
11 downloading, the battery card file? what type of file was
12 that? what was it used for?

13 A Once you downloaded the file, you could use your
14 computer and a cable attached to what's called a programmer
15 insert the circuit board type card into the programmer and
16 transfer the file from the computer into the battery card,
17 which would then allow you to watch TV.

18 Q Were you able to successfully use the battery card file
19 that you got on Mr. Menard's website to get free television
20 programming?

21 A Yes.

22 Q Now, did there ever come a point in time where Mr.
23 Menard's website, dr7, stopped offering freeware files?

24 A Yes.

25 Q Do you recall approximately when that was?

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15:08:37 1 A It was later on in the year 2000. I couldn't tell you
2 exactly which month.

3 Q Did you notice any sort of trend in EchoStar piracy
4 once the freeware files were no longer being offered on dr7?

5 A Well, it was pretty much nonexistent because those were
6 the only way to get free TV at the time through the EchoStar
7 system.

8 Q The only freeware way?

9 A That's correct.

10 Q Was there another commercial way of going out and
11 buying an EchoStar hack?

12 A Right. Once the freeware files disappeared, then there
13 were reprogrammed original access cards offered by certain
14 dealers.

15 Q And do you recall who the dealers were that these cards
16 were offered through?

- 17 A I remember the websites.
- 18 Q Can you list those out for the jury?
- 19 A There was hightechsats.com, coinvision.com,
20 DSSCanada.com. And there was one more,
21 newfrontiergroup.com.
- 22 Q Now, you mentioned hightechsats.com. Do you know who
23 that website was run by?
- 24 A It was run by a gentleman by the name of Shawn Quinn.
- 25 Q So the website hightechsats.com was offering

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- 15:08:37 1 reprogrammed EchoStar access cards?
- 2 A Correct.
- 3 Q Do you know if hightechsats.com was actually promoted on
4 Mr. Menard's dr7 website?
- 5 A Honestly I don't remember.
- 6 Q You also mentioned coinvision.com.
7 Was that also a website that advertised and sold E3M or
8 reprogrammed EchoStar access cards?
- 9 A Yes.
- 10 Q Do you recall if coinvision.com was a website that was
11 promoted on Mr. Menard's website?
- 12 A I do not recall. Sorry.
- 13 Q Is DSSCanada -- do you know who ran that website?
- 14 A I believe it was a gentleman by the name of Dave
15 Dawson.
- 16 Q And that was a website that also advertised and sold
17 reprogrammed EchoStar access cards?
- 18 A That's correct.
- 19 Q Do you know if DSSCanada was a website that was
20 promoted on Mr. Menard's website?
- 21 A No, I don't.
- 22 Q And the last one you mentioned I believe was
23 newfrontiergroup?
- 24 A Correct.
- 25 Q Do you know who operated newfrontiergroup.com?

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15:08:37 1 A The owner of the website was a gentleman by the name of
2 Stanley Frost.
3 Q And his website was basically advertising and selling
4 reprogrammed EchoStar access cards as well?
5 A Correct.
6 Q Do you know if newfrontiergroup.com was a website that
7 was promoted on Mr. Menard's dr7 website?
8 A I don't honestly recall.
9 Q Did you ever have occasion to meet Mr. Menard in
10 person?
11 A Yes.
12 Q Can you tell us when that was?
13 A It was also in the year 2000. There was a gathering
14 held in Toronto. Mr. Frost had put together a gathering of
15 people from the satellite IRC channel that basically had
16 never really met each other. They only knew each other by
17 these nicknames. We all got together in Downtown Toronto.
18 Q And do you know who arranged for the meeting?
19 A It was Mr. Frost.
20 Q And he was the individual who was running
21 newfrontiergroup?
22 A Correct.
23 Q Other than yourself, Mr. Frost, and Mr. Menard, do you
24 recall any other individuals who were present at this
25 meeting in Toronto in 2000?

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15:08:37 1 A Yes. There was a gentleman by the name of warren
2 Melnick. There was a gentleman by the nickname of wave
3 Guide. I don't know his real name.
4 THE COURT: Wave Guy?

5 THE WITNESS: Wave Guide.

6 THE COURT: Wave Guide.

7 THE WITNESS: Also Christopher Tarnovsky, and
8 there were other people that Mr. Frost brought along that I
9 did not know who they were.

10 BY MS. WILLETTS:

11 Q Is it a fair statement to say that individuals you were
12 aware of -- that each of those who were present at this
13 meeting were all engaged in some form or fashion in
14 satellite piracy?

15 A Yes. We were all from the satellite channel.

16 Q At any point in time during this meeting in Toronto in
17 2000, did Mr. Tarnovsky provide information to the group
18 that related to satellite piracy?

19 A There was general technical discussions between him and
20 the gentleman by the nickname of Wave Guide, who was also a
21 coder. The rest of us just kind of listened.

22 Q It was technical information that you really didn't
23 understand?

24 A Exactly.

25 Q Okay. Prior to this meeting in Toronto were you

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15:08:37 1 already acquainted with Mr. Tarnovsky?

2 A Yes.

3 Q And when did you first become acquainted with Mr.
4 Tarnovsky?

5 A Again, it would have been in the late '90s during the
6 DirectTV days.

7 Q How did you come to be acquainted with him and meet
8 him?

9 A Originally it was through the IRC Internet channel.

10 Q Okay. And once you met him in the late '90s, did you
11 begin having communications with Mr. Tarnovsky on any sort
12 of regular basis?

13 A Not originally but shortly thereafter.
14 Q Did there come a point in time when it was just more
15 than chatting on the IRC, when it became -- did there ever
16 become a point in time when you began discussing issues
17 relating to satellite piracy with Mr. Tarnovsky?
18 A Yes.
19 Q On how many occasions would you say you have discussed
20 issues relating to satellite piracy with Mr. Tarnovsky?
21 A You mean overall --
22 Q Overall.
23 A -- or at that time period or -- overall?
24 Q Overall.
25 A I would say 30 times approximately.

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15:08:37 1 Q During those 30 different conversations, did any of
2 those conversations with Mr. Tarnovsky relate to EchoStar
3 piracy?
4 A Not in '98 and '99 but later on, yes, in 2000.
5 Q Other than -- what type of information would Mr.
6 Tarnovsky provide you relating to EchoStar's satellite
7 system?
8 A I would generally ask him questions about what was
9 happening at that point in time, whether it was an ECM by
10 EchoStar or just news on the forums of what people were
11 talking about what was going on, and he would give me his
12 opinion on it.
13 Q You found him to be knowledgeable in the area of
14 EchoStar piracy?
15 A I did, yeah.
16 Q Other than just general conversations with Mr.
17 Tarnovsky, did he ever provide you with any additional
18 information that related to EchoStar's Conditional Access
19 System separate and apart from just general conversation?
20 A One time -- I believe it was later in the year 2000 or
21 it could have been the beginning of '01 -- I am not

22 100-percent sure on the time frame -- he did send me a file
23 that was supposed to work on an old, out-of-service DirectTV
24 access card in the EchoStar system.

25 Q Do you know -- how exactly did Mr. Tarnovsky send you

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15:08:37 1 this file that related to Bell Express Vu?

2 A He had sent the file via what's called a DCC file
3 transfer, which is again related to Internet relay chat.
4 It's a form of transferring files between individuals.

5 Q Did he use an alias when he sent this file to you?

6 A I did not recognize the nickname he used when the file
7 was sent.

8 Q So he used a nickname you had never heard of?

9 A Never seen before.

10 Q How did you know it was Mr. Tarnovsky sending you this
11 file?

12 A Before he sent me the file, he had phoned me at home
13 and told me he was going to send me something.

14 Q And you said he used a nickname you were not familiar
15 with. Were there some nicknames that Mr. Tarnovsky used
16 that you were familiar with that you knew was Mr. Tarnovsky?

17 A Yes. The two that I remember were Big Gun and Von Rat,
18 V-o-n, R-a-t.

19 Q And this file that Mr. Tarnovsky sent you, did you
20 attempt to use that file to get programming, satellite
21 programming without a subscription?

22 A Yes, I did.

23 Q And were you able to do that?

24 A No.

25 Q What did you do when the file didn't work?

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15:08:37 1 A I had phoned Mr. Tarnovsky and let him know that it did
2 not work. At that point in time he had directed me on how
3 to try and change the file to make it work, which I tried,
4 but it still did not work.

5 Q Did there ever come a point in time where you actually
6 received a similar file or file relating to Bell Express Vu
7 that did work that you could use to receive free Bell
8 Express Vu programming?

9 A Yes. Shortly thereafter there was a file released on
10 the internet, a freeware file that did exactly the same
11 thing.

12 Q And did you notice any differences between the file
13 that Mr. Tarnovsky sent you and the file that was posted on
14 the internet shortly thereafter?

15 A When I compared the two, there was a small difference,
16 six or eight bytes.

17 THE COURT: What was the small difference?

18 THE WITNESS: Six or eight bytes.

19 THE COURT: Six or eight bytes. Thank you.

20 BY MS. WILLETTS:

21 Q And what did that lead you to believe?

22 A I just assumed it was the same file, just modified.

23 Q Other than this file that Mr. Tarnovsky sent you
24 relating to the Bell Express Vu system -- and just to
25 clarify, it's your understanding that Bell Express Vu also

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15:08:37 1 operates off the same Conditional Access technology that
2 EchoStar does; correct?

3 A Correct.

4 Q Other than this file that Mr. Tarnovsky sent you
5 relating to Bell Express Vu, has he ever sent you any other
6 information relating to EchoStar piracy or NagraStar piracy?

7 A No.

8 Q Did Mr. Tarnovsky ever direct you to any areas of Mr.

9 Menard's website that related to EchoStar piracy?

10 A Right at the very beginning of the EchoStar piracy
11 period, Mr. Tarnovsky had sent me what's called a hyperlink
12 or a link to a web page that had information, pictures, and
13 instructions on how to extract the box keys out of an
14 EchoStar set-top receiver.

15 Q Do you know the approximate time frame that Mr.
16 Tarnovsky sent you this hyperlink relating to EchoStar box
17 keys?

18 A It would have been in the first half of 2000. It was
19 right before the EchoStar piracy began.

20 Q And what is your understanding of what box keys are?
21 Can you explain that to the jury?

22 A Box keys are an individual number like a serial number
23 that each set-top box has to, I guess, individualize it from
24 each other.

25 Q So the hyperlink that Mr. Tarnovsky sent you gave you

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15:08:37 1 instructions on how to extract these secret box keys?

2 A That's correct.

3 Q Did you attempt to use the instructions given to you or
4 relayed to you by Mr. Tarnovsky in order to extract box
5 keys?

6 A I did.

7 Q Were you successful in doing so?

8 A I was.

9 Q Now, I want to focus your attention in a little bit
10 different of a direction. Was there ever a point in time
11 when you became aware that Mr. Menard was involved in actual
12 reprogramming of EchoStar access cards?

13 A Yes.

14 Q How did you become aware of that?

15 A Mr. Menard came to Toronto, I believe, later on in 2000
16 to reprogram some access cards for a gentleman from Quebec.

17 THE COURT: For a gentleman named who?

18 THE WITNESS: For a gentleman from Quebec. It's a
19 province of Canada.

20 THE COURT: Do you know his name?

21 THE WITNESS: I don't have his name.

22 BY MS. WILLETTS:

23 Q Was anyone else present -- you said this took place in
24 Toronto?

25 A That's correct.

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15:08:37 1 Q Was anyone else present other than Mr. Menard, the
2 gentleman from Quebec, and yourself at this time when he
3 came up here to reprogram EchoStar access cards?

4 A No.

5 THE COURT: That assumes facts not in evidence.
6 You said Menard came to program some access cards. Now you
7 have to ask about EchoStar.

8 MS. WILLETTS: Okay.

9 THE COURT: It was, in fact, EchoStar access
10 cards?

11 THE WITNESS: Yes, sir.

12 THE COURT: Make that clear, counsel.

13 MS. WILLETTS: Okay.

14 BY MS. WILLETTS:

15 Q So Mr. Menard came up to Toronto to meet you and
16 another gentleman; correct?

17 A Correct.

18 Q And do you know why he was coming up to Toronto?

19 A He came to Toronto to program 50 EchoStar access cards
20 for this gentleman from Quebec.

21 Q Did he also come to reprogram any for you?

22 A He did two cards for me as well, EchoStar access cards
23 for me as well.

24 Q Do you know what Mr. Menard used to reprogram these
25 EchoStar access cards?

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15:08:37 1 A Yes. I did see the device that he used.
2 Q Did you personally observe him reprogram the EchoStar
3 access cards, the 52 cards?
4 A Yes, I did.
5 Q And based on your observation can you describe for the
6 jury the process that Mr. Menard used to reprogram the
7 EchoStar access cards?
8 A He had what was called, what is called a stand-alone
9 programmer, which means it does not require a computer to
10 work. It was -- it appeared to be homemade out of a
11 plastic, what I call, project box. It had a slot on it
12 where the card was inserted. It also had four or five push
13 buttons which he had pressed in a sequence before inserting
14 the card into the loader.
15 Q Can you tell us what -- do you recall what color this
16 box was?
17 A It was either dark blue or black.
18 Q Approximately how large? Can you give the jury an
19 idea?
20 A I would estimate it would be about six inches by two by
21 two inches.
22 Q Did Mr. Menard describe for you how the reprogramming
23 box actually worked?
24 A He had mentioned that the buttons had to be pressed in
25 a certain sequence. Whatever sequence was used determined

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15:08:37 1 first off which file would be loaded, as well as if it was
2 pressed wrong, the box would not work at all.
3 Q Okay. Approximately how long did it take Mr. Menard to
4 reprogram each of the EchoStar access cards?

5 A I would estimate 30 seconds.
6 Q Thirty seconds apiece?
7 A Correct.
8 Q How did you know that these 52 Smart Cards were
9 EchoStar Smart Cards?
10 A They all had DISH Network logos on them.
11 THE COURT: They had DISH Network what?
12 THE WITNESS: DISH Network logos.
13 BY MS. WILLETTS:
14 Q Were these Smart Cards reprogrammed for you for free by
15 Mr. Menard?
16 A No.
17 Q He charged you and the other gentleman?
18 A That's correct.
19 Q Approximately how much did you pay for the two EchoStar
20 access cards that Mr. Menard reprogrammed for you?
21 A I believe it was \$150 each.
22 Q Do you know if that's the same that was charged to the
23 other gentleman who had 50 EchoStar access cards
24 reprogrammed?
25 A Yes.

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15:08:37 1 Q Did you ever test the reprogrammed EchoStar access
2 cards that Mr. Menard reprogrammed for you?
3 A I tested the two that he did for me personally, yes.
4 Q Did they work?
5 A Yes.
6 Q And you were able to receive EchoStar's programming
7 without a subscription?
8 A That's correct.
9 Q Now, have you ever had any discussions with Mr.
10 Tarnovsky regarding a reprogramming device?
11 A Yes.
12 Q And when was that?
13 A It was in the same time period. I would say about a

14 week later.

15 Q How did this discussion take place? Was it over the
16 phone, in person?

17 A Yes, it was over the phone. He had called me, and
18 during the discussion he had, for lack of a better word,
19 bragged about this new device that he had built.

20 Q Did Mr. Tarnovsky describe for you the device that he
21 had built?

22 A Yes, he did.

23 Q How did he describe it to you?

24 A He described it in a way that he said that this box had
25 buttons on it. I am not sure of the number. I think it was

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15:08:37 1 four, five. And that, again, if you pressed it a certain
2 way, it would load a certain file. If you pressed it the
3 wrong way, it wouldn't load it at all; and that it was also
4 a what they call stand-alone, which means you do not need a
5 computer to operate it.

6 Q Did Mr. Tarnovsky tell you what he had called this
7 reprogramming device, what he had named it?

8 A He referred to it as the stinger.

9 Q And based on your personal observations of seeing Mr.
10 Menard personally reprogram the cards for you and another
11 gentleman, and the description that Mr. Tarnovsky had given
12 you regarding this reprogramming device, in your opinion
13 were those two devices similar?

14 A Yes. The description that Mr. Tarnovsky gave me was
15 exactly what I had seen a week earlier.

16 MS. WILLETTS: Pass the witness, Your Honor.

17 Thank you, Mr. Dionisi.

18 (Off-the-record discussion)

19 CROSS-EXAMINATION

20 BY MR. SNYDER:

21 Q You were approached in March of 2007 by Mr. J. J. Gee

22 about assisting NagraStar in this case; isn't that right?

23 A Actually I was approached earlier. I met with Mr. Gee
24 in March.

25 Q Okay. And when you met with Mr. Gee, he asked you to

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15:08:37 1 provide assistance in this case; isn't that right?

2 A He asked me if I had any information that may be
3 pertinent to this case.

4 Q And you said that you --

5 THE COURT: Move closer to the microphone, sir.
6 There you go. Say that answer again.

7 THE WITNESS: He had asked me if I had any
8 pertinent information regarding this case.

9 BY MR. SNYDER:

10 Q And when you spoke with Mr. Gee, he asked you if you
11 would be willing to -- what your information was; isn't that
12 right?

13 A Yes.

14 Q And you told him you weren't willing to provide that
15 information?

16 A No.

17 Q Didn't -- he asked you whether you would be willing to
18 testify to what your information was, and you told him no;
19 isn't that right?

20 A He asked me if I would be willing to testify in
21 California, yes.

22 Q And you said no?

23 A That's right.

24 Q And then a couple of months later Mr. Ereiser
25 approached you; isn't that right?

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15:08:37 1 A Approached me --
2 Q In May 2007 Mr. Ereiser contacted you?
3 A Yes.
4 Q And he contacted you about working for his company,
5 GES?
6 A That's correct.
7 Q And you have known Mr. Ereiser for quite some time;
8 correct?
9 A Yes.
10 Q Back when you were involved in satellite piracy?
11 A Correct.
12 Q And you understood that Mr. Ereiser was willing to pay
13 you to work at his company, GES?
14 A That's correct. He offered me a job.
15 Q And for that work you were paid how much per month?
16 A \$4,160.
17 Q And you work about 15 hours a week?
18 A It varies from week to week. I would say 15 to 20
19 hours a week on average.
20 Q So if that's 20 hours a week or 80 hours a month,
21 \$4,160, what is that? about 60 bucks an hour?
22 A I have never tried to figure it out, but I'll take your
23 word for it.
24 Q And what you do for that money is surf the internet;
25 correct?

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15:08:37 1 A Research, yes.
2 Q On the internet?
3 A That's correct.
4 Q But that's not your full-time job?
5 A No. I have another job as well, yes.
6 Q Your full-time job before was working in an auto shop?
7 A That's correct.
8 Q And now your other work is doing home-theater
9 installations?

10 A That's correct.
11 Q But for 15 or 20 hours a week and for about \$50,000 a
12 year you do internet research for Mr. Ereiser?
13 A That's correct.
14 Q Before you started to go to work for -- well,
15 withdrawn. You understand that the money that Mr. Ereiser
16 pays you comes from NagraStar; correct?
17 A I do now, yes.
18 Q And that that's the only client of GES?
19 A As far as I know.
20 Q And before Mr. Ereiser approached you to start working
21 for NagraStar through GES, had you been involved in any
22 anti-piracy work at all?
23 A No.
24 Q You hadn't helped provide any information that would
25 help bring down a piracy website?

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15:08:37 1 A No.
2 Q And you hadn't been involved in suing any pirate to try
3 and get them to stop their involvement in piracy?
4 A That's correct.
5 Q You hadn't been involved in assisting law enforcement
6 in any prosecutions?
7 A Correct.
8 Q This job that Mr. Ereiser offered you was essentially
9 \$50,000 a year to work half time watching the internet for
10 piracy information?
11 A That's correct.
12 Q Basically entry level?
13 A If \$50,000 a year is entry level to you, I guess.
14 Q You didn't have any experience doing this did you?
15 A Surfing the internet?
16 Q Trying to collect anti-piracy information, Mr. Dionisi.
17 A I have been a pirate until -- from the late '90s, so I

18 think I had some experience in it.

19 Q My 11-year-old can surf the internet, but nobody gives
20 him 50 grand a year to do it.

21 A Okay.

22 Q Mr. Ereiser offered you a job doing just that, though;
23 right?

24 A Research, that's correct.

25 Q And that was in early May 2007?

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15:08:37 1 A we had discussed it in early May, yes, that's correct.

2 Q And shortly thereafter you agreed to sign a written
3 statement for NagraStar in this case; isn't that right?

4 A Shortly thereafter is when I signed my declaration, but
5 we had talked about it before that.

6 Q You didn't write that declaration did you, Mr. Dionisi?

7 A Personally, no.

8 Q The lawyers for NagraStar wrote that declaration?

9 A Their lawyers and my lawyer.

10 Q And then you signed it?

11 A Correct.

12 Q And you agreed to sign it after you started your
13 \$50,000-a-year job with Mr. Ereiser and GES; isn't that
14 right?

15 A No. Technically I started working for Mr. Ereiser at
16 the end of May, the third week in May, I believe.

17 Q well, you knew that you were going to work for Mr.
18 Ereiser for your \$50,000-a-year job when you signed that
19 declaration; didn't you?

20 A Yes.

21 Q Right about the time you signed your declaration, you
22 also signed an agreement with Mr. NagraStar; isn't that
23 right?

24 A That's correct.

25 Q It was a release of liability?

15:08:37 1 A Correct.
2 Q And it was an agreement that said whatever you may have
3 done for NagraStar in the past, we are going to give you a
4 free pass?
5 A Okay.
6 Q Isn't that right? That's how you understood it; isn't
7 it?
8 A It basically released me of any further charges or
9 future charges, I should say, regarding my past.
10 MR. SNYDER: Could you show Mr. Dionisi, please,
11 Exhibit 411.
12 BY MR. SNYDER:
13 Q Is this the agreement that you signed with NagraStar?
14 A It appears to be, yes.
15 MR. SNYDER: I move Exhibit 411.
16 MS. WILLETTS: No objection, Your Honor.
17 THE COURT: Received.
18 (Exhibit 411 received in evidence)
19 BY MR. SNYDER:
20 Q would you go, please, to the second page, the paragraph
21 number one that says release.
22 A Paragraph one says "you agree to provide."
23 Q I'm sorry. On the second page there is a paragraph
24 with a number one that says release.
25 A Sorry. I had two page 1's.

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15:08:37 1 Q There are two page 1's. We've had that problem a lot.
2 A Okay. I see it now.
3 Q This is the paragraph where NagraStar says that any
4 claims that they might have against you because of anything
5 you have done against a NagraStar system or an EchoStar

6 system, that's forgiven; correct?
7 A Correct.
8 Q And then if you could go down to the next paragraph,
9 paragraph two, an agreement to defend and indemnify.
10 A Yes, sir. Yes. Okay.
11 Q In that paragraph NagraStar says that if you become a
12 defendant to a civil lawsuit or any criminal proceedings
13 brought by any government entity in the United States or
14 Canada as a result of providing the information you provide,
15 they're going to defend you; isn't that right?
16 A Correct.
17 Q They are going to provide you with a lawyer?
18 A Correct.
19 Q In fact, they've provided you with a lawyer in
20 connection with this case; correct?
21 A Are you referring to my lawyer in Victoria?
22 Q Yes.
23 A They didn't provide him for me. I chose him myself.
24 Q But they paid for it?
25 A That's correct.

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15:08:37 1 Q Okay. I'm sorry. I should have been clearer.
2 A All right.
3 Q And this agreement, this release and indemnity
4 agreement, you signed on the same day that you signed your
5 written statement in this case; isn't that right, Mr.
6 Dionisi?
7 A That's correct.
8 Q And this is the same testimony that you originally told
9 Mr. Gee that you were unwilling to give?
10 A If I had to come down here to do it, yes.
11 Q Now, let's talk for a moment about Mr. Menard's
12 website. You mentioned that you saw files, downloadable
13 files, on Mr. Menard's website related to the EchoStar

14 system?

15 A Correct.

16 Q And then you identified for NagraStar's counsel several
17 websites that advertised EchoStar reprogrammed cards for
18 sale. Do you recall that testimony?

19 A Correct.

20 Q One of the them was the hightechsats website?

21 A Correct.

22 Q But you don't recall that website ever being advertised
23 or promoted on dr7?

24 A I don't recall that.

25 Q In fact, you don't have any information that that

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15:08:37 1 website was connected to dr7 at all; isn't that right?

2 A Other than all of us hanging in the same satellite
3 channel, no, I don't.

4 Q When you say hanging out in the same satellite channel,
5 you mean having chats basically?

6 A Yeah. It's like a big room where everyone can talk to
7 each other.

8 Q You have no information that the hightechsats website
9 was somehow connected to Mr. Menard?

10 A No, I don't.

11 Q And you have no information that this hightechsats
12 website was somehow connected to dr7?

13 A No.

14 Q And you have no information that this website was
15 somehow affiliated or connected in any way whatsoever with
16 NDS?

17 A No, I don't.

18 Q And you have no information that this website was
19 connected in any way whatsoever to Mr. Tarnovsky?

20 A Correct.

21 Q Now, the second site that you mentioned was coinvision.
22 Do you recall that testimony?

23 A Yes.

24 Q And that's another website where you saw advertised
25 reprogrammed EchoStar cards?

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15:08:37 1 A Correct.

2 Q And you don't recall whether that website was even
3 promoted or advertised on dr7.com; correct?

4 A Correct.

5 Q You have no information, no reason to believe that that
6 website was connected in any way with dr7; isn't that right?

7 A Correct.

8 Q And you have no reason to believe or information that
9 that website was connected in any way to Al Menard?

10 A Correct.

11 Q You have no reason to believe or information that that
12 website was connected in some way to NDS?

13 A Correct.

14 Q And you have no information or reason to believe that
15 that website was connected to Chris Tarnovsky?

16 A Correct.

17 Q Now, the third one you mentioned was DSSCanada, and
18 that's a website that was run by Dave Dawson?

19 A As far as I know, yes.

20 Q It also was advertising reprogrammed EchoStar access
21 cards?

22 A Yes.

23 Q But you're not even aware of that website being
24 advertised on dr7; are you?

25 A Correct.

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15:08:37 1 Q And you have no reason to believe or information

2 connecting that website to dr7?

3 A Correct.

4 Q And you have no information or reason to believe that
5 that website was connected with Al Menard?

6 A Correct.

7 Q And you have no information or reason to believe that
8 that website was connected with NDS?

9 A Correct.

10 Q And you have no information or reason to believe that
11 that website was connected to Chris Tarnovsky?

12 A Correct.

13 Q Let's go to the last one. And I apologize if this
14 seems tedious, Mr. Dionisi, but this is very important. The
15 fourth website you mentioned was newfrontiergroup?

16 A Yes.

17 Q And that was a website that was being run by Stanley
18 Frost?

19 A He was the owner. I am not sure who was running it for
20 him.

21 Q You don't know who was running it, but he was the
22 registered owner?

23 A Correct.

24 Q And you were not aware whether or not that website was
25 even advertised on dr7?

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15:08:37 1 A Correct.

2 Q And you have no reason to believe or information
3 connecting that website to dr7?

4 A Correct.

5 Q And you have no information or reason to believe that
6 that website was connected in any way to Al Menard?

7 A Correct.

8 Q And you have no information or reason to believe that
9 that website was connected to NDS?

10 A Correct.
11 Q And you have no reason to believe or information that
12 that website was connected in any way to Chris Tarnovsky?
13 A Correct.
14 Q Now, you mentioned that Mr. Tarnovsky at one point sent
15 you a file that was supposed to reprogram a DirectTV card to
16 receive Bell Express View?
17 A Correct.
18 Q Mr. Tarnovsky didn't tell you that he wrote that file;
19 did he?
20 A No. Just said he was sending it.
21 Q He just told you he was sending it. And when that file
22 later appeared or what you thought was a variation of that
23 file later appeared on the internet, it didn't indicate that
24 it was from Mr. Tarnovsky; did it?
25 A That's correct.

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15:08:37 1 Q In fact, it indicated that it had another source?
2 A Yes. I don't remember the actual name that was used on
3 the download.
4 Q But it wasn't Chris Tarnovsky?
5 A No.
6 Q And it wasn't any of the aliases that you have ever
7 heard connected with Chris Tarnovsky?
8 A Not that I recognize, no.
9 Q In fact, you had no reason to believe that that file
10 was connected to Chris Tarnovsky in any way; isn't that
11 right?
12 A Correct.
13 Q Now, Ms. Willetts also asked you some questions about
14 extracting box keys, and I believe that you said that Mr.
15 Tarnovsky sent you a link to a web page on how to extract
16 those keys?
17 A That's correct.
18 Q He didn't send you instructions on how to do that; did

19 he?

20 A No.

21 Q He sent you a link to where you could find that
22 information on the Internet; correct?

23 A That's correct.

24 Q Publicly available information?

25 A Not at that time.

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15:08:37 1 Q It was information that was on the Internet; right?

2 A It was on dr7's website.

3 Q So anyone who was a member of dr7 was able to get that
4 information?

5 A Only if they knew the exact link.

6 Q Mr. Tarnovsky didn't tell you that he was the author of
7 that information; did he?

8 A No, he did not.

9 Q He didn't tell you that he had created this method for
10 extracting box keys; did he?

11 A No, he did not.

12 Q Now, you also testified previously about some cards
13 that Mr. Menard reprogrammed?

14 A Yes.

15 Q Where were you when those cards were being
16 reprogrammed?

17 A We were in a hotel near the airport in Toronto.

18 Q In Toronto. It was in Canada?

19 A Yes.

20 Q When was this?

21 A I am going to say the second half of 2000.

22 Q Okay. And at the time that Mr. Menard reprogrammed
23 these cards, was intercepting DirectTV or EchoStar in Canada
24 legal under Canadian law?

25 A Sorry. Can you restate that?

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15:08:37 1 Q Sure. When you saw Mr. Menard reprogram these 52
2 cards, was intercepting DirectTV or EchoStar's broadcast
3 signal illegal under Canadian law?
4 A How would I know if it was legal or illegal?
5 MS. WILLETTS: Objection. Calls for a legal
6 conclusion.
7 THE COURT: Overruled.
8 BY MR. SNYDER:
9 Q Did you believe that what Mr. Menard was doing was
10 illegal?
11 A No.
12 Q Did you believe that purchasing those cards from Mr.
13 Menard was illegal?
14 A No.
15 Q Did you believe that Mr. Menard's reprogramming of the
16 50 cards for this other person whose name you don't remember
17 was illegal?
18 A No.
19 Q Now, you talked a little bit about the device that Mr.
20 Menard used, the stand-alone reprogrammer?
21 A Yes.
22 Q While you were there, Mr. Menard never called that a
23 stinger; did he?
24 A No, he did not.
25 Q In fact, at no time did Mr. Menard ever refer to that

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15:08:37 1 programming device as a stinger?
2 A That's correct.
3 Q And in fact, at no time in any of your conversations
4 with Mr. Menard has he ever referred to any programming
5 device that he had as a stinger?

6 A That's correct.

7 Q Now, you also testified about some conversations that
8 you had with Mr. Tarnovsky. Were these conversations -- and
9 it was a conversation about a reprogramming device; correct?

10 A Yes.

11 Q You have seen stand-alone reprogramming devices other
12 than the one that Mr. Menard possessed; correct?

13 A Personally, no.

14 Q That was the only one you have ever seen?

15 A Every one I have seen you would have to hook up to a
16 serial port on a laptop or a PC.

17 Q Now, when Mr. Tarnovsky described the stinger for you,
18 he didn't send you pictures of it; did he?

19 A No, he did not.

20 Q He just described that it was a stand-alone device;
21 correct?

22 A He described that it was a stand-alone device, yes,
23 that's correct.

24 Q So you associated it with the device that Mr. Menard
25 had because that's the only stand-alone programming device

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15:08:37 1 you had ever seen; isn't that right?

2 A Not only that it was stand-alone but that it had
3 numerous buttons on it that had to be pressed in sequence,
4 so on and so forth.

5 Q So there were only two aspects of it that caused you to
6 make this connection. It was a stand-alone device, and it
7 had buttons; right?

8 A Correct.

9 Q Mr. Tarnovsky never told you that he provided his
10 stinger to anybody; isn't that right?

11 A That's correct.

12 Q He never told you that he gave a stinger to Al Menard;
13 isn't that right?

14 A That's correct.

15 Q Mr. Tarnovsky never told you that the stinger was used
16 to reprogram EchoStar cards; is that right?

17 A Not specifically, no.

18 Q He just said it reprogrammed cards?

19 A He called it a loader.

20 Q He called it a loader. And Mr. Tarnovsky never told
21 you that it was used for piracy; isn't that right?

22 A That's correct.

23 Q In fact, he just told you that it was a device that he
24 had created for loading information onto Smart Cards?

25 A That's correct.

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15:08:37 1 Q Mr. Tarnovsky never told you how he built the stinger;
2 did he?

3 A How he built it?

4 Q Yes.

5 A No.

6 Q He didn't tell you any of the technical aspects of the
7 stinger?

8 A No.

9 Q He never sent you any information about the stinger;
10 did he?

11 A No.

12 Q He never offered to sell you a stinger; did he?

13 A No.

14 Q Never offered to send you a stinger?

15 A No.

16 Q And, in fact, never indicated that anyone other than
17 him actually had a stinger?

18 A That's correct.

19 Q And he gave you no reason to believe that that stinger
20 was used in any way for piracy of any type?

21 A No, he did not.

22 Q Just a few more questions, Mr. Dionisi. You mentioned

23 that you attended this meeting in Toronto of several

24 hackers?

25 A Correct.

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15:08:37 1 Q Mr. Tarnovsky and someone who used the alias wave Guide
2 were there?

3 A That's right.

4 Q And they were discussing technical things; right?

5 A That's correct.

6 Q You didn't hear Mr. Tarnovsky say anything at that
7 meeting to indicate that he was interested in promoting
8 EchoStar piracy; did you?

9 A No, I didn't.

10 Q You didn't hear Mr. Tarnovsky say anything at that
11 meeting to indicate that he was participating in EchoStar
12 piracy; did you?

13 A Correct.

14 Q Now, you mentioned that you're familiar with some of
15 the aliases that Mr. Tarnovsky uses?

16 A Yes.

17 Q You have never heard in any way that Mr. Tarnovsky has
18 used the alias Nipper; have you?

19 A I have no knowledge of him using it, no.

20 Q And you have no knowledge of Mr. Tarnovsky ever using
21 the alias Nipper 2000; isn't that right?

22 A That's correct.

23 Q And you have no knowledge of Mr. Tarnovsky ever using
24 the alias NipperClause; isn't that right?

25 A Correct.

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15:08:37 1 Q And you have no knowledge of Mr. Tarnovsky ever using

2 April 22, 2008 volume 4 Ereiser Dionisi.txt
the alias XBR21; isn't that right?

3 A Correct.

4 MR. SNYDER: Thank you, Mr. Dionisi. No more
5 questions.

6 THE WITNESS: You're welcome.

7 THE COURT: Redirect.

8 MS. WILLETTS: Thank you, Your Honor.

9 THE COURT: Bear with me this evening, ladies and
10 gentlemen. I would like to finish this witness.

11 REDIRECT EXAMINATION

12 BY MS. WILLETTS:

13 Q Mr. Dionisi, Mr. Snyder just went through a list of
14 aliases, but you are not aware of every alias Mr. Tarnovsky
15 has ever used?

16 A No. I have no way of knowing that.

17 Q He hasn't admitted to you --

18 THE COURT: Sir, we didn't hear the answer.

19 THE WITNESS: I have no way of knowing every alias
20 he ever used.

21 BY MS. WILLETTS:

22 Q In fact, on at least one occasion Mr. Tarnovsky used an
23 alias that you had never heard of before?

24 A Sorry?

25 Q At least on one prior occasion Mr. Tarnovsky used an

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15:08:37 1 alias that you had never heard of before?

2 A Yes.

3 Q Do you recall what that alias was?

4 A No, I don't.

5 Q Now, Mr. Snyder also asked you about this reprogramming
6 device that you saw Mr. Tarnovsky use. And he didn't call
7 it a stinger to you?

8 A No, I didn't see Mr. Tarnovsky. I saw Mr. Menard use
9 it.

10 Q Oh, I'm sorry. Mr. Menard use -- let me start over.

11 A Okay.

12 Q Mr. Snyder asked you about a reprogramming box that you
13 observed Mr. Menard use.

14 A Right.

15 Q And he didn't call it a stinger?

16 A No.

17 Q But based on your observation do you believe that is
18 the same box that Mr. Tarnovsky described to you that he had
19 built?

20 A In my opinion, yes.

21 Q And Mr. Snyder also asked you about the legality of
22 what was going on in Canada, whether or not you believed the
23 reprogramming of EchoStar access cards to be illegal at the
24 time. There were also 50 other reprogramming cards that
25 another individual had reprogrammed by Mr. Menard; correct?

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15:08:37 1 A Correct.

2 Q And you don't know whether all 50 of those cards went
3 to Canada or the U.S.; correct?

4 A I have no way of knowing that.

5 Q At the beginning of Mr. Snyder's cross-examination, he
6 asked you some questions about the declaration that you have
7 signed in this case.

8 A Correct.

9 Q And he asked you whether or not you were actually
10 willing to testify when you first spoke with Mr. Gee of
11 NagraStar. Do you recall that?

12 A Correct.

13 Q And you told him in the beginning you were not willing
14 to testify?

15 A I told him that I was not willing to come to the U.S.
16 to testify, yes.

17 Q Why was that, Mr. Dionisi?

18 A At the time the job I was in, I just didn't have the

19 leeway to have that kind of time off.

20 Q When you met with Mr. Gee originally, did you tell him
21 everything that you told the jury here today in terms of
22 what you knew about this case?

23 A Yes.

24 Q You also met with NagraStar's and EchoStar's lawyers,
25 as Mr. Snyder pointed out; isn't that correct?

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15:08:37 1 A Are you referring to in Victoria?

2 Q That's correct.

3 A Yes.

4 Q And Mr. Snyder made it a point to ask you whether or
5 not you had actually written out the words that were on your
6 declaration, and you didn't do that; is that correct?

7 A That's correct.

8 Q How did that declaration get drafted; do you know?

9 A There was four of us. There was two Nagra lawyers, my
10 lawyer, and myself. As we were going through the
11 information, one of the Nagra lawyers, I believe, was taking
12 the information down.

13 Q So everything that was in your declaration was the
14 information you were providing at the time; correct?

15 A That's correct, yes.

16 Q And is that information, as you sit here today, that's
17 the information you have testified hereto to the jury;
18 correct?

19 A That's correct.

20 Q Mr. Snyder -- just one last point here -- he asked you
21 about a release and indemnity agreement that you had entered
22 into with NagraStar?

23 A That's correct.

24 MS. WILLETTS: Do you have that exhibit? I
25 believe it's Exhibit 411.

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15:08:37 1 BY MS. WILLETTS:

2 Q Do you have that in front of you, Mr. Dionisi?

3 A I do.

4 Q Can you read the first sentence after "Dear Anthony M.
5 Dionisi."

6 A The first sentence of the first paragraph?

7 Q That's correct.

8 THE COURT: Do you want to put that up on the
9 screen? Blow it up, please, so we can see it. Okay.

10 THE WITNESS: "Thank you for your agreement to
11 testify as a witness and for giving a truthful, complete,
12 and accurate recorded statement under oath concerning the
13 things that you have personal knowledge of involving efforts
14 by certain persons/or entities to breach NagraStar LLC,
15 NagraStar Conditional Access Encryption System."

16 BY MS. WILLETTS:

17 Q Did you understand the release and indemnity agreement
18 you entered into with NagraStar, did you understand that in
19 exchange for providing truthful and accurate testimony, they
20 agreed to release you from any of your past activity that
21 you had engaged in?

22 A Yes.

23 Q And have you done that here today? Have you provided
24 truthful, complete, and accurate testimony?

25 A Yes.

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15:08:37 1 MS. WILLETTS: Thank you.

2 THE COURT: Recross.

3 RE CROSS-EXAMINATION

4 BY MR. SNYDER:

5 Q Just a couple of questions, Mr. Dionisi. Your complete
6 and truthful and accurate testimony is that you were not

7 aware of any connection between Mr. Menard or dr7 and any of
8 those websites that you mentioned; isn't that right?

9 A Correct.

10 Q And you're not aware of any connection between NDS and
11 any reprogramming of EchoStar access cards; isn't that
12 right?

13 A Correct.

14 Q And you're not aware of any connection between NDS and
15 any piracy of the EchoStar satellite system; isn't that
16 right?

17 A That's correct.

18 MR. SNYDER: Thank you, Mr. Dionisi.

19 THE COURT: I doubt you will be returning to
20 court. I am being very cautious, though. If you are needed
21 back, you will have a limited time, 72 hours, to return. I
22 think that we are actually right on schedule with what
23 counsel represented to me, very close anyway.

24 In an absolute abundance of caution, I'm going to
25 ask you to remain available through June 15, but I think the

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15:08:37 1 case will conclude in the next couple of weeks. Okay?

2 THE WITNESS: Okay.

3 THE COURT: Remember, 72 hours, or there is an
4 adverse inference to the parties.

5 THE WITNESS: Okay.

6 THE COURT: would 10:00 be acceptable by agreement
7 of all of us tomorrow? Then you are admonished not to
8 discuss this matter amongst yourselves or express or form
9 any opinion concerning this case. We will see you at 10:00.

10 (Jury not present)

11 THE COURT: Thank you, counsel, for your courtesy.
12 If you will be seated.

13 According to our schedule Mr. Tarnovsky is the
14 first witness for tomorrow; is that correct?

15
16 THE COURT: All right. Because one of the jurors
17 has an important engagement that he informed us of and I
18 informed you of through the clerk, we are resuming at 10:00.
19 That gives us two hours, I think, on the record without
20 burning out the court reporters.

21 So I am going to order Mr. Shelton to be present
22 tomorrow at 10:00 -- strike that, at 8:00. My apologies.
23 Mr. Shelton at 8:00, Mr. Rock at 8:00.

24 Are these documents being Fed Ex'd as I ordered?

25 MS. WILLETTS: They are, Your Honor. They will be

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15:08:37 1 here tomorrow morning.

2 THE COURT: Tomorrow morning?

3 MS. WILLETTS: I am not sure what the earliest Fed
4 Ex is, but he scheduled it for the earliest.

5 THE COURT: Where are they going to arrive at?

6 MS. WILLETTS: The hotel.

7 THE COURT: You need to have somebody at that
8 hotel and bring those to court.

9 MS. WILLETTS: We will, Your Honor.

10 THE COURT: Now, is there anything further at
11 least on the record tonight? Then we will have an informal
12 discussion. Let me ask this. What's your position
13 concerning the question I've raised, and that is, obviously
14 there have now been significant press inquiries. My guess
15 is that when Tarnovsky testifies, that's minimally going to
16 generate notoriety from the gentleman who was out visiting
17 with us last week. What was his name?

18 MR. SNYDER: Mr. Tepper.

19 THE COURT: Mr. Len Tepper, that's right, of ABC.
20 Apparently -- was it Dateline that he was -- was it Dateline
21 that he represents? I don't know ABC from NBC from CBS.
22 Was it Dateline?

23 MR. HAGAN: Nightline.

24 MR. SNYDER: Nightline.

25 THE COURT: Thank you. You must watch TV.

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15:08:37 1 In the past with cases like -- you know, whenever
2 you get a notorious case like the Aryan Brotherhood or Anna
3 Nicole Smith -- we've had a couple. I don't expect the
4 press rush that we get on those kinds of cases, but my guess
5 is it's going to generate some notoriety. And the problem
6 isn't the press. The problem will be with the jury.

7 when we took it on in the past head-on and said to
8 the jury "you can expect the following" or "don't watch
9 something" it has two effects. One is the unethical juror
10 will rush out to watch it, but since there are no unethical
11 jurors, I am presuming that they won't.

12 Second, the timing of that can be prejudicial. In
13 other words, we can't control the press. Now, what I am not
14 going to do is hear a motion for new trial if one of the
15 jurors, you know, watches a program or starts to watch a
16 program. In the past, I have had better cooperation, quite
17 frankly, with criminal counsel than I have with you civil
18 counsel.

19 I am not denigrating you, but with the Mexican
20 Mafia and AB cases, et cetera -- I mean, we literally told
21 the jury the following, and that is because we had a press
22 representative for the printed press, and then we had a
23 press representative for media -- we could cooperate with
24 that one representative that I appointed, but I didn't
25 expect this to generate significant press, and it hasn't

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15:08:37 1 from my position anyway. There has been some coverage, but
2 it could start now because the first major piece that hits

3 in media or print will generate others to come in.

4 I want to get both of your thoughts because I am
5 just forewarning you that when anything hits, especially on
6 television, that can be hard to deal with. You don't know
7 what is going to be said, and apparently Mr. Tepper has been
8 following this since 2002 or 2003. So, your wisdom.

9 MR. SNYDER: Your Honor, I think given the
10 expected remaining length of the trial, my preference would
11 be that we caution the jury that the case may be generating
12 additional media interest but not specify any particular
13 coverage, whether it be newspaper coverage or television
14 coverage.

15 My evaluation is that the trial is not going to go
16 on for so much longer that you have the kinds of problems
17 that you had in the AB case and the Mexican Mafia case.

18 THE COURT: You're right. Those were nine-month
19 death-penalty trials, and because of that, we got a rush.
20 For instance, we got huge initial coverage, let's say -- and
21 that happened with Anna Nicole Smith, too, but there it was
22 literally a lot.

23 So we get this initial rush. You're absolutely
24 right. Then when we got to the 13th murder out of 30, the
25 press had lost interest, but they were back for key

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15:08:37 1 witnesses like Gotti. Whenever John Gotti was mentioned,
2 we'd get this huge rush, and then people would disappear.

3 This is the opposite. I am afraid that -- strike
4 that. We haven't gotten from my standpoint significant
5 coverage, but when Tarnovsky hits or somebody hits that's of
6 interest, I think all of us understand that that's going to
7 generate not significant coverage where the courtroom will
8 be packed with reporters, but it's going to generate
9 national or international interest because we already know
10 that one gentleman is here from Switzerland.

11
12 from?

13 UNIDENTIFIED SPEAKER: For the National Radio
14 Station.

15 THE COURT: From Switzerland.

16 So we know minimally it causes international
17 press, but sometimes like with the AB we picked up press in
18 the United Kingdom because of the allegations of fascism or
19 Nazism or a white supremacist movement. I don't know what
20 to expect. I think ABC is the primary vehicle that drives
21 additional coverage.

22 So if your recommendation is, and you agree, to
23 alert the jury but not alert the jury with specificity, at
24 least they know when they're picking up their papers or
25 watching media in the next couple days to be cautious. At

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15:08:37 1 least they're not caught by surprise.

2 If I was comfortable, if I had both of you in
3 there in the room with me, I would actually place a call in
4 your presence with you on the phone and ask Mr. Tepper, you
5 know, the date. But right now we're guessing, and I will
6 take your combined wisdom and probably follow your lead.

7 Mr. Hagan.

8 MR. HAGAN: Your Honor, I tend to agree that if we
9 specifically point out a particular program or particular
10 special or article, I think it's just going to heighten the
11 jury's interest. Just like telling a child don't do
12 something, it's going to be difficult for them to resist the
13 temptation.

14 I think that a friendly reminder of the initial
15 instructions that the Court gave initially, and that is
16 don't look at the media, don't read articles, until the case
17 is over so that you have a pure thought on the evidence that
18 comes in the trial --

19 THE COURT: And warn them that there may be press

20 coverage forthcoming.

21 MR. SNYDER: We have no problem with a joint call
22 to Mr. Tepper.

23 THE COURT: I agree. I think your counsel in that
24 is wise, and I think we were wise to take it head-on quite
25 frankly in some modified form so that we're not caught with

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15:08:37 1 jurors who are reading information and it's inadvertent.

2 Okay, is there anything more on the record
3 tonight?

4 MR. SNYDER: There is one more matter I would like
5 to raise on the record, Your Honor, just to help me
6 understand for the benefit of my client. Dr. Rubin has
7 testified and was twice admonished by the Court in front of
8 the jury that because he was the corporate representative he
9 ought to know certain information.

10 THE COURT: Yes.

11 MR. SNYDER: It is true that Dr. Rubin is the
12 corporate representative and that he sits at this table, but
13 he was not subpoenaed as the corporate designee such that he
14 was when he testified the spokesperson with an obligation to
15 educate himself.

16 The Court instructed him to go find information
17 about the standards of business conduct, which he did go do.
18 Perhaps I am confused, but I did not understand, nor has it
19 been my experience, that the person who sits at counsel
20 table is somehow charged with all knowledge or answers to
21 questions that counsel might ask.

22 THE COURT: This is a dangerous discussion you're
23 entering into. Are you sure you want me to respond to this?

24 MR. SNYDER: Perhaps we should discuss it off the
25 record.

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15:08:37 1

THE COURT: No, no. You raised it now.

2

MR. SNYDER: I did raise it because I --

3

THE COURT: I am going to respond very strongly to your comments. Finish.

5

MR. SNYDER: That is the issue I wanted to raise, Your Honor.

7

THE COURT: I want to make sure you have completely said what you have to say, and then I am going to respond to you. Are you done?

10

MR. SNYDER: Yes.

11

THE COURT: Counsel, however you designate it, for either EchoStar or NDS, I think it's literally tragic that you're placing on both parties' parts low-level engineers on the witness stand from Haifa, Israel, who don't quite know where they got directions from in Jerusalem.

16

I think it's tragic that we have this whole milieu of NDS, NagraStar -- so I am fair to both sides -- NagraStar, NDS, and DirectTV, and you have what you may designate a corporate representative for 30(b) and yet the gentleman doesn't quite understand the structure.

21

Both of you in my humble opinion with international companies crossing international borders should have had Ergen here. You should have had Andre Kudelski here. You should have the gentleman from England -- help me.

25

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15:08:37 1

MR. SNYDER: Dr. Peled.

2

THE COURT: Dr. Peled, and you should have Rupert Murdoch. When you have alleged piracy of this type and you have the trading and stealing of documents of this type in those allegations, the jury has the right to hear it from the very top of these organizations that they didn't know

6

7 about this theft or they had no knowledge of it, and they
8 have the right to see the person and judge their demeanor
9 and their credibility. I don't think I could have been any
10 clearer about that by giving a warm invitation to all to
11 testify, nor do I think I could have any more clear about
12 the fact that sometimes jurors may assume that leadership
13 starts at the top.

14 So the gentleman says he hasn't had a conversation
15 with Mr. Rupert Murdoch or Dr. Peled or that Andre Kudelski
16 is going to sit over in Switzerland and request money but
17 not pay, you know, homage to the jury in terms of judging
18 credibility. I think I have been equally strong concerning
19 Mr. Lenoir's testimony and my displeasure with the fact that
20 you are both gentlemen put in that position.

21 So I've made it clear that I'm turning you loose
22 in terms of argument. You can argue the nonappearance of
23 parties on either side. I don't have jurisdiction. In
24 fact, as far as I'm concerned you both decided from day one
25 to take advantage of the 150-mile radius jurisdiction of

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15:08:37 1 this Court to bring a multi-national case to this Court with
2 last-minute discovery, hiding of evidence by both sides,
3 quite frankly -- and I'll be blunt about that -- last-moment
4 information flowing back and forth from these corporate
5 entities -- literally almost a waste of discovery for three
6 years in my humble opinion. Now, I am not going to say that
7 to the jury, but don't tempt me.

8 So, I have admonished Mr. Lenoir. And if you feel
9 stunned by that, Mr. Snyder, that's too bad. Your client is
10 put in exactly the same position, and this is about as
11 frustrating to the American judicial system to watch what's
12 going on between these parties and ask an American jury to
13 judge, giving up their time, with one of the jurors sitting
14 receiving no money, for these multi-national corporations
15 posturing back and forth between themselves.

16 Now, I could say something much stronger tonight,
17 but I am going to defer and leave the bench before I really
18 say what's on my mind, but I hope that that answers your
19 question. I will not countenance somebody in either one of
20 you gentlemen's position not knowing the answers when
21 questions are asked, and that's been coequal. The problem
22 is you got stung at the last point, Mr. Snyder, so now you
23 feel gouged. Mr. Hagan felt equally gouged about two weeks
24 ago with Mr. Lenoir on the stand.

25 I have absolutely no sympathy, although I have no

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15:08:37 1 power, when the top of your organization does not appearing
2 and saying to this jury -- with hundreds of millions of
3 dollars at stake, they can't fly to the United States and
4 look a jury in the eye so they can judge credibility?
5 That's astounding to me.

6 So, we are off the record. I'll be back in just a
7 few minutes.

8 (Recess.)

9 (Jury not present.)

10 THE COURT: Counsel, have a seat. The Court will
11 finish a few comments. All counsel are still present.

12 when this lawsuit started, I simply viewed it
13 between corporations in a sense, NDS, et al., and EchoStar,
14 et al. This case has moved far beyond two corporations. It
15 involves very powerful and probably very ethical people, and
16 now it affects the consumer. Normally the Court would sign
17 some type of protective order for both parties, except it's
18 appearing more and more that we have a limited number of
19 players in the satellite signal business. Let's just put it
20 this way, the encryption business.

21 Understanding that this comment is outside the
22 presence of the jury is when counsel has decided to bring
23 this up, that applies to the American consumer, applies to

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24 the people who have subscription TV, to their rates, so this
25 has taken on a much larger larjec to this Court than simply

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15:08:37 1 two corporations..

2 This has become a lawsuit in which I think the
3 public has every right to know. My position has absolutely
4 changed from the beginning of this case to the present time.
5 That's why I will not sign a protective order from this
6 Court, and I will release all of the documents that come
7 into evidence like any other case to the press from this
8 point because it's not about you anymore. It's also about
9 the American consumer and what they get charged.

10 Mr. Snyder, I welcome any comments because I have
11 a lot more to say in response if you choose to keep going on
12 this record.

13 MR. SNYDER: No, Your Honor. Thank you.

14 THE COURT: Are you sure?

15 MR. SNYDER: Yes.

16 THE COURT: Mr. Hagan.

17 MR. HAGAN: I would just like to clarify one thing
18 for the record from the plaintiffs' position. We took Your
19 Honor's words of caution and words of instruction to heart
20 at the beginning of this case, and we have been able to
21 convince all of the witnesses to come here live. We have
22 put on Mr. Ergen, who is the CEO of EchoStar --

23 THE COURT: No, no, I am not going to place NDS in
24 a bad position or you in a good position. This is a coequal
25 statement across the board. It's a neutral statement. By

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15:08:37 1 my statements, I don't wish to embody you or harm you nor do
2 I wish to embody NDS or harm them. This is a coequal

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3 statement.

4 You both -- let me say for the record I have
5 esteemed, excellent counsel. This Court has a great
6 confidence in the attorneys in this court. I find the
7 attorneys to be absolutely ethical. I think this is driven
8 behind the scenes quite frankly by the corporate entities.

9 That's a neutral statement that I have made, and I
10 will keep it neutral. I am not going to single out NDS, and
11 I am not going to single out you. I am simply responding to
12 what I thought was an ill-timed and unthoughtful comment by
13 Mr. Snyder, and I would not have made that comment but for
14 his alleged protection of singling out Mr. Rubin and kind of
15 the inference that Mr. Rubin was being treated unfairly
16 compared to Mr. Lenoir. That's ridiculous.

17 I really don't care how you present your case,
18 except that you know that I had absolute noncooperation from
19 both of you a month ago if you are truthful with yourselves.
20 You weren't going to produce witnesses on behalf of EchoStar
21 at the beginning of this case and neither was NDS. If you
22 are really truthful with yourselves, you will know it took a
23 lot of brow-beating, a lot of threats of adverse inferences,
24 because you were going to come into my American system that
25 I absolutely love and present to a jury snippets, tactical

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15:08:37 1 decisions of different depositions that you chose on both
2 sides. I don't see how the American system can function,
3 so, yes, you have been pushed pretty hard by the Court, both
4 of you have.

5 On the good side of the ledger, we are in about
6 the best position we could be in, and, quite frankly, I
7 realize you could have gone five to ten years of discovery,
8 and until the case got started, this information wasn't
9 going to flow.

10 Let me say once again I don't think it's counsel's
11 fault. You are excellent counsel. I think it's the

12 corporations' fault. I think it's a multi-national
13 corporation doing business across international boundaries,
14 and, quite frankly, they have snubbed their those nose using
15 jurisdiction time and time again. We will produce who we
16 want when we want. Discovery has been lost. Frankly,
17 discovery has been destroyed.

18 I think arguments are made on both sides about the
19 ludicrousness of e-mails disappearing a week and a half
20 before a deposition, other items from EchoStar's perspective
21 that equally could be argued about destruction. So I am
22 giving you free reign in front of the jury to talk about
23 that.

24 Not through your gentlemen's efforts but this is
25 about the most difficult case in terms of the way the

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15:08:37 1 parties, not counsel, have conducted themselves, and I have
2 a very, very hard time understanding especially from my
3 background that leadership doesn't start at the top, and I
4 have forewarned you I think a lot of jurors are going to
5 think that.

6 So I think whether you bring Andre Kudelski, who
7 doesn't think this Court has any jurisdiction but is asking
8 for hundred of millions of dollars, or whether you bring
9 this gentleman from England or Mr. Murdoch who I am not sure
10 has relevance here -- I leave that to you, but it is going
11 to be argued by both sides, and I am giving you carte
12 blanche to say who is here and who is not. You have been
13 put on warning from the beginning.

14 So my frustration I think, Mr. Snyder, is you
15 trying to single out this Court -- I am going to be blunt
16 with you -- and rush to Mr. Dov Rubin's defense feeling
17 somehow you have been unfairly treated. That's the message
18 I am hearing.

19 Is that your message, sir?

20
21 There was a difference between the Court's references to Dr.
22 Rubin as a corporate representative and my understanding of
23 Dr. Rubin as someone who is representing the clients at
24 counsel table and was summoned to testify in his individual
25 capacity. He was not subpoenaed or summoned as a corporate

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15:08:37 1 designee.

2 THE COURT: But then who is? Who comes in to
3 represent you who has the answers? I mean, this is a
4 continuing pattern. Let me be neutral on both of your
5 parts, on the plaintiffs' part to begin with and on the
6 defendants' part. Who comes in to answers these questions
7 other than taking our time?

8 MR. SNYDER: I have understood the Court's
9 comments.

10 THE COURT: Can you get Dr. Peled here? Can you
11 get Mr. Murdoch here? How about Andre Kudelski? Is he
12 going to come in here and say he never had knowledge about
13 stealing NDS documents? Can you get Mr. Murdoch and Mr.
14 Peled to say, you know, at the top of this pyramid, at the
15 top of this structure, they had no idea about the alleged
16 satellite piracy if it occurred?

17 If you can't produce somebody in court, why is
18 this jury listening? I don't mean to denigrate either of
19 you gentlemen. You are not middle management. You are the
20 top of the structure, but you are the top of a limited
21 structure. I am getting tired of hearing about different
22 corporations who are supposedly separate entities, and,
23 quite frankly, there are four individuals behind all these
24 corporations -- Peled, Murdoch, Ergen, and Kudelski.

25 So you can divide that up slice that with the jury

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15:08:37 1 and pretend that all these are separate entitles, but the
2 shares flow, and the ownership flows, and finally they are
3 publicly held companies. That's another reason why the
4 consumer has the right to know it's a publicly-held company.

5 If you are a closely-held company, I don't think
6 the consumer would be the same. You're publicly traded.
7 You're public companies. You owe that duty to the public
8 who, quite frankly, trades on the stock exchange, and that
9 puts you in a different position. As far as I am concerned,
10 the Court has the complete right to let the consumers and
11 the country know why their rates are going up, quite
12 frankly.

13 Now, any other comments, and I am glad to respond?
14 I haven't even got to my thought about what I think Congress
15 might do. I have got a whole speech prepared if you want to
16 hear that.

17 MR. SNYDER: I have nothing further.

18 MR. HAGAN: Nothing further, Your Honor.

19 THE COURT: All right. We are off the record.

20 (Thereupon, court was adjourned.)

21 -oOo-

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CERTIFICATE

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I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported

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 22, 2008

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Sharon A. Seffens 4/22/08

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