

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

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ECHOSTAR SATELLITE)	
CORPORATION, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	No. SACV 03-0950-DOC
)	
NDS GROUP PLC, et al.,)	
)	Day 9, Volume II
Defendants.)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Jury Trial

Santa Ana, California

Wednesday, April 23, 2008

Jane C.S. Rule, CSR 9316
Federal Official Court Reporter
United States District Court
411 West 4th Street, Room 1-053
Santa Ana, California 92701
(714) 558-7755
08-04-23 EchoStarD9V2

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I N D E X

EXAMINATION

Witness Name	Direct	Cross	Redirect	Recross
TARNOVSKY, CHRISTOPHER				
By Mr. Hagan	4			

EXHIBITS

Exhibit	Identification	Evidence
Plaintiffs' No. 4-A		4
Plaintiffs' No. 25		47
Plaintiffs' No. 772		21

1 SANTA ANA, CALIFORNIA, WEDNESDAY, APRIL 23, 2008

2 DAY 9 - VOLUME II

3 (10:14 a.m.)

4 (Live reporter switch with Debbie Gale.)

5 (The following proceedings is taken in the
6 presence of the jury.)

7 CHRISTOPHER TARNOVSKY, PLAINTIFFS' WITNESS (Continued.)

8 DIRECT EXAMINATION (Continued.)

9 BY MR. HAGAN:

10 Q Do you have a copy of that in front of you?

11 A Yes, I do.

12 Q And on the last page, are those your initials at the
13 bottom?

14 A Yes, they are.

15 Q Does this look like the confidential agreement when you
16 started working for the defendants?

17 A It does.

18 MR. HAGAN: Your Honor, at this time we would
19 offer Exhibit 4-A into evidence.

20 THE COURT: Any objection?

21 MR. KLEIN: No, your Honor.

22 THE COURT: Received.

23 (Plaintiffs' Exhibit No. 4-A is received in
24 evidence.)

25 MR. HAGAN: Can we blow up the paragraph

1 immediately under the word "Definitions."

2 BY MR. HAGAN:

3 Q Now, Mr. Tarnovsky, you understood when you signed this
4 confidentiality agreement that it imposed certain
5 restrictions on you; is that right?

6 A Yes.

7 Q Restrictions that you weren't to disclose, confidential
8 or proprietary information outside of the defendants,
9 correct?

10 A Yes.

11 Q But this confidentiality agreement only applied to
12 confidential information about the defendants' security
13 system; isn't that right?

14 A Yes, this is common.

15 Q It did not obligate you not to disclose confidential
16 information about the defendants' competitors' technology,
17 correct?

18 A As far as I read, yes, correct.

19 Q In fact, there is nowhere in this document that
20 prohibits you from disclosing information about the
21 defendants' competitors or their technology, correct?

22 A That would not be normal for an NDA, but you are
23 correct.

24 Q Now, despite the fact that the defendants knew you are
25 a world-renowned hacker and pirate at the time they hired

1 you, they didn't provide you with any training, did they,
2 Mr. Tarnovsky?

3 A No.

4 Q And they didn't require you to work in any official NDS
5 establishment; isn't that correct?

6 A Correct.

7 Q They allowed you to work from the comfort of your own
8 home; is that right?

9 A Yes.

10 Q Where there was no supervision, no monitoring equipment
11 whatsoever, correct?

12 A Correct.

13 Q Now, when you first started working for the defendants,
14 you weren't being paid by them, were you, Mr. Tarnovsky?

15 A I was always paid by them. That's an incorrect
16 statement.

17 Q Mr. Tarnovsky, weren't you, in fact, paid by a company
18 called HarperCollins?

19 A Excuse me. Yes, however, NDS was paying me indirectly.

20 Q Through the company HarperCollins --

21 A Yes.

22 Q -- correct?

23 A Yes.

24 Q HarperCollins, as you understand it, is a News
25 Corporation affiliate?

1 A Yes.

2 Q HarperCollins is the publishing arm for Rupert
3 Murdoch's media empire, as you understand it?

4 A Yes.

5 Q HarperCollins is the vehicle by which Mr. Murdoch's
6 empire backed politicians and political agendas?

7 MR. KLEIN: Objection, your Honor.

8 THE COURT: Sustained.

9 BY MR. HAGAN:

10 Q Now, Mr. Tarnovsky, who made the decision for your
11 payment, your compensation to come from Rupert Murdoch's
12 company, HarperCollins, as opposed to the company NDS that
13 you were performing work for?

14 A I don't know.

15 Q Who would know the answer to that question?

16 A I -- I believe Mr. Norris could -- could explain that.

17 Q Now, one of -- going back to your initial role for the
18 defendants, in 1997, one of your responsibilities was to
19 spread what Reuven Hasak calls misinformation; is that
20 correct?

21 A I was never told that.

22 Q You were never instructed to provide misinformation to
23 the pirate community through these websites; is that your
24 testimony?

25 A That is my testimony.

1 Q Well, let's talk about one of the first projects that
2 you worked on when you started with the defendants. You
3 were directed by NDS to build pirate or develop pirate
4 software for reprogramming DirecTV access cards; is that
5 correct?

6 A That was very long. Could you repeat that, please?

7 Q Sure.

8 I want to focus on one of the first projects that you
9 worked on for the defendants. That project involved you
10 developing pirate software for reprogramming DirecTV access
11 cards; is that correct?

12 A Yes, it is.

13 Q And that software included something called a dongle;
14 is that right?

15 A That is correct.

16 Q And a dongle is a function of the software that allowed
17 you to control the number of pirated cards that could be
18 reprogrammed, correct?

19 A That is one aspect of it, yes.

20 Q Were you aware at the time that you were engaging in
21 these efforts that the government and DirecTV believed this
22 conduct to be risky and too difficult to control?

23 A I did not know that.

24 Q Did you inform anyone at DirecTV that you were building
25 this software?

1 A DirectTV was fully aware of this. I did not personally
2 inform them, however.

3 Q My question was, did you inform anyone at DirectTV that
4 you were developing this pirate software?

5 A I did not.

6 Q Now, Mr. Tarnovsky, you were instructed to develop this
7 software by the defendants; is that correct?

8 A Yes.

9 Q And you understood at that time that the defendants
10 provided the security system used by DirectTV here in the
11 United States?

12 A Yes.

13 Q So you were instructed to build a software or develop a
14 software that could circumvent that technology; is that
15 right?

16 A Yes.

17 Q You provided that technology to Mr. Ron Ereiser's
18 pirate syndicate up in Canada; is that correct?

19 A Yes.

20 Q And you were instructed to provide that software to him
21 by representatives of the defendants, correct?

22 A Yes.

23 Q That software worked. In other words, it allowed
24 Mr. Ereiser's syndicate to reprogram DirectTV cards; is that
25 right?

1 A Yes.

2 Q Shortly after that, you attended a meeting in Canada
3 with Mr. Ereiser and other individuals; is that right?

4 A Yes.

5 Q And --

6 A Excuse me. Before that, I attended a meeting; that is
7 incorrect.

8 THE COURT: Does the jury know the approximate
9 year or time, Counsel?

10 BY MR. HAGAN:

11 Q Do you recall the approximate month, Mr. Tarnovsky?

12 THE COURT: And year.

13 THE WITNESS: I believe it was October of -- of
14 1997 I visited this group that you are referring to in
15 Canada.

16 BY MR. HAGAN:

17 Q And as you understood it, all the individuals present
18 at that meeting were involved in one way or another in
19 hacking security systems or satellite piracy, correct?

20 A Yes.

21 Q In fact, that was the reason that you went to meet with
22 those individuals, correct?

23 A Yes.

24 Q Now, at this meeting -- well, let me back up for a
25 moment.

1 The defendants were fully aware that you attended this
2 meeting, right?

3 A Yes.

4 Q In fact, they instructed you to go to this meeting,
5 correct?

6 A Yes.

7 Q And they paid for your expenses incurred during this
8 meeting, correct?

9 A Yes.

10 Q And you gave them a report of what you talked about and
11 what you did when you got back to the United States,
12 correct?

13 A I should have, yes.

14 Q Now, during this meeting, you were provided with
15 \$20,000 in cash by Mr. Ereiser's pirate syndicate; is that
16 right?

17 A Yes.

18 Q But you didn't bring that cash back across the border
19 into the United States, did you?

20 A No.

21 Q Later, that cash would be sent to you, correct?

22 A Yes.

23 Q And you understood at the time that you received this
24 money that \$10,000 of it was repayment to you for your past
25 assistance in piracy?

1 A Yes.

2 Q And the other \$10,000 was to secure your assistance for
3 future involvement in piracy, correct?

4 A Yes.

5 Q Now, eventually, you received this money through the
6 mail; is that right, Mr. Tarnovsky?

7 A That is correct.

8 Q And you received it through a mail account that you had
9 set up in Manassas, Virginia; is that right?

10 A Yes, it is.

11 Q At the time that you received the money, though, you
12 were living in California?

13 A Yes.

14 Q And working for the defendants in California?

15 A Yes.

16 Q You had those shipments routed to you from the mail
17 account in San Marcos -- I'm sorry, in Manassas, Virginia,
18 correct?

19 A Yes.

20 Q Now, NDS knew about this mail account, is that right,
21 Mr. Tarnovsky?

22 A Yes.

23 Q In fact, they instructed you to set up this mail
24 account?

25 A Yes.

1 Q And they paid for the monthly fees and costs associated
2 with that mail account, correct?

3 A Yes.

4 Q In fact, you submitted invoices each month for that
5 mail account?

6 A Yes.

7 Q Do you recall approximately the month when you received
8 the first shipment of cash from Canada?

9 A No, I just recall it took a long time, over a year
10 period.

11 Q And two of those shipments which were sent to your mail
12 account in Manassas, Virginia, two of those payments
13 involved cash being concealed inside of electronic
14 equipment; is that correct?

15 A That is correct.

16 Q One of them was a Sony PlayStation; is that right?

17 A Yes.

18 Q And the other one was a Sony camera?

19 A No.

20 Q What was the other?

21 A It was -- it was some type of camera, but it wasn't
22 from Sony. It was some Japanese or Chinese camera.

23 Q And the cash was concealed inside these electronic
24 devices; is that correct?

25 A Yes.

1 Q Now, you notified the defendants that you were
2 receiving this cash; is that right?

3 A Yes.

4 Q You notified John Norris, your supervisor?

5 A Yes.

6 Q And you told him how you were receiving that cash; is
7 that correct?

8 A Yes, I believe so.

9 Q And Mr. Norris did not tell you to report that cash or
10 those shipments to any government agency, did he?

11 A No. I -- I don't -- I actually don't know what he said
12 back then.

13 Q If Mr. Norris had instructed you to report that cash to
14 government officials, would you have done so?

15 A I don't know that that's necessary. However, I am
16 required to pay taxes on these monies.

17 Q My question is, Mr. Tarnovsky, if Mr. Norris had asked
18 you to report those shipments to any government agency or
19 official, would you have done so?

20 MR. KLEIN: Objection. Calls for speculation.

21 THE COURT: Overruled.

22 THE WITNESS: Yes, I would have.

23 BY MR. HAGAN:

24 Q Okay. But you didn't report those shipments to any
25 government agency, did you, Mr. Tarnovsky?

1 A I wasn't instructed to do so, so no.

2 Q You didn't report them to the RCMP in Canada, correct?

3 A Correct.

4 Q You didn't report them to the United States Customs
5 officials, correct?

6 A Correct.

7 Q You didn't report them to the Assistant United States
8 Attorneys Office, did you, Mr. Tarnovsky?

9 A No.

10 Q Now, when you received this cash, you didn't give it
11 over to Mr. Norris or anyone else at the defendants, did
12 you?

13 A No.

14 Q And the reason is you were instructed that you could
15 keep that money; is that correct?

16 A Partially.

17 Q And in fact, as of last year, when we deposed you a
18 second time, you still had that money; isn't that right,
19 Mr. Tarnovsky?

20 A Yes.

21 Q They even allowed you to keep that \$20,000 after you
22 were terminated from their employment last year; is that
23 correct?

24 A Yes.

25 Q Did you think there was anything wrong with receiving

1 cash shipments concealed inside electronic equipment through
2 a dummy mail account in another state?

3 A I thought it was strange.

4 Q Now, Mr. Tarnovsky, I want to talk to you a little bit
5 about the defendants' efforts to reverse engineer and hack
6 EchoStar security system.

7 You're aware of an engineer employed by the defendants
8 by the name of David Mordinson; is that correct?

9 A Yes.

10 Q And the first time you met Mr. Mordinson was shortly
11 after he started working for the defendants; is that
12 correct?

13 A Yes.

14 Q And that was in 1998?

15 A I'm not sure of the year; probably.

16 Q If Mr. Mordinson testified that he started working for
17 the defendants in 1998, does that sound consistent with your
18 recollection?

19 A I believe that you are correct, yes.

20 Q And where did that meeting take place, Mr. Tarnovsky?

21 A In Jerusalem.

22 Q At the defendants' offices?

23 A Excuse me, yes, at their office in Jerusalem.

24 Q And that wasn't the only time that you met with
25 Mr. Mordinson; is that right?

1 A No -- yes, that's correct.

2 Q In fact, as you stated in your deposition, you had at
3 least 5 to 10 different meetings with David Mordinson; is
4 that correct?

5 A Yes.

6 Q And you described those meetings, or you characterized
7 those meetings as a technical interchange; is that correct?

8 A That is correct.

9 Q Can you explain to the ladies and gentlemen of the jury
10 what you mean by technical interchange?

11 A Technical interchange is basically once every few
12 months I would go to Israel, travel to Israel, meet with the
13 engineers over there, and we would share ideas that I've
14 come up with, ideas that they've come up with, and we would
15 kind of comingle our ideas from multiple technical persons,
16 personas. I don't have anybody in California to speak to,
17 really, except my father, so it was good when I moved over
18 there to comingle with all of the -- the heads. There's
19 some Ph.Ds, master's degrees, engineers over there. Adi
20 Shamir from RSA, I would meet with him on occasion, and so
21 the technical exchange was basically that, just sharing
22 information.

23 Q So you started these technical interchanges where you
24 and David Mordinson shared information with each other in
25 1998, correct?

1 A That's not correct. And if I'd like to clarify, David
2 Mordinson was not the head of the technical interchange. He
3 was part of a group of engineers that we would be in a room
4 with having a meeting.

5 Q You began these meetings in 1998, correct?

6 A Negative.

7 Q Now, Mr. Tarnovsky, during these technical
8 interchanges, you would provide certain information to the
9 Haifa team, and they would provide certain information to
10 you, correct?

11 A Yes.

12 THE COURT: Well, that's not clear so far, yet,
13 Counsel. His testimony was he traveled to Jerusalem. It's
14 not clear that he was in Haifa.

15 MR. HAGAN: Let me back up for a moment, then.

16 BY MR. HAGAN:

17 Q Other than David Mordinson, who were the other NDS
18 engineers that participated in these technical interchanges?

19 A Yeko Vlevi (phonetic), Perry Smith, Yossi Tsurì --

20 THE COURT: Just a moment. Smith, the next
21 gentleman Tsurì?

22 THE WITNESS: Yossi Tsurì.

23 THE COURT: Spell that name for me, please.

24 THE WITNESS: Y-o-s-s-i T-s-u-r-i, I think,
25 something like this, your Honor.

1 Adi Shamir from RSA has been in these meetings,
2 Donny Ratner, R-a-t-n-e-r, David Watchvogel (phonetic),
3 Nathan Alzaz (phonetic). I can go on and on, but it's been
4 a year since I've worked for the company.

5 BY MR. HAGAN:

6 Q Was Zvi Shkedy one of the NDS engineers that
7 participated in these technical interchanges?

8 A Not until post 2001.

9 Q Had you heard the term "Black Hat Team" as it related
10 to the NDS engineers in the Haifa facility?

11 A Only verbally.

12 Q Now, Mr. Tarnovsky, I want to talk to you a little bit
13 about the creation and distribution of pirated EchoStar
14 access cards, but before we get too far into this, you're --
15 you deny any involvement in the creation or distribution of
16 EchoStar access cards, pirated cards; is that right, sir?

17 A Yes.

18 Q As part of your work for the defendants, you developed
19 and created a device called the Stinger; is that right?

20 A That is correct.

21 Q And that device, according to your words, could
22 communicate to any CAM in the world; is that right?

23 A This is correct.

24 Q And CAM stands for conditional access module; is that
25 right?

1 A Yes.

2 Q And that's just a fancy way of saying Smart Card?

3 A That is correct.

4 Q So the Stinger that you developed could communicate to
5 any Smart Card in the world, correct?

6 A Yes.

7 Q That included EchoStar Smart Cards, as well as DirectTV
8 Smart Cards, correct?

9 A Yes.

10 Q You developed this device as part of your work for the
11 defendants, correct?

12 A Yes.

13 Q And you were paid for your efforts to develop that
14 device, correct?

15 A Yes.

16 Q And you shared that device with other personnel within
17 the defendants' organization, correct?

18 A Yes.

19 Q Now, Mr. Tarnovsky, that device was unique in the sense
20 that it was a stand-alone device. In other words, you
21 didn't have to hook it up to a PC or a computer; is that
22 right?

23 A That's incorrect. I'm sorry, you have your facts
24 wrong.

25 Q It's your testimony that that device was not a

1 stand-alone device?

2 A That is correct.

3 MR. HAGAN: Christine, can we show Mr. Tarnovsky a
4 copy of Exhibit 772.

5 BY MR. HAGAN:

6 Q Mr. Tarnovsky, this is an e-mail exchange between you,
7 John Norris and other NDS employees dated August 19th of
8 2000. Have you had an opportunity to look at this document?

9 A I'm reading it.

10 MR. HAGAN: Your Honor, we would offer Exhibit 772
11 into evidence.

12 THE COURT: Any objection?

13 MR. KLEIN: No objection.

14 THE COURT: Received.

15 (Plaintiffs' Exhibit No. 772 is received into
16 evidence.)

17 MR. HAGAN: Can we blow that up.

18 BY MR. HAGAN:

19 Q And let's focus in on the last three lines of the first
20 paragraph, top e-mail.

21 Mr. Tarnovsky, in this e-mail that you sent in August
22 of 2000, you described the Stinger, and let me quote your
23 words, as "a stand-alone without a PC"; is that correct?

24 A This was an introduction e-mail about that. I -- yes,
25 it's correct, but it's being taken out of context.

1 Q Now, let's -- before we go off of this exhibit, the
2 e-mail line, the "from" line, says "Michael George," but
3 that's just a code name that you used in your work for the
4 defendants, correct?

5 A Yes.

6 Q And you used a number of other code names or aliases
7 for your work on behalf of the defendants; is that correct?

8 A Yes.

9 Q And we'll get into those later in the day, but the
10 Michael George alias, that was just used internally within
11 the defendants' representatives, correct?

12 A Yes.

13 Q Now, you -- if I understood your deposition testimony
14 correctly, you deny providing that Stinger device or any
15 form of that device to an individual named Allen Menard --

16 A Yes, I deny that.

17 Q -- is that correct?

18 A Yes, sir.

19 Q Let's take a look at Exhibit 989.

20 This has already been introduced into evidence, your
21 Honor.

22 THE COURT: You may put it up on the board.

23 MR. HAGAN: I'm sorry, Clint, 988 first.

24 BY MR. HAGAN:

25 Q Mr. Tarnovsky, you recognize the name or the nick

1 "dr7"; is that right, sir?

2 A Yes, I do.

3 Q That was a nickname used by your buddy, Allen Menard,
4 up in Canada; is that correct?

5 A Yes.

6 Q That was also the name of his pirate website that you
7 frequently visited, correct?

8 A Yes, it is.

9 Q Okay. And in this e-mail exchange between Mr. Menard
10 and Mr. Dawson, he says, "I called Von on the phone and
11 mentioned the problem. He told me that he is sending
12 another box, and we should have it this week... he's happy.
13 Thinks I killed this one from overuse, ha-ha."

14 Now, Mr. Tarnovsky, you deny providing Mr. Menard with
15 any type of reprogramming box; is that correct?

16 A That is my testimony.

17 Q But you don't deny using the alias "Von" or the code
18 name "Von"; is that right?

19 A No, I -- yeah, you are correct. I do not deny that.

20 Q In fact, you used that code name with Mr. Menard, among
21 other individuals, correct?

22 A On the internet, yes.

23 Q And you used that code name "Von" to post information
24 on Mr. Menard's website, www.dr7.com?

25 A I believe so, yes.

1 Q Now, let's take a look at Exhibit 989. And while
2 Christine is getting that out, let's just note the date for
3 a moment of this e-mail, which is October 19th of 1999.

4 Now, Exhibit 989, your Honor, this has also been
5 introduced into evidence.

6 THE COURT: You may put it up on the board.

7 BY MR. HAGAN:

8 Q Is another e-mail exchange between dr7 and Dave Dawson,
9 and this is dated three days later, October 21st of 1999.
10 And in this e-mail, Mr. Menard says "Vonnie is on the job,
11 and we should be fine soon."

12 Now, Mr. Tarnovsky, you deny sending a new reprogrammer
13 to Mr. Menard in or around August of 1999; is that correct?

14 A Yes, I deny that.

15 Q Now, let's take a look at Exhibit 990.

16 This, too, your Honor, has already been introduced into
17 evidence.

18 THE COURT: Just one moment, Counsel.

19 Counsel, just a minute.

20 BY MR. HAGAN:

21 Q Do you have a copy of that in front of you,
22 Mr. Tarnovsky?

23 A I do.

24 Q And this is another e-mail with the "from" line "dr7";
25 is that correct?

1 A Yes.

2 Q And it's dated March of 2000, March 1st of 2000; is
3 that right?

4 A Yes.

5 Q And in this e-mail, Mr. Menard is saying, "I got to get
6 coin together. I got to ship to Von this week"; do you see
7 that?

8 A I see that.

9 Q Now, you deny Mr. Menard ever shipping you money
10 related to reprogrammed EchoStar access cards --

11 A Yes, I do.

12 Q -- is that correct?

13 A Yes.

14 Q Now, let's take a look at Exhibit 991.

15 This has also been introduced previously, your Honor.

16 BY MR. HAGAN:

17 Q Mr. Tarnovsky, do you have a copy of Exhibit 991 in
18 front of you?

19 A Yes, I do.

20 Q And this is another e-mail with the "from" line of
21 "dr7," "members at www.dr7.com"; do you see that, sir?

22 A Yes.

23 Q And this one is dated July 27th of 2000, correct?

24 A Yes, it is.

25 Q And in this e-mail, Mr. Menard says again, "I gotta pay

1 Von for the cards"; do you see that?

2 A Yes.

3 Q But your recollection is Mr. Menard never sent you any
4 money for reprogrammed EchoStar access cards; is that
5 correct?

6 A That is correct.

7 Q Now, Mr. Tarnovsky, Tony Dionisi testified yesterday,
8 and you know Tony Dionisi; is that right?

9 A Yes, I know him.

10 Q You've met him before in Canada, correct?

11 A Once, yes.

12 Q And we'll talk a little bit about that meeting later,
13 but Mr. Dionisi testified that he was personally present
14 when Al Menard reprogrammed over 50 EchoStar access cards
15 with the little black box. Do you have any reason to
16 dispute that testimony, Mr. Tarnovsky?

17 A I have no say in this testimony whatsoever regarding
18 two individuals that I wasn't present around.

19 Q You weren't present when Mr. Menard used that
20 reprogramming device to -- to create pirated EchoStar access
21 cards, correct?

22 A Yeah, that's correct.

23 Q Now, Mr. Dionisi also testified that shortly after that
24 meeting with Menard, he had a conversation with you, and
25 during that conversation, you bragged to him about building

1 a reprogrammer, a stand-alone reprogrammer that could pirate
2 EchoStar access cards. Do you deny that conversation took
3 place?

4 A Yes, I do.

5 Q Mr. Dionisi also testified that you termed or coined
6 that reprogramming box the Stinger. You admitted earlier
7 that that was the name of a device that you built, correct?

8 A Yes.

9 Q A stand-alone device.

10 Now, Mr. Tarnovsky, you understood that in late 2000,
11 early 2001, you became the subject of a government
12 investigation; is that correct?

13 A Yes.

14 Q And you understood at that time that the investigation
15 dealt with, among other issues, monies that were intercepted
16 through a mail account in San Marcos, Texas, correct?

17 A Yes.

18 Q Now, you set up that mail account in San Marcos, Texas
19 in July of 2000; is that right?

20 A I'm not sure when I set it up, sir.

21 Q But you did set up a mail account in San Marcos, Texas,
22 right?

23 A Yes.

24 Q And that mail account was similar to the one that you
25 set up in Manassas, Virginia, correct?

1 A Yes.

2 Q Similar to the one that you received the cash payments
3 concealed inside the electronic equipment from Mr. Ereiser's
4 group in Canada, correct?

5 A Yes.

6 Q You weren't living in San Marcos, Texas at the time
7 that you set this account up, though, were you,
8 Mr. Tarnovsky?

9 A No.

10 Q You were living here in California?

11 A Yes.

12 Q Now, within a week of you setting up that mail account,
13 you received a package from Al Menard in Canada that was
14 labeled "birthday gift"; do you recall that?

15 A Yes.

16 Q And that was on August 2nd of 2000; does that date ring
17 a bell?

18 A No.

19 Q When's your birthday, Mr. Tarnovsky?

20 A April 20th.

21 Q So Mr. Menard was either a little early or a little
22 late; you would agree with that?

23 A This was common, yes.

24 Q Now, Mr. Menard sent that package, but he didn't put
25 your name on the "to" line, did he, Mr. Tarnovsky?

1 A I don't know.

2 Q You don't recall? Did you shred those records?

3 A I shred everything, yes.

4 Q Well, Lieutenant Leuters from the Hays County Narcotics
5 Task Force testified earlier in this trial, and he showed us
6 some shipping records that were obtained through the
7 government's investigation at Hays County. And those
8 shipping records, the one that said "birthday gift" was
9 addressed to CT, not Christopher Tarnovsky?

10 THE COURT: I'm sorry, you dropped your voice; to
11 who?

12 BY MR. HAGAN:

13 Q To CT, not Christopher Tarnovsky. Does that sound like
14 something Mr. Menard typically did when he sent you
15 packages?

16 A I don't know.

17 Q How did Mr. Menard find out about this mail account
18 that you had in San Marcos, Texas?

19 A I let him know.

20 Q And you had him ship you packages through that mail
21 account; is that correct?

22 A Yes.

23 Q Now, when he sent you this birthday gift six or seven
24 months after your birthday, it included a number of
25 different electronic devices, correct?

1 A Four months later, it contained a PlayStation 2 that
2 had just come out.

3 Q It also included a Sony controller, correct?

4 A I don't believe so.

5 Q It also included a Sony camera, correct?

6 A No, no, that's not correct. Whatever was in the
7 package related to the PlayStation 2.

8 Q Well, give me just a moment, Mr. Tarnovsky. We'll --
9 we'll find the shipping record.

10 MR. HAGAN: Christine, if you could hand
11 Mr. Tarnovsky a copy of what has been marked Plaintiffs'
12 Exhibit Number 53.

13 And your Honor, I would request permission to
14 publish this document. It was part of the documents
15 admitted through Lieutenant Leuters.

16 THE COURT: You may.

17 MR. HAGAN: Lieutenant Cumberland, I apologize.

18 BY MR. HAGAN:

19 Q Now, Mr. Tarnovsky, you've got in front of you a copy
20 of Exhibit 53, which is the shipping records associated with
21 that birthday gift that Al Menard sent you from Canada; do
22 you have that, sir?

23 A Yes.

24 Q And if you'll look on the front page, Mr. Menard uses
25 for your company name, "CT"; do you see that?

1 A Yes.

2 Q And for his name, he includes "X Factor Design." Was
3 that one of Mr. Menard's companies up there in Canada?

4 A To the best of my knowledge, yes.

5 Q Now, if you'll look at the next page, there is a
6 Declarations of Contents letter; do you see that,
7 Mr. Tarnovsky?

8 A Yes, I do.

9 Q And under section 21 entitled "Remarks," Mr. Menard
10 writes in "birthday gift"; do you see that?

11 A Yes, I see it.

12 Q Now, let's focus right above that. Mr. Menard writes
13 out the contents of the package that he shipped to you; do
14 you see that, Mr. Tarnovsky?

15 A Yes, I do.

16 Q And it says "one Sony PlayStation, one Sony controller
17 and three Sony CD players." I apologize, I think I may have
18 said a camera.

19 Now, do you still have any of the shipping records
20 associated with this package, Mr. Tarnovsky?

21 A I have -- I do not, no.

22 Q Okay. You would agree, Mr. Tarnovsky, that you could
23 have purchased any of these devices at your local Best Buy?

24 A No, I could not have.

25 Q It -- they needed to be shipped to you from

1 Mr. Menard's business up in Canada; is that your testimony?

2 A My testimony is that the system was not available in
3 North America, yet, and it had to come from Hong Kong. And
4 this was not a CD player, they were CDs, games for the
5 PlayStation 2.

6 Q And the best way to get that to you from Hong Kong was
7 to send it to Canada, and then send it down to a mail
8 account that you set up in Texas, and then reroute it over
9 here to you in California; is that right?

10 A That is correct.

11 Q How much money was in the Sony PlayStation,
12 Mr. Tarnovsky?

13 A There was no money in it.

14 Q Now, those packages that Mr. Menard -- or that one
15 package that you admit Mr. Menard sent you, that wasn't
16 inspected by government officials, was it?

17 A I believe everything is x-rayed when it goes through
18 the system.

19 Q That particular package wasn't intercepted by the Hays
20 County Narcotics Task Force and opened up pursuant to a
21 search warrant in Texas, correct?

22 MR. KLEIN: Objection. Lack of foundation, your
23 Honor.

24 THE COURT: Overruled.

25 THE WITNESS: I don't believe so, no.

1 BY MR. HAGAN:

2 Q You received that package at your home in California?

3 A Yes.

4 Q Now, Mr. Menard sent that package from Vancouver,
5 British Columbia, Canada; is that correct?

6 A I suppose.

7 Q Now, Lieutenant Cumberland testified that his
8 investigation revealed a number of other shipping records
9 that were associated with your mail account in San Marcos,
10 Texas. And his testimony was that you were receiving
11 packages every day or every other day through that mail
12 account. Do you have any reason to dispute that testimony?

13 A It sounds a little exaggerated.

14 Q You think that Lieutenant Cumberland came here from
15 Hays County and wasn't completely honest with the jury?

16 MR. KLEIN: Objection. Misstates the testimony.

17 BY MR. HAGAN:

18 Q Is that what you believe?

19 THE COURT: Overruled.

20 You can answer that.

21 THE WITNESS: I don't -- I don't know. I'm not
22 Mr. -- this guy.

23 BY MR. HAGAN:

24 Q Now, let's fast-forward.

25 August 2nd, 2000 is the date --

1 THE COURT: I'm sorry, Counsel, I am going to
2 reverse that. I am going to sustain the objection. Strike
3 the answer.

4 BY MR. HAGAN:

5 Q August 2000, August 2nd of 2000, that's the date that
6 Mr. Menard shipped you the birthday gift. And let's
7 fast-forward 28 days to August 30th. Another package, this
8 package was intercepted by the Hays County Narcotics Task
9 Force at your mail account in San Marcos, Texas. And the
10 government's investigation revealed that there was \$20,000
11 of cash concealed inside the circuitry of a CD player. It's
12 your testimony, Mr. Tarnovsky, that you had nothing to do
13 with that cash shipment; is that correct?

14 A Yes, that is correct.

15 Q You had no knowledge of that cash shipment?

16 A That is correct.

17 Q And that cash shipment had nothing to do with pirated
18 EchoStar access cards, correct?

19 A That is correct.

20 Q Would it surprise you that that cash shipment was also
21 received from British Columbia, Canada?

22 A No. Mr. Ereiser lived there.

23 Q Now, let's talk about one day later, August 30th,
24 August 31st of 2000. Another package was intercepted by
25 government officials at your mail account in San Marcos,

1 Texas. They executed another search warrant, and they
2 opened up that package, and they found a DVD player. And
3 inside that DVD player was \$20,100 cash concealed inside the
4 circuitry. It's your testimony that you had no knowledge of
5 that shipment, correct?

6 A That is my testimony.

7 Q And you had no reason to believe that that money
8 related in any way to your assistance in EchoStar piracy,
9 correct?

10 A Yes.

11 Q Now, you became aware through this case that the RCMP
12 in the Hays County Narcotics Task Force conducted a joint
13 investigation into those shipments and into the packages
14 that were intercepted by the government, correct?

15 A Yes.

16 Q You understood that the government officials lifted
17 fingerprints off of one of those packages and sent it up to
18 Canada for them to analyze, correct?

19 A It is my understanding.

20 Q And you understand that the RCMP linked those
21 fingerprints to a gentleman named Mervin Main, correct?

22 A Yes.

23 Q And you understand that Mr. Main was a business
24 associate of your buddy, Al Menard, correct?

25 A I don't know the exact extent of the relationship.

1 Q If Mr. Menard testified that Mr. Main was one of his
2 business associates and he, in fact, helped with the website
3 and helped drive Mr. Menard around after he had surgery, do
4 you have any reason to dispute that testimony?

5 A No.

6 Q Now, that second package also came from Vancouver,
7 British Columbia, Canada, the same area from which
8 Mr. Menard sent you the birthday gift. Do you have any
9 reason to dispute that?

10 A No.

11 Q You know an individual named Stan Frost --

12 A Yes.

13 Q -- correct?

14 A Yes.

15 Q You and Mr. Frost became pirate buddies back in the
16 day; isn't that right?

17 A No, that's incorrect.

18 Q You understand that Mr. Frost was engaged in satellite
19 piracy?

20 A Yes, I did.

21 Q In fact, you attended a meeting with Mr. Frost in
22 mid-2000; is that right?

23 A Yes.

24 Q That meeting took place up in Canada?

25 A Yes.

1 Q And part of that meeting, at least, was at the SkyDome
2 in Canada, correct?

3 A No.

4 Q At any point in time when you were there in mid-2000,
5 did you visit the SkyDome?

6 A The entire meeting took place at the SkyDome.

7 Q Oh, thank you, Mr. Tarnovsky.

8 Now, Mr. Frost and yourself weren't the only ones
9 present at this meeting; is that right?

10 A Correct.

11 Q Your buddy, Al Menard, was also there, wasn't he?

12 A Yes.

13 Q Do you recall who else was present?

14 A Another person from Edmonton, another person from
15 Tennessee, Warren Melnick, Tony Dionisi was there, some
16 other people that I didn't know were there.

17 Q All the people that were attending that meeting were
18 involved in one way or another in satellite piracy; isn't
19 that correct?

20 A Yes, that's correct.

21 Q In fact, at the time, Mr. Menard was operating his dr7
22 website out of Vancouver, British Columbia, Canada, correct?

23 A I -- I don't know where he operated it from.

24 Q Well, you provided Mr. Menard with some technical
25 assistance for his website at some point in time, didn't

1 you, Mr. Tarnovsky?

2 A That was not my testimony.

3 Q In fact, Mr. Menard paid you for providing him with
4 some assistance related to his website, correct?

5 A That was not my testimony.

6 Q Now, during this meeting with your buddy, Al Menard,
7 and your other buddy, Stan Frost --

8 THE COURT: Just a moment. I am not sure what the
9 answer refers to.

10 You may be referring back to depositional
11 testimony. He's asking you today in court in front of the
12 jury.

13 So reask those questions, Counsel.

14 BY MR. HAGAN:

15 Q Mr. Tarnovsky, did you ever provide Mr. Menard with any
16 assistance that related in any way whatsoever to his
17 website?

18 A I don't know if -- if it helped his website or not.

19 Q Did Mr. Menard ever pay you any money providing him
20 with technical assistance that related in any way to his
21 website?

22 A I don't know when I helped him if it was for his
23 website or for his own personal use. I -- I don't know.

24 Q Was Mr. Menard one of these poor, poor Canadians that
25 you were helping in the '96, '97 time frame?

1 A I would -- sure, yes.

2 Q Now, I believe you testified at your deposition that
3 despite the fact that all of these gentlemen were involved
4 in satellite piracy, you didn't discuss any issues about
5 hacking or piracy when you all got together at the SkyDome;
6 is that correct?

7 A That -- could you repeat that?

8 Q Sure. Let me just ask it a different way.

9 Did you, Mr. Menard and Mr. Frost and Mr. Dionisi and
10 Mr. Melnick and the other gentlemen that you admit were
11 involved in one way or another in satellite piracy, did you
12 discuss any issues related to hacking or piracy or
13 reprogrammed EchoStar access cards?

14 A At no such time did EchoStar come up.

15 Q Did you discuss hacking or piracy of any conditional
16 access system?

17 A On one occasion, yes.

18 Q Now, Mr. Tarnovsky, in addition to discussing issues
19 related to piracy with these gentlemen, you also
20 participated in some recreational drug use; is that correct?

21 A Yes.

22 Q And you knew at the time that that was against the
23 defendants' business practices and policies; is that right?

24 A Yes.

25 Q But you didn't think there was anything wrong with it,

1 because it fit within keeping your persona as a pirate,
2 correct?

3 A That is correct.

4 Q And you notified John Norris, your supervisor, that you
5 had engaged in that conduct, and he didn't terminate you,
6 did he, Mr. Tarnovsky?

7 A No.

8 Q Because he understood that that was part of you keeping
9 your persona as a pirate, correct?

10 A Yes.

11 Q And after all, Mr. Tarnovsky, that was a big part of
12 your job, was to keep your persona as a satellite pirate and
13 continue to rub elbows with these other gentlemen up in
14 Canada who were involved in piracy, correct?

15 A Yes.

16 Q Now, we deposed Mr. Frost in this case, and the -- the
17 jury watched his video testimony, because Mr. Frost wouldn't
18 come here live. Mr. Frost took the same oath that you took
19 this morning. And when I asked Mr. Frost if you had ever
20 sent him or provided him in any way with reprogrammed
21 EchoStar access cards, he said, "I can't answer that
22 question. I've got to plead the Fifth."

23 You understand what pleading the Fifth is, don't you,
24 Mr. Tarnovsky?

25 MR. KLEIN: Your Honor, may I have a continuing

1 objection on this line of questioning?

2 THE COURT: You may.

3 That's overruled.

4 THE WITNESS: Could you repeat the question,
5 please?

6 BY MR. HAGAN:

7 Q You understand what pleading the Fifth is, don't you,
8 Mr. Tarnovsky?

9 A Could you explain it, please, so I can understand it
10 fully?

11 Q You understand that when someone pleads the Fifth,
12 they're refusing to answer a question that could subject
13 them to criminal prosecution, correct?

14 A I understand now, yes.

15 Q Now, did you tell your buddy, Mr. Frost, to plead the
16 Fifth and refuse to answer these questions?

17 MR. KLEIN: Your Honor, I would object to the
18 phrasing of the question. It's inconsistent with the
19 testimony.

20 THE COURT: Overruled.

21 THE WITNESS: No.

22 BY MR. HAGAN:

23 Q We also asked Mr. Frost under oath if he ever sent you
24 money through the San Marcos mail account that you set up
25 that related to pirated EchoStar access cards. Again,

1 Mr. Frost said, "I can't answer that. I plead the Fifth
2 Amendment."

3 Now, Mr. Tarnovsky, did you ask Mr. Frost to refuse to
4 answer that question?

5 A No.

6 Q Why don't we take a look at Exhibit 25.

7 Now, Mr. Tarnovsky, as part of your work for NDS, I
8 believe you testified this morning that you monitored a
9 number of pirate websites and chat forums, correct?

10 A That -- that is correct.

11 Q And can you explain to the ladies and gentlemen of the
12 jury what a chat forum is.

13 A A chat -- a chat -- Counsel, can you clarify, chat room
14 or chat forum.

15 Q Well, let's start with chat room.

16 A A chat room is basically -- the chat rooms came first
17 when the WWW started to come about, and it was basically you
18 would install a -- a program on your computer, and you would
19 log into a server, and then you could join a room. And the
20 rooms would have individuals live, typing, just typing
21 anything they want to talk about, but the room was typically
22 the subject of the matter. And the -- so the chat rooms
23 were basically live conversations with others that shared
24 interests with you.

25 These -- then, with the World Wide Web becoming more

1 graphical, the chat forums came out, which were where a
2 user, instead of being live, would actually post a -- a
3 bulletin, if you wish, like a bulletin board, and -- and
4 they could write messages. And then, you need to typically
5 register an account to post, but you can read without being
6 registered. And then you would see time zones based off of
7 wherever the server is versus where you might really live.

8 Does that clarify?

9 Q Absolutely.

10 Now, you participated in these discussions, these live
11 internet discussions on chat forums and chat rooms, correct?

12 A Yes.

13 Q In fact, that's where in the early stages you exchanged
14 information about hacking and pirating conditional access
15 technology, correct?

16 A Yes.

17 Q And a chat forum came about after the TV Crypt
18 Listserve that you participated in when you were in Europe,
19 correct?

20 A Yes, yes.

21 Q And if I understand it, the way these chat rooms work,
22 you create an internet persona or some type of alias where
23 you post under, correct?

24 A Yes.

25 Q And you had a number of different aliases, but the one

1 I want to focus on right now is Von. You don't deny using
2 that alias, correct, Mr. Tarnovsky?

3 A Correct, I do not deny it.

4 Q Now, in 1999, you had already been working for the
5 defendants almost two years, correct?

6 A Yes.

7 Q You were still being paid by Mr. Murdoch's company,
8 HarperCollins Publishing, though, correct?

9 A I don't know.

10 Q You don't recall?

11 A Correct.

12 Q Let's take a look at -- first of all, do you have
13 Exhibit 25 in front of you?

14 A Yes, I do.

15 Q Okay. And at the top of that, it says "Pound Dish
16 Network"; do you see that?

17 A Yes.

18 Q That's one of the IRC rooms that you participated in,
19 correct?

20 A No, it is not.

21 Q You deny participating in the chat room "Pound Dish
22 Network," Mr. --

23 A Yes, I --

24 Q -- Tarnovsky?

25 A Yes, I do.

1 Q Well, let's turn to Page ESC-84104. It's on the bottom
2 right-hand corner of the document. Let me know when you're
3 there.

4 A I'm there.

5 Q Now, on this page, there is an entry by Von that says
6 "All you butt munches bow down to me and send me your
7 worldly possessions. I shall lead you to the promised land
8 at \$350 per hit."

9 THE COURT: Let's put that exhibit up for a
10 moment.

11 MR. HAGAN: Sure.

12 Clint, this is Exhibit 25. The page is 20, the
13 Bates stamp is 84104.

14 THE COURT: This has already been received.

15 MR. HAGAN: Now --

16 MR. KLEIN: Your Honor, has it been received?

17 THE COURT: I believe it has, Counsel.

18 MR. KLEIN: I believe so, your Honor.

19 MR. HAGAN: I don't -- I don't know if this one
20 has.

21 MR. KLEIN: I would object to it, your Honor.

22 THE COURT: Overruled.

23 It's received.

24 MR. HAGAN: Thank you, Judge.

25 BY MR. HAGAN:

1 Q Now, Mr. Tarnovsky --

2 THE COURT: Just a moment, Counsel. We've
3 discussed this a number of times. It wasn't in front of the
4 jury?

5 MR. KLEIN: I don't believe so, your Honor.

6 THE COURT: It's received.

7 Well, let's ask preliminarily if he's the same
8 gentleman referring to --

9 BY MR. HAGAN:

10 Q Mr. Tarnovsky, you -- you deny being the Von that's
11 posting here; is that correct, sir?

12 A That is correct.

13 Q The Von that's posting in September of 1999; is that
14 right?

15 A That is correct.

16 Q Okay.

17 Clint, let's take that down.

18 THE COURT: I am going to receive the document for
19 your consideration, but that doesn't mean that he is Von or
20 isn't Von. We will hear testimony about who this Von is --

21 BY MR. HAGAN:

22 Q And Mr. Tarnovsky --

23 THE COURT: Excuse me, Counsel.

24 MR. HAGAN: I'm sorry.

25 THE COURT: -- so that will be for you to decide.

1 The Court will receive the document for your consideration.

2 (Plaintiffs' Exhibit No. 25 is received into
3 evidence.)

4 MR. HAGAN: Thank you, your Honor.

5 BY MR. HAGAN:

6 Q Mr. Tarnovsky, let me back up for just a moment and
7 read you a passage, a couple of entries from this IRC log by
8 an individual using the alias "Von."

9 MR. KLEIN: Your Honor, could I have a continuing
10 objection?

11 THE COURT: You may.

12 It's overruled.

13 BY MR. HAGAN:

14 Q It says "All you butt munches bow down to me and send
15 me your worldly possessions. I shall lead you to the
16 promised land at \$350 per head."

17 A few lines down, "Von: I'm the only person who knows
18 how to hack Nagra's cards."

19 You deny writing that; is that right, Mr. Tarnovsky?

20 A Yes, I deny that.

21 Q You don't know who wrote that, though, do you, sir?

22 A No.

23 Q Someone just stole your Von persona?

24 A As long as I wasn't logged on, correct.

25 Q Now, Mr. Tarnovsky, going back to your denial of any

1 involvement in EchoStar pirated cards or the cash shipments
2 that went through the mail account in San Marcos, Texas,
3 your belief is that someone was trying to set you up; is
4 that right?

5 A That's correct.

6 Q Your belief and your story to the jury is that someone
7 had it out for you so bad that they threw away \$40,000 just
8 on the hope that it would get intercepted by government
9 officials, correct?

10 A More or less, yes.

11 Q \$40,000 that was sent through a mail account that you
12 set up, that you told Mr. Menard about, and that you admit
13 Mr. Menard sent you electronic components through 28 days
14 earlier, correct?

15 A Yes.

16 Q Let's move on to another issue.

17 You are aware that certain codes and information were
18 posted on Mr. Menard's website in December of 2000 that
19 related to EchoStar security system, correct?

20 A Yes, I am.

21 Q But you deny any involvement in those publications;
22 isn't that right, Mr. Tarnovsky?

23 A Yes, that is correct.

24 Q And anybody or any evidence that indicates that you
25 were responsible as part of this elaborate scheme to set you

1 up, correct?

2 A I don't necessarily know that -- either way if -- if
3 they're connected.

4 Q Let's take a look at Exhibit 12-A.

5 This has already been received into evidence, your
6 Honor.

7 BY MR. HAGAN:

8 Q Mr. Tarnovsky, this is the December 24th, 2000
9 publication under the alias "NiPpEr2000"; do you see that?

10 A Yes.

11 THE COURT: What year again, Counsel,
12 December 24th of 2000?

13 MR. HAGAN: December 24th of 2000, yes, sir, your
14 Honor.

15 THE COURT: Okay.

16 BY MR. HAGAN:

17 Q And this is one of the postings that you deny any
18 involvement in?

19 A Yes.

20 Q Correct?

21 A Yes.

22 Q Let's take a look at Exhibit 39.

23 Now, Mr. Tarnovsky, while we are getting that out, you
24 understand because you had a significant amount of
25 experience in setting up these internet personas, that you

1 typically did so by registering with an e-mail address,
2 correct?

3 A Yes.

4 Q And in fact, you used various e-mail addresses to
5 register for these internet personas as part of your work
6 for the defendants, correct?

7 A Yes.

8 Q Some of those e-mail addresses were valid, some of them
9 you just made up, correct?

10 A No, I -- they all needed to be valid.

11 Q Von@fumanche.net, that was a valid e-mail address,
12 because in your deposition you testified that you made that
13 one up. Was that a valid e-mail address?

14 A No.

15 Q Okay. Now, do you have Exhibit 25 in front of you,
16 Mr. Tarnovsky? I'm sorry, Exhibit 39?

17 A Yes.

18 Q This is --

19 And your Honor, this has already been received into
20 evidence --

21 MR. SNYDER: No, it's not.

22 MR. HAGAN: -- and if we could --

23 MR. KLEIN: I don't believe it has.

24 MR. HAGAN: This has not?

25 THE COURT: Well, I'm getting the Saturday

1 sessions confused with these sessions. My apology, Counsel,
2 but no wonder you're concerned. That's my responsibility,
3 so I apologize.

4 Counsel, we need further foundation.

5 MR. HAGAN: Certainly, your Honor.

6 BY MR. HAGAN:

7 Q Mr. Tarnovsky, one of the aliases that you used on a
8 frequent, recurring basis was Von, correct?

9 A Yes.

10 Q And you don't deny that your first name is Chris,
11 correct?

12 A Yes.

13 Q So if someone used the e-mail address
14 ChrisVon@s4interpass.com to register the NiPpEr2000 alias,
15 that's either a coincidence or part of this overelaborate
16 conspiracy to set you up; is that your testimony?

17 A Yes.

18 Q But you've used the alias "Von" to create internet
19 accounts in the past, haven't you, sir?

20 A Yes.

21 Q One of those is von@fumanche.net, correct?

22 A No.

23 Q You never created that account or used that account in
24 any way?

25 A No.

1 Q You never used that address for any purpose whatsoever;
2 is that your testimony?

3 A No, my testimony is that after registering on whatever
4 bulletin board you're talking about, I could then change the
5 e-mail address. And so then, at that point, I could make up
6 an e-mail address I wanted to, so then that e-mail address
7 might have been used on that bulletin board.

8 Q Okay. So that's one of the e-mail addresses that you
9 changed to make up?

10 A After being registered, yes.

11 Q All right. Von@fumanche.net, correct?

12 A Yes.

13 Q Another one that you used is von@metro2000.net,
14 correct?

15 A Yes.

16 Q And another one was von@m20.net, correct?

17 A Yes.

18 Q And you also used the -- the alias "Von" in different
19 iterations for different internet personas, right?

20 A I don't understand the question.

21 Q Well, in addition to using Von for posting information,
22 you also went by the alias "Von Neumann," correct?

23 A Yes.

24 Q And you admit to using the alias "Von Rat," correct?

25 A Yes.

1 Q And you admit to using the alias "Von Rolla," correct?

2 A Yes.

3 Q And you admit to being called, at least on one
4 occasion, Vonnie, correct?

5 A I don't know. I -- I can't say correct or not.

6 Q You can't recall?

7 A I don't recall.

8 Q Now, Mr. Tarnovsky, let's focus on Von Neumann for just
9 a moment. That alias comes from the Von Neumann
10 architecture used in microcontrollers or Smart Cards,
11 correct?

12 A Yes.

13 Q And you understood at the time that you were using this
14 alias that EchoStar's microprocessor, the ST Thompson 16CF54
15 chip used the Von Neumann architecture, correct?

16 A Could you repeat the question, please?

17 Q You understood at the time that you used these
18 different Von, Von Rat, Von Rolla, von@fumanche, Von
19 Neumann, at the time you used those, you understood that
20 EchoStar's Smart Cards used an ST Thompson chip, 16CF54,
21 that had a Von Neumann architecture, correct?

22 A I disagree.

23 Q Just a coincidence?

24 A No, my Von account existed before you guys produced
25 your Smart Card.

1 Q Now, you've also used the name Chris, your first name,
2 when creating internet personas, correct?

3 A Never.

4 Q You deny using the -- the alias "Chris Geo"?

5 THE COURT: I'm sorry, Chris what?

6 MR. HAGAN: Geo, G-e-o.

7 THE WITNESS: No.

8 BY MR. HAGAN:

9 Q You don't deny it?

10 A No.

11 Q How about --

12 THE COURT: That's confusing. Did you use it or
13 not?

14 THE WITNESS: Your Honor, he's mixing up e-mails
15 with internet personas.

16 BY MR. HAGAN:

17 Q So Chris Geo was an e-mail account that you created?

18 A Yes, that is correct.

19 Q And you used your first name and then Geo, correct?

20 A Part of my middle name, yes.

21 Q And Chris Berny was also one that you used, correct?

22 A I believe once, yes.

23 Q And Berny is your wife's maiden name, right?

24 A Yes.

25 Q You also use your first name Chris when creating other

1 e-mail accounts for internet activity, and let me just read
2 two of them for you.

3 Chris.Tarnovsky@freeworld.nacamar.de, you don't deny
4 using that e-mail address, do you, Mr. Tarnovsky?

5 A As in the deposition, I briefly recall that from 1994,
6 '95 era.

7 THE COURT: Well, he's asking in front of the jury
8 now.

9 THE WITNESS: Yes, your Honor. I believe it's my
10 e-mail. I don't believe I've ever used it.

11 BY MR. HAGAN:

12 Q You created that e-mail account at some point in time?

13 A Apparently, yes.

14 Q You also created the e-mail account
15 Chris.Tarnovsky@f180.n2488.z2.fido.sub.org?

16 A I -- I don't know.

17 Q If you admitted to using that in your deposition, you
18 have no reason to believe that you were being less than
19 honest with me, do you, sir?

20 A No, no. You are going back to 1993, '94.

21 Q So, Mr. Tarnovsky, it's not beyond the realm of
22 possibility that you created the alias
23 "ChrisVon@s4interpass.com" using your first name and your
24 Von alias, your infamous Von alias, to register that
25 NiPpEr2000 address, is it, sir?

1 A That's impossible that -- that -- that I would do that.

2 Q Well, in fact, sir, I asked you at your deposition if
3 you were a hundred percent certain that you never used that
4 e-mail address to create that account. You said, no, but
5 you're 99.9 percent certain; is that right?

6 A I don't understand your -- what you're saying.

7 MR. HAGAN: Christine, let's hand Mr. Tarnovsky
8 page 286, line 7 through 25 of his deposition.

9 BY MR. HAGAN:

10 Q And Mr. Tarnovsky, just look at -- actually, it's going
11 to be page 287, the top.

12 A Thank you.

13 I see it.

14 Q I asked you if you were a hundred percent certain that
15 you didn't create the NiPpEr2000 alias or internet persona
16 using the internet, the e-mail address
17 ChrisVon@s4interpass.com.

18 MR. KLEIN: Your Honor, I object. That misstates
19 the testimony.

20 THE WITNESS: It does.

21 May I see page 286?

22 BY MR. HAGAN:

23 Q Page 36?

24 A 286.

25 Q 286, you should have 286 and 287 in front of you.

1 And let's start at page 286, line 7, and you let me
2 know if this is what you testified to.

3 "Question: What about ChrisVon@s4interpass.com?"

4 "Answer: I don't believe that's correct, no."

5 "Question: You know for certain, or you don't recall
6 if it's possible?"

7 "Answer: I don't believe I ever used that. I don't
8 know what interpass is."

9 "Question: But you said earlier that like, for
10 example, the von@fumanche.net, that was just something that
11 you made up to put on an IRC chat?"

12 "Answer: Correct."

13 "Question: Same thing with VonRolla@fumanche.net?"

14 "Answer: Yes."

15 "Question: So it's possible that you've also used the
16 same thing, ChrisVon@s4interpass.com?"

17 "Answer: Not for IRC. I would never put "Chris." "I
18 don't believe that's me."

19 "Question: But you don't know for sure, correct?"

20 "Answer: I'm pretty positive that's not me. You can
21 show me something if you want me to clarify."

22 "Question: Are you 100 percent sure?"

23 "Answer: I'm 99.9 percent positive that's not me."

24 Was that your testimony, Mr. Tarnovsky?

25 A That is my testimony.

1 Q Let's look at Exhibit 27.

2 Your Honor, at this time, I would offer Exhibit 39 into
3 evidence.

4 MR. KLEIN: I would object, your Honor.

5 THE COURT: You need more foundation, Counsel,
6 about where this came from, once again, for my record.

7 MR. HAGAN: I -- I believe Mr. Tarnovsky is going
8 to be persistent in denying he had any involvement in that,
9 so we'll have to prove it up through another witness. We'll
10 move along.

11 MR. KLEIN: I would object to counsel's statement.

12 THE COURT: We will wait. I'll take this under
13 submission, Counsel, and hear you outside the presence of
14 the jury.

15 BY MR. HAGAN:

16 Q Now, Mr. Tarnovsky, you understood that during the time
17 you were working for NDS, DirecTV filed a lawsuit against
18 them, correct?

19 A Can you repeat that, please. I was reading the
20 exhibit.

21 Q You understood at the time that you were working for
22 the defendants, that DirecTV filed a lawsuit against them,
23 correct?

24 A Yes.

25 Q And you understood that DirecTV went out and hired a

1 third-party company, one called TDI and one called Internet
2 Crimes Group, Incorporated, or ICG, correct?

3 A I've only learned about this -- this now.

4 Q Well, Exhibit 27 -- I'm sorry, exhibit -- yeah,
5 Exhibit 27, do you have that in front of you, sir?

6 A Yes.

7 Q This is a document that has already been admitted into
8 evidence in this case, and on the front page, I want you to
9 focus on that. It says "To date, the following internet
10 aliases and e-mail addresses have been identified for Chris
11 Tarnovsky"; do you see that, sir?

12 A I do.

13 MR. KLEIN: Your Honor, may I have a continuing
14 objection to this line of questioning?

15 THE COURT: You may.

16 BY MR. HAGAN:

17 Q Now, Mr. Tarnovsky, if you'll look at the first column
18 under "Aliases," there's one that says "Christogeo." You
19 don't deny using that alias, correct?

20 A (No audible response.)

21 Q I know there's some on here --

22 A Correct, correct.

23 Q Now, the next one down is Arthur Von Neumann. You
24 don't deny using that one?

25 A Correct.

1 Q The next one down is BG. You don't deny using BG as an
2 abbreviated form of Big Gun, correct?

3 A Correct, however, this form is totally wrong on a lot
4 of things, so I don't know how to properly address your
5 questions, because --

6 THE COURT: Well, he's just going down the form,
7 Mr. Tarnovsky. Please answer the question.

8 THE WITNESS: Yes, your Honor.

9 BY MR. HAGAN:

10 Q The next one down is Big Gun written out. You don't
11 deny using that alias, correct?

12 A Correct.

13 Q The next one down is Chris Geo. You testified a moment
14 ago that you've used that alias, correct?

15 A I believe so.

16 Q The next one down is Mike George.

17 THE COURT: Counsel, excuse me.

18 I've counseled all witnesses words like "I believe
19 so," "might have been," "to the best of my recollection" are
20 hedge words as far as I am concerned. So if you know the
21 answer, if you used it, "yes," or if you don't, "no," or if
22 you don't know.

23 THE WITNESS: Yes, your Honor.

24 I don't believe I have told you that I ever used
25 Chris Geo. I used Christogeo.

1 BY MR. HAGAN:

2 Q Okay. The one immediately underneath that says "Mike
3 George," and that's the internal NDS code name that you
4 used, or Michael George, correct?

5 A Internal, yes.

6 Q Now, the -- the last one is Shrimp, and you admit to
7 using the alias "Shrimp" to post on IRCs, correct?

8 A I don't remember if it was IRC or chat forums.

9 Q But you admit to using that internet persona, right?

10 A Yes.

11 Q So internet -- well, let's go over to -- to "Associated
12 E-mail Addresses."

13 Geo@tfb.com, at your deposition, you admitted to using
14 that e-mail address at least on one occasion, correct?

15 A Yes.

16 Q And the next one down,
17 Chris.Tarnovsky@freeworld.nacamar.de, that's another one you
18 admit to using, correct?

19 A I believe so, yes.

20 Q And the next one down, von@metro2000.net, did you use
21 that one?

22 A Yes.

23 Q The next one, von@m20.net, did you use that one?

24 A Yes.

25 Q The next one down, berny, your wife's maiden name,

1 @8ung.at, I asked you about this one at your deposition, and
2 you said you couldn't recall. I am going to ask you again
3 today, did you ever use that e-mail address?

4 A No.

5 Q Did you go back and check any records between your
6 deposition and today?

7 A No.

8 Q Now, the next one down, ChrisVon@s4interpass.com, you
9 deny using that one, right?

10 A Yes.

11 Q So according to your testimony, third-party company
12 hired by DirecTV in the investigation into you and NDS's
13 conduct, Internet Crimes Group, Inc., they got it right on
14 Christogeo, Arthur Von Neumann, Big Gun, BG, Chris Berny,
15 Mike George, Shrimp, the Geo e-mail address, the
16 Chris.Tarnovsky e-mail address, the two Von e-mail
17 addresses, one at metro2000 and one at m20.et, they got all
18 that right, correct?

19 MR. KLEIN: Objection, your Honor. That's just
20 argument.

21 THE COURT: Overruled.

22 THE WITNESS: Yes.

23 BY MR. HAGAN:

24 Q But the ChrisVon@s4interpass, that's not you?

25 A Correct.

1 Q Now, if you'll turn to -- actually, let's look at
2 Exhibit 17.

3 Your Honor, this has also been introduced into evidence
4 previously.

5 BY MR. HAGAN:

6 Q Do you have that document in front of you,
7 Mr. Tarnovsky?

8 A Yes, I do.

9 Q Okay. Let's look at page 2. It's got a Bates stamp on
10 the bottom of ICG-03507.

11 Are you there?

12 A No, I'm not. Which -- where, Counsel?

13 MR. HAGAN: Christine, can you show him.

14 BY MR. HAGAN:

15 Q It's actually at the bottom of page 1, section 3,
16 "Finances," and it spills over to the next page.

17 Now, this is part of the investigation into Christopher
18 Tarnovsky. Section 3, "Finances," it says "The following
19 accounts have been identified for Chris Tarnovsky," and then
20 it lists several accounts.

21 You agree, sir, that you had an account at one point or
22 another at the Pentagon Federal Credit Union; is that right?

23 A Yes, that's correct.

24 Q And you agree that you had an account at one time or
25 another at the Union Bank of California Investment Services,

1 a money market account, correct?

2 A Yes.

3 Q You admit that you had an account with E*TRADE
4 FINANCIAL, also a money market account, correct?

5 A I believe so.

6 Q And you had a security --

7 THE COURT: Just a moment.

8 THE WITNESS: I'm sorry, your Honor.

9 I don't know how they categorize it, but I had an
10 E*TRADE account, yes.

11 BY MR. HAGAN:

12 Q So the investigation into your activities, at least
13 with respect to section 3, "Finances," they got all that
14 right?

15 A I don't know if it's correct, but the accounts are
16 correct, yes.

17 Q Let's look at section 4, "Site survey." It has an
18 address for you at 2339 Carioca Place as of June 28th, 2002.
19 Is that your address, Mr. Tarnovsky?

20 A Yes, it is.

21 Q And was the purchase price for that address \$592,500?

22 A Yes, it was.

23 Q The home, does it have four bedrooms, three-and-a-half
24 baths, a library and a four-car tandem garage?

25 A Yes.

1 Q And the neighborhood is referred to as Somerset Glen in
2 East Vista; is that correct?

3 A Yes.

4 Q So their investigation into your activities, at least
5 with respect to section 4, they got that right?

6 A I believe they did, yes.

7 Q Now, if you'll turn to the next page, section 5,
8 "Internet identities." It says "Chris Tarnovsky has now
9 been linked to the following internet identities. Searches
10 of internet discussion forums are under way to determine if
11 any of these identities are linked to piracy activities."

12 MR. KLEIN: Your Honor, may I have a continuing
13 objection to this document?

14 THE COURT: You may.

15 MR. KLEIN: Thank you.

16 THE COURT: It's overruled.

17 BY MR. HAGAN:

18 Q Now, section A, geo@tfb.com, that's one of the e-mail
19 addresses that you admit to using, right, Mr. Tarnovsky?

20 A Yes.

21 Q And section D, Chris.Tarnovsky@freeworld.nacamar.de,
22 that's another one you admit to using?

23 THE COURT: Just a moment, Counsel. You said
24 section D?

25 MR. HAGAN: Section 5-D, your Honor.

1 THE COURT: Thank you.

2 THE WITNESS: It's not that I admit to using it,
3 it's that I don't -- I -- I believe it was something that
4 was created back in '94, '93 registering somewhere, and they
5 gave me an e-mail address --

6 BY MR. HAGAN:

7 Q That -- that one wasn't part of this elaborate plan to
8 set you up, though, right?

9 A No.

10 Q It also has NiPpEr2000 and ChrisVon@s4interpass.com.
11 It's your testimony to the ladies and gentlemen of this jury
12 that they got it wrong in that section, correct?

13 A Could you repeat that, Counsel?

14 Q Section 5, under B and C, there's entries for
15 NiPpEr2000 and ChrisVon@s4interpass.com; do you see those?

16 A Yes, I do.

17 Q Your testimony is, for the ladies and gentlemen of this
18 jury, that their investigative work simply got it wrong on
19 those two, right?

20 A Yes, these are Google searches.

21 Q Now, Mr. Tarnovsky, let's -- let's look at a couple of
22 other sections in the document to see if there were other
23 parts to the document where their investigation got it
24 right.

25 Page 4 of 6, entitled "Recent travel." This says that

1 you, Christopher George Tarnovsky, traveled to Dayton, Ohio
2 on the 15th of May, 2002, to the 19th of May, 2002 for a ham
3 radio convention. Did you attend that convention?

4 A I believe I did that year.

5 Q And did you stay at the Penthouse Suite for the
6 Residence Inn in Dayton North when you attended that
7 convention?

8 A No.

9 Q Did you use a Mailboxes, Etc. at 2909 Dayton Yellow
10 Springs Road to ship packages to yourself in California --

11 A No.

12 Q -- while you were on that trip?

13 A No.

14 Q So they got it wrong in this section?

15 A Yes, they did.

16 Q This is part of the elaborate theory to set you up?

17 A (No audible response.)

18 Q Let's go to section 7.

19 MR. KLEIN: I am going to object.

20 THE COURT: Sustained.

21 Strike the last comment.

22 BY MR. HAGAN:

23 Q Let's go to section 7, Mr. Tarnovsky, "Connection to
24 Texas."

25 Do you know an individual named Lois Bingham?

1 A Yes.

2 Q Who is that?

3 A This is my mother.

4 Q And did you sell Ms. Bingham a 1996 Pontiac in August
5 of 2000?

6 A Yes.

7 Q Okay. So they got it right in that section of their
8 report, correct?

9 A I suppose.

10 Q Now --

11 A I don't understand your question, got what right
12 exactly, my mother -- me giving a vehicle to my mother?

13 Q Well, you're not contesting the information in that
14 section of the report, are you, Mr. Tarnovsky?

15 A (No audible response.)

16 Q In other words, you don't think that that's part of
17 the -- the sections that are not related to you in your
18 internet activities, correct?

19 A I believe that this information on page 506 about my
20 mother and my family members is correct.

21 Q Let's -- let's move on. Let's focus on the posting of
22 December 21st, 2000, posting entitled "NiPperClAuZ 00." You
23 deny any involvement in that posting, is that right,
24 Mr. Tarnovsky?

25 A I deny that, yes.

1 THE COURT: And Counsel, why don't we go to lunch
2 at this time. It's going to be an extended lunch hour --

3 MR. HAGAN: Certainly, your Honor.

4 THE COURT: We'll come back. This is a logical
5 break point.

6 You are going to have more than you need today.
7 You're not going to reconvene until 1:00, and I may need a
8 little additional time, also.

9 So you are admonished not to discuss this matter
10 amongst yourselves, nor form or express any opinion.

11 In fact, make it 1:15 just so you're not standing
12 around, okay?

13 Thank you very much.

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

16 THE COURT: All right. The jury is no longer
17 present, all counsel are present. We're outside the
18 presence of the jury.

19 Thank you for your courtesy, Counsel.

20 Concerning Exhibit 39, Counsel, I want you to
21 voice your objection again so that you don't have to
22 repeatedly do that in front of the jury.

23 MR. KLEIN: Thank you, your Honor.

24 THE COURT: Have a seat so I can hear you. Pull
25 the microphone closer --

1 MR. KLEIN: I'm sorry.

2 THE COURT: -- or go to the lectern, one of the
3 two.

4 MR. KLEIN: I'll go to the lectern.

5 Our objections are twofold, your Honor. It's an
6 unauthenticated document. The witness has testified that he
7 never used the name NiPpEr2000. My understanding is that
8 counsel has no witness who can come in here and even tell us
9 where this document came from. It just dropped out of the
10 air years after the event.

11 THE COURT: Whose discovery did it come through?
12 Was it obtained through discovery that EchoStar requested of
13 NDS?

14 MR. KLEIN: I'm not aware where it came from, your
15 Honor. I don't believe it came from NDS.

16 THE COURT: Counsel, where did this document come
17 from?

18 MR. HAGAN: This document came from EchoStar's
19 Signal Integrity investigative files, your Honor.

20 THE COURT: Who created this document?

21 MR. HAGAN: The problem is we don't have a witness
22 that knows. We believe that it was a dump from the website,
23 but for purposes of Rule 901, authentication, it is a very
24 low threshold. All we must do is produce some evidence that
25 shores this document up, and we've done that. We've got two

1 of the documents in evidence already, the ICG report and the
2 TDI report. Both of those documents identify the
3 registration for the NiPpEr2000 alias.

4 THE COURT: Excuse me.

5 Mr. Tarnovsky, if you'd be kind enough, sir, to
6 step down and wait in the hallway.

7 THE WITNESS: Yes, sir. Yes, your Honor.

8 THE COURT: Please continue, Counsel.

9 MR. HAGAN: Both of those reports, investigative
10 reports by third parties retained by DirectTV, not associated
11 in any way with this litigation, link the registration of
12 the NiPpEr2000 persona to the e-mail address
13 ChrisVon@s4interpass.com. They go a step further, and they
14 link both the NiPpEr2000 persona and the Chris Von e-mail
15 address directly to Mr. Tarnovsky.

16 In addition to those two documents, which have
17 already been received into evidence, we have the testimony
18 of Mr. Ereiser, who says "Chris Tarnovsky admitted to me
19 that he was responsible for the publications by Nipper in
20 December of 2000."

21 That is more than sufficient to overcome the
22 threshold for Rule 901.

23 THE COURT: Counsel?

24 MR. KLEIN: Your Honor, if this threshold is 1,
25 this is a 0. It is a minus 10. He has a document that --

1 that he does not know where it came from. He said he thinks
2 it came from some dump, but he has no idea where it came
3 from.

4 THE COURT: Just a moment. It's -- it's not your
5 ability to argue this that's being foreclosed. You can
6 construct the same argument in front of the jury. It's the
7 authenticity of the document itself, and it comes from your
8 own files. If this was from NDS's files, I would receive
9 this. But it comes from your files, and there is a duty
10 upon you to at least authenticate it. So is it relevant?
11 Yes. Can you authenticate it at this time? No. Are you
12 precluded from arguing this in the same way you just argued
13 it to the Court, tying together, Nipper and Chris Tarnovsky?
14 Absolutely, you are not precluded.

15 It's the document itself that comes floating into
16 evidence. With no authentication, we have no idea where it
17 came from; that's the concern. It's not foreclosing this
18 argument in any way. The jury may be very persuaded by the
19 combination of documents coming in. It's the document
20 itself that just, as counsel says, floats through the
21 internet. I'm just kidding you, but --

22 MR. HAGAN: One thing that I left out of -- of our
23 position, your Honor, is that the defendants produced
24 documents from their own database that show the link between
25 ChrisVon@s4interpass.com to the NiPpEr2000 internet persona

1 and --

2 THE COURT: What documents?

3 MR. HAGAN: -- and we will find those at lunch. I
4 don't have the Bates number.

5 THE COURT: Well, find them at lunch. All right,
6 Counsel. That's why I probably don't have them at this
7 time, because you're looking for them at lunch. All right.

8 Well, Counsel, let's come back to this and see
9 what counsel presents to us at 1:00, okay?

10 Counsel, we'll see you at 1:00.

11 MR. HAGAN: Thank you, your Honor.

12 (Recess.)

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2 CERTIFICATE

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

10
11 Date: April 23, 2008

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

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