

1

2

3

4

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

5

6

7

8

HONORABLE DAVID O. CARTER, JUDGE PRESIDING

9

- - - - -

10

ECHOSTAR SATELLITE CORP., )  
et al., )  
Plaintiffs, )

11

12

vs. )

No. SACV-03-950-DOC  
DAY 10, Vol. IV

13

NDS GROUP PLC, et al., )  
Defendants. )

14

15

16

17

18

REPORTER'S TRANSCRIPT OF PROCEEDINGS

19

Santa Ana, California

20

April 24, 2008

21

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

22

23

24

25

APPEARANCES:

SHARON SEFFENS, U.S. COURT REPORTER

♀

1

FOR PLAINTIFF ECHOSTAR SATELLITE CORPORATION, ET AL.:

2

3

T. WADE WELCH & ASSOCIATES  
BY: CHAD M. HAGAN  
CHRISTINE D. WILLETTS  
ROSS WOOTEN  
WADE WELCH  
Attorneys at Law  
2401 Fountainview

4

5

April 24, 2008 Volume 4 Gee.txt  
Suite 700  
Houston, Texas 77057  
(713) 952-4334

FOR DEFENDANT NDS GROUP PLC, ET AL.:

O'MELVENY & MYERS  
BY: DARIN W. SNYDER  
DAVID R. EBERHART  
Attorneys at Law  
275 Embarcadero Center West  
Suite 2600  
San Francisco, California 94111  
(415) 984-8700

-and-

HOGAN & HARTSON  
BY: RICHARD L. STONE  
KENNETH D. KLEIN  
Attorneys at Law  
1999 Avenue of the Stars  
Suite 1400  
Los Angeles, California 90067  
(310) 785-4600

ALSO PRESENT:

David Moskowitz  
Dov Rubin

SHARON SEFFENS, U.S. COURT REPORTER

3

	INDEX				PAGE
PLAINTIFF'S WITNESS:	DIRECT	CROSS	REDIRECT	RE CROSS	
(None)					
PLAINTIFFS' EXHIBITS:		MARKED		RECEIVED	
(None)					
DEFENSE WITNESSES:	DIRECT	CROSS	REDIRECT	RE CROSS	
RONALD GEE (Continued)	4	50			
DEFENSE EXHIBITS:		MARKED		RECEIVED	
Exhibit 206				17	
Exhibit 515				31	

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SHARON SEFFENS, U.S. COURT REPORTER

4

1 SANTA ANA, CALIFORNIA; THURSDAY, APRIL 24, 2008; 3:00 P.M.

2 (Jury present)

3 THE COURT: The jury is present. The counsel are  
4 present.

5 This is continued direct examination on behalf of  
6 NDS.

7 (Continued) DIRECT EXAMINATION

8 BY MR. STONE:

9 Q Mr. Gee, I need to jump back for a second here and see  
10 if I can't help you refresh your recollection on that  
11 criminal case in Ontario. What I had asked Mr. O'Donnell to  
12 show you was a decision in Ontario between Her Majesty the  
13 Queen and Stephen Patrick Lindsey and Raymond Lawrence  
14 Bonner.

15 A Okay.

16 Q Directing your attention to page 9 of that decision.

17 A Okay.

18 Q Paragraph 10, it references a Mr. M in the other box.  
19 Mr. M would be the Mr. M you testified to in the Barrie  
20 group; do you recall that?

21 A I testified to a Mr. M, but I don't know if this is the  
22 same Mr. M or not.

23 Q Do you see the name Christopher Maskell? Does that  
24 refresh your recollection at all that Mr. Maskell had some  
25 association with Mr. M?

SHARON SEFFENS, U.S. COURT REPORTER

5

1 THE COURT: Are we at paragraph 11?

2 MR. STONE: Paragraph 9. I'm sorry.

3 THE WITNESS: No, it does not.

4 BY MR. STONE:

5 Q Go to the top of page 10. Earlier I believe you  
6 testified you thought these criminal events occurred in 2001  
7 or 2002.

8 Looking up at the top at paragraph 12, does that  
9 refresh your recollection that these events occurred on the  
10 evening of December 23rd, 2000?

11 A My recollection was that it was a year later.

12 Q Does this refresh your recollection now, though, that  
13 it was actually December 23rd, 2000?

14 A No, it does not.

15 Q Can you go to page 13 at the bottom? By the way, do  
16 you see references to bikers and Hells Angels in here? Does  
17 that refresh your recollection at all that Hells Angels were  
18 involved with Mr. M.?

19 A What page?

20 Q I believe it's on the same page we've looked at. I'll  
21 tell you in one second.

22 THE COURT: Paragraph 13 on page 10.

23 MR. STONE: Yes, sir. Correct. Paragraph 15.

24 BY MR. STONE:

25 Q Bad dudes and bikers I think is --

SHARON SEFFENS, U.S. COURT REPORTER

6

1 THE COURT: Wait, counsel. Let me look at it.

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY MR. STONE:

Q Does that refresh your recollection at all based on what you heard back in the day?

A No, it does not.

Q All right, sir, looking at the bottom of page 13, there should be a little paragraph 32 on the left-hand side.

A Okay.

Q At the bottom of the page, there is a sentence that begins at the very bottom, and it continues to the top of page 14.

Does that refresh your recollection that there were bikers who were very angry that programming boxes they bought ended up on the internet?

A No, it does not.

Q Does the name of this criminal proceedings refresh your recollection, the very first page?

A No, it doesn't. I am not familiar with this investigation.

Q And your informant, Cameron Kiewl, never told you about an extortion case involving the Barrie group?

A As I stated before, the date that I have with it is in 2002.

Q Does this refresh your recollection that it actually

SHARON SEFFENS, U.S. COURT REPORTER

7

1 arose in December of 2000?

2 A No.

3 Q Did anyone ever tell you that they used a 16-byte  
4 password to trace a card ID from the December 24th, 2000,  
5 posting?

6 A I do not recall that, no.

7 MR. STONE: If we could show Exhibit 191 again.

8 BY MR. STONE:

9 Q I may not have been clear in my question, Mr. Gee, but  
10 I mean including up until today, have you ever learned that

11 password information in this posting can be used to trace to  
12 a subscriber ID?

13 A I have heard you can identify that, but the information  
14 that's in here could be changed.

15 Q Did you hear that that process was actually done in the  
16 course of this trial?

17 A I do not recall hearing that.

18 Q Did anyone ever send you a printout showing you the  
19 information that relates to that password beginning with 85  
20 and ending with 54, at address E20 of Exhibit 191?

21 A No.

22 MR. STONE: If you could show the witness Exhibit  
23 1510, which I believe is in evidence. If you could blow  
24 that up just a little bit.

25 BY MR. STONE:

SHARON SEFFENS, U.S. COURT REPORTER

8

1 Q If we can go to account number two, there is a number  
2 at the top left that begins with an S?

3 A Yes.

4 Q Have you seen those kind of numbers before; right?

5 A Yes, I have.

6 Q Can you tell the folks what that number is.

7 A It's a serial number within the DISH Network Smart  
8 Cards, so Nagra Vision Smart Cards.

9 Q So that would be a card ID number; right?

10 A Yes.

11 Q Are you aware that that card ID number is what your  
12 system spits out if you put that password in from Exhibit  
13 191 that we just saw?

14 A You're stating that this number on Exhibit 191 comes up  
15 with S0003804033? Is that what you're asking me, Mr. Stone?

16 Q You stole my question, but that's exactly what I am  
17 asking you.

18 A Okay.

19 Q Are you aware that the password that we just looked at  
20 in Exhibit 191 correlates to this card ID on Exhibit 1510?

21 A No, I was not.

22 Q Who within your organization would understand how the  
23 database works to generate a card ID number that correlates  
24 to the password? Do you have any understanding who that  
25 might be?

SHARON SEFFENS, U.S. COURT REPORTER

9

1 A That number is assigned, my understanding of it --  
2 well, the answer to your question would be somebody from  
3 Nagra Vision that would have that information.

4 Q And then EchoStar controls the actual subscriber  
5 information; is that correct?

6 A Yes.

7 Q So if you are provided with a particular card number,  
8 you can trace which subscribers that relates to?

9 A That's correct.

10 Q Now, look looking at account number two on this Exhibit  
11 1510, I will represent to you that this is the card ID that  
12 matches that password from Exhibit 191, and this is the  
13 subscriber information we were provided. Okay?

14 A Okay.

15 Q There is an address underneath the name Margaret Koops,  
16 600 Main Street, Tonawanda, New York. Do you see that?

17 A Yes, I do.

18 Q Now, Margaret Koops, based on the name, would be a  
19 residential subscriber of EchoStar; correct?

20 A First -- I'm sorry. So is this information that has  
21 come from DISH Network?

22 Q Yes, sir.

23 A Okay. And this is information that they've indicated  
24 that this was associated with that serial number and  
25 address?

SHARON SEFFENS, U.S. COURT REPORTER

1 Q Absolutely, sir.

2 A Okay. Then if that's what it is, then I would have to  
3 say yes.

4 Q So if you were to find out that that address is not a  
5 residence but is a commercial building, would that cause you  
6 to have any suspicions?

7 A Yes, it would.

8 Q What would you want to do if you learned that fact?

9 A That DISH Network's Integrity Group would investigate  
10 that for gray market piracy.

11 Q That's interesting. You immediately jumped to gray  
12 market piracy, that this is a commercial building and not a  
13 residence. Why is that, sir?

14 A The experience that I have in investigations.  
15 Tonawanda is close to the border in Canada. A lot of  
16 subscriptions are set up in the States, multiple accounts,  
17 so they could have the invoicing and the reflection of the  
18 subscriber to the content being broadcast by DISH Network  
19 into the United States, but it's actually being provided to  
20 somebody in Canada.

21 Q So they use basically a fake address in the United  
22 States so they can get the subscription, and then the  
23 receiver and the card is actually used in Canada; right?

24 A That's correct.

25 Q Isn't it true, sir, that a lot of times these gray

SHARON SEFFENS, U.S. COURT REPORTER

1 market operations slide over into black market?

2 A Yes.

3 Q So where there is gray market, there is also piracy;  
4 isn't that true?

5 A A lot of the time, yes.

6 Q So if you learned that the password from the card that



7 was posted on the internet was affiliated with a commercial  
8 address that hinted at gray market piracy, you would want to  
9 follow up on that; wouldn't you?

10 A Yes.

11 Q You would want to follow up on that immediately because  
12 you would want to see if there is a connection between that  
13 posting and some piracy operation; wouldn't you?

14 A Yes.

15 Q Did anyone, anyone, from 2001 until you took the stand  
16 today at either EchoStar, NagraStar, or Nagra Vision, ever  
17 come to you and tell you the password in Exhibit 191, the  
18 December 24th posting, could be used to locate a card ID  
19 number and address?

20 A No.

21 Q Have you ever been to 600 Main Street, Tonawanda, New  
22 York?

23 A No, I have not.

24 Q Have you ever heard of M&M Freight Forwarding?

25 A I have heard -- I believe I have heard of M&M Freight

SHARON SEFFENS, U.S. COURT REPORTER

‡

12

1 Forwarding before.

2 Q In what context, sir?

3 A In the context of investigations.

4 Q Really? How did their name come up in the context of  
5 -- I assume you mean piracy investigations?

6 A Piracy investigations.

7 Q How did the name M&M Freight Forwarding come up in  
8 piracy investigations, sir?

9 A I don't know where M&M is, but M&M is familiar to me.

10 Q Familiar to you as an operation that helped either gray  
11 market or black market piracy of some sort?

12 A It rings a bell with me on that, but I just can't place  
13 what it is.

14 Q Have you ever heard the name Dawn Branton?

- 15 A Yes, I have.
- 16 Q Tell the folks who Dawn Branton is.
- 17 A Dawn Branton was a person who was involved with gray  
18 market piracy back in, I think the time frame was -- I don't  
19 know when she began, but she stopped after 2002, 2003.
- 20 Q Do you recall the name of her company being Tech  
21 Electronics in Lindsay, Ontario?
- 22 A That sounds familiar, yes.
- 23 Q So Dawn Branton was in the Ontario year near Barrie,  
24 Ontario; isn't that right?
- 25 A Yes. Lindsay is north of Ontario along with Barrie.

SHARON SEFFENS, U.S. COURT REPORTER

13

- 1 Q Did you ever hear that Dawn Branton had any kind of a  
2 relationship with anyone in the EchoStar Signal Integrity  
3 Department?
- 4 A There was a rumor of that, yes.
- 5 Q And what was the rumor that you heard?
- 6 A The rumor was that she was sleeping with Russ Densmore.
- 7 Q Russ?
- 8 A Densmore.
- 9 THE COURT: Spell it.
- 10 THE WITNESS: D-e-n-s-m-o-r-e.
- 11 THE COURT: Thank you.
- 12 BY MR. STONE:
- 13 Q He was the head of security for EchoStar Signal  
14 Integrity?
- 15 A That's correct.
- 16 Q Did you hear that rumor from multiple sources?
- 17 A Actually I don't recall the multiple sources. Actually  
18 I think maybe it was Russ that told me that. We thought it  
19 was pretty funny.
- 20 Q Did Mr. Guggenheim ever tell you that he learned from a  
21 confidential informant that Ms. Branton had some kind of  
22 personal relationship with Mr. Densmore?
- 23 A He may have. I don't know.

24 Q Ever heard of the name Jerry Lieubeck?

25 A Yes, I know the name Jerry Lieubeck.

SHARON SEFFENS, U.S. COURT REPORTER

14

1 Q Was he ever an informant to EchoStar?

2 A Yes, he was.

3 Q Did you ever have a conversation with Mr. Guggenheim  
4 about Dawn Branton and Russ Densmore as far as you know?

5 A He may have. I know that Mr. Lieubeck and Mr.  
6 Guggenheim spoke.

7 Q Did Mr. Guggenheim ever come to you and say we have got  
8 a problem. There is this woman who is involved in either  
9 gray market or black market piracy that might have a  
10 relationship with Russ Densmore?

11 A I don't recall that, but still, the thought of Russ and  
12 Dawn being together is comical, so --

13 Q Did you ever investigate that?

14 A I talked to Russ about it. We both laughed about it.

15 Q Did you ever investigate it?

16 A I asked him about it. We joked about it.

17 Q My question is: Did you ever investigate it?

18 A No, I did not investigate it.

19 Q would you be surprised that the account for Margaret  
20 Koops was actually used by Tech Electronics owned by Dawn  
21 Branton?

22 A Yes, I would be.

23 Q If you knew that, you would want to investigate that;  
24 wouldn't you, sir?

25 A I would have investigated that, yes.

SHARON SEFFENS, U.S. COURT REPORTER

15

1 Q Particularly since the posting on December 24, 2000,  
2 had to do with piracy; right?

3 A Yes, it did.

4 Q So you would want to know if there was an actual, real  
5 live pirate whose name you knew was affiliated with that  
6 posting; wouldn't you, sir?

7 A Certainly. But, you know, the serial number here of  
8 S0003804033 are numbers in order. You can change this  
9 information, random number. Whoever changed that  
10 information changed it -- it was possible to change it  
11 within that code. And then it goes out there.

12 So you read it, and it comes to an active subscription.  
13 That's not surprising to us because people manipulate that  
14 all the time. They're trying to mask who their identity is.  
15 So if you're getting a cloned Smart Card or if you're doing  
16 an AVR board, the code within it that it's getting from the  
17 Smart Card, it has the same serial number. It's repetition,  
18 and you're going to mask that. You're not going to put in a  
19 serial number in order for us to come knocking on your door.

20 Q Well, let's take that apart here shall we? You have  
21 got a password that's in hexadecimal bytes, 16-byte  
22 sequence; right?

23 A It is an identifier of the serial number.

24 Q And it's unique because otherwise you would pull up a  
25 bunch of card numbers that relate to it; wouldn't you, sir?

SHARON SEFFENS, U.S. COURT REPORTER

♀

16

1 A That's correct.

2 Q So you're saying somebody could fake a 16-byte unique  
3 password and it would pull up a card ID that just happens to  
4 use an address of M&M Freight Forwarding that you've heard  
5 about in piracy investigations. Is that your testimony,  
6 it's all coincidence?

7 A It is coincidental, yes.

8 Q And it's a coincidence that the customer who used M&M  
9 for an address in the United States just happens to be Dawn  
10 Branton, a well-known pirate in the Ontario area? That's

11 just a coincidence; right, sir?

12 A Yes.

13 Q And it's just a coincidence that it's the same Dawn  
14 Branton who is rumored to have some kind of relationship  
15 with Mr. Densmore that you never investigated but thought  
16 was funny; is that right?

17 A That's correct.

18 Q Could that be why there was never an investigation done  
19 of the December 24th, 2000, posting?

20 A There was an investigation. That was an investigation  
21 into Al Menard and Chris Tarnovsky.

22 Q Yeah. Let me show you Exhibit 206, please. Now, 206  
23 is an e-mail from Peter Kuykendahl to Renee Colthorp with a  
24 copy to you at NagraStar; correct?

25 A Yes.

SHARON SEFFENS, U.S. COURT REPORTER

♀

17

1 MR. STONE: I would move at this time Exhibit 206,  
2 Your Honor.

3 THE COURT: Any objection?

4 MR. HAGAN: No objection, Your Honor.

5 THE COURT: Received.

6 (Exhibit 206 received in evidence)

7 BY MR. STONE:

8 Q Now, Mr. Kuykendahl was working at NagraStar as an  
9 evidence analyst engineer?

10 A Yes.

11 Q And who is Renee Colthorp?

12 A Renee Colthorp worked within the EchoStar Signal  
13 Integrity Group.

14 Q And then Mr. Kuykendahl right underneath the PGP  
15 signature attached a file that has the same posting as  
16 December 24; correct?

17 A Yes.

18 Q And the date, as you can see on there, is Sunday,  
19 December 24th, 2000?

20 A Yes.

21 Q Now, if you go up above in the first paragraph of Mr.  
22 Kuykendahl's e-mail, it says: "I also did a use net search  
23 on the poster and came up with a couple of hits that  
24 returned the same thing. As a bonus, you get the full use  
25 net header including the IP address from which he posted.

SHARON SEFFENS, U.S. COURT REPORTER

18

1 That currently resolves to Ontario, Canada," and then there  
2 is an internet path for vianet, Ontario, Canada; correct?

3 A Yes.

4 Q What does that mean when Mr. Kuykendahl says currently  
5 resolves to Ontario, Canada, bar-TCSL.vianet.on.ca?

6 A The IP address of 209.91.172.154 ends there.

7 Q So Mr. Kuykendahl had taken the posting and was able to  
8 trace the internet protocol address to a provider in  
9 Ontario, Canada. Is that how you understood this?

10 A That's correct.

11 Q Do you know why Mr. Kuykendahl was finally getting  
12 around to tracing the IP address for the December 24th  
13 posting in January of 2004?

14 A Well, the e-mail address of dr7\_al@my-deja.com, which  
15 is dr7 or Al Menard, that information had just come  
16 available to us. Renee had asked us if we could try and  
17 trace this back to IP address.

18 Q And Ontario was where Dawn Branton was located;  
19 correct?

20 A Yes, it is.

21 Q And Mr. Menard has never lived in Ontario; correct?

22 A Not that I am aware of.

23 Q And the Barrie group is also in Ontario, Canada;  
24 correct?

25 A Yes.

SHARON SEFFENS, U.S. COURT REPORTER

1 Q Did Mr. Kuykendahl follow up with this information to  
2 your knowledge?

3 A No, but we never asked him to because with the dr7, Al  
4 at deja.com, these are being posted on news groups. You'll  
5 see a little further down the news group  
6 REC.video.satellite.dvs. That is a news group that could  
7 have been hosted on the deja server which is located in  
8 Ontario, so where its IP trace is going back to that point  
9 there -- that was our opinion with that.

10 Q And you did no follow-up investigation; right?

11 A Of that, no. That was our opinion.

12 Q My question is: Did you do any follow-up  
13 investigation?

14 A No.

15 Q Thank you. Let's talk briefly about Mr. Ereiser.  
16 When is the last time you had any discussion with Mr.  
17 Ereiser?

18 A Yesterday.

19 Q Did you discuss the lawsuit?

20 A Yes.

21 Q And understanding that you're under oath here today,  
22 sir, are you aware of any arrangement where Mr. Ereiser will  
23 be paid extra compensation depending on the outcome of this  
24 lawsuit?

25 A No.

SHARON SEFFENS, U.S. COURT REPORTER

1 Q Now, how many hours a week does Mr. Ereiser have to  
2 work for his pay?

3 A It varies. He's a person that works the night shift as  
4 he calls it because that's where he is on. Sometimes he  
5 does zero hours. Sometimes he does 12 hours a day. Nothing  
6 is set.

7 Q Where does Mr. Ereiser do his work?  
8 A He does it from his home.  
9 Q Do you have him networked on your computer system so  
10 that you can monitor his activities?  
11 A No.  
12 Q Did you discuss any of Mr. Ereiser's trial testimony  
13 with him?  
14 A I asked him if he had indicated where he got the CD  
15 ROMS from, and he told me that he had received them from  
16 Giles Kaehlin.  
17 Q Is that something you didn't know before?  
18 A That's correct.  
19 Q Do you have any cameras at the basement at Mr.  
20 Ereiser's house where he has the lab?  
21 A No.  
22 Q How often have you been to that laboratory?  
23 A I have been there one time.  
24 Q When was that?  
25 A The end of last month.

SHARON SEFFENS, U.S. COURT REPORTER

21

1 Q For how long has the lab been operational?  
2 A Operational? would have been able to do things  
3 probably for about six months, but -- I would say six  
4 months.  
5 Q Do you have any ability to find out what internet  
6 websites Mr. Ereiser goes to?  
7 A At times we do. I could -- we have our own monitoring  
8 of seeing whether he's in or where he's at. But from his  
9 computers, no, we do not.  
10 Q You don't know all the names Mr. Ereiser uses to post  
11 information; do you?  
12 A No.  
13 Q And you don't even know what groups he pretends to be a  
14 pirate with; do you?  
15 A I do. I have an understanding of that, yes, I do.



16 Q You don't have any real way of knowing whether Mr.  
17 Ereiser is engaged in piracy on the side; isn't that right?

18 A I do not believe he does, but, no, I do not.

19 Q And didn't you testify that you can't be a hundred  
20 percent certain that Mr. Ereiser isn't engaged in piracy on  
21 the side?

22 A That's correct. I did say that.

23 Q In fact, you testified you can't speak to what Mr.  
24 Ereiser does on a day-to-day basis for the last three years;  
25 right?

SHARON SEFFENS, U.S. COURT REPORTER

22

1 A That's correct. I cannot speak to everything that he  
2 does.

3 Q But you believe he is sufficiently reformed that he can  
4 have a piracy lab in his basement 1,000 miles away; right?

5 A I do. I have confidence in both if Mr. Ereiser and Mr.  
6 Gurlinski that they want to work with us. They don't want  
7 to work against us. And I think they appreciate the  
8 relationship that we have with them, and they don't want to  
9 ruin that.

10 Q And is there any arrangement to pay Mr. Ereiser's  
11 company any additional compensation based on the outcome of  
12 this lawsuit?

13 A No.

14 Q Now, you talked a bit earlier about Al Menard and this  
15 supposed distribution network.

16 Didn't you testify that you never obtained one single  
17 reprogrammed access card from Mr. Menard?

18 A I did not.

19 Q And nobody within the organization that you're aware of  
20 did either; correct?

21 A I testified that I did not know that.

22 Q But you never bought any reprogrammed access cards from  
23 Mr. Menard either directly or through some private

24 investigator?

25 A No.

SHARON SEFFENS, U.S. COURT REPORTER

23

1 Q And isn't it right you never bought any kind of  
2 reprogramming device from Mr. Menard? Isn't that true, sir?

3 A That's correct.

4 Q And you didn't have Mr. Perlman or Mr. Ereiser buy any  
5 reprogramming device from Mr. Menard?

6 A No.

7 Q No, you did not; isn't that right?

8 A That's correct.

9 Q And you have never seen any analysis from Nagra of any  
10 card that was supposedly reprogrammed with a device by Mr.  
11 Menard?

12 A I do not recall one, no.

13 Q Isn't it true that NagraStar didn't take any civil or  
14 criminal action to shut down the dr7 website between 1999  
15 and 2001?

16 A No, they did not.

17 Q In fact, you took no steps ever to shut down the dr7  
18 website; right?

19 A That's correct.

20 Q And Mr. Perlman was an informant who had administrator  
21 privileges on that website; correct?

22 A Yes.

23 Q Did you ever give instructions to Mr. Perlman to block  
24 or delete anything on the dr7 website?

25 A No.

SHARON SEFFENS, U.S. COURT REPORTER

24

1 Q Do you know if anyone did in December of 2000?

2 A No.

- 3 Q Where is Mr. Perlman located?
- 4 A He is located in Quebec.
- 5 Q Who is he employed by?
- 6 A I think he is self-employed right now.
- 7 Q Does he receive any compensation from NagraStar or  
8 EchoStar?
- 9 A Yes, he does.
- 10 Q Is that on a regular basis?
- 11 A Yes, it is. Mr. Perlman currently provides us with  
12 information.
- 13 Q Pardon?
- 14 A Mr. Perlman currently provides us with information.
- 15 Q And he did going all the way back to the year 2000;  
16 correct?
- 17 A He did EchoStar as well as DirectTV.
- 18 Q Well, in December of 2000 do you have any understanding  
19 whether Mr. Perlman was an administrator along with Mr.  
20 Scullion of the dr7 website?
- 21 A Yes.
- 22 Q Did you understand at that time that Mr. Menard was  
23 recovering from hip surgery?
- 24 A Yes.
- 25 Q Did you ever learn that Mr. Scullion had the ability to

SHARON SEFFENS, U.S. COURT REPORTER

25

- 1 delete or modify postings on that website?
- 2 A Mr. Scullion was an administrator on the website as  
3 well as Mr. Perlman. They both were. And they were able to  
4 see the control panel, what sat behind the websites -- the  
5 person who registered a website, the IP addresses they came  
6 into, and other data, the registration.
- 7 Both Perlman and Scullion told us that they matched up  
8 IP addresses with known nicks by Tarnovsky, that they knew  
9 of him on the dr7 website with the IP address of his Nipper  
10 2000 registration.
- 11 Q Did anyone have Mr. Perlman or Mr. Scullion immediately

12 take down the posting on December 23rd, 2000?

13 A I wasn't employed at that time, and I can't speak to  
14 that, no. It did not come down, so I would say no.

15 Q So nobody gave you instructions to take that thing  
16 down; it's dangerous?

17 A I don't know if that instruction was sent. Maybe it  
18 was asked of him to do it, but he said he couldn't do it  
19 because there was a risk of exposing his undercover capacity  
20 to us. And he wasn't about to do that.

21 Q So better to destroy the whole system than have Mr.  
22 Perlman take down one posting. Is that your testimony?

23 A No. My testimony is I'm saying it is unknown to me if  
24 somebody had asked him that.

25 Q Okay. Do you know a gentleman named Jim Shelton?

SHARON SEFFENS, U.S. COURT REPORTER

26

1 A Yes, I do.

2 Q And he has provided consulting services to the  
3 plaintiffs as far as you know?

4 A Yes, he has.

5 Q Down through the years?

6 A He has done that for both the prosecution and the  
7 defense in this case.

8 Q Did you have a conversation with Mr. Shelton about  
9 various ROM version cards and when they were issued?

10 A Yes, I did.

11 Q When was that conversation?

12 THE COURT: Counsel, could I see you for just a  
13 moment? Excuse me for just a moment.

14 (Sidebar conference)

15 THE COURT: We are on the record at sidebar.  
16 There has been mention of Shelton. I have no idea what  
17 counsel is going to say in a moment. You are not precluded  
18 in any way, but I decided to stop the proceeding just to  
19 send this general message. If Mr. Shelton comes up,

20 depending on how it comes out, it may open the door to some  
21 of his testimony.

22 (End sidebar conference)

23 BY MR. STONE:

24 Q Mr. Gee, in performing your job duties, are you ever  
25 called upon to determine how many ROM versions are issued at

SHARON SEFFENS, U.S. COURT REPORTER

27

1 a particular period of time?

2 A Not within my job duty, no.

3 Q Okay. Did you ever become aware when the ROM 10 card  
4 was issued?

5 A Yes.

6 Q When did you become aware of that?

7 A The first time probably would have been a couple of  
8 years ago.

9 Q When was the ROM 10 card rolled out; do you recall?

10 A No, I don't. I don't know if it was 2000 or 2001.

11 Q Does mid 2000 sound about right to you, sir?

12 A Yes.

13 THE COURT: Strike the question. You can reask  
14 the question.

15 MR. STONE: Thank you, Your Honor.

16 BY MR. STONE:

17 Q Do you have a recollection of the ROM 10 card being  
18 rolled out in mid 2000?

19 A That sounds familiar, but I am not clear on that.

20 THE COURT: But your prior answer was 2000, 2001?

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: I just wanted to make sure. Thank you  
23 very much.

24 BY MR. STONE:

25 Q And the ROM 10 card was utilized in a soft swap of the

SHARON SEFFENS, U.S. COURT REPORTER

1 ROM 3 cards; is that correct?  
2 A No.  
3 Q How many ROM 10 cards were issued?  
4 A I don't know the figure.  
5 Q When were they shipped? Do you know during what time  
6 period?  
7 A I provided that information to Mr. Shelton, but I don't  
8 recall the dates.  
9 Q Mr. Gee, did you receive information that there were at  
10 least four different piracy organizations with laboratories  
11 in Canada and the U.S.?  
12 A Information as with the Barrie Group? I apologize for  
13 asking for clarification. Are you referring to DISH Network  
14 or DirectTV?  
15 Q DISH Network.  
16 A At this time I can only recall one, but it's possible  
17 that it was as high as four.  
18 Q You became aware that the Barrie Group had a lab;  
19 correct?  
20 A I was informed of that, yes.  
21 Q And you became aware that the DISH Plex group had a lab  
22 in Thunder Bay; correct?  
23 A That's correct, yes.  
24 Q Do you know who Larry Pilon is?  
25 A Yes, I do.

SHARON SEFFENS, U.S. COURT REPORTER

1 Q Who is Larry Pilon?  
2 A Larry Pilon is a confidential source of mine. He has  
3 been since 2002. He used to be partners with Dennis Renaud,  
4 the person I mentioned earlier that he had told me was  
5 involved with the Thunder Bay lab. He also ran -- he was  
6 partners with Dennis Renaud with the DISH Plex website,  
7 which went down -- I believe he was sued by DirectTV in late

8 2000, 2001.

9 Q Did Mr. Pilon tell you about the laboratory that the  
10 DISH Plex group had?

11 A Yes, he did. He told that to me during a meeting with  
12 Larry Risler, who was vice-president of Signal Integrity for  
13 DirectTV.

14 Q And you still pay Mr. Pilon as an informant or  
15 consultant; correct?

16 A Yes, I do.

17 Q So you have continual access to him?

18 A Yes, I do.

19 Q Did Mr. Pilon tell you what kind of equipment they had  
20 at the laboratory in Thunder Bay?

21 A I believe he had told me that they had laser beam  
22 equipment. I don't know the exact wording that he had, but  
23 he heard that there was high-tech equipment there.

24 Q Did he tell you there was a scanning electron  
25 microscope up in Thunder Bay?

SHARON SEFFENS, U.S. COURT REPORTER

30

1 A That was what he had told me, yes.

2 Q Did Mr. Pilon tell you that the laboratory in Thunder  
3 Bay had been used to supply Stunt Guy with some of his  
4 information for his hacking bible?

5 A Yes, he did tell me that.

6 Q Did he tell you what kind of information the DISH Plex  
7 group provided to Stunt Guy for his hacking bible?

8 A I believe the Stunt Guy bible was posted on the DISH  
9 Plex website.

10 Q Did Mr. Pilon ever tell you whether ROM code to  
11 EchoStar access cards was provided to Stunt Guy prior to  
12 December 2000?

13 A I am not aware of that, no.

14 Q You sat in on Stunt Guy's deposition in this case;  
15 correct?

16 A Yes, I did. Again, thank you for finding him.  
17 Q You heard him testify about obtaining ROM code?  
18 A Yes.  
19 Q From scanning electron microscopes; correct?  
20 A I do recall that, yes, briefly. I don't recall the  
21 full details of his examination.  
22 Q And that was before December 2000; correct?  
23 A I don't recall the date that he said.  
24 Q Let's look at Exhibit 515, please. Do you recognize  
25 Exhibit 515?

SHARON SEFFENS, U.S. COURT REPORTER

31

1 A Yes, I do.  
2 Q This is a database printout for information on Dennis  
3 Renaud; correct?  
4 A Yes.  
5 Q He was the head of DISH Plex group?  
6 A He was partners with Larry Pilon.  
7 MR. STONE: Your Honor, at this time I would move  
8 Exhibit 515.  
9 THE COURT: Any objection?  
10 MR. HAGAN: No objection.  
11 THE COURT: 515 is received.  
12 (Exhibit 515 received.)  
13 BY MR. STONE:  
14 Q If you could look at the first page, this shows up at  
15 the top that this is a database entry relating to Dennis  
16 Renaud; correct?  
17 A Yes.  
18 Q And the address in the lower part of the page, 210  
19 Pally, Thunder Bay, Ontario?  
20 A Yes.  
21 Q Was that Mr. Renaud's address?  
22 A I believe that was Mr. Renaud's address, yes.  
23 Q If you would go to the next page, please, 515, page 2.  
24 Up at the top it says, "Hired DISH farmer to crack ROM 3."



25 Do you see that?

SHARON SEFFENS, U.S. COURT REPORTER

32

1 A Yes.

2 Q Did you ever learn that DISH farmer was a gentlemen  
3 named Peter Beck?

4 A I knew the name was Peter, but I don't have a last name  
5 on here. But I have learned that he is Peter Beck.

6 Q And the DISH Plex group began sometime in 1999;  
7 correct?

8 A I don't know the date that it started, that it formed.

9 Q Did Mr. Pilon ever tell you that it was around early  
10 1999?

11 A I don't recall the date that he told me.

12 Q If you could go to page 56, Exhibit 515, please, up at  
13 the top where it says November 7, 2002.

14 A Okay.

15 Q It says financial backer of lab in Thunder Bay,  
16 Ontario, which has recently been moved. Lab has an electron  
17 microscope and was used to provide Stunt Guy with the data  
18 for his FAQ; correct?

19 A Yes.

20 Q Who is the financial backer that is referenced here; do  
21 you know?

22 A It was indicating that Dennis Renaud was.

23 Q And it says most recently used for the ROM 10 hack.

24 A Yes.

25 Q And you understood that to mean that the laboratory was

SHARON SEFFENS, U.S. COURT REPORTER

33

1 used for the ROM 10 hack?

2 A That was the information that Mr. Pilon was providing  
3 to me, yes.

4 Q Did Mr. Pilon tell you where the lab had moved to?

5 A I don't recall that, no.

6 Q Did you ever take any steps to shut down the DISH Plex  
7 laboratory?

8 A After he gave me the information, I attempted to. He  
9 gave me the address -- the information that he gave me for  
10 the laboratory was that it was a 10-minute drive in an  
11 immigrant neighborhood from 210 Pally in Thunder Bay,  
12 Ontario, which is pretty obscure. So doing a 10-minute  
13 drive in a radius I don't know the speed, don't know the  
14 direction. I had no additional information to follow up on  
15 that. Mr. Pilon had never been to this laboratory himself  
16 and was just hearing about it through word of mouth. And  
17 he, since he was never there himself, he was never able to  
18 tell me where it was at.

19 Q Did you ever hear that a gentleman named Donald Nance  
20 was affiliated with the DISH Plex group?

21 A Yes.

22 Q Did you ever hear that Billy Joe Osborne was affiliated  
23 with the DISH Plex group?

24 A Yes.

25 Q You mentioned a name earlier, Ukovich or Vukovich. Do

SHARON SEFFENS, U.S. COURT REPORTER

†

34

1 you recall that?

2 A Danny Vukovich.

3 Q Did you ever have that Danny Vukovich also had a piracy  
4 lab?

5 A I may have. I don't recall.

6 Q Now, when you obtained the CDs of documents from Mr.  
7 Ereiser, do you recall that?

8 A Yes, I do.

9 Q Did you have any understanding of what was on those CDs  
10 before you left Colorado to go to Vancouver to obtain those  
11 documents?

- 12 A No, I did not.
- 13 Q Mr. Ereiser didn't tell you that he had CDs with  
14 internal NDS e-mails on them?
- 15 A No, he did not.
- 16 Q Mr. Ereiser didn't tell you that he had NDS e-mails on  
17 the CDs?
- 18 A No, he did not.
- 19 Q So it's your testimony that the first time you ever  
20 learned what was on those CDs is when you returned to  
21 Colorado and opened the CDs?
- 22 A That is correct.
- 23 Q Were those CDs encrypted?
- 24 A There was a file on it that was encrypted, yes.
- 25 Q What was the password?

SHARON SEFFENS, U.S. COURT REPORTER

35

- 1 A I don't recall the password.
- 2 Q Who gave you the password?
- 3 A Mr. Ereiser.
- 4 Q And I take it you reviewed some of the documents on the  
5 CD when you got back to Colorado?
- 6 A Yes, I did.
- 7 Q Didn't you testify that you were surprised to learn  
8 there were NDS e-mails on those CDs?
- 9 A Yes, I was surprised. And from looking at the CD, they  
10 appeared to be e-mails from Ray Adams. And previously Mr.  
11 Guggenheim had received e-mails and documentation from Giles  
12 Kaehlin when we were going to -- we were joining forces in  
13 our litigation against NDS. Giles Kaehlin was with Canal  
14 Plus. These e-mails were similar to that.
- 15 Q Let's take those one at a time.
- 16 A Okay.
- 17 Q The information from Mr. Kaehlin was obtained in  
18 November or December of 2002; correct?
- 19 A I believe that was the time frame, yes.
- 20 Q And was the P3 card still in the field for DirectTV at

21 that point in time?

22 A 2002? Yes, I believe it was.

23 Q And you became aware that those documents existed

24 because Mr. Guggenheim told you?

25 A He gave those to me, yes.

SHARON SEFFENS, U.S. COURT REPORTER

36

1 Q Mr. Guggenheim told you he never asked Mr. Kaehlin how  
2 he got the documents; correct?

3 A That is correct.

4 Q Even though you were very curious as to how Mr. Kaehlin  
5 obtained secret NDS documents; right?

6 A Yes, I was.

7 Q And you never asked Mr. Kaehlin; correct?

8 A I did not ask Mr. Kaehlin, no.

9 Q And you're not aware of anyone from NagraStar  
10 contacting NDS to find out what was the situation with those  
11 documents; correct?

12 A No.

13 Q And you scanned in copies of the documents from Mr.  
14 Kaehlin; correct?

15 A Yes, I did.

16 Q So at one point you had an electronic copy of all of  
17 those documents; correct?

18 A Yes, I did.

19 Q Do you recall how many pages were obtained from Mr.  
20 Kaehlin?

21 A Probably a stack about two or three inches.

22 Q How many pages of NDS internal documents were obtained  
23 from Mr. Ereiser?

24 A From the court documents I've seen that there were  
25 around 26,000 pages, but I don't know.

SHARON SEFFENS, U.S. COURT REPORTER

- 1 Q How many CDs did Mr. Ereiser give you?
- 2 A I recall one.
- 3 Q Was there a reason why Mr. Ereiser didn't FedEx that CD
- 4 to Colorado?
- 5 A No.
- 6 Q How long was the meeting up in the Vancouver airport
- 7 when you got the CD from Mr. Ereiser?
- 8 A I think 30 minutes. It was a quick turn-around, flying
- 9 up and coming back.
- 10 Q So you flew all the way up from Colorado, spent 30
- 11 minutes talking to Mr. Ereiser, and then flew right back to
- 12 Colorado?
- 13 A Yes.
- 14 Q And who had possession of the CD? You or Mr.
- 15 Guggenheim?
- 16 A I did.
- 17 Q And you never asked Mr. Ereiser any questions about how
- 18 he got the CD?
- 19 A No.
- 20 Q You didn't ask him any questions about what was on the
- 21 CD?
- 22 A No, I did not.
- 23 Q Did Mr. Ereiser tell you where he had gotten the CDs?
- 24 A He told me yesterday.
- 25 Q Did he tell you when you were in the Vancouver airport?

SHARON SEFFENS, U.S. COURT REPORTER

- 1 A No, he did not.
- 2 Q Did you ever contact NDS after you looked at the CSS
- 3 that Mr. Ereiser gave you to inform them that you had those
- 4 internal documents?
- 5 A No.
- 6 THE COURT: Counsel, once again can you remind the
- 7 jury and the Court where Mr. Ereiser said he got those CDs?

8 MR. STONE: I believe Mr. Ereiser testified that  
9 he --

10 THE COURT: Well, he knows. He talked to Mr.  
11 Ereiser yesterday. Let's find out. Let's make sure it's  
12 consistent just in case --

13 MR. STONE: I understand.

14 THE COURT: Just a moment. You're going to be  
15 asked a question.

16 THE WITNESS: Okay.

17 MR. STONE: Thank you, Your Honor.

18 BY MR. STONE:

19 Q Did Mr. Ereiser tell you yesterday where he obtained  
20 the CDs that he gave you in the Vancouver airport in January  
21 2005?

22 A Yes, he did.

23 Q And that's the first time he told you?

24 A That is correct.

25 Q What did he say?

SHARON SEFFENS, U.S. COURT REPORTER

♀

39

1 A He told me he received them from Giles Kaehlin.

2 Q Did he tell you that there was a reason he couldn't  
3 have told you that in January of 2005?

4 A No, he did not.

5 Q Where did you meet Mr. Cameron Kiewl when you paid  
6 \$5,000 for the stolen DirectTV documents?

7 A I didn't meet Cameron.

8 Q How did you obtain them from him?

9 A He sent those to me.

10 Q By what means?

11 A Federal Express overnight delivery mail. I don't know  
12 what the --

13 Q How come you didn't fly up to meet Mr. Kiewl to get the  
14 stolen DirectTV documents?

15 A I don't think what my schedule was of doing that and  
16 why I didn't go up and get them from him.

17 Q What was the volume of documents that Mr. Kiewl gave  
18 you?

19 A I don't know.

20 Q Was it thousands of pages, hundreds?

21 A I would say thousands.

22 Q Thousands of pages?

23 A From memory. I haven't seen them in a long time. I  
24 don't know.

25 Q What did you do with those documents after you got

SHARON SEFFENS, U.S. COURT REPORTER

40

1 them?

2 A I looked at the CD. I did print off some. And since  
3 that time it's been destroyed, and those documents have been  
4 shredded.

5 Q Okay. Let's back up. What was destroyed?

6 A The materials that I got from Mr. Kiewl.

7 Q When were they destroyed?

8 A I don't know when I did it.

9 Q Pardon?

10 A I don't know.

11 THE COURT: How much time had gone by, years or  
12 months?

13 BY MR. STONE:

14 Q Can you be any more precise as to what year you  
15 destroyed that information from Mr. Kiewl?

16 A I don't even recall when I received it from Mr. Kiewl.

17 Q Well, the documents, if I recall correctly, were stolen  
18 from DIRECTV in the late 2002 time frame.

19 A I believe that's when they were posted on the internet.

20 Q When did you buy them from Mr. Kiewl?

21 A It would be during that time frame.

22 Q Late 2002 or early 2003?

23 A Yes.

24 Q When in relationship to when you bought them did you

25 destroy them? A year later, two years later, three years

SHARON SEFFENS, U.S. COURT REPORTER

41

1 later?

2 A Probably within a year.

3 Q So sometime in late 2003 approximately?

4 A Or mid 2003.

5 Q Is that your best recollection?

6 A That is.

7 Q You said you shredded some documents. Was that  
8 separate from destroying the electronic copies?

9 A I did it at the same time.

10 Q Explain that for me. What did you do at the same time?

11 A I shredded any of the documents that I printed out, and  
12 I destroyed the CD that I had received.

13 Q Did anyone tell you to do that?

14 A No. The person had been apprehended by DirectTV. The  
15 information was out. They caught the person. It was done.

16 Q You didn't obtain these documents to help catch the  
17 person?

18 A No, I did not.

19 Q So it was irrelevant to you whether the person was  
20 caught or prosecuted. You wanted those documents?

21 A No. Actually I was hoping they would be able to find  
22 the person that did that, and I was happy that they did.

23 Q Why did you want DirectTV NDS documents in late 2002  
24 from Mr. Kiewl?

25 A I wanted to see what was available. I mean, there was

SHARON SEFFENS, U.S. COURT REPORTER

42

1 a rumor out there that there was a bunch of materials  
2 available that were from DirectTV talking about their P4  
3 card, and I was curious in seeing what it was.



- 4 Q Seeing what it was, meaning what it said about the P4  
5 card?
- 6 A Not what it was saying about the P4 card but seeing the  
7 details of was it something that was generic information or  
8 was it -- I just wanted to know what the details, the  
9 information was.
- 10 Q Why?
- 11 A I don't know.
- 12 Q Who did you give those documents or any copies to?
- 13 A I might have -- I showed some to Mr. Guggenheim, but I  
14 didn't give him any.
- 15 Q Were you the only person who had copies of these P4  
16 technology documents?
- 17 A No. It was posted on the internet, so there were a lot  
18 of people that had it.
- 19 Q But you paid \$5,000 for it?
- 20 A Yes, I did.
- 21 Q How much time did you spend reviewing the P4 documents?
- 22 A I don't know.
- 23 Q And P4 was the latest card issued by DirectTV and NDS;  
24 correct?
- 25 A Yes.

SHARON SEFFENS, U.S. COURT REPORTER

♀

43

- 1 Q And it's your testimony you didn't share those  
2 documents with anyone other than perhaps Mr. Guggenheim?
- 3 A Yes.
- 4 Q And it's your testimony you just had idle curiosity in  
5 the latest technology and NDS and DirectTV; correct?
- 6 A I was curious. It wasn't curiosity in the technology.  
7 I was curious what was being posted out on the internet.
- 8 MR. STONE: Could you show the witness Exhibit  
9 1148, please?
- 10 BY MR. STONE:
- 11 Q Exhibit 1148 is a Pinkerton investigating report to  
12 you; correct?

13 A Yes.

14 Q What's the date of it?

15 A June 28, 2002.

16 Q And that's a little bit, maybe six months before you  
17 obtained the stolen DirectTV documents from Mr. Kiewl?

18 A That's correct.

19 THE COURT: Has this been received yet, counsel?

20 MR. STONE: I thought it had been, Your Honor. If  
21 not, I will move it at this time.

22 THE COURT: Any objection?

23 MR. HAGAN: No objection, Your Honor.

24 THE COURT: Received.

25 (Exhibit 1148 received in evidence)

SHARON SEFFENS, U.S. COURT REPORTER

44

1 BY MR. STONE:

2 Q Down below it says: "Dear Mr. Gee, Re: Satan's  
3 Playhouse." what is Satan's Playhouse?

4 A Satan's Playhouse was a piracy dealer in the Ontario  
5 area. His name was Adam Dicker. He sold piracy products  
6 for DirectTV and DISH Network.

7 Q Now, the assignment according to Pinkerton was: "We  
8 were directed to research satansplayhouse.com and confirm  
9 their operating locations in the greater Ontario area. In  
10 addition we were tasked to purchase in person their P4  
11 access card, instructed to purchase three cards if modified  
12 and two units if unmodified." Do you see that?

13 A Yes, I do.

14 Q So you sent a private investigator to a piracy outfit  
15 in Toronto, Ontario, to buy NDS DirectTV P4 cards?

16 A Yes.

17 Q Why did you want two if unmodified and three if  
18 modified?

19 A Cost. I don't know. I don't know.

20 Q I'm sorry. Your testimony is --

- 21 A It might be the price of what they were advertising the  
22 sale of the cards for. I don't know.
- 23 Q What does it mean to have a nonmodified P4 access card?
- 24 A A card that is not hacked.
- 25 Q There has been testimony that there was a security lab

SHARON SEFFENS, U.S. COURT REPORTER

45

- 1 in Denver that had DIRECTV receivers to monitor that system.  
2 Why would you need to go to a pirate outfit in Ontario to  
3 buy P4 cards unmodified.
- 4 A We are not modifying the cards.
- 5 Q Sorry?
- 6 A We're not modifying the cards at NagraStar. And if  
7 Satan's Playhouse was selling a modified Smart Card, we  
8 would buy that Smart Card, put it in the lab and see that,  
9 yes, it is modified.
- 10 Q You told him to buy two if they were not modified?
- 11 A Correct.
- 12 Q Wouldn't it be cheaper to go to Costco or Best Buy?
- 13 A We had an investigation going on Satan's Playhouse, so  
14 going there to purchase something was still going to be of  
15 value to us.
- 16 Q Tell me where in this investigative report does it tell  
17 Pinkerton to try to buy any device or card for piracy of the  
18 EchoStar system.
- 19 A This report doesn't, but there was a report about a  
20 month ago prior to this one that we did task them to  
21 purchase an emulator from Satan's Playhouse.
- 22 Q My question is in this assignment of buying the P4  
23 card, there was no assignment that dealt with EchoStar  
24 piracy; isn't that right?
- 25 A That's correct. In this assignment there was not.

SHARON SEFFENS, U.S. COURT REPORTER

46

1 Q In fact, you told him to buy two nonmodified P4 cards?

2 A Yes.

3 Q And they were able to do so; weren't they? If you go  
4 to page 4 of 1148 at the bottom paragraph.

5 A What page number?

6 Q Page 4 at the bottom, 004.

7 A Yes. Investigator Varley then paid cash for the two P4  
8 access cards.

9 Q Why did Investigator Varley pay cash?

10 A If you have an investigator go in and use a credit  
11 card, the dealer has that information. They are able to  
12 track it back on who has the credit card.

13 Q What they bought were nonmodified P4 cards; correct?

14 A That is correct.

15 Q The same P4 cards that one could get in Best Buy or  
16 Costco in the United States; right?

17 A That is correct.

18 Q You sent investigators all the way to Canada to buy two  
19 P4 cards; right?

20 A I used investigators that were in Canada to do that.

21 Q This was about six months before you paid \$5,000 to Mr.  
22 Kiewl for stolen P4 documents; right?

23 A Yes.

24 Q And who told you to send investigators to buy P4 cards  
25 to buy from a piracy outfit called Satan's Playhouse in

SHARON SEFFENS, U.S. COURT REPORTER

47

1 Ontario?

2 A Nobody did. That would have been my instruction.

3 Q Pardon?

4 A I would have done that on my own.

5 Q What prompted you to decide one day to buy two  
6 nonmodified P4 access cards from Satan's Playhouse?

7 A Well, I wanted to get the modified ones to see if they  
8 were modified.

9 Q why did you care if P4 cards were modified?

10 A well, it's a new technology that's out. And if it's --  
11 DirecTV and NDS were splitting. It would have been  
12 interesting. I mean, a new card coming out and it's already  
13 hacked. That sucks. But we weren't going to hack it. We  
14 were going to put it in our lab and see if it worked. They  
15 were not hacked, and I am happy to say that they still are  
16 not hacked.

17 Q well, you knew they weren't hacked when you told them  
18 to buy two if they were not modified. So before they left  
19 Satan's Playhouse, Investigator Varley knew they weren't  
20 hacked; right?

21 A I did not know they were not hacked because Satan's  
22 Playhouse was advertising that they were hacked P4 cards.

23 Q well, no. Your instructions were to purchase three if  
24 modified and two if nonmodified. So you gave specific  
25 instructions to buy two if they weren't modified; correct?

SHARON SEFFENS, U.S. COURT REPORTER

48

1 A If they were not modified. But sometimes a dealer has  
2 something that is working, and sometimes it doesn't. If we  
3 do a counter measure at that time when that person walks in  
4 the door, they cannot purchase a hacked card. So they have  
5 to get an unmodified card or you walk away and come back and  
6 get something else.

7 Q Did you go back and get something else?

8 A No.

9 Q Where are those two P4 cards today?

10 A I believe they are at NagraStar in our evidence locker.

11 Q Where is that evidence locker?

12 A In NagraStar.

13 Q Where exactly is that, sir?

14 A In my area, in a secure area.

15 Q What city?

16 A Englewood, Colorado.

17 THE COURT: What city?  
18 THE WITNESS: Englewood, Colorado.  
19 THE COURT: Englewood?  
20 THE WITNESS: Englewood, the address that's on the  
21 report.  
22 BY MR. STONE:  
23 Q Did you ever inform anyone at NDS or DirectTV that you  
24 were sending an investigator to Satan's Playhouse to buy P4  
25 cards?

SHARON SEFFENS, U.S. COURT REPORTER

49

1 A Not that I recall, no.  
2 Q And you have had those P4 cards since June of 2002?  
3 A Until I saw this last night, I had forgotten that I had  
4 them.  
5 Q And you never sent those to Switzerland; is that your  
6 testimony?  
7 A Yes.  
8 Q And you never sent the P4 stolen documents you got from  
9 Mr. Kiewl to Switzerland; correct?  
10 A No, I did not.  
11 Q And you did this all on your own?  
12 A Yes, I did.  
13 Q Just for curiosity?  
14 A I am an investigator. I track things down.  
15 Q Did you think it was -- based on your years of  
16 investigating, did you think it was illegal to purchase  
17 stolen documents?  
18 A They weren't stolen -- they were stolen documents, but  
19 they were posted out on the internet. The source that I got  
20 them from went through the trouble of getting them. He had  
21 them. I paid him money for it.  
22 Q Did you think there was anything wrong with that?  
23 A No, I did not.  
24 Q You have heard a lot in this trial so far about  
25 standards of business conduct. Does buying stolen documents

SHARON SEFFENS, U.S. COURT REPORTER

50

1 violate the business standards of conduct of NagraStar?

2 A Yes, it would.

3 Q Are there written standards of business conduct for  
4 NagraStar that you're aware of?

5 A No, there are not.

6 Q Are there any written business standards of conduct for  
7 EchoStar that you're aware of?

8 A I don't know.

9 MR. STONE: Thank you. No questions at this time.

10 THE COURT: Cross-examination by Mr. Hagan.

11 MR. HAGAN: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. HAGAN:

14 Q Good afternoon, Mr. Gee.

15 A Thank you.

16 Q You have been on the stand for quite a while now, but  
17 you haven't really got to tell the ladies and gentlemen of  
18 the jury anything about yourself.

19 where do you live?

20 A I live in a suburb of Denver.

21 Q Do you have a family there in Denver?

22 A Yes, I do. I am married. My wife is a school teacher,  
23 and I have a 13-year-old son.

24 Q Connor is your son's name?

25 A Yes.

SHARON SEFFENS, U.S. COURT REPORTER

51

1 Q Mr. Gee, can you tell us a little bit about your  
2 education background.

3 A My education started -- as soon as I got out of high  
4 school, I enlisted in the Marine Corps, the Marine Corps

5 Reserves. I did my boot camp, went to college from there;  
6 in the reserves I served 14 years in the Marine Corps  
7 Reserves.

8 When I was in college I received an associate's degree  
9 in general studies, but my focus was Russian -- Russian  
10 language, Russian history.

11 When I was in the Marine Corps, I had a couple of  
12 MOS's, occupations. One of the occupations was I was a  
13 forward observer, and the other one was I was an  
14 intelligence analyst.

15 Q Mr. Gee, how long have you been with NagraStar?

16 A I have been with them for over seven years.

17 Q And NagraStar provides the encryption technology used  
18 by EchoStar; correct?

19 A Yes.

20 Q What are your job duties at NagraStar?

21 A My responsibility is, number one, to gather technical  
22 intelligence to identify the hacks that are occurring  
23 against our customers in North America. We have two  
24 customers that I partner with in their investigation groups.  
25 We have talked about DISH Network here in the United States,

SHARON SEFFENS, U.S. COURT REPORTER

52

1 but we also work with Bell Express Vu.

2 Q Bell Express Vu is a --

3 A Bell Express Vu is a satellite provider in Canada.

4 Q Bell Express Vu, as you understand it, uses the same  
5 security system as EchoStar here in the United States?

6 A Yes. Bell Express Vu also uses the NagraVision system.

7 Q Mr. Gee, is it fair to say that you take pride in your  
8 work for NagraStar?

9 A Yes, I do.

10 Q Is it fair to say you do the absolute best job that you  
11 can day in and day out to investigate piracy?

12 A Yes, I do.



13 Q Do you have an occasion to work with government  
14 agencies and officials in your work in investigating  
15 satellite piracy?

16 A I do, and I also have the opportunity to work with  
17 other investigators within our fields, whether it be with  
18 the MPAA, Bell Express Vu, DISH Network, DirectTV.

19 Q What were some of those law enforcement agencies that  
20 you work with?

21 A Through my testimony we have talked about the FBI and  
22 the U.S. Postal Service. We have also worked with the  
23 Secret Service, U.S. Customs, the Royal Canadian Mounted  
24 Police or RCMP. In Canada they have an enforcement for kind  
25 of what we call the FCC, worked with that group. And also

SHARON SEFFENS, U.S. COURT REPORTER

53

1 in custom enforcement they have in Canada the federal  
2 enforcement or the border protection, and we work with all  
3 those, in addition to sheriffs' departments, small police  
4 departments.

5 Q Mr. Gee, as part of your work for NagraStar, did you  
6 engage in efforts to investigate the distribution and  
7 creation of pirated EchoStar access cards?

8 A Yes, I did.

9 Q And we heard quite a bit this afternoon about a shotgun  
10 theory of suspects. I tried to write them down, and let me  
11 know if I missed any. But what I have in my notes are Marco  
12 Pizzo, Dennis Renaud, Jim Water, Mike Menarre, Anthony  
13 Maldonado, Tom McGuire, Billy Osborne, Donald Nance, and  
14 Danny Vukovich. Did you come across those names in your  
15 piracy investigations?

16 A Yes, I did. But I also came across a lot more.

17 Q How many active litigation files or investigation  
18 files, rather, did you have when you started with NagraStar  
19 in 2001?

20 A That I had? One.

21 Q And then by the end of 2001 had that number grown?

22 A Yes.

23 Q By the end of 2002 had that number grown?

24 A Yes.

25 Q What's the largest number of active investigation files

SHARON SEFFENS, U.S. COURT REPORTER

54

1 that you have had at NagraStar?

2 A We have over 500 active investigations right now.

3 Q Those are 500 completely separate and different pirate  
4 syndicates and pirate groups; is that correct?

5 A They start out that way, but they end up being  
6 connected eventually somehow, so one case file might merge  
7 with another case file.

8 Q Did you ever -- in your investigative efforts for  
9 NagraStar, did you ever come across any credible evidence  
10 whatsoever, any evidence that was corroborated whatsoever,  
11 that linked any of these 12 or 13 gentlemen to the internet  
12 alias Von?

13 A No.

14 Q Von Rat?

15 A No.

16 Q Did you come across any credible evidence or  
17 corroborating evidence whatsoever that linked any of these  
18 gentlemen to the e-mail address Chris von at  
19 S4interpass.com?

20 A No.

21 Q Did you come across any credible evidence or  
22 corroborating evidence that linked any of these gentlemen to  
23 the internet alias Nipper, Nipper 2000, or NipperClause?

24 A No.

25 Q Mr. Gee, can you walk the ladies and gentlemen of the

SHARON SEFFENS, U.S. COURT REPORTER

55

1 jury through the basic steps that you took on behalf of  
2 NagraStar to investigate. First let's talk about the  
3 distribution network of pirated EchoStar access cards.

4 A I mentioned some names earlier of the distribution  
5 network of Al Menard. Those names were Shawn Quinn, Sergei  
6 -- I don't recall his last name, but he was coinvision; Dave  
7 Dawson, Stan Frost.

8 That network had the Smart Cards and distribution on  
9 that. I have spoken to Stan Frost. Stan Frost is one of  
10 the first people that I met, and he told me that --

11 MR. STONE: Objection, Your Honor. Hearsay.

12 BY MR. HAGAN:

13 Q Yeah. Let's not get ahead of ourselves, Mr. Gee. Just  
14 the basic steps that you took. Did you interview  
15 individuals, collect evidence? What are the basic steps  
16 that you took?

17 A I did interview a lot of people, looked at a lot of  
18 information from people; tried to disseminate good  
19 information, bad information; information from other people,  
20 documents, multiple steps.

21 Q Did you always find the evidence and information and  
22 witness statements and documents that you gathered to be  
23 completely accurate and reliable?

24 A No.

25 Q Were there instances where you got information that was

SHARON SEFFENS, U.S. COURT REPORTER

56

1 not reliable or not accurate?

2 A Yes. And I still get that today on many of my  
3 investigations.

4 Q Is it your practice to continue an investigation or  
5 prosecute claims based on inaccurate or unreliable evidence  
6 that you obtain through your investigative efforts?

7 A No.

8 Q Do you make it a practice to initiate prosecution,

9 whether it be criminal or civil, when you don't feel like  
10 you have solid evidence?

11 A No.

12 Q Is that the same practice that you follow when  
13 assisting law enforcement personnel before prosecuting  
14 individuals criminally?

15 A Yes.

16 Q Are you engaged in efforts to coordinate the execution  
17 of search warrants or anton pillars for satellite pirates  
18 that are still active in the market today?

19 A Yes.

20 Q Can you explain to the ladies and gentlemen of the jury  
21 what an anton pillar is.

22 A An anton pillar is a Canadian search and seizure that  
23 is used in the civil courts that we use in our anti-piracy  
24 fight on organizations that are committing a crime against  
25 us.

SHARON SEFFENS, U.S. COURT REPORTER

57

1 Q You understand that when NagraStar or EchoStar make the  
2 decision to prosecute individuals engaged in piracy, that's  
3 not a decision that they make lightly?

4 A Yes.

5 Q And do you have to personally satisfy yourself that you  
6 have looked at the relevant evidence, spoken to the relevant  
7 witnesses, and made a determination based on the evidence  
8 available to you that that prosecution is in good faith?

9 A Yes.

10 Q And then once you initiate those prosecutorial efforts,  
11 is it oftentimes the case that you obtain additional  
12 information that supports the claims?

13 A Yes.

14 Q Mr. Gee, I want to talk to you a little bit about this  
15 particular case. Based on NagraStar's investigative  
16 efforts, were you able to reach a conclusion as to whether  
17 or not the defendants Chris Tarnovsky and Alan Menard were

18 involved in the creation and distribution of pirated  
19 EchoStar access cards?

20 A Yes.

21 Q Based on NagraStar and your investigative efforts, were  
22 you able to make a conclusion on whether or not the  
23 defendants Chris Tarnovsky and Al Menard were involved in  
24 the posting of sensitive proprietary information related to  
25 hacking EchoStar security system on Mr. Menard's website?

SHARON SEFFENS, U.S. COURT REPORTER

58

1 A Yes.

2 Q Based on your investigative efforts and NagraStar's  
3 investigative efforts, were you able to reach a conclusion  
4 on whether or not the defendants engaged in efforts to  
5 reverse engineer EchoStar's security system?

6 A Yes.

7 Q Did your investigation indicate that the defendants  
8 also developed a methodology to hack EchoStar's security  
9 system and provide that information to Chris Tarnovsky?

10 A Yes.

11 Q Is it your understanding that that hack recipe is by  
12 and large the same in all material respects as what was  
13 posted on Allen Menard's website, dr7.com?

14 MR. STONE: Objection to leading at this point.

15 THE COURT: Overruled. You can answer that.

16 THE WITNESS: Yes.

17 THE COURT: As far as a leading objection anyway.

18 MR. EBERHART: Do you want him declared an adverse  
19 witness?

20 MR. HAGAN: Do you have an objection, David?

21 THE COURT: No, it doesn't suggest the answer,  
22 quite frankly. It's almost a foregone conclusion what he's  
23 going to answer. The question is where is this going. Just  
24 because he has an opinion doesn't mean that the jury should  
25 take that opinion.

1 MR. EBERHART: That's correct, Your Honor, but --

2 THE COURT: So what's the question?

3 MR. HAGAN: Mr. Stone took steps to impune Mr.  
4 Gee's investigative efforts, but he only focused on a very  
5 thin slice of those investigative efforts.

6 THE COURT: Okay.

7 MR. HAGAN: Thank you, Your Honor.

8 BY MR. HAGAN:

9 Q Now, Mr. Gee, there was a lot of talk this morning  
10 about a pirate syndicate in Canada called the Barrie group.  
11 Did you obtain information through your investigation about  
12 the Barrie group?

13 A Yes, I did.

14 Q Did you ever obtain any credible and corroborated  
15 information that anyone associated with the Barrie group had  
16 developed a hack recipe for EchoStar's security system?

17 A No.

18 Q Did you ever obtain any credible and corroborated  
19 information that anyone associated with the Barrie group  
20 ever registered the internet e-mail address  
21 ChrisVon@S4interpass.com?

22 A No, I did not.

23 Q Did you ever receive or obtain any credible and  
24 corroborating evidence that anyone associated with the  
25 Barrie group developed what was known as the west E3M code

1 to reprogram EchoStar Smart Cards?

2 A No.

3 Q Did you ever obtain any credible evidence or any  
4 corroborating evidence that anyone associated with the

5 Barrie group developed software applications like SC Talk or  
6 Get ATR or Sniff Host that could be used to pirate  
7 EchoStar's security system?

8 A No, I did not.

9 Q Mr. Gee, can you list for us some of the individuals  
10 that you debriefed and obtained evidence from as it relates  
11 to this case?

12 A Yes, I can. I spoke to Stan Frost, Reg Scullion, Dean  
13 Lov, Ron Ereiser, Jan Saggiori, Charles Perlman, Lawrence  
14 Harmon, Al Menard. I didn't speak to him, but Mr.  
15 Guggenheim had.

16 Q Is it fair to say that there was a large number of  
17 individuals that you and NagraStar debriefed, questioned,  
18 and obtained evidence from in this investigation?

19 A Yes.

20 Q I know that Mr. Stone spent quite a bit of time talking  
21 about these Menarres, Maldonados, Maskells, McGuires.  
22 That's just the M's. Let's talk about some of the other  
23 individuals that you interviewed. Let's start with Mr.  
24 Scullion, Reginald Scullion. Did you have an occasion to  
25 debrief and evidence from Mr. Scullion?

SHARON SEFFENS, U.S. COURT REPORTER

61

1 A Yes. Mr. Scullion provided us an affidavit for our  
2 complaint.

3 Q What evidence and documents, if any, did you obtain  
4 from Mr. Scullion?

5 A Mr. Scullion was an administrator.

6 MR. STONE: Objection. Hearsay.

7 MR. HAGAN: Your Honor, they're both statements  
8 against penal interest, which is an exception to the hearsay  
9 rule. We're also offering it for a nonhearsay purpose to  
10 show the effect of Mr. Gee's state of mind at the time.  
11 They have taken great pains to impune his investigative  
12 efforts.

13 MR. STONE: State of mind is not an issue.

14 MR. HAGAN: Brief response?

15 THE COURT: Excuse me. Why don't I labor into the  
16 evening hours with counsel. Ladies and gentlemen, you are  
17 admonished not to discuss this matter amongst yourselves.  
18 See you tomorrow. Is 8:00 okay? We will make an agreement  
19 that about 3:00 or 3:30 we will send you home tomorrow.

20 (Jury not present)

21 THE COURT: Okay. Now, the jury is no longer  
22 present. All counsel are present. Let's go through before  
23 you believe you're going one by one, because my guess is  
24 that you're going to believe that there is an exception and  
25 probably try to walk through each one of these witnesses.

SHARON SEFFENS, U.S. COURT REPORTER

62

1 Let's do that now.

2 You're starting with Reginald Scullion and asking  
3 what he told the gentleman. There is one exception that  
4 what he said is corroborative; it's not for the truth. But  
5 the difficulty with that is if the jury doesn't receive it  
6 for the truth, then they are receiving it to bolster his  
7 credibility when his credibility has been attacked.

8 But at the same time you have blurted out that  
9 there is a declaration against penal interest. So let's  
10 find out if it's coming in. And if it is coming in, why it  
11 would be coming in, what exception to the hearsay rule; or  
12 if it's not being offered for the truth or if it's not  
13 coming in.

14 Why don't we start with whatever you were going to  
15 say to the jury a few moments ago about Reginald Scullion.  
16 There is out of the presence of the jury, so what were you  
17 going to say about Reginald Scullion?

18 THE WITNESS: I was going to tell the jury that  
19 Reginald Scullion had told me that he had seen the aliases  
20 known to him for Christopher Tarnovsky on the panel matching  
21 up with the IP address with the Nipper registration.



22 THE COURT: Just a moment. Now, do you still  
23 employ Reginald Scullion -- I mean, contract or pay him any  
24 amount of money?

25 THE WITNESS: Reg Scullion is dead.

SHARON SEFFENS, U.S. COURT REPORTER

63

1 THE COURT: He's dead?

2 THE WITNESS: He died of cancer.

3 THE COURT: Okay. And how long ago would that be?

4 THE WITNESS: I think it's been a year now.

5 THE COURT: About a year. Thank you. Now, the  
6 declaration against penal interest that

7 comes out of that statement, Mr. Hagan, is what?

8 MR. HAGAN: For that particular statement there is  
9 none, Your Honor.

10 THE COURT: Okay. Well, then, there must be  
11 something else that would cause me to think that there is a  
12 declaration against penal interest. What is that, because  
13 that's what you said in front of the jury?

14 MR. HAGAN: From Mr. Scullion he was involved in  
15 satellite piracy.

16 THE COURT: Wait a minute. Let me hear from this  
17 gentleman. What else would you be saying? Because I don't  
18 think that there is going to be too many objections to  
19 testimony about being involved in satellite piracy. I don't  
20 think NDS is too concerned about that. It's the IP address,  
21 and I have a hard time understanding how that's a  
22 declaration against penal interest.

23 So let's go slowly, one by one.

24 MR. HAGAN: Sure. You want to hear from the  
25 witness, I would assume?

SHARON SEFFENS, U.S. COURT REPORTER

64

1 THE COURT: Certainly, everything he's going to  
2 say. why don't you just --

3 THE WITNESS: Additionally Mr. Scullion was  
4 offered to be a part of the distribution group by Mr.  
5 Menard, and during that offer he told him he didn't have  
6 anything to worry about because they had NDS's protection.

7 THE COURT: Distribution group, Scullion was told  
8 by Menard -- I am going to repeat this back. That he had  
9 seen aliases on -- and you said panel. You mean the  
10 internet?

11 THE WITNESS: The control panel of the dr7  
12 website.

13 THE COURT: Thank you. And that that control  
14 panel showed a matching IP address?

15 THE WITNESS: Yes.

16 THE COURT: With?

17 THE WITNESS: With known nicks of Tarnovsky with  
18 the Nipper 2000.

19 THE COURT: And also that Mr. Scullion told you  
20 that Mr. Menard had said to Mr. Scullion that he could be  
21 part of a distribution group but that he was not to worry  
22 because NDS was providing protection?

23 THE WITNESS: That's correct. A little background  
24 on that --

25 THE COURT: I don't need background. I am not

SHARON SEFFENS, U.S. COURT REPORTER

65

1 interested in background right now.

2 THE WITNESS: Okay.

3 THE COURT: I am interested in the words that  
4 counsel wants you to elicit in front of the jury.

5 Counsel, is there anything else?

6 BY MR. HAGAN:

7 Q Mr. Gee, during your debriefing sessions with Mr.  
8 Scullion, did he indicate to you in any way that Christopher  
9 Tarnovsky was involved in the creation of a device for

10 reprogramming EchoStar access cards?

11 A Yes.

12 Q How did he do that?

13 A How did Tarnovsky do that?

14 Q How did Mr. Scullion advise you of that?

15 A I believe it was in our communication.

16 Q what did he tell you?

17 A He told me that he knew of a device that Tarnovsky had.

18 THE COURT: How did he know it, though? Did  
19 Tarnovsky allegedly make a statement to him? Did he obtain  
20 that information through the internet? How did he say he  
21 knew this?

22 THE WITNESS: He had -- Reg Scullion was a DirectTV  
23 pirate primarily. He was a competitor, and Tarnovsky had  
24 sent him threatening e-mails.

25 THE COURT: Tarnovsky was sending threatening

SHARON SEFFENS, U.S. COURT REPORTER

♀

66

1 e-mails?

2 THE WITNESS: Threatening e-mails.

3 THE COURT: Now, do you have that e-mail --

4 MR. HAGAN: We do, Your Honor.

5 THE COURT: Could I see that e-mail again to  
6 refresh my recollection. I believe that that's already come  
7 into evidence; hasn't it? There was a threatening e-mail  
8 from Tarnovsky. That's not the same e-mail that Tarnovsky  
9 was cross-examined on when he was on the stand?

10 MR. HAGAN: No.

11 THE COURT: That wasn't the one that said  
12 basically I'm going to dump you or --

13 MR. HAGAN: That's correct. That relates to Dean  
14 Lov.

15 THE COURT: well, let's see the threatening  
16 e-mail.

17 MR. EBERHART: It's Exhibit 44, Your Honor. We

18 are looking for a copy right now.

19 THE COURT: We will wait.

20 MR. HAGAN: Can you pull it up?

21 THE COURT: I am going to want a copy in chambers  
22 also, so get it for me eventually. But you can pull it up  
23 for the time being.

24 MR. NOLL: It's not the top you're going to focus  
25 in on. It's the bottom. That's the header right there. Go

SHARON SEFFENS, U.S. COURT REPORTER

67

1 to the second page, one more. There you go, the information  
2 at the top.

3 THE COURT: Now, you represent that this is an  
4 e-mail from whom to whom?

5 THE WITNESS: I represent this is Tarnovsky, who  
6 signs it Big Gun, to Reg Scullion.

7 THE COURT: This is Big Gun sending an e-mail to  
8 whom?

9 THE WITNESS: Reg Scullion.

10 THE COURT: To Scullion on the date of?

11 THE WITNESS: The date is on the page 1.

12 THE COURT: I'm going to look down. You're going  
13 to tell me the page.

14 MR. NOLL: Go back a page.

15 THE COURT: Since nobody has given me an exhibit  
16 yet --

17 THE WITNESS: 29th of January 1997.

18 THE COURT: Okay. And you can go to the next page  
19 if you'd like to, and now tell me what Tarnovsky is saying.  
20 There is the second page. "You have chosen to ignore me and  
21 no reply since your last message. I begin to think you  
22 accept my proposition to you and make things nice for both  
23 of us. If I am against you, you will not have happy  
24 customers under your side. I give you the TV and I can  
25 remove the TV. I have been very patient with you, and my

1 patience is now expiring. You will have until 1800 hours my  
2 time -- this is 12:00 for you. If I do not hear from you  
3 before I go to my school, I will consider you a threat to me  
4 and commit something very drastic soon after. I may just  
5 give the source to NDC. I am sure they will purchase it  
6 from me. And if I agree to stop, then your role stops also.  
7 You leave me no other source. I also know one of people  
8 with the hex file has given this to you, perhaps for some  
9 money. I am not sure."

10 Now, if I assume that NDC -- is that NDS?

11 THE WITNESS: News Data Corp.

12 THE COURT: Okay. What else, counsel, were you  
13 going to elicit from this witness about Mr. Scullion?

14 BY MR. HAGAN:

15 Q Mr. Gee, did there come a point in time in your  
16 discussions with Mr. Scullion where he provided you with  
17 information linking Chris Tarnovsky to the December 2000  
18 Nipper posts?

19 A Yes.

20 Q Can you describe that information for the court?

21 A That was the IP address information that he had shared  
22 with me that we had spoken about previously.

23 THE COURT: I'm sorry?

24 THE WITNESS: It was the previous information of  
25 the IPs.

1 BY MR. HAGAN:

2 Q Let's go through it again.

3 A Okay.

4 Q What specifically did Mr. Scullion tell you or provide  
5 you with related to Chris Tarnovsky and the Nipper 2000 or

6 NipperClause postings?

7 A He was able to see known nicks of Tarnovsky, such as  
8 Von, and that registration on the control panel of the dr7  
9 matching up with the registration of the IP with Nipper  
10 2000.

11 THE COURT: Anything else? In other words, when  
12 this issue gets decided, I am not going to have new pop-up  
13 information. Anything else?

14 THE WITNESS: I can't recall.

15 THE COURT: There is not going to be new  
16 information that I will accept later on. Be careful.

17 THE WITNESS: Okay.

18 THE COURT: That Mr. Scullion told you that he had  
19 been able to see on the control panel dr7 the alias Von  
20 which he was able to match to Nipper?

21 THE WITNESS: Yes.

22 THE COURT: Did he tell you how he was able to  
23 match that?

24 THE WITNESS: Yes, he did.

25 THE COURT: How?

SHARON SEFFENS, U.S. COURT REPORTER

70

1 THE WITNESS: He was an administrator and had  
2 access to that information.

3 THE COURT: Mr. Scullion was an administrator?  
4 Anything else before we move to the next person?

5 THE WITNESS: No.

6 MR. HAGAN: No, Your Honor.

7 THE COURT: Okay. Counsel, anything else in your  
8 notes before we move to the next person?

9 MR. HAGAN: Yes, Your Honor.

10 BY MR. STONE:

11 Q Mr. Gee, during your investigation did you debrief an  
12 individual named Marty Mullen?

13 A Yes, I did.

14 THE COURT: Well, that's the next person.

15 MR. HAGAN: I thought you said to move to the next  
16 person.

17 THE COURT: No. I said is there anything else  
18 before we move to the next person? In other words, I want  
19 to exhaust the information that you think fits under the  
20 penal code exception to the hearsay rule.

21 MR. HAGAN: Well, first of all, Your Honor, let me  
22 clarify, because perhaps I wasn't clear. I think there are  
23 several ways that this comes into evidence.

24 THE COURT: Well, I know, but one of those ways  
25 you said, you said there was a declaration against penal

SHARON SEFFENS, U.S. COURT REPORTER

71

1 interest. And we'll get to all the several ways as soon as  
2 I understand the information.

3 MR. HAGAN: Okay.

4 THE COURT: But if you want to, since we're going  
5 through this one by one, why don't you list the ways that  
6 you believe that Reginald Scullion's testimony would come in  
7 with a hearsay objection.

8 MR. HAGAN: As an initial matter, Your Honor, this  
9 can be offered for a nonhearsay purpose, and that is to both  
10 rehabilitate the credibility of Mr. Gee and his  
11 investigative efforts, as well as to rebut claims implied by  
12 Mr. Stone's questioning that focused solely on a small  
13 percentage of relevant individuals.

14 THE COURT: All right. What's your next reason?

15 MR. HAGAN: As well as it also goes to show the  
16 state of mind of Mr. Gee at the time he made conclusions  
17 during the process of his investigation.

18 THE COURT: Okay. What's your next -- those are  
19 both nonhearsay reasons.

20 MR. HAGAN: I think just before we move on --

21 THE COURT: It's not offered for the truth of the  
22 matter asserted?

23 MR. HAGAN: That's correct, which can be cured by  
24 an instruction from the Court. And I would like to point  
25 out that --

SHARON SEFFENS, U.S. COURT REPORTER

72

1 THE COURT: Wait a minute. I want to make sure we  
2 exhaust all your hearsay or nonhearsay.

3 MR. HAGAN: Okay. And before I move on on those  
4 two, I would like to point out that these are the same  
5 reasons that Mr. Stone questioned Mr. Gee on. For example,  
6 statements made to Mr. Gee by Larry Pilon or were made to  
7 Larry Pilon from someone else that were based on a lab that  
8 that individual never visited. I didn't make those  
9 objections because I understood the reason why that evidence  
10 was being offered. And they certainly can't have it both  
11 ways. It's the same thing with Mr. Maldonado.

12 THE COURT: No, it doesn't work that way. It  
13 doesn't work that way. It doesn't work because you didn't  
14 object, believing that this was --

15 MR. HAGAN: Well, regardless of the objection,  
16 Your Honor, this is being offered for nonhearsay purpose at  
17 minimum.

18 THE COURT: Okay. Now, if that's what you're  
19 resting it on, they we're done with the discussion and we  
20 move on. Are there any other reasons?

21 MR. HAGAN: Absolutely. There are going to be  
22 statements -- for Mr. Scullion, or do you want me to give  
23 you the reasons for all of these individuals?

24 THE COURT: I want for Mr. Scullion now, because  
25 you just blurted out also that it came in for declaration

SHARON SEFFENS, U.S. COURT REPORTER

73

1 against penal code. I want to know both hearsay and



2 nonhearsay reasons for each of the people we go through. I  
3 am not going to listen to a further argument when I come out  
4 and make my decision. There is not going to be a pop-up  
5 reason. So complete your reasons now.

6 MR. HAGAN: For purposes of Mr. Scullion's  
7 statements, he was involved in the operation of Mr. Menard's  
8 dr7 website. That was a pirate website. According to Mr.  
9 Gee's testimony, he had administrator or moderator  
10 privileges on that website. So he was assisting in the  
11 operation of a website that distributed cards and  
12 information related to circumventing EchoStar's security  
13 system.

14 His involvement and statements about his  
15 involvement and information he obtained through his  
16 involvement would be considered statements against his penal  
17 interest because they could be used against him in a  
18 prosecution for his efforts to assist others in satellite  
19 piracy.

20 THE COURT: Even though it might be legal in  
21 Canada?

22 MR. HAGAN: Mr. Scullion was prosecuted by the  
23 defendants.

24 THE COURT: Where?

25 MR. HAGAN: Where? I don't recall the

SHARON SEFFENS, U.S. COURT REPORTER

74

1 jurisdiction. I think there were at least two different  
2 ones. There was a raid.

3 MR. SNYDER: It was Quebec.

4 THE COURT: Was he prosecuted?

5 MR. SNYDER: Yes, he was.

6 THE COURT: By NDS?

7 MR. SNYDER: He was charged by the RCMP.

8 THE COURT: Okay.

9 MR. SNYDER: And I believe he also had civil

10 litigation also with DirectTV and NDS.

11 THE COURT: Okay. Anything else? He also had  
12 what?

13 MR. SNYDER: I believe he had civil litigation  
14 that was against him as well.

15 THE COURT: Anything else? Any other reasons?

16 MR. HAGAN: I think that would be it for Mr.  
17 Scullion.

18 THE COURT: Okay. Now we will move to the next  
19 gentleman.

20 MR. HAGAN: It's not a reason, Your Honor, but I  
21 think under 807 these statements are independently  
22 corroborated by other evidence that is already in the  
23 record. That is, Chris Tarnovsky and Al Menard's  
24 involvement in the operation of dr7, the reprogramming of  
25 EchoStar access cards, the distribution of those cards, the

SHARON SEFFENS, U.S. COURT REPORTER

75

1 distribution through publications of information about  
2 EchoStar security system. Each of those things have  
3 independent evidence that is already in the record.

4 THE COURT: Any other reasons?

5 MR. HAGAN: That's it, Your Honor.

6 THE COURT: Okay. Then after Mr. Scullion we  
7 might as well move to Stan Frost.

8 THE WITNESS: Okay. I met with Stan Frost in  
9 early 2001.

10 THE COURT: Now, you know he has asserted the  
11 Fifth Amendment?

12 THE WITNESS: I have been informed of that, yes.

13 THE COURT: All right.

14 THE WITNESS: When I met with him, he told me that  
15 he was part of the dr7 group and that he knew Chris  
16 Tarnovsky and that he knew that Chris Tarnovsky was the  
17 coder behind dr7.

18 THE COURT: Was the what?

19 THE WITNESS: The coder.  
20 THE COURT: The coder behind dr7.  
21 THE WITNESS: Yes.  
22 THE COURT: Okay. And what else?  
23 THE WITNESS: He was the person who had first  
24 informed me about the testimony that Mr. Dionisi had  
25 provided about the visit to Toronto with Mr. Menard and Stan

SHARON SEFFENS, U.S. COURT REPORTER

76

1 Frost and Mr. Tarnovsky.  
2 THE COURT: But that's not why you're really being  
3 questioned, to give information. You're really being  
4 requested to give information, frankly, if counsel can get  
5 this in, about the link of Tarnovsky to Nipper.  
6 THE WITNESS: I don't understand your question,  
7 sir.  
8 THE COURT: I know you don't. Counsel, this is  
9 irrelevant so far.  
10 MR. HAGAN: Mr. Mullen or Mr. Scullion?  
11 THE COURT: Mr. Frost's statement to the  
12 gentleman. So cut to what you really want. We already have  
13 this evidence in, and it's not coming in through this mode.  
14 So what do you really want from this gentleman, concisely?  
15 MR. HAGAN: I want to be able to establish that  
16 Mr. Frost, while he pled the fifth in his deposition, made  
17 statements against his own penal interest.  
18 THE COURT: What are those statements? I'm  
19 waiting for you, and now I'm losing my patience.  
20 BY MR. HAGAN:  
21 Q Mr. Gee, during your debriefing sessions with Stanley  
22 Frost, did he make any statements to you about his  
23 involvement in a distribution network of pirated EchoStar  
24 access cards with Chris Tarnovsky or Al Menard?  
25 A Yes, he did.

SHARON SEFFENS, U.S. COURT REPORTER

1 Q What were those statements?

2 A He told me that he was one of the distributors with him  
3 and he handled the East Coast. He had his operation run out  
4 of Nova Scotia, and he was -- he was currently living in New  
5 York, but he was part of that distribution group.

6 THE COURT: I am going to repeat this back to you.  
7 Stan Frost tells you that he was part of a distribution  
8 network on the East Coast along with Al Menard, and that Mr.  
9 Tarnovsky was involved in this distribution group on the  
10 East Coast?

11 THE WITNESS: I would like to clarify that he was  
12 the East Coast distributor for Menard, who was on the west.

13 THE COURT: So Stan Frost -- start again -- said  
14 he was the East Coast distributor for Al Menard; is that  
15 correct?

16 THE WITNESS: Yes.

17 THE COURT: What did he allegedly say about  
18 Tarnovsky?

19 THE WITNESS: He said that Tarnovsky was Menard's  
20 coder and they were partners.

21 THE COURT: Anything else?

22 THE WITNESS: Outside of the video to confirm that  
23 they were together.

24 THE COURT: Huh?

25 THE WITNESS: I received a video of them in

SHARON SEFFENS, U.S. COURT REPORTER

1 Toronto to confirm that he had been with them, had a  
2 meeting.

3 THE COURT: You have a video of Stan Frost --

4 THE WITNESS: Yes.

5 THE COURT: -- showing Frost and -- when you say

6 them, who is them?

7 THE WITNESS: Frost is recording the video, and  
8 the video is of Menard and Tarnovsky.

9 THE COURT: Menard and Tarnovsky. Did Frost tell  
10 you when that video was taken?

11 THE WITNESS: He did tell me the date, but I don't  
12 recall the date of it.

13 THE COURT: The year?

14 THE WITNESS: It was the testimony that Mr.  
15 Dionisi testified to, Your Honor.

16 THE COURT: The year?

17 THE WITNESS: I don't recall the year, Your Honor.

18 THE COURT: The occasion?

19 THE WITNESS: They were getting together in  
20 Toronto as a get-together, the people that --

21 THE COURT: The pirates' jamboree?

22 THE WITNESS: Yes.

23 THE COURT: All right. Do you have that?

24 MR. HAGAN: It's been produced, Your Honor.

25 THE COURT: well, I haven't seen it yet. I asked

SHARON SEFFENS, U.S. COURT REPORTER

79

1 do you have that tape.

2 MR. STONE: I have two exhibits that they were  
3 going to use on his direct.

4 MR. HAGAN: we have no intention of playing the  
5 videotape, no intention of offering --

6 THE COURT: My question isn't directed to you  
7 gentlemen to have a discussion. My question is deliver an  
8 answer. Unless you start doing that, this hearing is done.  
9 Now answer my question. Do you have a tape?

10 MR. HAGAN: Yes, Your Honor.

11 THE COURT: You two may be trading information and  
12 discussing it, but you're not discussing it with the Court.  
13 So answer my question and quit trying to lump things  
14 together. This idea that it's just going to come shoveling

15 in is misplaced on your part.

16 Look through your notes. Is there anything else,  
17 so there are no more surprises that you are seeking to  
18 introduce either as nonhearsay or an exception to the  
19 hearsay rule about Mr. Frost?

20 MR. HAGAN: We have covered that. What we intend  
21 to offer --

22 THE COURT: I said is there anything else. I  
23 don't need a lot of words from you now. Just answer my  
24 question directly.

25 MR. HAGAN: No, Your Honor.

SHARON SEFFENS, U.S. COURT REPORTER

80

1 THE COURT: All right. Now, I want you to go over  
2 each exception or whether this is nonhearsay, and make your  
3 statement concerning Mr. Frost.

4 MR. HAGAN: Minimally this evidence can be used  
5 for a nonhearsay purpose, and that is to show the effect on  
6 Mr. Gee, to show the completeness of his investigative  
7 efforts, and to rehabilitate those investigative efforts.  
8 Assuming --

9 THE COURT: Because he was attacked concerning his  
10 lack of diligence by Mr. Stone?

11 MR. HAGAN: Correct.

12 THE COURT: Okay. Now, that's nonhearsay. Of  
13 course, that would not come in for the truth of the matter  
14 asserted, and it would take a limiting instruction.

15 Anything else?

16 MR. HAGAN: Certainly, Your Honor. There is an  
17 exception to the hearsay rule that these statements made by  
18 Mr. Frost that he was a member of a distribution network  
19 with Christopher Tarnovsky and Alan Menard and he  
20 participated in the distribution of reprogrammed EchoStar  
21 access cards through a website operated by him out of the  
22 state of New York are statements against penal interest.

23 THE COURT: I never heard except from you that  
24 this was the distribution of EchoStar cards. I heard this  
25 witness say that the distribution -- and I wrote it down --

SHARON SEFFENS, U.S. COURT REPORTER

81

1 said he was the East Coast distributor for Al Menard. I  
2 never heard what.

3 BY MR. HAGAN:

4 Q Mr. Gee, what was Mr. Frost distributing?

5 A DISH Network cards.

6 THE COURT: Did he explicitly tell you that?

7 THE WITNESS: Yes, he did.

8 THE COURT: Anything further for Mr. Frost?

9 MR. HAGAN: In addition to them being statements  
10 against penal interest, they are statements that have been  
11 corroborated by other evidence in this case, including the  
12 adverse inference drawn from Mr. Frost refusing to answer  
13 those specific questions of his involvement in the  
14 distribution network for pirated EchoStar access cards with  
15 Christopher Tarnovsky.

16 THE COURT: What are those other corroborating  
17 factors so I have a complete record?

18 MR. HAGAN: As an initial matter there's Mr. Frost  
19 refusing to answer those questions.

20 THE COURT: I already heard that. What else?

21 MR. HAGAN: There are also -- I believe that is  
22 sufficient, Your Honor.

23 THE COURT: Okay.

24 MR. HAGAN: Just give me a second.

25 THE COURT: Remember, when I come back, I am not

SHARON SEFFENS, U.S. COURT REPORTER

82

1 entertaining any additional pop-up arguments. I will hear

2 from you, Mr. Stone, in just a moment.

3 MR. HAGAN: There is also the e-mail and the  
4 testimony that came through Mr. Tarnovsky that he sent a  
5 threatening e-mail to Dean Lov telling him that he would  
6 dump his --

7 THE COURT: Wait just a moment. We're still on  
8 Stan Frost.

9 MR. HAGAN: It relates to that, Your Honor.

10 THE COURT: E-mail to --

11 MR. HAGAN: From Chris Tarnovsky to Dean Lov.

12 THE COURT: Tarnovsky to Lov.

13 MR. HAGAN: As well as Tarnovsky's testimony about  
14 that e-mail.

15 THE COURT: All right. You're going to refresh my  
16 recollection and give me that e-mail.

17 MR. HAGAN: It's Exhibit 21. Mr. Tarnovsky said  
18 that he threatened to dump Dean Lov's card condom code on  
19 the internet unless he removed information that was posted  
20 by Mr. Lov about Stan Frost. That is further evidence of a  
21 nexus between Tarnovsky and Frost.

22 THE COURT: Just a moment. Okay, which will be  
23 Exhibit 21 which you will get for me. And what else?

24 MR. HAGAN: These are also -- I believe those are  
25 the arguments that we have for the exceptions, exclusions,

SHARON SEFFENS, U.S. COURT REPORTER

83

1 and nonhearsay purposes for the evidence on Mr. Frost.

2 THE COURT: Okay. The next one you named was Dean  
3 Lov.

4 BY MR. HAGAN:

5 Q Mr. Gee, what information did you obtain from Dean Lov  
6 related to Chris Tarnovsky, Al Menard, and a distribution  
7 network of pirated EchoStar access cards?

8 A Dean Lov had told me that he knew that Chris Tarnovsky  
9 and Al Menard were behind the dr7 DISH Network Smart Cards.

10 THE COURT: That's a conclusion only. That would



11 get an immediate objection, and it would be sustained. So  
12 he knew Tarnovsky was behind Smart Cards. Okay.

13 BY MR. HAGAN:

14 Q Did Mr. Lov tell you the basis for that conclusion?

15 A Yes. He had received some Smart Cards from them.

16 THE COURT: So Dean Lov had received Smart Cards  
17 from --

18 THE WITNESS: Dr7, Al Menard.

19 BY MR. HAGAN:

20 Q Were those EchoStar Smart Cards?

21 A They were DISH Network Smart Cards, yes. EchoStar.

22 THE COURT: what else? Is that it?

23 THE WITNESS: He was familiar with the nicknames  
24 that Tarnovsky used.

25 THE COURT: Did he state to you the nickname?

SHARON SEFFENS, U.S. COURT REPORTER

84

1 THE WITNESS: Yes, he did.

2 THE COURT: What was it?

3 THE WITNESS: He had e-mails from --

4 MR. HAGAN: That's Exhibit 21, Your Honor.

5 THE COURT: Okay.

6 THE WITNESS: I don't recall the e-mail address,  
7 Your Honor. And he knew --

8 THE COURT: Where is Dean Lov?

9 THE WITNESS: Dean Lov is in Winnipeg, Manitoba.

10 THE COURT: Is he a consultant in any way to  
11 NagraStar?

12 THE WITNESS: No, he is not.

13 THE COURT: Has he been paid by NagraStar or  
14 EchoStar?

15 THE WITNESS: No, he has not.

16 THE COURT: Either directly or indirectly?

17 THE WITNESS: No, he has not.

18 THE COURT: Has he been subpoenaed to come to this

19 court?

20 THE WITNESS: No. We were speaking with Dean Lov  
21 on providing us an affidavit on this litigation.

22 THE COURT: Was he asked to come to this court by  
23 anybody?

24 THE WITNESS: He is not returning phone calls  
25 anymore, Your Honor. He had a litigation with NDS, and I

SHARON SEFFENS, U.S. COURT REPORTER

85

1 don't know the status of that litigation. I just know that  
2 Mr. Lov is no longer returning my phone calls.

3 THE COURT: Does NDS or DirectTV or HarperCollins  
4 or News Corp. to your knowledge supply any money or  
5 consulting agreements to Dean Lov?

6 THE WITNESS: Not that I know.

7 THE COURT: Okay. So Dean Lov is one of those  
8 just somewhat independent persons where neither of the  
9 parties in this matter have any past relationship in terms  
10 of money payments?

11 THE WITNESS: I can only speak for NagraStar, Your  
12 Honor.

13 THE COURT: And you do not?

14 THE WITNESS: I do not.

15 MR. STONE: Your Honor, I don't know if you want  
16 me to point something out at this point or not.

17 THE COURT: No. Later on. You started off and  
18 I'm going to read it back to

19 you, that Mr. Lov told you that he knew Tarnovsky  
20 was behind these Smart Cards; that Dean Lov told you he had  
21 received DISH Net cards from dr7, Al Menard, and that Al  
22 Menard was familiar with the nickname?

23 THE WITNESS: No. Dean -- I'm sorry, Dean Lov was  
24 familiar with the nickname, nicknames that Chris Tarnovsky  
25 used.

SHARON SEFFENS, U.S. COURT REPORTER

1 THE COURT: Did he tell you those nicknames?

2 THE WITNESS: Von, Von Rat, Vonster.

3 THE COURT: What? Vonster?

4 THE WITNESS: I believe Vonster was one.

5 THE COURT: Okay.

6 THE WITNESS: And he believed that he was also  
7 Nipper.

8 THE COURT: Did he state to you why he believed he  
9 was Nipper?

10 THE WITNESS: Yes, he did.

11 THE COURT: What did he say?

12 THE WITNESS: He said that from the Smart Cards  
13 that he had received previously from Al Menard and Chris, he  
14 was able to glean some of the code from that. And after the  
15 post by Nipper was released, he felt that it matched up with  
16 it.

17 THE COURT: So this was an opinion on his part  
18 based upon the code?

19 THE WITNESS: That was his opinion.

20 THE COURT: Did he say that he ever received a  
21 direct statement from Tarnovsky that he was Nipper,  
22 NipperClause, Nipper 2000?

23 THE WITNESS: No, he did not.

24 THE COURT: Did he ever say that Al Menard made a  
25 statement directly to Dean Lov that Tarnovsky passed himself

SHARON SEFFENS, U.S. COURT REPORTER

1 as Nipper, Nipper 2000, or NipperClause?

2 THE WITNESS: No.

3 THE COURT: Anything else that you can think of?

4 THE WITNESS: Mr. Lov told me that he had told  
5 John Norris after John had asked him -- he provided me an  
6 e-mail of this where John Norris asked him if he knew who

7 was behind the DISH Network hack, and he told him that it  
8 was Tarnovsky.

9 THE COURT: So John Norris told Dean Lov that he  
10 knew it was Tarnovsky?

11 HE WITNESS: No. I am sorry, Your Honor. He  
12 asked Dean Lov in an e-mail if he knew who was behind the  
13 DISH Network hack, and he said --

14 THE COURT: And Dean Lov said it was Tarnovsky?

15 THE WITNESS: Menard and Tarnovsky.

16 THE COURT: Okay. Just a moment. And besides  
17 that opinion, I am hearing that the basis of that opinion is  
18 no identification of Nipper, NipperClause, or Nipper 2000,  
19 but this is based upon his comparison of the code posted on  
20 the internet?

21 THE WITNESS: And also his understanding of  
22 Menard's distribution of the DISH piracy cards.

23 THE COURT: Okay. Counsel, what are the reasons  
24 you believe it should be received by the Court?

25 MR. HAGAN: For the same reasons as previously

SHARON SEFFENS, U.S. COURT REPORTER

88

1 stated, Your Honor.

2 THE COURT: Okay. Nonhearsay. And?

3 MR. HAGAN: Statements against penal interest.

4 THE COURT: What are those statements?

5 MR. HAGAN: Mr. Lov received reprogrammed Smart  
6 Cards from Mr. Menard. Possession of those circumvention  
7 devices is a violation of law. Mr. Lov was prosecuted and,  
8 I believe, sued civilly by the defendants.

9 THE COURT: Now, if Mr. Lov is in Canada and Mr.  
10 Lov receives cards in Canada, how is that a violation of  
11 law?

12 MR. HAGAN: I don't know the specific provinces  
13 where circumvent -- I mean, what we do know --

14 THE COURT: I don't know that either. That is my

15 problem. That is causing me deep concern, because different  
16 provinces apparently may have condoned this; other provinces  
17 didn't. In 2002 the Canadian Supreme Court put a stop to  
18 it.

19 But up to that time and during the course of  
20 action, it's very unclear to the Court which provinces  
21 condoned this activity and which provinces didn't.  
22 Apparently a lot of pirated network developed in Canada  
23 quite frankly with some impunity. That's why he went to  
24 Canada, by the way?

25 THE WITNESS: Yes.

SHARON SEFFENS, U.S. COURT REPORTER

89

1 BY MR. HAGAN:

2 Q Was Mr. Lov prosecuted criminally?

3 A I don't recall if his charges were criminal or civil.  
4 I don't recall.

5 MR. HAGAN: We can submit briefing tomorrow, Your  
6 Honor, that outlines --

7 THE COURT: One by one. Now, the next one is --  
8 we have all these statements out, so it doesn't change. I  
9 am not very amenable to changes overnight. Ron Ereiser.

10 THE WITNESS: Your Honor, I would like to also add  
11 that after Dean Lov told John Norris that he felt that it  
12 was Tarnovsky and Menard behind this, that he said that he  
13 also had e-mail communication from Tarnovsky, and John  
14 Norris had sent Joe Z to Dean Lov's place to get a copy of  
15 those. And instead of copying them, he deleted them.

16 THE COURT: Okay. Before we go any further,  
17 obviously the first question is going to be do you have any  
18 notes -- typed, handwritten, anything -- in your possession  
19 that will verify this information accurately to this Court?

20 THE WITNESS: Yes, I do.

21 THE COURT: Could I see those notes concerning  
22 Reggie Scullion.

23 THE WITNESS: Could I --

24 THE COURT: When you talk about Reginald Scullion  
25 and the FBI takes a 302, don't have tape recorders.

SHARON SEFFENS, U.S. COURT REPORTER

90

1 THE WITNESS: I believe I provided all that  
2 information to our counsel for Mr. Scullion.

3 THE COURT: Could I see them? Where is the  
4 Reginald Scullion notes?

5 MR. HAGAN: This is going to take some time, Your  
6 Honor.

7 THE COURT: That's right. That's why we're not  
8 going to rush into decisions. Those pop-up decisions are  
9 not what the Court is going to do.

10 MR. HAGAN: I understand the Court's inquiry.  
11 This is what we need to be gathering right now to speed this  
12 along.

13 THE COURT: I just told you. You understand it.  
14 Get Reginald Scullion's notes for me. We're wasting time.

15 Now, do you have notes for Stan Frost,  
16 conversations with Stan Frost?

17 THE WITNESS: I believe I also provided those as  
18 well.

19 THE COURT: Okay. So counsel would have those?

20 THE WITNESS: If I have them, yes, they would.

21 THE COURT: Do you have notes that you took  
22 concerning Dean Lov?

23 THE WITNESS: Yes.

24 THE COURT: Were those recorded on or about the  
25 time of the conversations with each of those two gentlemen,

SHARON SEFFENS, U.S. COURT REPORTER

91

1 or were they recently appended?

2 THE WITNESS: It was done a while ago.

3 THE COURT: Okay. You interviewed -- you got  
4 these statements from Reginald Scullion about what date?

5 THE WITNESS: Mr. Scullion's was over a period of  
6 time beginning in 2001 until 2003, 2004.

7 THE COURT: So were those notes taken  
8 contemporaneously in that period of time, or were they  
9 appended around the time of 2004, 2005, 2006, or 2007?

10 THE WITNESS: It would have been during that time  
11 period.

12 THE COURT: During that time period. What about  
13 Stan Frost, when did you have the discussions with him?

14 THE WITNESS: 2001.

15 THE COURT: Were those notes taken on or about  
16 2001?

17 THE WITNESS: Yes.

18 THE COURT: Dean Lov.

19 THE WITNESS: That was 2006, I believe.

20 THE COURT: 2006. Did you take notes  
21 contemporaneously -- I don't mean at that exact moment. I  
22 just want to make sure that in the process of litigation  
23 that the notes weren't prepared more recently. Did you take  
24 these notes at or about the time you had the conversations  
25 with Mr. Lov?

SHARON SEFFENS, U.S. COURT REPORTER

♀

92

1 THE WITNESS: Yes.

2 THE COURT: Now, Ron Ereiser. Mr. Ereiser was  
3 here. What did Mr. Ereiser tell you?

4 THE WITNESS: Mr. Ereiser and Tarnovsky were  
5 business partners. Tarnovsky was his coder. After Mr.  
6 Ereiser was sued --

7 THE COURT: By NDS?

8 THE WITNESS: -- by NDS, Mr. Tarnovsky and him  
9 were no longer business associates.

10 THE COURT: Well, they weren't even friends.

11

THE WITNESS: Yes.

12

THE COURT: And?

13

THE WITNESS: He was aware of the Tarnovsky and Menard relationship and their relationship with Dave Dawson in the distribution of the DISH Network Smart Cards.

16

THE COURT: Okay. So he was aware of the Tarnovsky/Menard relationship. He has already stated that in court. But what about the DISH Network Smart Cards? what was said?

20

THE WITNESS: He stated that he knew Dave Dawson was getting the cards from Menard.

22

THE COURT: Okay.

23

THE WITNESS: And he also stated that he knew that Dawson was requiring -- if a card needed to be programmed, it had to be sent back to Menard to do it. That's when

25

SHARON SEFFENS, U.S. COURT REPORTER

♀

93

1 Tarnovsky would do the programming for it.

2

THE COURT: And Tarnovsky would do the programming?

3

4

THE WITNESS: Yes.

5

THE COURT: Anything else?

6

THE WITNESS: Yes, but nothing comes to mind right now.

7

8

THE COURT: Counsel, why don't you look at your notes and see if there is any additional information or questions. Let him look at his notes and see if something has been missed.

11

12

THE WITNESS: And I am just trying to recall this from Mr. Ereiser's affidavit.

14

MR. HAGAN: Your Honor, that's all we intend to offer about statements.

16

THE COURT: Are you offering this for nonhearsay purposes or as an exception to the hearsay?

17

18

MR. HAGAN: Both, Your Honor.

19

THE COURT: What's the exception?



20 MR. HAGAN: The exception would be statements  
21 against penal interest.

22 HE COURT: And what are those statements?

23 MR. HAGAN: The statements that Mr. Ereiser was  
24 involved in the distribution of pirated Smart Cards and that  
25 Christopher Tarnovsky was the coder for those particular

SHARON SEFFENS, U.S. COURT REPORTER

94

1 Smart Cards. That is also corroborated by Mr. Tarnovsky's  
2 own testimony.

3 I believe the last issue would be the payments  
4 through the mail account in Manassas, Virginia.

5 THE COURT: Just a moment. I didn't hear that.  
6 Was there a conversation that you had with Mr. Ereiser about  
7 payments in Manassas, Virginia? And if so, I want you to  
8 relate to me what those were in your own words.

9 THE WITNESS: I'm sorry. I don't recall that  
10 today.

11 THE COURT: Okay.

12 MR. HAGAN: So then that would conclude the  
13 evidence that we intend to offer on Mr. Ereiser.

14 THE COURT: Okay. Jan Saggiori, he also appeared  
15 in this court. When did you have the conversation with Mr.  
16 Saggiori?

17 You see, counsel, first of all, the argument can  
18 be made that to rehabilitate, it's sufficient without  
19 getting into the statements. That it's simply a matter of  
20 you stating that these people were interviewed by this  
21 gentleman, and the reviewing Court might think that that was  
22 enough.

23 So if the statements are going to come in, you're  
24 going to have to persuade the Court that they're truly for a  
25 nonhearsay purpose. That's the basic remedy that you have

SHARON SEFFENS, U.S. COURT REPORTER

1 at your disposal, or that there's an exception. That's why  
2 I'm taking my time with this. I'm not going to try it twice  
3 if I can help it.

4 So Jan Saggiori, what did he say to you?

5 THE WITNESS: I don't recall when I first met Mr.  
6 Saggiori -- 2003, 2004.

7 THE COURT: Did you make notes?

8 THE WITNESS: I probably did, yes.

9 THE COURT: But we'll know, because counsel are  
10 scurrying right now to find them.

11 THE WITNESS: Yes.

12 THE COURT: with 400,000 pages of discovery  
13 between them. what did Mr. Saggiori say to you?

14 THE WITNESS: He said that he had received an  
15 e-mail from Mr. Tarnovsky, and within that e-mail was  
16 EchoStar code.

17 THE COURT: Okay. How did he know or did he ever  
18 say how he knew that this was from Tarnovsky? Was he more  
19 specific, or was this a statement that he made, "I received  
20 an e-mail from Tarnovsky"?

21 THE WITNESS: He told me that he knew Tarnovsky,  
22 that he had introduced Al Menard and Tarnovsky to each  
23 other.

24 THE COURT: Okay. But he said he received e-mail  
25 from Tarnovsky, and contained in that e-mail was EchoStar

SHARON SEFFENS, U.S. COURT REPORTER

1 code?

2 THE WITNESS: Yes.

3 THE COURT: Okay. How did he know that that was  
4 Tarnovsky sending him the e-mail? Did he say, "Hi. I'm  
5 Tarnovsky and I am sending you an e-mail"?

6 THE WITNESS: It was, from my understanding, from

7 previous e-mail communication that they had had before.

8 THE COURT: By the way, did Ron Ereiser ever say  
9 to you that Tarnovsky had used an alias Nipper, Nipper 2000,  
10 or NipperClause?

11 THE WITNESS: He told me that he thought that he  
12 was Nipper.

13 THE COURT: That he thought that he was Nipper.  
14 That's not my question. Did Mr. Ereiser ever make a  
15 statement to you that Tarnovsky told him that he used Nipper  
16 or sent him a e-mail using Nipper, Nipper 2000, or  
17 NipperClause?

18 THE WITNESS: Yes, I do recall him telling me  
19 that.

20 THE COURT: Do you have an e-mail that verifies  
21 that?

22 MR. HAGAN: We don't have an e-mail, Your Honor.  
23 What we are looking for is Mr. Gee's investigation notes.  
24 Are those going to be an I-base, J.J.? We are trying to  
25 search the production, but I need to focus the search.

SHARON SEFFENS, U.S. COURT REPORTER

97

1 THE WITNESS: Possibly I-base, yeah.

2 MR. HAGAN: what other methods would they have  
3 been produced through?

4 THE WITNESS: It could have been just handwritten  
5 notes, photocopies.

6 MR. HAGAN: Is this an example of I base?

7 THE WITNESS: Yes, it is.

8 THE COURT: we'll come back to that. You believe  
9 that in some form Ereiser conveys to you Tarnovsky is using  
10 Nipper?

11 THE WITNESS: Yes.

12 THE COURT: Or Nipper 2000?

13 THE WITNESS: I recall Nipper. I don't recall  
14 Nipper 2000.

15 THE COURT: NipperClause?

16 THE WITNESS: Just Nipper, Your Honor.

17 THE COURT: Do you recall in what form he used  
18 Nipper.

19 THE WITNESS: How he told me?

20 THE COURT: Was that by e-mail?

21 THE WITNESS: Verbally. He told this to me  
22 verbally.

23 THE COURT: When Tarnovsky is using this Nipper,  
24 he must be sending something to Ereiser.

25 THE WITNESS: I don't know if Tarnovsky told him

SHARON SEFFENS, U.S. COURT REPORTER

98

1 directly. I don't know -- I don't know how that was done.

2 THE COURT: Let me repeat that back to you. You  
3 don't know if he said, "Hi, I am using Nipper" in a  
4 conversation, or whether it came in the form of an e-mail?

5 THE WITNESS: Correct. I do not know that.

6 THE COURT: But if he told that to you, your notes  
7 most likely would reflect that? You're an investigator;  
8 right?

9 THE WITNESS: I'm an okay investigator. If I have  
10 them written down, they will be there. If I did not write  
11 it down --

12 THE COURT: Did you shred them?

13 THE WITNESS: No.

14 THE COURT: Did you destroy them?

15 THE WITNESS: No, I did not.

16 THE COURT: So did you lose them?

17 THE WITNESS: No.

18 THE COURT: So in other words, whatever you turned  
19 over, you turned over your full and complete notes to the  
20 attorneys in this matter, to your attorneys?

21 THE WITNESS: If I had notes on it, I have turned  
22 them over.

23 THE COURT: So in other words -- I am going to

24 repeat it back to you. If you have notes, the attorneys  
25 have them?

SHARON SEFFENS, U.S. COURT REPORTER

99

1 THE WITNESS: Correct.

2 THE COURT: If they don't have them, you don't  
3 have notes?

4 THE WITNESS: That's correct.

5 THE COURT: Let's go back to Jan Saggiori. In  
6 2003, 2004 you received an e-mail or Saggiori says he  
7 received an e-mail from Tarnovsky?

8 THE WITNESS: Not in that time frame. I learned  
9 of this in that time frame.

10 THE COURT: I'm sorry. Of course. That's my  
11 fault. And Saggiori says he received an e-mail from  
12 Tarnovsky. Does he say in what time period?

13 THE WITNESS: He showed me the e-mail, and it's  
14 part of our -- it's within his affidavit. I don't know the  
15 date of it.

16 THE COURT: So he actually showed you an e-mail?

17 THE WITNESS: Yes. It's in our complaint.

18 THE COURT: Counsel, which exhibit is that?

19 MR. HAGAN: I don't have the exhibit number, Your  
20 Honor. We're trying to locate each of them, the exhibit.  
21 It's already been admitted into evidence, though.

22 THE COURT: So you can find it?

23 MR. HAGAN: Yes, sir.

24 THE COURT: Which one is it? Don't leave. We  
25 have a lot of work to do. Somebody else is going to do

SHARON SEFFENS, U.S. COURT REPORTER

100

1 that. Now, what else did he tell you?

2 MR. HAGAN: 2002, Your Honor.

3 THE COURT: 2002. Okay. Could you pull a copy of  
4 that for me, because I have been giving those back?

5 what else did he tell you?

6 THE WITNESS: Outside of the e-mail and that he  
7 introduced him and Chris together, those are the two things  
8 that stick out in my mind.

9 THE COURT: Did he say anything about a  
10 distribution network?

11 THE WITNESS: No.

12 THE COURT: Did he say anything about Nipper or  
13 any other alias, Big Gun?

14 THE WITNESS: Big Gun, yes. He knew him by  
15 multiple nicknames.

16 THE COURT: Frankly everybody knows that.  
17 Everybody's interested in Nipper, NipperClause, Nipper 2000.  
18 Any conversation about that you can recall about that? Any  
19 indicia that Jan Saggiori says to you that Tarnovsky is  
20 using that code?

21 THE WITNESS: I don't recall that.

22 THE COURT: Okay. Counsel, your reasons for  
23 introduction are?

24 MR. HAGAN: Minimally, Your Honor, it comes in for  
25 the nonhearsay purpose that I have already stated. It also

SHARON SEFFENS, U.S. COURT REPORTER

101

1 comes in with the exception to the hearsay rule because it  
2 is corroborated by other evidence, including the e-mail  
3 submitted by Mr. Saggiori, and the testimony.

4 THE COURT: what's the exception to the hearsay  
5 rule? The corroboration is not an exception.

6 MR. HAGAN: Under 87, one way to get, quote,  
7 unquote, hearsay in is to establish that it is corroborated  
8 by other independently admissible evidence.

9 THE COURT: Okay.

10 MR. HAGAN: In addition to that, Your Honor, the  
11 e-mailing of code by Mr. Tarnovsky to Mr. Saggiori has

12 independent legal significance.

13 THE COURT: What does that mean? Is it against  
14 penal interest?

15 MR. HAGAN: For Mr. Tarnovsky it would be, but the  
16 statements of Saggiori to Gee would not be.

17 THE COURT: Okay. Anything else?

18 MR. HAGAN: It would also go to Mr. Gee's state of  
19 mind and the completeness of his investigation efforts.

20 THE COURT: I don't know that I'm making that  
21 ruling yet, but I can state to you that I am not certain  
22 that it goes to the completeness because there's other ways  
23 with Mr. Stone's examination to fulfill completeness.

24 All right. Chad or Charles Coleman, Charles  
25 Coleman.

SHARON SEFFENS, U.S. COURT REPORTER

102

1 THE WITNESS: Charles Coleman's information to me  
2 is the same as Reg Scullion's.

3 THE COURT: I don't want to hear that. I want to  
4 hear the exact words. I never allow, you know, let's just  
5 lump it all together. That's not going to go very far with  
6 me. My ruling then is denied.

7 THE WITNESS: I understand. I'm sorry. Mr.  
8 Perlman told me that he also -- since he was -- since Mr.  
9 Menard was injured and he was in rehabilitation for a hip  
10 injury, and Mr. Perlman administered the dr7 website for him  
11 during that time.

12 THE COURT: That's what he told you?

13 THE WITNESS: Yes.

14 THE COURT: Okay. So, administered dr7. Now,  
15 where is Mr. Perlman?

16 THE WITNESS: He is in Quebec.

17 THE COURT: Have you ever paid Mr. Perlman -- I  
18 don't mean you, but NagraStar?

19 THE WITNESS: Yes.

20  
21  
22  
23  
24  
25

THE COURT: How long ago?  
THE WITNESS: I've had a -- my relationship with  
Mr. Perlman began before I came to the company.  
THE COURT: And is he still being paid?  
THE WITNESS: Yes, he is.  
THE COURT: Is there any reason he can't come

SHARON SEFFENS, U.S. COURT REPORTER

103

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

here?  
THE WITNESS: He wasn't brought in as a witness on  
this, Your Honor. I never mentioned his name.  
THE COURT: That's no reason he can't come here.  
THE WITNESS: Your Honor, he's a confidential  
informant for us now, and I feel that his safety is a  
concern. He is involved with some individuals that -- we  
were discussing earlier the anton pillar, and he was  
associated with that individual who just did the anton  
pillar. I am concerned for his safety, and I -- he could  
come, but hopefully the defense would feel the same way  
about his safety as well. They are asking Mr. Pilon to come  
here, and --  
THE COURT: So we can get Mr. Perlman here?  
THE WITNESS: I can't say that I could get him  
here. I could ask him to come. He could refuse.  
THE COURT: why don't you give him a call. we  
will put Mr. Perlman on. So you have a relationship with  
Ereiser, who could come here?  
THE WITNESS: Yes.  
THE COURT: Then you have a relationship with Mr.  
Perlman, who has come here?  
HE WITNESS: No. Mr. Perlman has not come, Your  
Honor.  
THE COURT: I'm sorry. You have a relationship

SHARON SEFFENS, U.S. COURT REPORTER



1 with Mr. Perlman?

2 THE WITNESS: Yes.

3 THE COURT: You have a relationship with Jan  
4 Saggiori?

5 THE WITNESS: Yes.

6 THE COURT: You do not have a relationship with  
7 Lov?

8 THE WITNESS: No.

9 THE COURT: You do not have a relationship with  
10 Stan Frost?

11 THE WITNESS: No.

12 THE COURT: Have you ever had a relationship with  
13 Stan Frost?

14 THE WITNESS: No.

15 THE COURT: Relationship, that's a broad word.

16 THE WITNESS: I have never given Mr. Frost any  
17 money.

18 THE COURT: Or EchoStar or NagraStar to your  
19 knowledge?

20 THE WITNESS: To my knowledge, yes.

21 THE COURT: No relationship with Reginald Scullion  
22 when he was alive?

23 THE WITNESS: We have compensated Mr. Scullion.  
24 Yes, we have paid some money to him.

25 THE COURT: Okay. Lawrence Harmon, is he being

SHARON SEFFENS, U.S. COURT REPORTER

1 compensated?

2 THE WITNESS: Lawrence Harmon is not.

3 THE COURT: Has he ever been compensated --  
4 contract, fee?

5 THE WITNESS: We paid some legal fees for him.

6 THE COURT: Legal fees. When?

7 THE WITNESS: I think it was 2002.

8 THE COURT: Where is he?  
9 THE WITNESS: I do not know.  
10 THE COURT: Canada?  
11 THE WITNESS: Yes -- well, my assumption is  
12 Canada.  
13 THE COURT: Last location in Canada?  
14 THE WITNESS: Last location was Alberta.  
15 THE COURT: When did you speak to Mr. Harmon?  
16 2002?  
17 THE WITNESS: I believe I began speaking to him in  
18 2002.  
19 THE COURT: And for how long?  
20 THE WITNESS: Three to six months maybe.  
21 THE COURT: Okay. And tell me what he tells you.  
22 THE WITNESS: He worked for Al Menard. He also  
23 was a --  
24 THE COURT: Administrator?  
25 THE WITNESS: No. He was a gofer. He was a

SHARON SEFFENS, U.S. COURT REPORTER

106

1 childhood friend of Mr. Menard.  
2 THE COURT: What does he tell you about Menard  
3 and/or Tarnovsky?  
4 THE WITNESS: He told me he had never knew the  
5 name of the coder for Tarnovsky, but he did tell me that he  
6 had sent money down to his coder into the States.  
7 THE COURT: That he had sent money to the decoder?  
8 THE WITNESS: To Menard's technical person.  
9 THE COURT: Was he more specific?  
10 THE WITNESS: Yes, he was.  
11 THE COURT: What did he say?  
12 THE WITNESS: He would place the money into  
13 magazines or electronic components.  
14 THE COURT: Or electronic components. Was he more  
15 specific? Does he tell you where this is sent?

16 THE WITNESS: I would have to review my notes on  
17 that, Your Honor. At this time I don't recall.

18 THE COURT: Arkansas, Alabama, Oregon, Texas, New  
19 York?

20 THE WITNESS: California sticks out in my head.  
21 He said that his guy was in California. But I don't know if  
22 he sent the money other places. He just knew that --

23 THE COURT: So I'm going to repeat that. Is there  
24 anything else that he told you?

25 THE WITNESS: He would help ship out the Smart

SHARON SEFFENS, U.S. COURT REPORTER

107

1 Cards that they had programmed, and he would also receive  
2 those. He would handle money. He would do some paperwork.

3 THE COURT: Where did he ship the Smart Cards to,  
4 or did he tell you?

5 THE WITNESS: He sent multiple -- he just said he  
6 shipped them.

7 THE COURT: Did he say where?

8 THE WITNESS: I don't recall that he did.

9 THE COURT: Where was he shipping them from?

10 THE WITNESS: From Vancouver.

11 THE COURT: Vancouver. But he doesn't tell you  
12 where?

13 THE WITNESS: No.

14 THE COURT: Anything else that he tells you?

15 THE WITNESS: He tells me a lot.

16 THE COURT: I am waiting. I have all night.

17 THE WITNESS: That's what stands out in my mind.

18 THE COURT: Did you make notes of this conversation  
19 with him?

20 THE WITNESS: Yes, I did.

21 THE COURT: All right. The exception, counsel?

22 MR. HAGAN: It's the same as previously stated,  
23 Your Honor.

24 THE COURT: Which is?

25

MR. HAGAN: Nonhearsay purpose.

SHARON SEFFENS, U.S. COURT REPORTER

108

1 THE COURT: Nonhearsay. And?

2 THE WITNESS: I'm sorry, Your Honor. Which  
3 witness are we on?

4 THE COURT: We're on Lawrence Harmon. I'll read  
5 back to you. Witness states that in 2002 for about six  
6 months he speaks to Lawrence Harmon on occasion; that there  
7 are legal fees paid for Mr. Harmon in 2002; that Mr. Harmon  
8 states he works for Al Menard; basically he is a gofer. He  
9 is a childhood friend. Mr. Harmon states to the witness  
10 that he never knew the name of the decoder but he had sent  
11 money to the technical person. He placed money into  
12 magazines and into electronics and shipped out Smart Cards.  
13 He lived in Vancouver. He is not sure where they were  
14 shipped in the United States, but his notes would show that  
15 and he'd like to review it.

16 MR. HAGAN: The other exception then, Your Honor,  
17 would be under 807, corroborated additional evidence that  
18 has already been admitted, including the evidence in the  
19 Hays County Narcotics Task Force report, the RCMP  
20 fingerprint analysis that is attached to that report, and  
21 the testimony --

22 THE COURT: Is this Mr. Harmon's fingerprints that  
23 were eventually found?

24 MR. HAGAN: No. That was Mervin Main, the other  
25 associate of Mr. Menard.

SHARON SEFFENS, U.S. COURT REPORTER

109

1 THE COURT: Mervin Main. But Mr. Harmon's name  
2 has come up in the testimony as working with Al Menard?

3 MR. HAGAN: I don't know if it has come through

4 another witness.

5 THE COURT: That's what I'm searching also. I  
6 have heard Mr. Main. I don't know if I have heard Mr.  
7 Harmon.

8 MR. HAGAN: The corroborating evidence that I was  
9 referring to, Your Honor, and forgive me if I was not clear,  
10 is the cash shipments to Mr. Tarnovsky where money was  
11 concealed inside electronic equipment.

12 THE COURT: Okay.

13 MR. HAGAN: Both those that he admits to and those  
14 that he denies.

15 THE COURT: Okay.

16 MR. HAGAN: And then finally, statements against  
17 penal interest insofar as --

18 THE COURT: Section 408? What's the statement  
19 against penal interest exception in the federal code. I'm  
20 used the California code. For 17 years I had that  
21 memorized. But I think, is it 408?

22 MR. HAGAN: No, Your Honor, not for federal. Give  
23 us a second.

24 THE COURT: I've got it right here. I can find  
25 it. It would be --

SHARON SEFFENS, U.S. COURT REPORTER

110

1 LAW CLERK: I think it's 804.

2 MR. HAGAN: 804(a), I believe.

3 THE COURT: Just a second. No. 804 here states  
4 that defendant must be unavailable, a, unavailable means; b,  
5 hearsay exception.

6 MR. HAGAN: 804(b)(3).

7 THE COURT: One is former testimony; two,  
8 statement under belief of impending death; three, statement  
9 against interest. So it's 804(b)(3). Thank you.

10 MR. HAGAN: Our position on that would be Mr.  
11 Harmon is involved in -- I am not sure if Canada has customs

12 violations similar to those in the United States, but these  
13 would be undeclared -- shipping those payments into the  
14 United States would be undeclared currency, potential money  
15 laundering, tax evasion.

16 THE COURT: Even if they're under that amount, it  
17 would be structuring, if they're under \$10,000.

18 Now, once again, I want to be sure. Are you  
19 paying Mr. Harmon, have you ever paid him or is there any  
20 nexus to EchoStar or NagraStar?

21 THE WITNESS: I paid him his legal fees, and I  
22 have no contact with him now.

23 THE COURT: Now the last person you named was  
24 Allen Menard. I'm going to go down the list. As you named  
25 people, I tried to write them. Maybe I missed somebody.

SHARON SEFFENS, U.S. COURT REPORTER

111

1 THE WITNESS: Okay.

2 THE COURT: Stan Frost, Reginald Scullion, Dean  
3 Lov, Ron Ereiser, Jan Saggiori, Charles Perlman, Lawrence  
4 Harmon, Allen Menard. Did you talk to Allen Menard?

5 THE WITNESS: I did not.

6 THE COURT: You did not?

7 THE WITNESS: Mr. Guggenheim did.

8 THE COURT: Mr. Guggenheim did. Not for you,  
9 then. Now, is there anybody else you spoke to so I am not  
10 surprised tomorrow morning?

11 Counsel, is there anybody else that you're  
12 requesting or eliciting information about? Let counsel  
13 guide us for just a moment.

14 BY MR. HAGAN:

15 Q Mr. Gee, did there come an occasion in your  
16 investigation where you debriefed former NDS employee by the  
17 name of Graham James?

18 A Yes.

19 Q Did Mr. James provide you with any information that  
20 related to the defendant's involvement in the hacking or

21 distribution of pirated cards for their competitor system,  
22 including EchoStar or Canal Plus?

23 A Yes, he did, on the Canal Plus system.

24 Q What did Mr. James tell you -- well, let me back up.  
25 Did Mr. James obtain this information as part of his work

SHARON SEFFENS, U.S. COURT REPORTER

112

1 for the defendants?

2 A He received it from NDS.

3 Q And is it your understanding that Mr. James has  
4 submitted a sworn declaration attaching those e-mails?

5 A Yes.

6 THE COURT: Is that what you are eventually going  
7 to argue that the Court should accept on behalf of Mr.  
8 James?

9 MR. HAGAN: That will come through Mr. James, not  
10 Mr. Gee.

11 THE COURT: Mr. James is stuck in England. You're  
12 not releasing Mr. James. You told him to come here?

13 MR. HAGAN: It's my understanding that the Court  
14 told us, instructed us to do everything feasibly possible to  
15 --

16 THE COURT: He is not coming. He is stuck in  
17 Customs.

18 MR. HAGAN: As of yesterday he has received a  
19 declaration for them granting a travel visa based on his  
20 checkered history.

21 THE COURT: Oh, he has? That's new.

22 MR. NOLL: We're waiting on a response back from  
23 them, Your Honor.

24 MR. HAGAN: We're waiting on a letter so that we  
25 can file it with the Court. They told him verbally at a

SHARON SEFFENS, U.S. COURT REPORTER

1 meeting with one of the lawyers that we retained for him  
2 that he was not going to be permitted to leave the UK to  
3 travel into the United States or that he be granted a travel  
4 visa regardless of this Court's order.

5 THE COURT: So the position is still the same that  
6 you related to me; he is not coming?

7 MR. HAGAN: That's correct.

8 THE COURT: But he is willing to come?

9 MR. HAGAN: He is willing to come. We even  
10 offered to pay for a U.S. marshall to accompany him from the  
11 UK to the United States and back, and they rejected that.

12 THE COURT: Well, I am not saying I am going to do  
13 this, but -- I'm not out to take an affidavit, quite frankly  
14 -- but I have taken deposition testimony from as far away as  
15 Japan. And I have also taken live testimony in a civil suit  
16 as far away as Europe.

17 So why can't I set up screens in this court as I  
18 have in the past and have him taken to a location in London  
19 and have him testify under oath from London?

20 MR. HAGAN: That is certainly fine with us, Your  
21 Honor. He also was deposed in this case by video.

22 THE COURT: That might be the best position that  
23 you find yourself in, so start thinking about how that --  
24 that's easily done for a court administration. We have done  
25 it many times before. If I think that there is a good-faith

SHARON SEFFENS, U.S. COURT REPORTER

1 effort -- and I will wait to see what that letter is. Right  
2 now that's not proven to me. But you might start putting  
3 that in motion.

4 MR. HAGAN: Who would we need to work with from  
5 your staff, Your Honor, to coordinate that?

6 THE COURT: Kristee has done it before. The  
7 administrator -- well, the old court administrator has done



8 it. We have a new one. It's not hard to do. Kinko's are  
9 great for the hookup with this Court. We can test it out.  
10 I love to see a nice American flag behind them when they're  
11 testifying. But we can make that work. We'll see. I am  
12 just waiting.

13 I am not saying that that's going to happen, but  
14 if I was you, I would -- I'm planting that in your mind --  
15 I'd start putting that in motion, because if I believe that  
16 that has been made, that the solicitor has made that effort  
17 and that the United Kingdom will not release him, I would be  
18 inclined to at least consider that.

19 Therefore, he would be viewable by the jury, and  
20 he would also have the benefit of cross-examination live in  
21 front of the jury. So we will see. Now, anybody else?

22 And then we will need a big screen. We'll need a  
23 big 60-inch screen if we do that. Okay?

24 BY MR. HAGAN:

25 Q Mr. Gee, did there come an occasion in your

SHARON SEFFENS, U.S. COURT REPORTER

115

1 investigation where you debriefed or obtained any evidence  
2 from a gentleman by the name of Marty Mullen?

3 A Yes.

4 Q Did Mr. Mullen provide you with any evidence or  
5 statements indicating that the defendants or any of their  
6 employees or agents were involved in developing a hack of  
7 EchoStar security system or offering to sell that hack to  
8 individuals in the pirate community?

9 A Yes.

10 Q Can you articulate those statements for the Court?

11 A Mr. Mullen told me and has provided in an affidavit for  
12 us that his -- that he was offered a DISH Network hack from  
13 Oliver Kommerling for the price of \$1 million.

14 THE COURT: Mullen said to you he was offered the  
15 DISH Network hack from Kommerling, Oliver Kommerling?

16 THE WITNESS: Yes.

17 THE COURT: In other words, Kommerling was going  
18 to pay him a million?

19 THE WITNESS: No. Kommerling -- Mr. Mullen and a  
20 couple partners, one being Paul Cater, were offered the hack  
21 if they could pay Kommerling \$1 million.

22 THE COURT: I don't understand. Say it to me  
23 again.

24 THE WITNESS: Oliver Kommerling offered the DISH  
25 Network hack to Marty Mullen and Paul Cater, the DISH

SHARON SEFFENS, U.S. COURT REPORTER

116

1 Network hack for \$1 million, offered to sell it to them.

2 THE COURT: Just a minute. It's Kommerling  
3 offering to give the hack --

4 THE WITNESS: To sell the hack.

5 THE COURT: To sell the hack to who?

6 THE WITNESS: Marty Mullen.

7 THE COURT: And?

8 THE WITNESS: Paul Cater.

9 THE COURT: For \$1 million?

10 THE WITNESS: Yes.

11 THE COURT: What hack was that?

12 THE WITNESS: It was prior to DISH Network, prior  
13 to a hack for DISH Network. Mr. Mullen was a DirectTV  
14 pirate.

15 THE COURT: What hack was it?

16 THE WITNESS: We believe it was the hack that --  
17 it was unsuccessfully --

18 THE COURT: What did he say? I don't care what  
19 you believe. What did he say?

20 THE WITNESS: DISH Network hack.

21 THE COURT: DISH Network hack?

22 THE WITNESS: DISH hack.

23 THE COURT: DISH hack. Hack of EchoStar?

24 THE WITNESS: Yes.

SHARON SEFFENS, U.S. COURT REPORTER

117

1 THE WITNESS: He did not purchase that hack  
2 because he did not have -- they could not come up with the  
3 funds.

4 THE COURT: Anything else?

5 THE WITNESS: Later is when Menard and Tarnovsky  
6 came out with the hack, so Marty Mullen --

7 THE COURT: Did he say anything about Nipper,  
8 NipperClause, or Nipper 2000?

9 THE WITNESS: No.

10 THE COURT: Does he make any link to Mr. Tarnovsky  
11 and any type of distribution network?

12 THE WITNESS: I don't recall, Your Honor.

13 THE COURT: Does he make any statement about Mr.  
14 Tarnovsky actually posting -- I don't mean an opinion but --

15 THE WITNESS: No.

16 THE COURT: Is Marty Mullen or has Marty Mullen  
17 ever been paid by NagraStar or EchoStar or any of those  
18 entities?

19 THE WITNESS: I have not paid him any money. We  
20 have paid his legal fees on any lawyer representation on  
21 this case.

22 THE COURT: Is that because he is working for you?

23 THE WITNESS: No. He was providing testimony for  
24 us, Your Honor. He is the individual who is currently in  
25 jail.

SHARON SEFFENS, U.S. COURT REPORTER

118

1 THE COURT: Oh, he's the one that everybody tried  
2 to depose. We have a deposition coming up; don't we?

3 MR. STONE: Yes.

4 THE WITNESS: He is in jail for DirectTV piracy at  
5 this time, Your Honor. And also Paul Cater who I mentioned  
6 has also been sued by DirectTV.

7 THE COURT: Now, it's this Court's effort, Mr.  
8 Hagan, to get people to come to court. As hard a time as  
9 I've been having getting people to appear in person, why  
10 would I allow this testimony? My rules have been relatively  
11 clear from the beginning at least concerning people that  
12 either of the entities have had control over.

13 MR. HAGAN: Are we talking about just the  
14 testimony of Mr. Mullen?

15 THE COURT: We're talking about the testimony of  
16 those people that I perceive you've got control over or have  
17 control over. Saggiori has appeared. Ereiser has appeared.  
18 Coleman has not. Harmon has not, and Mullen has not and  
19 probably can't. I am not talking about the other three.  
20 We'll get to them in just a moment.

21 From the very beginning I put tremendous pressure  
22 on both of you to produce people live and in person for  
23 cross-examination purposes. Now, that doesn't mean that  
24 that's a good legal reason, but I am not certain that the  
25 door has been opened either by Mr. Stone in that regard, so

SHARON SEFFENS, U.S. COURT REPORTER

♀

119

1 -- because this can easily be accomplished with the number  
2 of people that he has interviewed without getting into the  
3 specifics of the conversation.

4 MR. HAGAN: With the respect to the individuals --

5 THE COURT: The nonhearsay. If it's a declaration  
6 against penal interest and for the truth, that's a different  
7 argument.

8 MR. HAGAN: With respect to the individuals that  
9 you identified as being in your definition under the  
10 plaintiff's control, we brought Mr. Saggiori live. He was  
11 subject to cross-examination in front of the jury. Mr.  
12 Ereiser, same thing.

13 THE COURT: So for those two people you might have  
14 a good argument concerning corroboration, because you  
15 produced them. It does verify his diligence in that area.  
16 There is really little harm of additional information coming  
17 in. It's corroborative. I understand that potentially.

18 what about Mr. Perlman who might be available,  
19 Harmon, and Mullen? Mullen I know is in jail, in prison.  
20 What about Harmon?

21 MR. HAGAN: It's my understanding, Your Honor,  
22 that we have even under the broadest sense absolutely no  
23 control over Mr. Harmon, certainly not even close to the  
24 extent of control that the defendants had over Alan Menard.

25 THE COURT: Now, look at 804 for a moment. That

SHARON SEFFENS, U.S. COURT REPORTER

♀

120

1 hearsay exception has the first requirement in the A  
2 section. It says must be unavailable.

3 MR. HAGAN: Unavailability includes when the  
4 witness is outside of a party's control and outside of the  
5 Court's jurisdictional reach.

6 THE COURT: Mr. Perlman is not outside your  
7 control.

8 MR. HAGAN: And, Your Honor, in light of the  
9 Court's rulings, we would not offer any testimony about what  
10 Mr. Perlman told Mr. Gee.

11 THE COURT: Just a moment. Does that mean you're  
12 withdrawing your request to call Mr. Perlman?

13 MR. HAGAN: We will make a request that he come  
14 live. If he refuses to comply with that request, then we  
15 will not offer any testimony about what Perlman told Mr. Gee  
16 if the Court has concluded that Mr. Perlman is somehow under  
17 plaintiff's control.

18 THE COURT: You can get him here if you choose to.  
19 Now, Mr. Harmon, we don't know where he is, so he is  
20 certainly at least tentatively unavailable. And Mr. Mullen

21 is in prison, unavailable.

22           Okay. We have no information about Mr. Lov  
23 testifying. Mr. Frost has simply refused to come to court,  
24 but he is in the continental United States. And Mr.  
25 Scullion is dead. I want to make sure I have exhausted your

SHARON SEFFENS, U.S. COURT REPORTER

121

1 persons and your information through this witness that you  
2 seek for rehabilitative purposes or corroboration or  
3 nonhearsay purposes or under 804. And I said 408 before.  
4 It's 804.

5           Anybody else, so there's no surprises?

6 BY MR. HAGAN:

7 Q Mr. Gee, did there come a time in your investigation  
8 where you debriefed an individual and took a sworn  
9 declaration from an individual named Anthony Dionisi?

10 A Yes, we did.

11 Q Did Mr. Dionisi provide you with any information or  
12 evidence linking Christopher Tarnovsky to Allen Menard and a  
13 distribution network of pirated EchoStar access cards?

14 A Yes, he did.

15 Q Can you articulate that information for the Court?

16 A Yes.

17           THE COURT: Mr. Dionisi. Now, Mr. Dionisi has  
18 appeared in court.

19           THE WITNESS: Yes, he has. He had told me -- he  
20 had confirmed Mr. Frost's information to me.

21           THE COURT: No. I want to hear exactly what he  
22 said.

23           THE WITNESS: He told me that there was a  
24 get-together in Toronto.

25           THE COURT: Okay. I call it the pirates'

SHARON SEFFENS, U.S. COURT REPORTER

122

1 jamboree. I say that jokingly, but --

2 THE WITNESS: The pirates' jamboree occurred with  
3 himself, Al Menard, Chris Tarnovsky, and several other  
4 people. He also told me that he had been -- a programmer  
5 was described to him by Mr. Tarnovsky, and that he had had  
6 Mr. Menard program cards for him with that programmer  
7 matching that same description that Mr. Tarnovsky described  
8 to him. And that would be it, Your Honor.

9 THE COURT: Anything about Nipper, Nipper 2000,  
10 NipperClause?

11 THE WITNESS: No.

12 THE COURT: Anything about any statements by  
13 Tarnovsky or anybody else about Tarnovsky being involved in  
14 the distribution network?

15 THE WITNESS: With the connection with Al Menard  
16 and Tarnovsky, there was the dr7 distribution. He was part  
17 of that, because Stan Frost --

18 THE COURT: That's a conclusion. What did Dionisi  
19 say?

20 MR. HAGAN: Can I ask some questions, Your Honor?

21 THE COURT: Certainly.

22 BY MR. HAGAN:

23 Q Mr. Gee, did Mr. Dionisi tell you if he was ever  
24 personally present when Mr. Menard used a reprogramming  
25 device to create pirated EchoStar access cards?

SHARON SEFFENS, U.S. COURT REPORTER

123

1 A Yes.

2 Q Did Mr. Dionisi ever tell you that he tested those  
3 reprogrammed EchoStar access cards?

4 A Yes.

5 Q Based on what Mr. Dionisi told you, did those  
6 reprogrammed EchoStar access cards work? In other words,  
7 were they able to circumvent EchoStar security measures?

8 A Yes, they were.

9 Q Did Mr. Dionisi tell you that he ever had a  
10 conversation --

11 THE COURT: Just a moment. Were these EchoStar  
12 cards?

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: Okay. Thank you.

15 BY MR. HAGAN:

16 Q Did Mr. Dionisi tell you he had ever had a conversation  
17 with Christopher Tarnovsky about creating a device that Mr.  
18 Tarnovsky called the stinger?

19 A Yes.

20 MR. HAGAN: Your Honor, I would submit that that  
21 is consistent with what Mr. Dionisi has previously testified  
22 to.

23 THE COURT: Okay. So you have got corroboration,  
24 and 804 would be one of your reasons; is that correct?

25 MR. HAGAN: That's correct, Your Honor.

SHARON SEFFENS, U.S. COURT REPORTER

124

1 THE COURT: (b)(3), and nonhearsay, which is not  
2 really what you're seeking. Anything else?

3 BY MR. HAGAN:

4 Q Mr. Gee, did there ever come a point in time in your  
5 investigation where you spoke with a gentleman named Giles  
6 Kaehlin of Canal Plus?

7 A No, I did not.

8 Q Did there come a point in your investigation where you  
9 spoke with a gentleman named Larry Risler of DirectTV?

10 A Yes.

11 Q Did Mr. Risler provide you with any documents or any  
12 statements that linked Christopher Tarnovsky or NDS to the  
13 distribution of EchoStar access cards, reprogrammed EchoStar  
14 access cards, reverse engineering or hacking EchoStar  
15 security system --

16 THE COURT: Just a moment. Is Mr. Risler



17 available?

18 THE WITNESS: I don't know the status of Mr.  
19 Risler. He is recuperating from cancer. I don't know what  
20 his status is, Your Honor.

21 THE COURT: Does he work for NagraStar?

22 THE WITNESS: No. He is a consultant for DirectTV.

23 THE COURT: He is a consultant for DirectTV?

24 THE WITNESS: Yes. He is a former employee of  
25 DirectTV.

SHARON SEFFENS, U.S. COURT REPORTER

125

1 THE COURT: Is that the gentleman who was having  
2 the liaison -- I got the names turned around. There was the  
3 security chief who was having the liaison with --

4 MR. SNYDER: That was Russ Densmore of EchoStar.

5 THE COURT: My apologies. I turned those around.  
6 Thank you.

7 THE WITNESS: No to both of those, Your Honor.

8 THE COURT: So Risler is a consultant for DirectTV.  
9 You spoke to him.

10 THE WITNESS: He was a former employee of DirectTV.  
11 He was head of DirectTV's signal integrity group.

12 THE COURT: what did he say?

13 THE WITNESS: He provided to DISH Network the ICG  
14 report.

15 MR. HAGAN: And, Your Honor, we will submit on the  
16 ICG report. I don't need to elicit that testimony from Mr.  
17 Gee. So we can retract him from your list.

18 THE COURT: So at the most you're simply seeking  
19 the fact that -- not the content but the fact that he's a  
20 competent investigator, and amongst the many people that he  
21 interviewed was Mr. Risler?

22 MR. HAGAN: And Mr. Risler provided him with the  
23 ICG reports that have been admitted into evidence.

24 THE COURT: That doesn't seem to be the subject of  
25 the motions. Anything else?

SHARON SEFFENS, U.S. COURT REPORTER

126

1 MR. HAGAN: Those are all the individuals I had  
2 intended to question Mr. Gee about with respect to this one  
3 issue.

4 THE COURT: Okay. Now, Mr. Stone, I know you're  
5 anxious to lump all of them together, and I'm not going to  
6 let you do it. Same process. Reginald Scullion.

7 MR. KLEIN: Your Honor, we have a deposition that  
8 was supposed to start 10 minutes ago. Can I send someone  
9 from my team to attend that deposition? This is one of the  
10 witnesses they just disclosed and that's taking the stand  
11 tomorrow.

12 THE COURT: Who is going?

13 MR. KLEIN: David Single will go. Mr. Single will  
14 represent our side.

15 THE COURT: Thank you. And who is the witness?

16 MR. KLEIN: Mr. McGuire.

17 THE COURT: McGuire. Okay. Why don't you just  
18 open up the courtroom next door for them.

19 MR. KLEIN: Your Honor, we also have Mr. Poluso  
20 who is waiting outside.

21 THE COURT: All right. Mr. Stone.

22 MR. STONE: Thank you, Your Honor. As to Mr.  
23 Scullion, first of all, rehabilitating credibility is not an  
24 excuse to slam in hearsay. The witness can testify to whom  
25 he investigated, but it's not necessary to rehabilitate nor

SHARON SEFFENS, U.S. COURT REPORTER

127

1 is it a hearsay exception to bring in hearsay to bolster  
2 credibility.

3 THE COURT: Two wrongs don't make a right, but  
4 certainly you went into content.

5 MR. STONE: I went into their own agents'  
6 statements, like Mr. Pilon, their own informants'  
7 statements, which are party admissions. Also, for the  
8 nonhearsay purpose, it would be unduly prejudicial. I think  
9 it would be difficult for the jury not to take this for the  
10 truth frankly. Mr. Scullion does not fit the definition of  
11 unavailability even though he has passed away obviously.

12 Also for statements against penal interests, it's  
13 limited to that part of the statement that is against the  
14 interest of the declarant, and it's not a justification to  
15 bring in statements about other people under the guise of  
16 against penal interest. I didn't hear much that was against  
17 the interest of Mr. Scullion that they intend to offer, and  
18 the only thing they could offer would be that which is  
19 against Scullion's interest.

20 THE COURT: There is quite a bit. He said he had  
21 seen the alias on the control panel of dr7 matching the IP  
22 address that he noticed to be that of Tarnovsky, Nipper  
23 2000. That's about as damaging as it could be, quite  
24 frankly.

25 MR. STONE: Not to Mr. Scullion, though.

SHARON SEFFENS, U.S. COURT REPORTER

128

1 THE COURT: Mr. Scullion made that statement to  
2 this witness.

3 MR. STONE: Right, but to be penal interest, it  
4 would have to be against the penal interest to Mr. Scullion.  
5 He is simply reporting something that might be damaging to  
6 Mr. Tarnovsky.

7 THE COURT: I think he was one of those that had  
8 the distribution network. He stated that Scullion told  
9 Menard that he would be part of a distribution group but not  
10 to worry because NDS would provide him protection.  
11 Therefore the issue becomes if Tarnovsky is tied to that  
12 distribution group, if that's a declaration against penal

13 interest, it's harmful to your client frankly.

14 MR. STONE: I think it was a statement by Menard  
15 to Scullion, and once again not against Scullion's interest.  
16 We also have the issue of whether it was even illegal in  
17 Canada.

18 THE COURT: Tarnovsky is involved in -- a device  
19 to reprogram and --

20 MR. STONE: Again, not against Mr. Scullion's  
21 penal interest.

22 THE COURT: Okay.

23 MR. STONE: I believe if the e-mail reference was  
24 the one I heard, I think that's the one from January of '97,  
25 which predates Mr. Tarnovsky's employment with NDS, if it's

SHARON SEFFENS, U.S. COURT REPORTER

129

1 the one I'm thinking of.

2 THE COURT: Let's turn to Mr. Frost. Mr. Frost  
3 said he was the East Coast distributor for Al Menard.  
4 Tarnovsky was Menard's coder, and they were partners. There  
5 is a video taken by Mr. Frost showing Mr. Menard and Mr.  
6 Tarnovsky together up in Canada. And the request is  
7 nonhearsay, not for the truth.

8 There is a claim this is corroborative. There's a  
9 claim citing 804 because they're a member of the  
10 distribution team, the decoder. And there is an e-mail that  
11 would be corroborative concerning from their standpoint  
12 Tarnovsky threatening to dump Dean Lov's code.

13 MR. STONE: The Dean Lov code was not DISH Network  
14 cards. That's the exhibit that predates Mr. Tarnovsky's  
15 employment that deals with DirectTV piracy. The statement  
16 about Tarnovsky was Menard's coder is not against the penal  
17 interest of Frost. The statement he was an East Coast  
18 distributor for Menard, I am not sure what that means. I  
19 think he said East Coast meaning Nova Scotia, is my  
20 recollection.

21 Again, their own witness said it was not illegal

22 in Canada. For the nonhearsay purpose, I mean, obviously I  
23 have made that argument. It's not an excuse under the claim  
24 of rehabilitation. The witness can simply testify about  
25 whom he interviewed or whom he investigated without getting

SHARON SEFFENS, U.S. COURT REPORTER

130

1 into the hearsay.

2 THE COURT: Dean Lov.

3 MR. STONE: Dean Lov, Your Honor, was identified

4 --

5 THE COURT: well, let me read back my notes.

6 Let's just make sure that you and I are, you know, not too  
7 general. He knew Tarnovsky was behind the Smart Card. He's  
8 not certain how he knows that yet. So it sounds like an  
9 opinion when I start off just hearing that statement; that  
10 Dean had a huge DISH Net or has received DISH Net from dr7,  
11 Al Menard; that he's familiar with the nickname Von, Von  
12 Rat, and Vonster, which is not against penal interest. For  
13 Nipper, NipperClause, that becomes relevant against penal  
14 interest. For Smart Cards he is able to glean code, and his  
15 opinion is in comparison of that code, that it belongs to  
16 Tarnovsky -- comes from Tarnovsky.

17 Now, I am having a hard time with that being --  
18 and that's against penal interest or a declaration against  
19 penal interest.

20 So John Norris -- he also says John Norris asked  
21 Dean Lov in an e-mail who was behind the e-mail hack, and he  
22 said it was Tarnovsky and Al Menard.

23 MR. STONE: That e-mail is in evidence. Again,  
24 that particular statement by Mr. Lov isn't against Mr. Lov's  
25 interest. But one fact that I need to bring out is in

SHARON SEFFENS, U.S. COURT REPORTER

131

1 response to interrogatory number 22, plaintiffs identified  
2 Mr. Lov as a confidential informant and/or consultant. So  
3 he is part of the team, so to speak, and belongs in the  
4 other category.

5 THE COURT: I thought he was a consultant.

6 THE WITNESS: We do not have a relationship with  
7 him.

8 BY MR. HAGAN:

9 Q The question was did NagraStar ever in the broadest  
10 sense of the word have any relationship with Dean Lov?

11 A Yes, we did.

12 Q What was that relationship?

13 A That relationship was that we were talking to him and  
14 providing testimony for us on this trial, and he was giving  
15 us information about that.

16 THE COURT: About this trial?

17 THE WITNESS: About this case. And he has stopped  
18 communicating with us. We can't reach him in any way. We  
19 have tried with his lawyers; we've tried with him.

20 THE COURT: Did you pay anything -- attorneys'  
21 fees, assistance, plane fare?

22 THE WITNESS: He might have been compensated on  
23 some legal fee, yes.

24 THE COURT: Tell us why that might have been  
25 compensated.

SHARON SEFFENS, U.S. COURT REPORTER

132

1 THE WITNESS: We would have paid for his lawyer  
2 and any meetings that he had with us.

3 THE COURT: Now, Mr. Jan Saggiori.

4 MR. STONE: He has been here and testified. This  
5 seems to be cumulative of his actual testimony, which we  
6 have.

7 THE COURT: I am going to allow some  
8 rehabilitation. The question is how far I go. He is

9 certainly going to be able to ask did you interview these  
10 people.

11 THE WITNESS: It's the statements I was referring  
12 to, Your Honor.

13 THE COURT: He is certainly going to be asked some  
14 of the corroborating statements where people have already  
15 been here. It simply backs up the credibility of the person  
16 who has testified. It shows that it's close in time. It  
17 shows that even Jan Saggiori's statements are consistent.  
18 None of that, though, is really harmful to NDS. It's the  
19 Nipper, NipperClause, Nipper 2000, that's what I am really  
20 focused on.

21 All the rest of this is corroborative. I just  
22 want to be careful that -- Jan Saggiori isn't causing me too  
23 much concern. He simply said he received e-mail from  
24 Tarnovsky, and the EchoStar codes were in the e-mail. And  
25 he told you that in 2002?

SHARON SEFFENS, U.S. COURT REPORTER

133

1 THE WITNESS: I believe that was the time frame.

2 THE COURT: That's corroborative of his testimony.

3 MR. STONE: But, Your Honor, it should not be  
4 received for the truth because Mr. Saggiori is not  
5 unavailable. So presumably that would be an instruction  
6 that it's not offered for the truth.

7 THE COURT: No, but under corroborative testimony  
8 it's an exception to the hearsay rule; isn't it?

9 MR. STONE: Not that I am aware of.

10 MR. HAGAN: 807, Your Honor.

11 THE COURT: Let's look. No, it's not 807,  
12 counsel.

13 MR. HAGAN: 807 is the residual exception which is  
14 oftentimes used --

15 THE COURT: I'm sorry. You're right. It requires  
16 equivalent trustworthiness, must be material, which it is,  
17 more probative than any other reasonably available evidence.

18 MR. STONE: Which, we have his testimony.

19 THE COURT: But you also have corroboration where  
20 you have challenged him. And, of course, in the interest of  
21 justice. We will research that tonight. Ron Ereiser.

22 MR. STONE: Ron Ereiser is in the same situation.  
23 He was here. He testified. He is their consultant.  
24 Nothing he said that I recall was against his penal interest  
25 in any event, and he didn't say that Mr. Tarnovsky was

SHARON SEFFENS, U.S. COURT REPORTER

134

1 Nipper in his testimony. And we have his deposition, and he  
2 testified consistently in court here that Tarnovsky never  
3 admitted that he was Nipper or NipperClause, et cetera. So  
4 it would actually be inconsistent with the actual testimony  
5 we have from Mr. Ereiser.

6 THE COURT: The offer this for nonhearsay, but  
7 they also offer it under 804(b)(3) because allegedly the  
8 statement to this gentleman is that Ereiser tells the  
9 witness that he was involved in the distribution of Smart  
10 Cards to Tarnovsky, who was the decoder of the EchoStar  
11 cards. Is that right?

12 THE WITNESS: Are you asking me if Ereiser and  
13 Tarnovsky were doing that?

14 THE COURT: Ereiser, you said, told you that he  
15 was involved as a distributor of Smart Cards and that  
16 Tarnovsky was the decoder of the EchoStar Smart Card.

17 THE WITNESS: For clarification on that, Your  
18 Honor, Tarnovsky and Ereiser, when Ereiser was doing hacking  
19 against DirectTV is when Tarnovsky was with Ereiser.

20 THE COURT: That sounds like an explanation like  
21 you're tying things together. I want to hear the words.

22 THE WITNESS: He told me that Tarnovsky was his  
23 coder. He was doing the coding --

24 THE COURT: That's just what I said.

25 THE WITNESS: I'm sorry. I misunderstood you



1 then.

2 THE COURT: You told me Ereiser told you that he  
3 was involved as a distributor, he being Ereiser, of Smart  
4 Cards, and that Tarnovsky was a decoder of EchoStar Smart  
5 Cards.

6 THE WITNESS: Yes, but for Menard.

7 THE COURT: I understand.

8 MR. STONE: I think what Mr. Ereiser was talking  
9 about was back in the day when Tarnovsky was doing DirectTV  
10 piracy, I think is what the reference was. There is a  
11 separate statement by Mr. Ereiser that Tarnovsky was the  
12 coder for Al Menard, which of course is not against Mr.  
13 Ereiser's interest.

14 THE COURT: Mr. Perlman, he simply said Menard was  
15 injured and he was an administrator of dr7. How is that a  
16 declaration against penal interest of Mr. Perlman.

17 MR. STONE: That was withdrawn, I believe.

18 THE COURT: Lawrence Harmon spoke to you in 2002.  
19 Apparently you can't locate him. Paid legal fees for him in  
20 2002. He worked for Al Menard. He was a gofer and never  
21 knew the name of the decoder but he had sent money to the  
22 technical person. Placed money into magazines and  
23 electronics, and shipped out Smart Cards also from  
24 Vancouver. Not certain yet where the magazines and  
25 electronics were sent. You have to review your notes. And

1 you don't know where the shipments went. No specific  
2 statements were made to you; is that correct?

3 THE WITNESS: That's correct.

4 THE COURT: Offered under 807, hearsay exception,

5 804(b)(3), and also for nonhearsay purposes.

6 MR. STONE: Under 807 there has to be advance  
7 notice. It's also very rarely invoked. He is their  
8 consultant or was their consultant and informant. Therefore  
9 he is not unavailable. Most of this is not against the  
10 penal interest of Mr. Harmon, particularly since there is no  
11 testimony where any of this was shipped. And the rest of it  
12 frankly is not corroborated by anything. It's a vague  
13 statement about shipping money somewhere and shipping cards  
14 somewhere.

15 THE COURT: well, the corroborative part frankly  
16 is the uniqueness of sending it in electronics. This is the  
17 first time I have heard about magazines. But the  
18 electronics is very corroborative. Marty Mullen.

19 MR. STONE: Mr. Mullen is another one of their  
20 consultants and informants. He has been deposed in this  
21 case. They did not offer any of his deposition testimony in  
22 their case, and now they are slamming it in as hearsay  
23 frankly.

24 THE COURT: He tells this witness that Oliver  
25 Kommerling offered to sell DISH Network hack to Mr. Mullen

SHARON SEFFENS, U.S. COURT REPORTER

137

1 and Paul Cater for \$1 million, and Mullen did not purchase  
2 the hack.

3 MR. STONE: See, that's the problem. I deposed  
4 Mr. Mullen in jail, and Mr. Mullen admitted in his  
5 deposition testimony that it was a sting operation. He  
6 didn't believe Oliver actually had it. He never saw any  
7 evidence that Mr. Kommerling actually had a hack. And then  
8 he took the Fifth Amendment about everything else.

9 THE COURT: Mr. Dionisi. He told this witness  
10 allegedly that the pirate conclave or jamboree, that Al  
11 Menard and Tarnovsky were there, which is corroborative.  
12 Apparently there is a tape of some type. Dionisi had a  
13 programmer -- Dionisi saw a programmer. I am not sure what

14 my notes say. Did Dionisi tell you that Tarnovsky described  
15 a programmer to him or that Tarnovsky had a programmer?

16 THE WITNESS: Tarnovsky described it to him.

17 THE COURT: He described a programmer. Thank you.  
18 And Dionisi said he was personally present when Tarnovsky  
19 tested the Smart Cards.

20 THE WITNESS: When Menard did, Your Honor.

21 THE COURT: When Menard did. And that Tarnovsky  
22 said that he created the stinger, or Menard said that  
23 Tarnovsky created the stinger?

24 THE WITNESS: Tarnovsky. It was Tarnovsky's  
25 device.

SHARON SEFFENS, U.S. COURT REPORTER

138

1 THE COURT: Tarnovsky said to Dionisi, "I created  
2 the stinger"?

3 THE WITNESS: I don't recall the exact verbiage,  
4 Your Honor.

5 THE COURT: Your objections.

6 MR. STONE: We have heard from Mr. Dionisi. He  
7 has fully testified. It's hearsay for this witness to  
8 summarize statements by Mr. Dionisi, particularly when he  
9 has testified.

10 I think it would be appropriate for him to testify  
11 that he interviewed Mr. Dionisi, but the statements by Mr.  
12 Dionisi are hearsay. And to come in for a nonhearsay  
13 purpose, there is no reason to allow in those statements to  
14 rehabilitate. And there is a prejudice, that the jury will  
15 consider them for the truth.

16 THE COURT: Dean Lov. He talked to Mr. Lov in  
17 2006. He tells you that he knew Tarnovsky was behind the  
18 Smart Cards, which is an opinion. But then he goes on to  
19 state to you that he had received DISH Net from dr7 on  
20 Menard, which is corroborative. Everybody knows that. That  
21 he is familiar with the nicknames Von, Von Rat, and Vonster;

22 that he believes he was -- well, he formed the opinions -- I  
23 am not sure what it says.

24 He believed that he was -- he believed that  
25 Tarnovsky was Nipper, that he formed that opinion from the

SHARON SEFFENS, U.S. COURT REPORTER

139

1 Smart Cards.

2 THE WITNESS: From the code that he had -- from  
3 the post and the code that he has gleaned from it.

4 THE COURT: That's opinion testimony. And your  
5 objections are nonhearsay 804(b)(7).

6 MR. STONE: He's not unavailable. He is their  
7 consultant/informant, as revealed in the interrogatory  
8 response. None of these statements are against the interest  
9 of Mr. Lov. I don't believe there is a corroboration  
10 hearsay exception, and the opinion is unsupported and also  
11 violates best evidence.

12 (Recess.)

13 THE COURT: All counsel are present.

14 As to Ron Ereiser, Jan Saggiori, and Anthony  
15 Dionisi, each of these witnesses have previously testified  
16 in this matter. They made statements to Mr. Gee that track  
17 statements made during the trial, the fact that Mr. Gee  
18 interviewed these witnesses and that their testimony  
19 corroborates his theory that Chris Tarnovsky was involved in  
20 the EchoStar piracy.

21 Therefore, these statements tend to rehabilitate  
22 Mr. Gee and can be presented for this nonhearsay purpose  
23 without undue prejudice to NDS. It shows that the  
24 statements were made also close in time and prior to Mr.  
25 Gee's testimony, and it shows a rehabilitation of Mr. Gee

SHARON SEFFENS, U.S. COURT REPORTER

140

1 concerning his investigative efforts.

2 Because the evidence has already been admitted,  
3 the risk of prejudice is minimal. I don't know that the  
4 Court even needs a limiting instruction because they came in  
5 for the truth of the matter before, but I will create a  
6 limiting instruction for corroborative purposes. This tends  
7 to show investigative efforts of Mr. Gee, and I will flush  
8 that out in a better ruling tomorrow, because when I stepped  
9 back into court informally, counsel thought they were  
10 leaving for the evening. They're not.

11 Charles Perlman has been withdrawn; is that  
12 correct?

13 MR. HAGAN: That's correct, Your Honor.

14 THE COURT: Lawrence Harmon.

15 MR. HAGAN: Withdrawn.

16 THE COURT: Are you going to mention Mr. Harmon  
17 was interviewed without being -- because I don't know what  
18 withdrawn means. I want no surprises. Are you going to  
19 mention him at all? Or when you say withdrawn, you're going  
20 to say Investigator Gee discussed this matter with him and  
21 just leave it?

22 BY MR. HAGAN:

23 Q Are we paying him in any way?

24 A I haven't talked to him in four or five years.

25 Q When was the last time that any money went from

SHARON SEFFENS, U.S. COURT REPORTER

141

1 NagraStar or EchoStar or anyone acting on their behalf to  
2 him?

3 A Best guess, 2002.

4 Q That was before the lawsuit.

5 MR. HAGAN: We would ask to keep Lawrence Harmon,  
6 the statements made by Lawrence Harmon. I don't think he is  
7 under the control under the Court's broad definition.

8 THE COURT: Marty Mullen.

9 MR. HAGAN: We will get those statements in

10 through the video deposition clips that we have offered. I  
11 believe we have counterdesignations. You have identified  
12 Marty Mullen as a witness.

13 THE COURT: You better find out if the defense is  
14 going to present Marty Mullen, because apparently you have  
15 some agreements between the two of you that I am not aware  
16 of.

17 MR. HAGAN: They told us at the beginning of trial  
18 they were --

19 THE COURT: It's between you. If in fact Marty  
20 Mullen is going to be testifying through depositions and you  
21 think you have got 106 clips, that will probably resolve it  
22 between the two of you. But if all of a sudden you're  
23 surprised and then you come to the court and you withdraw  
24 this --

25 MR. HAGAN: What we can do, Your Honor, is this.

SHARON SEFFENS, U.S. COURT REPORTER

142

1 If they play his clips, we will play our clips. If they  
2 fail to play his clips, we can play our clips in our  
3 rebuttal case.

4 Mr. Stone, are you playing the clips or not?

5 MR. STONE: I don't think so.

6 THE COURT: They don't think that they're playing  
7 the clips.

8 MR. HAGAN: This is the first we've heard of that.  
9 What we can do, Your Honor, if I understood your earlier  
10 ruling, is that I can ask Mr. Gee if he interviewed --

11 THE COURT: I haven't wrestled with Marty Mullen  
12 yet. I've only gotten this far so I can let Sharon go and  
13 get another court reporter. I'm not going to keep her on  
14 the record. She is not my court reporter.

15 So I've made the rather easy rulings immediately.  
16 You know that as far as those three witnesses, they're  
17 corroborative and I have made -- in fact, I stand on that

18 ruling. It's a final ruling.

19 MR. STONE: Can I make one request, Your Honor?

20 THE COURT: Yes.

21 MR. STONE: With respect to Mr. Ereiser in  
22 particular, the statement allegedly made to Mr. Gee is  
23 actually inconsistent with what Mr. Ereiser said on the  
24 stand, so I think we need an instruction that what the jury  
25 ought to be considering for the truth is Mr. Ereiser's

SHARON SEFFENS, U.S. COURT REPORTER

143

1 testimony and not any statements to Mr. Gee, because that  
2 could get confusing.

3 THE COURT: Let me wrestle with that later this  
4 evening. I just want to try to see what the universe is in  
5 terms of what we have left. We have a lot of work to do  
6 this evening.

7 Marty Mullen, are you seeking his testimony or  
8 not?

9 MR. HAGAN: We will not offer any statements made  
10 from Mullen to Gee. We will offer that he interviewed him  
11 as part of his investigation.

12 THE COURT: That resolves Marty Mullen as far as  
13 the Court is concerned.

14 Dean Lov. Do you want me to read his statements  
15 back to you to refresh your recollection?

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: You are looking sleepy. I am just  
18 going to kid you for a moment. Mr. Gee was told by Mr. Lov  
19 allegedly that he knew Tarnovsky was behind the Smart Cards;  
20 that Lov had received the DISH Net from dr7, Al Menard, of  
21 which there is a lot of testimony; that Dean Lov is familiar  
22 with the nickname Von, Von Rat, and Vonster, of which there  
23 seems to be a lot of testimony and no disagreement; and from  
24 the Smart Cards he was able to glean in his opinion that  
25 this was the same person.

1           Now, my concern with that is unlike a statement,  
2 whenever I get into opinion, you may be on the listing side  
3 of that motion because there, there is no way to ferret out  
4 that opinion. And unless that person is in front of the  
5 Court to explain to us what the intricacies of that is or  
6 explain it in detail to Mr. Gee who can relate it to the  
7 Court, I think the prejudicial effect far outweighs any  
8 probative value. And I think it's really an unfair position  
9 for either of you to be placed in, so I think minimally that  
10 that portion is excluded.

11           Now, that leaves you with the following, if you  
12 can read my handwriting. It leaves you potentially arguing  
13 about whether Tarnovsky, that he knew Tarnovsky was behind  
14 the Smart Cards. That's a conclusion the way Mr. Gee stated  
15 it. It's not trustworthy, not from Mr. Gee's standpoint but  
16 it might be brought in for nonhearsay purposes. And that's  
17 what I am going to wrestle with. Dean said that he had  
18 received the DISH Net for dr7, Al Menard. I don't think  
19 that's in contention; is it? Don't you have a significant  
20 amount of evidence already?

21           MR. HAGAN: We don't believe it's in contention.

22           THE COURT: In other words, why do you want it?

23           MR. HAGAN: Really the purpose of this is just to  
24 rehabilitate Mr. Gee based on --

25           THE COURT: Well, that's what we're going to

1 wrestle with. I'm not going to make the decision right now.  
2 I need time back in chambers. So if you want this, the  
3 other part is that John Norris asked Dean Lov through an  
4 e-mail who was behind the e-mail hack, and Norris said it  
5 was Tarnovsky and Al Menard.



6 MR. HAGAN: That's inconsistent, I believe, with

7 --

8 THE COURT: So do you want this or not?

9 MR. HAGAN: No, Your Honor. We want to  
10 rehabilitate and I don't have to get into specific  
11 statements.

12 THE COURT: So you're going to ask Mr. Gee  
13 tomorrow or, if we're calling him back, Monday -- Tuesday,  
14 depending on what's left. You're going to ask him if he  
15 interviewed Dean Lov in the year 2006 in Canada. Anything  
16 else?

17 MR. HAGAN: And did Mr. Lov provide you with any  
18 information about Chris Tarnovsky or Al Menard's involvement  
19 in EchoStar piracy. I will not get into specific  
20 statements.

21 THE COURT: And he's going to say yes, and the  
22 inference is that it's damning evidence. So we're right  
23 back -- I am not discouraging it.

24 MR. HAGAN: I am just trying to find a compromise  
25 in what I believe I am entitled to do, which is rehabilitate

SHARON SEFFENS, U.S. COURT REPORTER

146

1 Mr. Gee.

2 THE COURT: That may be, but I am going to make  
3 those rulings and decide if you are.

4 MR. HAGAN: Right.

5 THE COURT: Sharon is leaving in a moment. She is  
6 not my court reporter, and you are going to give me that  
7 time.

8 MR. HAGAN: Absolutely, Your Honor.

9 THE COURT: Okay. Thank you. So this is still on  
10 the table; right?

11 MR. HAGAN: Yes, sir.

12 THE COURT: Next, what you're really after is  
13 Scullion's testimony.

14

MR. HAGAN: Correct.

15

THE COURT: Because what you really want obviously is anything that has to do with matching the IP address of Tarnovsky with Nipper. So we are going to go back and take a look at that this evening.

19

And we are going to also discuss Stan Frost. Stan Frost already testified, but he testified by deposition and we have a lot of work to do, although you seem to have a lot of corroborating documents like Exhibit 21, but we haven't had time to get to that.

24

MR. HAGAN: Your Honor, to assist in your decision, we have pulled the three documents that I believe

25

SHARON SEFFENS, U.S. COURT REPORTER

♀

147

1 support the statements that Mr. Scullion made to Mr. Gee.

2

THE COURT: Do you want to brief this tonight?

3

MR. HAGAN: And the Stan Frost notes --

4

THE COURT: Do you want to brief this tonight?

5

MR. HAGAN: We will submit a brief on the issue of rehabilitating Mr. Gee.

7

THE COURT: I will be here until you do. We're going to work until that brief is submitted to me, or I will decide it based on oral arguments.

10

MR. HAGAN: I think we have made our record based on oral arguments. I would just like to provide the Court with these documents that we had referenced earlier.

13

THE COURT: What's your preference?

14

MR. STONE: I would submit on the oral argument.

15

MR. SNYDER: Your Honor, can I ask a question about scheduling? Mr. Poluso is still here.

17

THE COURT: I know. I am going to go get another court reporter.

19

MR. SNYDER: Okay. Thank you.

20

THE COURT: If they're still in the building. If they're not, Mr. Poluso will have to be back tomorrow.

22

MR. SNYDER: Your Honor, I don't mean to be rude,

23 but Mr. Poluso has an obligation that requires him to leave  
24 tomorrow.

25 THE COURT: Mr. Poluso, go outside and call him.

SHARON SEFFENS, U.S. COURT REPORTER

148

1 If I don't have the resources after 7:15 tonight, so be it.  
2 He is back tomorrow morning. Or you will make an  
3 accommodation with other counsel when you'll bring him back.  
4 But I am not going to do the impossible.

5 MR. SNYDER: If we cannot find a court reporter  
6 tonight, Your Honor, would it be possible to have the  
7 hearing you want to have tomorrow morning before the jury  
8 arrives?

9 THE COURT: No, I'm not going to bring them in  
10 tonight at 7:00 or 7:30, because I didn't tell them tonight.  
11 If they would have known when we left tonight that Jane or  
12 Debbie needed to be here at 7:00 or 7:30, I'll do that. But  
13 otherwise they're here at 8:00. They've got families and  
14 children. And they make accommodation to get their kids to  
15 school when they have notice. They don't have notice.

16 THE WITNESS: Should I step out?

17 THE COURT: I don't see any reason why Mr. Gee  
18 can't remain. You can remain, sir. I don't think any  
19 counsel is concerned about your being here.

20 we've had an informal discussion, counsel, on  
21 behalf of NDS concerning Mr. Poluso.

22 MR. KLEIN: Yes, Your Honor. What I stated to the  
23 Court is that tomorrow we will not ask any questions to Mr.  
24 Poluso, and I will talk to Mr. Poluso to make sure he  
25 understands what we're not doing. We're not going to ask

SHARON SEFFENS, U.S. COURT REPORTER

149

1 any questions that will bring up the letter from the U.S.

2 Attorney Spertus.

3           we will not bring up any questions that will bring  
4 up the fact that there were investigations ongoing and that  
5 Mr. Poluso knew there were investigations, didn't talk to  
6 Mr. Norris because of those investigations. Then when he  
7 found out that they concluded, he began talking to Mr.  
8 Norris.

9           what I will simply will do is ask at some point in  
10 time did you start talking to Mr. Norris without getting  
11 into why there was a period of time that he didn't speak to  
12 him.

13           MR. HAGAN: We have no objection to that, Your  
14 Honor. I would like, just so that the record is clear,  
15 there were two other issues that Mr. Klein had indicated he  
16 was going to question Mr. Poluso on. One of them was that  
17 Mr. Gee asked the U.S. Attorney's office not to prosecute  
18 Martin Mullen because Mr. Gee stated that Marty Mullen was  
19 assisting EchoStar and NagraStar in their anti-piracy  
20 efforts.

21           The second is that Mr. Poluso as an AUSA was  
22 prosecuting pirates and received evidence that these pirates  
23 were engaged in EchoStar piracy to the thousands and  
24 thousand of cards or devices but that NagraStar did not want  
25 to pursue them. Instead they wanted to pursue Chris

SHARON SEFFENS, U.S. COURT REPORTER

150

1 Tarnovsky. He asked if they would provide him evidence of  
2 Chris Tarnovsky's involvement in piracy, and they failed to  
3 do so.

4           I would just like to be able to ask Mr. Poluso if  
5 he was aware that NagraStar was providing that evidence to  
6 the U.S. Attorney's office in California since that is where  
7 Mr. Tarnovsky was living at the time. And that would not be  
8 opening up the door to the declination.

9           THE COURT: No, it would not. That way it gives

10 you both the fairness of, from your standpoint, the  
11 prosecutions are being requested or information is being  
12 requested on behalf of NDS to prosecute in Florida, it gives  
13 you the option of stating that those prosecutions were going  
14 to be centered, at least Mr. Gee was talking to prosecutors  
15 out in California. He can name Mr. Chang by name.

16 That gets away from the import of the cleansing  
17 letter and/or then what follow Mr. Spertus's alleged leaving  
18 of the office a short time after and allegedly going to work  
19 in a related industry.

20 All right. Is there anything else at least on the  
21 record tonight? And I will make the rulings on these  
22 evidentiary issues by minute order this evening to you.

23 MR. SNYDER: There is one last thing, Your Honor.  
24 You had previously ordered that with respect to the ROM 10  
25 soft swap that Mr. Shelton testified about, that plaintiffs

SHARON SEFFENS, U.S. COURT REPORTER

151

1 either produce documents regarding that swap or an affidavit  
2 declaration that it didn't happen.

3 THE COURT: No. I've given you the option. I  
4 thought that I was very clear earlier, and I was trying to  
5 warn NDS that you could be in an awful position at the time  
6 of trial or argument on lost profits with the state of the  
7 evidence.

8 The carte blanche almost exists with EchoStar  
9 depending upon their ethics, and we all know that there is a  
10 document that was produced in an out-of-the-presence  
11 hearing, an out-the-presence-of-the-jury hearing in front of  
12 the Court, which is 2027, and that document itself has to be  
13 authenticated. It seems to me that that document should  
14 come in because if it came into evidence, it's an EchoStar  
15 document. It should be relied upon, and it tells us where  
16 the ROM 10 came in. It comes in, I think, in 2000.

17 And then it shows the growth in 2001, 2010. It  
18 shows the relationship of ROM 3 -- I'm doing this from

19 memory. And then it shows a sharp decrease of ROM 3. And  
20 when you average that out, it's about 109,000 units.

21 So I don't think that EchoStar should be entitled  
22 to argue that these are a hundred thousand units every year.  
23 And if I was doing the circuit, I would be concerned how the  
24 jury came back with a verdict. But I am not taking NDS's  
25 position that this is excluded in its entirety.

SHARON SEFFENS, U.S. COURT REPORTER

152

1 MR. SNYDER: I understood that, Your Honor, and I  
2 am not trying to reargue that point. That record is what it  
3 is. The Court issued an order on the 14th. May I just read  
4 the paragraph? "Plaintiffs are hereby ordered to produce  
5 any and all documents related to a potential card swap  
6 exchanging ROM 10 cards for prior cards, or present a  
7 declaration or affidavit that no such swap took place."

8 THE COURT: That's correct. You're right.

9 MR. SNYDER: And it's important because it could  
10 relate to issues beyond simply lost profits or the number of  
11 cards that ought to be considered in the context of lost  
12 profits. It could go to issues of mitigation or whether the  
13 need for a later card swap was necessary, whether there was  
14 any damage at all because they could replace or perhaps did  
15 replace existing ROM 2 and 3 cards with ROM 10 cards.

16 This arises because Mr. Shelton indicated he was  
17 told there was a card swap, and then counsel indicated to  
18 the Court that someone was mistaken. And we just need to  
19 resolve that either by having the relevant documents  
20 produced or having a declaration from a knowledgeable person  
21 that it didn't take place, precisely what the Court's  
22 ordered.

23 MR. HAGAN: Your Honor, what we had intended to do  
24 is have Mr. Guggenheim, who was the CEO of NagraStar at the  
25 time, testify about that issue. There are no documents, and

SHARON SEFFENS, U.S. COURT REPORTER

♀

153

1 Mr. Guggenheim will testify in front of the jury that there  
2 was no ROM 10 card swap or soft swap or anything related to  
3 that.

4 MR. SNYDER: Can we get that in an affidavit  
5 before Mr. Guggenheim takes the stand? Otherwise we have no  
6 idea what he's going to say.

7 MR. HAGAN: He's just going to say there was no  
8 ROM 10 card swap. That was the issue. Mr. Shelton was  
9 simply mistaken. Mr. Guggenheim was the CEO at the time.  
10 He's the individual that would know.

11 MR. SNYDER: All right, then. I guess we will  
12 look forward to Mr. Guggenheim's testimony.

13 THE COURT: Right. If you're caught by surprise  
14 and you need a continuance, so be it. But there's no reason  
15 for him not to testify. It's the same thing. And then I'll  
16 look to you and if you want to delay cross-examination,  
17 fine.

18 MR. HAGAN: Thank you, Your Honor.

19 THE COURT: Anything else?

20 (Thereupon, the proceedings were adjourned.)

21 -oOo-

22

23

24

25

SHARON SEFFENS, U.S. COURT REPORTER

♀

154

19:30:21 1

-oOo-

2

3

CERTIFICATE

4

5

I hereby certify that pursuant to section 753,

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

11

12 Date: April 24, 2008

13

14

Sharon A. Seffens 4/24/08

15

SHARON A. SEFFENS, U.S. COURT REPORTER

16

17

18

19

20

21

22

23

24

25

SHARON SEFFENS, U.S. COURT REPORTER

♀