

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

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ECHOSTAR SATELLITE)	
CORPORATION, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	No. SACV 03-0950-DOC
)	
NDS GROUP PLC, et al.,)	
)	Day 11, Volume I
Defendants.)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Jury Trial

Santa Ana, California

Friday, April 25, 2008

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Federal Official Court Reporter
United States District Court
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08-04-25 EchoStarD11V1

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I N D E X

EXAMINATION

Witness Name	Direct	Cross	Redirect	Recross
GEE, JERRY J.				
By Mr. Hagan		11		71
By Mr. Stone			44	

1 SANTA ANA, CALIFORNIA, FRIDAY, APRIL 25, 2008

2 DAY 11 - VOLUME I

3 (8:00 a.m.)

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

6 THE COURT: We are on the record. All counsel are
7 present.

8 Concerning the admissibility of statements of
9 Stanley Frost, Lawrence Harmon and Dean Love, those are
10 final rulings by the Court.

11 Concerning Scullion, there is the change in the
12 reasoning, but not a change in the ruling.

13 The Court notes two other things that have been
14 added to the Tentative Opinion the Court set forth last
15 evening.

16 First, the risk is tremendous that the statements
17 will be used for the truth of the matter asserted, because
18 they directly identify Tarnovsky and provide some purported
19 evidence for this claim as it relates to Nipper. It's
20 unlikely that the risk of prejudice can be reduced to any
21 material degree by giving a limiting instruction. Moreover,
22 the handwritten notes that Mr. Gee allegedly took during his
23 interviews with Scullion, which would corroborate Scullion's
24 testimony, have not been forthcoming.

25 In comparison with testimony previously admitted

1 concerning Maldonado statements identifying Jim Waters,
2 Scullion's testimony is different from pertinent -- for some
3 pertinent reasons. First, Maldonado's testimony occurred
4 before Scullion's, therefore, the rehabilitative value of
5 the Scullion testimony is limited. Additionally,
6 Maldonado's statements are incorporated in Gee's report, a
7 party admission. Finally, Maldonado will appear to be
8 cross-examined.

9 Now, when we started this colloquy, the great fear
10 on EchoStar's part was that somehow Mr. Gee would appear to
11 be an incompetent investigator; that's not true. You can
12 amply show with the breadth of material I'm allowing you to
13 put in in my rulings concerning Frost, Harmon, Scullion, and
14 those -- those portions of Scullion and Dean Love, that he
15 spoke to all of these people, that he has this targeting, if
16 you will, of money being sent through the magazines and
17 receivers, that he is part of Menard's web, if you will,
18 that he has a Stinger. All of that is rehabilitative in
19 terms of his competency, and there is absolutely
20 overwhelming or ample evidence as to why Mr. Gee would
21 target him and target him at an earlier date.

22 Your in -- your internal document, Exhibit
23 Number 645; is that correct? No, I'm sorry, 374 is dated
24 March of 2001. That document, though, allows NDS to state
25 that sometime during the 2001 to 2004 period, which Mr. Gee

1 said he spoke to Scullion and obtained this information
2 about Nipper, is a document that comes early on in that time
3 frame, and without the notes, there is no reason for this
4 Court or the jury not to believe that he didn't get this
5 information from Scullion in 2004; he's not definite. And
6 if he gets this information in 2004, then NDS has the right
7 to show that the target early on was a complete shoving to
8 the side of Maldonado. And so that's why I asked for the
9 notes, and if those aren't forthcoming -- which you still
10 don't have.

11 MR. HAGAN: We just have the typed up notes which
12 came from Scullion.

13 THE COURT: I know what you've got. You've got
14 some typed up notes. I asked for the original, you know.
15 He said he took notes. So therefore, the ruling on -- on
16 Scullion remains as it was last weekend. There are some
17 additional reasons that the Court focused on after all of
18 you left last night about 11:00, and that was the fact that,
19 truly, EchoStar is not biased by this. Truly, they have
20 ample evidence of what's coming in to give Mr. Gee every
21 reason to have focused on Tarnovsky, and therefore, I think
22 the prejudicial effect outweighs the probative value as
23 well, as well as the evidentiary ruling that the Court's
24 made concerning hearsay.

25 All right. Now, I've made that ruling. There is

1 only one thing that needs to remain before he takes the
2 stand, and that is a hearing out of the presence of the jury
3 to find out what efforts were made to find Mr. --

4 MR. STONE: Harmon.

5 THE COURT: I'm sorry?

6 MR. STONE: Harmon.

7 THE COURT: Oh, Mr. Harmon. You understand you're
8 not limited, and you may have other evidence. Maybe he knew
9 about some e-mail, for instance, that you haven't covered,
10 yet. Maybe he knew about the Dawson e-mails; I don't know.
11 Maybe he knew about the CGI reports. I don't think so,
12 obviously, but I don't know. But you are not precluded from
13 focusing on why he focused on Tarnovsky at an early time.

14 It's just in relation to not having any notes
15 about Scullion, he could have done the very thing NDS
16 accuses him of, and that is, have the information in your
17 own internal documents for EchoStar, disregarded it and
18 talked to Scullion in 2004. So you could put him back on
19 the stand now if you'd like to as soon as we hear briefly
20 about what efforts were made. And even if the efforts
21 aren't sufficient for the content concerning Harmon, you can
22 still ask him if he talked to Harmon; understood?

23 MR. HAGAN: Yes, your Honor.

24 THE COURT: Now, if you want to sort that out
25 later on after the next witness, so be it.

1 Who do you want to proceed with next?

2 MR. STONE: Mr. Peluso.

3 MR. KLEIN: And then Mr. McGuire.

4 THE COURT: Mr. Peluso and Mr. McGuire.

5 MR. HAGAN: We -- we can finish with Mr. Gee,
6 and -- and I won't go into the statements that Lawrence
7 Harmon made to him.

8 THE COURT: That's your choice. I'm giving you
9 that opportunity, depending upon the efforts made, to
10 find -- so -- so you are really not hurt. I hate to use
11 that word, it's a nonlegal word. You're really not wounded.
12 You can rehabilitate him in terms of his efforts and all of
13 the indicia that it was Tarnovsky right to begin with.

14 MR. HAGAN: If I could have five minutes just to
15 brief Mr. Gee?

16 THE COURT: Sure. Are you going to be short with
17 him, so we can take --

18 MR. HAGAN: Yes.

19 THE COURT: Okay. I prefer to finish him up in a
20 segment, quite frankly, so that it appears that there hasn't
21 been an interruption.

22 (Recess.)

23 THE COURT: All right. So we're on the record for
24 a moment. The Court's handed down a -- a series of rulings
25 last evening and early this morning in written form to

1 counsel. Many of the statements, initially, with Harmon,
2 Frost, Scullion, and --

3 MR. WELCH: Dean Love.

4 THE COURT: -- and Love are coming in. A
5 significant number of those statements are coming in for the
6 truth of the matter asserted. There are a minority of
7 statements coming in which are not being offered for the
8 truth of the matter asserted.

9 All counsel and the Court agree that instead of
10 admonishing the jury during Mr. Gee's testimony, that we
11 should see what the final testimony is of Mr. Gee in front
12 of this jury, and the admonition should be given a short
13 time after or later today so that that admonition is given
14 at one time, because the testimony has sometimes
15 significantly changed on the witness stand.

16 Is that acceptable to EchoStar?

17 MR. WELCH: Yes, sir.

18 THE COURT: Is that acceptable to NDS?

19 MR. SNYDER: Yes, your Honor.

20 THE COURT: Okay. That also will allow Mr. Gee to
21 take the stand with continuity rather than interrupting his
22 testimony.

23 Okay. Mr. Hagan, have you had enough time?

24 MR. HAGAN: Yes, your Honor, the exhibits --

25 THE COURT: While you were discussing this with

1 your witness, remaining counsel for EchoStar and NDS have
2 agreed as follows, that Mr. Gee be allowed, of course, to go
3 into the areas that the Court has indicated. And that any
4 admonition concerning what's accepted for the truth and
5 what's accepted for non-hearsay purposes, we delay that
6 until the end of his testimony, because otherwise, if there
7 is another statement, for instance, that may be testified
8 to, the Court's not going back and forth with that
9 admonition; is that acceptable to you?

10 MR. HAGAN: Yes, your Honor.

11 THE COURT: Okay. Well, then, Kristee, would you
12 get the jury, please.

13 MR. STONE: Your Honor, were we going to have a
14 hearing outside the presence of Mr. Harmon?

15 THE COURT: They are not offering Mr. Harmon.

16 MR. STONE: Oh, I'm sorry.

17 THE COURT: They're -- they're going to say that
18 they spoke to him, but they're not going to offer the
19 contents.

20 MR. STONE: Okay. I didn't hear that.

21 (The following proceedings is taken in the
22 presence of the jury.)

23 THE COURT: All right. The jury is, once again,
24 present. All counsel are still present. The parties are
25 present. Mr. Gee is, of course, on the witness stand.

1 This is the continued examination,
2 cross-examination by Mr. Hagan on behalf of EchoStar,
3 NagraStar.

4 MR. HAGAN: Thank you, your Honor.

5 JERRY J. GEE, DEFENDANTS' WITNESS, RESUMED

6 CROSS-EXAMINATION (Continued.)

7 BY MR. HAGAN:

8 Q Good morning, Mr. Gee.

9 A Good morning.

10 Q Before we broke yesterday afternoon, we were talking a
11 little bit about your investigation into defendants and
12 Chris Tarnovsky and Al Menard, and I want to go back to that
13 for just -- just a few more minutes.

14 In addition to the individuals that you testified about
15 with Mr. Stone and the ones that we covered earlier, there
16 were also, as I understand it, other gentlemen that you
17 interviewed in connection with this investigation; is that
18 correct?

19 A Yes, that is correct.

20 Q And one of those individuals is Jan Saggiori, who
21 testified previously in this case. Did you obtain any
22 evidence or information from Mr. Saggiori that connected
23 Chris Tarnovsky and Al Menard to the distribution of pirated
24 EchoStar access cards?

25 A Yes, I did. I received an e-mail with a file that

1 Mr. Tarnovsky had sent to him that was a file of EchoStar
2 code versus the Canal+ code that Mr. Tarnovsky had thought
3 that he had sent Mr. Saggiori.

4 Q Now, Mr. Saggiori is -- is now a consultant for
5 NagraStar; is that correct?

6 A That is correct.

7 Q And he provides anti-piracy work for NagraStar?

8 A Yes, he does.

9 Q And the jury has -- has already seen Exhibit 2002,
10 which is a copy of that e-mail, but we may come back to it a
11 little bit later today.

12 I want to move, now, to a gentleman named Anthony, or
13 Tony, Dionisi. Did there come a point in your investigation
14 where you debriefed Mr. Dionisi?

15 A Yes, I had an opportunity to meet with Mr. Dionisi.

16 Q And did Mr. Dionisi provide you with any evidence or
17 statements that connected the defendants and Chris Tarnovsky
18 and Al Menard to a distribution network of pirated EchoStar
19 access cards?

20 A Yes, Mr. Dionisi had told me that he had -- had a --
21 had a DISH Network Smart Card programmed by Al Menard, and
22 also, he shared with me that he had a conversation with
23 Mr. Tarnovsky just about the programmer that he had
24 designed, and that from that description, that Mr. Tarnovsky
25 had told Mr. Dionisi that it matched up with the -- the

1 programmer that Mr. Menard had used to program the DISH
2 Network Smart Cards with them.

3 Q And did Mr. Dionisi explain to you if he ever tested
4 those reprogrammed EchoStar access cards that he received
5 from Mr. Menard?

6 A Yes, he said that they were able to receive the
7 programming that was not paid for.

8 Q Are you familiar through your investigation with the
9 term "E3M" pirate cards?

10 A Yes, I am.

11 Q Can you explain to the ladies and gentlemen of the jury
12 what an E3M pirated EchoStar access card is?

13 A Yeah, a Smart Card, as it's subscribed, is -- has set
14 content that's allowed to be seen. An E3M card is the code
15 that has been added to that Smart Card to allow for the
16 programming that's not -- has not been paid for, or if you
17 haven't paid for it before, it unlocks it to view -- to
18 allow viewing of all programming.

19 THE COURT: Excuse me just a moment.

20 (Discussion held off the record.)

21 THE COURT: Thank you, Counsel.

22 BY MR. HAGAN:

23 Q Mr. Gee, going back to the -- the pirated E3M cards, if
24 I understand your testimony correctly, those are cards that
25 were reprogrammed to steal EchoStar's services; is that

1 correct?

2 A Yes, that is correct.

3 Q And did there come a point in time in your
4 investigation where you were able to determine that those
5 E3M cards were being distributed by a particular group or
6 distribution network?

7 A Yes, that E3M card was being distributed by Mr. Menard
8 and his distribution group through the dr7 and multiple
9 websites associated with the dr7 website.

10 Q And Mr. Gee, did you ever obtain any information or
11 evidence in your investigation that was -- that you were
12 able to identify the coder or the individual who was
13 responsible for writing the code, the E3M code that
14 Mr. Menard used to reprogram those EchoStar access cards?

15 A Yes, I was.

16 Q Who was that individual?

17 A Chris Tarnovsky.

18 Q Now, did there come a point where you debriefed a
19 gentleman by the name of Stanley Frost?

20 A Yes, I did.

21 Q And did Mr. Frost provide you with any evidence that
22 Christopher Tarnovsky was the coder for Mr. Menard in those
23 E3M cards?

24 A Yes, he had.

25 Q Can you explain to the ladies and gentlemen of the jury

1 what information Mr. Frost provided you in your
2 investigation?

3 A Mr. Frost told me that people behind the dr7 website
4 and the E3M hack was Menard and Tarnovsky. He also told me
5 that he was part of that group, and he was -- he had -- he
6 lived in New York, but he had his operation that was run by
7 a person by the name of Dan Cavanaugh in Nova Scotia, and
8 that's where he did the distribution portion for his
9 partnership in that -- that group.

10 Q Now, did Mr. Frost, in addition to admitting to you
11 that he was one of the distributors for Mr. Tarnovsky and
12 Mr. Menard's E3M cards, did there come a point in time where
13 he provided you with a copy of a videotape that showed Chris
14 Tarnovsky and Al Menard together in Canada?

15 A Yes, he had. We had questioned the information that he
16 had with us, so he said that he had a video that he attended
17 to in Toronto where Mr. Menard and Chris Tarnovsky and Stan
18 Frost and several other people, including Mr. Dionisi who
19 has testified earlier, got together for a meeting. He was
20 to show that they -- he did have a relationship with them.

21 Q Now, turning briefly back to Mr. Dionisi, when you
22 debriefed Mr. Dionisi and he told you that Chris Tarnovsky
23 had admitted to building the Stinger, this reprogramming
24 device, did he describe that device for you?

25 A Yes, he did.

1 Q And did he also tell you that when he was personally
2 present when Mr. Menard reprogrammed some of these E3M
3 cards, that he was able to inspect Mr. Menard's
4 reprogramming device?

5 A Yes, he did.

6 Q And did Mr. Dionisi give you any information as to the
7 relatedness of the device that Chris Tarnovsky admitted to
8 building, the Stinger, and the device that Mr. Menard used
9 in his presence to create these pirated EchoStar access
10 cards?

11 A Yes, he felt that the description that Mr. Tarnovsky
12 provided to him matched with the same description of what he
13 had actually seen.

14 Q Now, you also debriefed an individual named Ron
15 Ereiser, who is also now a consultant in NagraStar's
16 anti-piracy efforts; is that correct?

17 A That's correct.

18 Q And during that portion of your investigation, did
19 Mr. Ereiser provide you with any evidence or information or
20 documents linking the defendants and Chris Tarnovsky and Al
21 Menard to the distribution of pirated EchoStar access cards?

22 A Yes, he did. He provided me -- he had a previous
23 relationship with Mr. Tarnovsky and knew him under multiple
24 aliases that he used, Von and Von Rat, and he provided me
25 e-mail communication between Tarnovsky and Mr. Dave Dawson

1 of Discount Satellite, who was also part of the Menard
2 distribution group.

3 Q Now, the e-mails that Mr. Ereiser provided you, the
4 jury has had an opportunity to look at those early in the
5 trial, so we won't go through them again, but can you
6 describe generally what type of evidence was contained in
7 those e-mails.

8 MR. STONE: This is double hearsay. Objection.

9 THE COURT: Concerning the -- just a moment.

10 Overruled.

11 THE WITNESS: I would need to see those again to
12 speak to him. It's been awhile since I've looked at them,
13 I'm sorry.

14 BY MR. HAGAN:

15 Q And -- and we may come back to them, but did you
16 understand that the alias used for Mr. Tarnovsky in those
17 e-mails was Von?

18 A Yes.

19 Q And was that consistent with other information that you
20 received through your investigation into Mr. Tarnovsky and
21 the aliases that he used?

22 A Yes.

23 Q Now, did there come a point in your investigation where
24 you debriefed a gentleman by the name of Dean Love?

25 A Yes.

1 Q Did Mr. Love provide you with any evidence or
2 information linking the defendants and Chris Tarnovsky to
3 the Al Menard distribution of pirated EchoStar access cards?

4 A Yes, he also shared with me that he had received
5 programmed Smart Cards from Mr. Menard, and he also told me
6 that he knew that Chris Tarnovsky was associated with
7 Al Menard.

8 Q And what does it mean in -- in your line of work for
9 someone to be the coder, the quote, "coder," behind a
10 distribution network?

11 A Within an organization, you have the dealer, or the
12 front person, that takes the risk if you are going to get
13 sued. They're the person that might have the storefront,
14 might have the website, but behind every dealer, there is a
15 technology. It could be something that's obtained freely
16 off the internet and they are taking that, but in order for
17 it to become freely available, somebody has to do the
18 programming in order to allow a theft of the programming,
19 and that's what the coder would do. The coder is the behind
20 the scenes person.

21 Q And if I understood your earlier testimony, your
22 investigation concluded that Mr. Tarnovsky was the, quote,
23 "coder" behind dr7 and Al Menard and the E3M pirated
24 EchoStar access cards, correct?

25 A That is correct.

1 Q Now, Mr. Gee, did there also come a point in your
2 investigation where you debriefed a gentleman by the name of
3 Larry Rissler?

4 A I had spoken with Larry Rissler, yes.

5 Q And did Mr. Rissler provide NagraStar and EchoStar with
6 evidence and information linking the defendants and Chris
7 Tarnovsky to this distribution network?

8 A Mr. Rissler had provided to EchoStar the IDG report --
9 ICG report that they believed Nipper was Chris Tarnovsky.

10 Q And let's back up for just a moment. Can you explain
11 to the -- the jury who Mr. Rissler is?

12 A Mr. Rissler used to be head of anti-piracy for DirecTV.

13 Q And at the time that you debriefed and spoke with
14 Mr. Rissler, was he holding that role as the head of the
15 DirecTV anti-piracy division?

16 A Yes, he was.

17 Q And did you find Mr. Rissler to be reliable and the
18 information that he provided you to be reliable?

19 A Yes.

20 Q Let's take a look at what has been previously
21 introduced as Exhibit 27.

22 Mr. Gee, I've handed you a copy of what has been
23 previously introduced in this trial as Exhibit 27. Can you
24 identify this for the jury.

25 A It is an ICG report on Christopher Tarnovsky.

1 Q And ICG, or Internet Crimes Group, Inc., as you
2 understood it, was the third-party company that was hired by
3 DirecTV when they were investigating Chris Tarnovsky and the
4 defendants, correct?

5 A Yes.

6 Q And is this one of the reports generated by Internet
7 Crimes Group, Inc., that Mr. Rissler provided to EchoStar
8 and NagraStar?

9 A I'm not sure if it was this report or if it was a
10 similar one to it.

11 Q And there are a couple of others that we looked at, and
12 we may get back to you, but are you -- are you certain that
13 the company that generated these reports was ICG, or
14 Internet Crimes Group, Inc.?

15 A Yes, I am.

16 Q Now, Mr. Gee, did there also come a point in your
17 investigation where you debriefed a gentleman by the name of
18 Graham James?

19 A Yes, I did.

20 Q And without going into any specific statements that
21 Mr. James told you, did he provide you with information
22 relating to the defendants in distributing pirated access
23 cards?

24 A Yes.

25 Q And as you understood it, was Mr. James an employee or

1 an informant consultant of the defendants up until 2007,
2 last year?

3 A Yes.

4 Q And do you recall approximately how long the defendants
5 employed Mr. James?

6 A Since the '90s.

7 Q Did there also come a point in your investigation where
8 you debriefed a gentleman by the name of Lawrence Harmon?

9 A Yes.

10 Q And without getting into any of the specific statements
11 that Mr. Harmon provided you, did he give you information
12 that assisted you in your investigation into the defendants
13 and Christopher Tarnovsky and Al Menard with distributed --
14 distributing pirated EchoStar access cards?

15 A Yes.

16 Q Now, going back to some of the gentlemen that you spoke
17 about yesterday with Mr. Stone, there was, as I understood
18 it, a number of other piracy organizations, both in the
19 United States and in Canada, that were distributing
20 circumvention devices for EchoStar's system; is that
21 correct?

22 A Yes.

23 Q And you don't contend that the defendants were
24 responsible for all of those different circumvention
25 devices; is that right, Mr. Gee?

1 A That is correct.

2 Q We're focused on this case on the E3M cards; is that
3 correct?

4 A Yes.

5 Q And did you come across the term "West Group"?

6 THE COURT: I'm sorry, West --

7 MR. HAGAN: Pardon me. West Group, W-e-s-t.

8 THE WITNESS: Yes.

9 BY MR. HAGAN:

10 Q And what is the West Group based on your investigation?

11 A The West Group is the Menard distribution. That would
12 include the dr7, Discount Satellite, High-tech Satellite,
13 Koinvizion, and Stan Frost operation.

14 Q And Mr. Frost's operation, if I understand your earlier
15 testimony, that was run through New York where Mr. Frost
16 lived?

17 A He was in New York, but it was out of Nova Scotia.

18 THE COURT: Just a moment. It sounds like it's
19 the same group. Is this a different group?

20 THE WITNESS: It is the same group, your Honor.

21 THE COURT: So the West Group includes Frost?

22 THE WITNESS: Yes, sir.

23 THE COURT: Thank you.

24 BY MR. HAGAN:

25 Q Now, Mr. Gee, are you familiar with the term "gray

1 market" as it relates to satellite television or conditional
2 access technology?

3 A Yes, I am.

4 Q And can you explain to the -- the ladies and gentlemen
5 of the jury what the gray market is?

6 A The gray market is -- was very prevalent during -- back
7 in that time period where DirecTV and DISH Network were --
8 wanted -- Canadian citizens wanted to pay for television,
9 but they weren't able to actually do it, because neither
10 DirecTV or EchoStar could sell in Canada.

11 So I mentioned earlier some retailers. There was the
12 black market retailer, who would have a code or -- and
13 provided pirated cards, but there is also retailers within
14 Canada that would set up these paid subscriptions to the
15 content providers in the United States. They would set up
16 these accounts in border towns from Washington all the way
17 across to Maine, conveniently having a paid invoice, an
18 invoice going to a location in one of these towns. They --
19 most of these accounts were set up and paid on credit cards,
20 and then the individual who was setting up these accounts
21 for the Canadian citizens would take these, maybe it would
22 be 500, 1,000 at a time, and then distribute them all across
23 Canada. It could go to -- you could set up in Washington,
24 have it go through Blaine, Washington, have the person pick
25 it up, truck it up to Calgary, Ontario -- Calgary, Alberta,

1 and then that person in Calgary, Alberta selling to somebody
2 in Newfoundland. So it starts in Washington, the
3 distributors in Calgary, but the person who bought it could
4 possibly be up as far away on the other side of the country
5 for Canada.

6 Q Now, Mr. Gee, we heard the name yesterday, Dawn Branton
7 (phonetic). Did your investigation conclude that Ms.
8 Branton was involved in any way in gray market piracy?

9 A Yes, Ms. Branton was involved in the gray market.

10 Q And did your investigation conclude in any way that
11 Dawn Branton was associated with reprogramming EchoStar
12 Smart Cards or distributing reprogrammed EchoStar Smart
13 Cards?

14 A No.

15 Q Did your investigation conclude in any way, or did you
16 receive any information that led you to conclude that
17 Dawn Branton was in any way associated with Mr. Menard's
18 distribution network?

19 A No.

20 Q Did your investigation conclude in any way that
21 Ms. Branton was linked in any regard to the creation of the
22 E3M pirated EchoStar Smart Cards?

23 A No.

24 Q Now, Mr. Gee, as I understand it, Ms. Branton was just
25 distributing these gray market boxes and receivers and Smart

1 Cards; is that correct?

2 A She was facilitating the paid accounts with DirecTV and
3 DISH Network, and then she was distributing to those -- to
4 her customers.

5 Q And did your investigation conclude that there were a
6 significant number of these gray market accounts?

7 A Yes.

8 Q And is it fair to say that the cards that Dawn Branton
9 was facilitating distributing -- I understand these weren't
10 E3M cards -- but those cards went all over North America?

11 A Yes.

12 Q It could have gone anywhere from California to Florida,
13 to all parts of Canada?

14 A Yes.

15 Q Now, Mr. Gee, you looked yesterday at Exhibit 1510.
16 I'd like to turn back to that for just a moment.

17 Your Honor, this has already been admitted into
18 evidence, 1510.

19 It's the one that you admitted yesterday.

20 BY MR. HAGAN:

21 Q And Mr. Gee, we looked at this yesterday, and Mr. Stone
22 asked you some questions about Tonawanda, New York. And you
23 see that reference on Exhibit 1510 in the far right-hand
24 column?

25 A Yes.

1 Q And that is an address that was associated with one
2 particular Smart Card; is that correct?

3 A Yes.

4 Q Immediately underneath that there is another address
5 that's also associated with that particular Smart Card.
6 What state is that address in?

7 A California.

8 Q And can you explain why there could be multiple
9 addresses associated with a particular EchoStar Smart Card?

10 A My understanding with it is that you have the product
11 shipped to one location, but you pay for it at another
12 location.

13 Q In addition to that, the -- the Smart Cards could be
14 refurbished and regenerated to other subscribers once they
15 came in from the field?

16 A Yes, there is the repairing of satellite boxes where --
17 as myself, I might have a certain model of box. Maybe I
18 want to upgrade it to a new box. I'll send that -- my old
19 satellite receiver in. That old satellite receiver has been
20 associated with my address, but the box that I'm going to
21 get, the new one, is also assigned to my address.

22 The box that I've returned would go through a repair
23 process, cleaned up, making sure that it was functioning
24 properly, receive a new Smart Card, and then go out to a new
25 customer. And then when that person activated that account,

1 that set-top box, or that -- that receiver now would be
2 activated with the new address, the current account.

3 Q Mr. Gee, yesterday you -- you started to describe for
4 the jury something called "masking a card ID" or masking
5 information in postings on the internet related to an
6 EchoStar card, but Mr. Stone cut you off. I want to give
7 you an opportunity to do that. What did you mean by pirates
8 could mask a card ID or information in a post?

9 A When you -- there was a period of time with
10 subscriptions where you needed a subscription in order to
11 get some kind of rights onto a card so you can hack it.
12 Now, you -- that's -- that's not always necessary now, but
13 when a person is providing code on something that they've
14 done, they're going to change the -- that information, so --
15 the Smart Card that I had fits 1, 2, 3, 4, 5, 6, 7 is -- now
16 might be 7, 6, 5, 4, 3, 2, 1, and they just change that
17 around, and that's easy to do in the changing the code.

18 Q And -- and that was done, and based on your
19 investigation on more than one occasion when individuals
20 would post portions of code on the internet?

21 A We continue to see that today.

22 Q And why is that, based on your experience in
23 investigating these postings or these codes?

24 A The -- a lot of times somebody will subscribe a card as
25 I mentioned here before, and that Smart Card number can be

1 traced to an address. That person doesn't want to have
2 that -- very simply to be able to be found by just by us
3 running the number and then it popping back to them.

4 Q It was an effort by people posting to try to conceal
5 their relationship to a particular card or to a particular
6 posting?

7 A Yes.

8 Q Have you also come across individuals using
9 applications like proxies or anonymizers or spoofing
10 techniques when posting information on the internet?

11 A Yes, I have. As we've seen through materials that I've
12 spoken about, people use aliases. The alias is one way of
13 not showing what their identity is, their real name. And
14 then, also, it's -- they don't want to know if you're in
15 Colorado or if I'm -- we'll use it as -- for my example. If
16 I'm investigating somebody and I'm in Colorado, everybody
17 knows that EchoStar and NagraStar is in Colorado. If I'm
18 going to be on an internet forum site, I might want to
19 sit -- I'm in Victoria British, Columbia, and that will
20 reflect that way, so I'll use a proxy. That way it doesn't
21 come back to me.

22 Q Now, Mr. Tarnovsky testified that he could use a proxy
23 to post something from California or somewhere else, and it
24 would look like, if you traced it, it was coming from the
25 east coast or Canada. Based on your investigation, is it

1 possible for someone to use a proxy or an anonymizer to do
2 that?

3 A Yes.

4 Q Now, Mr. Gee, we also spoke a little bit about the --
5 the piracy syndicate called the Barrie Group (phonetic) or
6 DISH Plex yesterday; do you recall that testimony?

7 A Yes, I do.

8 Q And did there come a point in time where you conducted
9 an investigation into Barrie Group or DISH Plex pirate
10 syndicate?

11 A I was investigating the Barrie Group.

12 Q And did you -- as part of that investigation, did you
13 debrief a gentleman name Laurent Pilon?

14 A Yes, I did.

15 Q And after you investigated Mr. Pilon, were you able
16 to -- to recruit him to be a consultant or informant for
17 NagraStar?

18 A I was introduced to Mr. Pilon by Mr. Rissler of
19 DirecTV, and when I met with him, eventually we were able to
20 develop a relationship for him to be a consulting
21 confidential informant for me.

22 Q And as you understand it, Mr. Pilon was providing
23 evidence and information both to NagraStar, as well as to
24 Mr. Rissler and DirecTV?

25 A Yes.

1 Q Now, Mr. Pilon, at one point, was a distributor for
2 this DISH Plex Group; is that correct?

3 A Mr. Pilon ran DISH Plex with Mr. Reyno (phonetic).

4 Q Now, did there come a point in your investigation where
5 you were able to conclude one way or the other whether the
6 devices being distributed by the DISH Plex Group were
7 related in any way to the devices being distributed by
8 Mr. Tarnovsky and Mr. Menard?

9 A No.

10 Q Are you familiar with the term -- the piracy term
11 "cloned Smart Card"?

12 A Yes.

13 Q And can you explain to the ladies and gentlemen of the
14 jury what a cloned Smart Card is.

15 A Yes. A cloned Smart Card is -- referred earlier where
16 you have -- where you have two forms of piracy, where you
17 might have a freeware piracy or a piracy where it's a group
18 that has a designated code and it's unique. A lot of times
19 within freeware piracy, they will take a clone of a hacked
20 card and use that over and over again and use it in the
21 freeware context, but also, certain dealers will do that
22 same thing where they're -- if I'm a subscriber -- I'm a
23 customer of a pirate dealer, I'm going to come to you. I'm
24 going to get that Smart Card that's going to be programmed,
25 and then I'm going to walk out the door. But the next

1 person who comes in the door is getting his Smart Card
2 programmed with the same cloned image of the hacked card of
3 that original source card. And then when I walk out as a
4 second customer, I don't know any different from it, but I'm
5 just -- I have a clone of what every other person that's
6 walking in that door gets.

7 Q So those cloned Smart Cards would have an identical
8 code as the original pirate card that was used to clone
9 them; is that correct?

10 A Yes.

11 Q Now, Mr. Gee, you looked yesterday, briefly, at
12 Exhibit 206. I would like to focus your attention back on
13 that document.

14 Do you recall looking at this exhibit with Mr. Stone
15 yesterday afternoon?

16 A Yes.

17 Q And what did you understand this language at the bottom
18 to be, "There will be no more boxes anymore. There will be
19 no more fighting amongst us. Learn from this and prosper.
20 This will be posted to all news groups around the world"?

21 THE COURT: Well, remind us of the heading,
22 Counsel, so that the jury has two ways of referring back to
23 various documents. In other words, the content, but the
24 heading.

25 MR. HAGAN: The -- the e-mail heading?

1 THE COURT: Yes.

2 MR. HAGAN: Okay.

3 BY MR. HAGAN:

4 Q Mr. Gee, looking at the -- at the e-mail heading from
5 Exhibit 206, the one that starts "from dr7," what -- can you
6 read that into the record and explain who that is based on
7 your investigation.

8 A Yes. It's an e-mail from Renee -- that is received
9 from Renee Coltharp for evidence here, but the e-mail is
10 from Peter Kuykendall of NagraStar that was sent Friday,
11 January 9th, 2004, 11:13 a.m. It was to Renee Coltharp and
12 myself, Gee, JJ, and the subject was "dr7 info you
13 requested."

14 Q And if you look down, Ms. -- Ms. Coltharp -- or I'm
15 sorry, Mr. Kuykendall is forwarding information. If you'll
16 look down about halfway, there is another entry that says
17 "from: dr7_al"; do you see that?

18 A Yes, I see -- "from: dr7_al@my-deja.com for
19 dr7_al@my-deja.com."

20 Q And did your investigation conclude that Mr. Menard was
21 using the internet alias "dr7"?

22 A Yes.

23 Q And did your investigation conclude that anyone other
24 than Mr. Menard was using the alias "dr7" to operate the dr7
25 website?

1 A No.

2 Q Now, the -- what is the subject of that e-mail?

3 THE COURT: Does that mean all of the e-mails are
4 from dr7?

5 MR. HAGAN: Yes, your Honor.

6 THE COURT: Okay.

7 THE WITNESS: The subject is not from an e-mail,
8 but from a news group. The news group is
9 rac.video.satellite.dbs, but the subject is "The West E3M
10 code."

11 BY MR. HAGAN:

12 Q And remind us again, what was that West E3M code?

13 A The West E3M code was the hacked cards that were
14 distributed through Al Menard in his distribution group.

15 THE COURT: We refer to that as the ROM 3; is that
16 correct, Counsel?

17 MR. HAGAN: It was used on the ROM 3 cards, and I
18 can clear that up with the witness.

19 BY MR. HAGAN:

20 Q Mr. Gee, did your investigation conclude that this West
21 E3M code, this pirate code, was used on any particular ROM
22 version of EchoStar cards?

23 A The ROM 3 code? The ROM 3 Smart Card by NagraVision.

24 Q Now, Mr. Gee, looking back briefly at Exhibit 1510, do
25 you still have that in front of you?

1 A Yes, I do.

2 Q There is an entry on there that says or that indicates
3 that the card was deactivated in 1999. What does it mean
4 for a card, an EchoStar Smart Card, to be deactivated?

5 A I give the -- I'm a paying subscriber. I've been
6 receiving DISH Network programming for a couple years; I
7 move. Where I go to, I want to have cable. I disconnect my
8 account. I stop paying, and I no longer receive bills from
9 DISH Network. I end my relationship with DISH Network.

10 Q Mr. Gee, based on your experience in investigating
11 piracy, is there a pretty significant market for EchoStar
12 Smart Cards that are out in the field?

13 A Yeah, as a person that has deactivated the -- my
14 subscription with DISH Network, I might not send my set-top
15 box back. I might move, forget about it. I'm thinking
16 about other things. But then when I get to the location
17 where I'm going to, I might have that, and I realize I don't
18 want it anymore. So I have a garage sale, and I put it out,
19 then somebody comes and buys that. That person would take
20 that same Smart Card and receiver, take it home, call up
21 DISH Network and activate that account, and then have a
22 second account with it.

23 Another thing that somebody would do is they might take
24 that receiver that I've been selling in my garage -- at my
25 garage sale, take it and want to have it programmed by

1 somebody, take it to one of the dealers that I've provided
2 to you, where I have a dish, I have -- I need a receiver for
3 it, I need a Smart Card. This is a way for me to obtain
4 this.

5 Garage sale is an example. People sell these now
6 currently on the internet. At the time, you could find them
7 in a bargain finder newspaper. They were available all the
8 time. If you -- if you looked for it, you can find an
9 available DISH Network Smart Card or a receiver.

10 Q And for EchoStar subscribers that were not using the
11 least --

12 A Excuse me.

13 Q Sure.

14 For EchoStar subscribers who were not using the leased
15 box and Smart Card program, in your experience, do those
16 individuals typically sell their box and receiver after they
17 deactivate?

18 A Yes.

19 Q So there are a number of these deactivated cards
20 floating around in the piracy community at any given time,
21 correct?

22 A Thousands.

23 Q And was -- based on your investigation, was Dawn
24 Branton or other individuals in the United States and Canada
25 involved in distributing these deactivated cards, selling

1 them to pirates wanting to reprogram them?

2 A I am not aware of Dawn Branton doing that, but I am
3 aware of people that Dawn Branton was associated with of
4 doing that.

5 Q And who are those individuals?

6 A Primarily David Fuss.

7 THE COURT: I'm sorry, primarily David who?

8 THE WITNESS: David Fuss.

9 THE COURT: Spell the last name.

10 THE WITNESS: F-u-s-s.

11 THE COURT: Okay.

12 BY MR. HAGAN:

13 Q And have you conducted an investigation into Mr. Fuss?

14 A Yes, I have.

15 Q What was the result of that investigation?

16 A Two weeks ago, NagraStar, EchoStar and Bell ExpressVu
17 conducted an Anton Pillar (phonetic) on David Fuss, his
18 operation in Toronto, Canada.

19 Q Now --

20 A So we -- we have sued him civilly.

21 Q Mr. Gee, did you ever become aware that Christopher
22 Tarnovsky was soliciting people to get him hundreds of blank
23 or deactivated EchoStar Smart Cards?

24 A Yes.

25 Q And why is that?

1 MR. STONE: Objection. This calls for hearsay,
2 and lack of foundation, your Honor.

3 THE COURT: Overruled.

4 THE WITNESS: When a coder is working on a Smart
5 Card or working on anything, they kill them. They make them
6 inoperable. They damage them. They do something so they
7 are not working properly, so the more that they have to work
8 with, the more success they are going to have, more success
9 they are going to have in getting into -- hacking the Smart
10 Card.

11 BY MR. HAGAN:

12 Q Because the device being used by Mr. Menard would only
13 work if he had Smart Cards to reprogram, correct?

14 A My understanding was that that device was used to
15 program Smart Cards.

16 Q Now, Mr. Gee, did -- did Mr. Saggiori provide you with
17 any information or evidence that Christopher Tarnovsky was
18 soliciting blank or deactivated EchoStar Smart Cards?

19 A Yes.

20 Q And how about Mr. Ereiser, he also provides you with
21 information and evidence linking Chris Tarnovsky to the
22 solicitation of these blank EchoStar Smart Cards or
23 deactivated EchoStar Smart Cards?

24 A I -- I do not recall that discussion with him.

25 Q If Mr. Ereiser testified that Christopher Tarnovsky had

1 e-mailed him asking for hundreds of these cards, you have no
2 reason to -- to doubt that testimony?

3 MR. STONE: Your Honor, that's an improper
4 question. It calls for speculation.

5 THE COURT: That's sustained.

6 You'll recall Mr. Ereiser's testimony on that.

7 BY MR. HAGAN:

8 Q Mr. Gee, did there come a point in your investigation
9 where you attempted to debrief and interview Allen Menard?

10 A Yes.

11 Q Did there come a point in your investigation where you
12 concluded that Mr. Menard, after this lawsuit was filed, was
13 hired by the defendants?

14 A Yes.

15 Q Did there come a point in your investigation where you
16 determined that after this lawsuit was filed, Mr. Menard was
17 paid over -- or roughly \$400,000 by the defendants?

18 A Yes.

19 Q Was Mr. Menard willing to provide you with evidence
20 about his distribution of EchoStar Smart Cards or Chris
21 Tarnovsky acting as his coder?

22 A No.

23 Q Was Mr. Menard willing to verify for you the shipments
24 that were intercepted by government officials in San Marcos,
25 Texas where the cash was concealed inside those devices?

1 A No.

2 Q Now, finally, Mr. Gee, I want to look at Exhibit 1148,
3 which you discussed yesterday. This is one of the Pinkerton
4 investigation reports?

5 A Yes.

6 Q And this is the one involving Satan's Playhouse?

7 A Yes.

8 Q And if you'll look at the back page of -- of that
9 report, Exhibit 1148.

10 Your Honor, this has already been admitted into
11 evidence.

12 THE COURT: Thank you.

13 BY MR. HAGAN:

14 Q Under the remarks section, can you read that into the
15 record. It starts with "The P4 access cards."

16 A Sorry, I think I've got the wrong page.

17 I'm sorry, you'd like me to read the remarks?

18 Q Just that first -- that first -- those first two lines.

19 A "The P4 access cards purchased from Satan's Playhouse
20 have been couriered to your office and evidence labeled
21 accordingly for chain of custody purposes."

22 Q So there wasn't anything secretive about acquiring this
23 evidence, was there, Mr. Gee?

24 A No.

25 Q And that evidence is maintained in an evidence locker

1 at NagraStar; is that correct?

2 A Yes.

3 Q You've never attempted in any way to reverse engineer
4 those P4 cards or hack those P4 cards?

5 A No.

6 Q Now, Mr. Gee, did -- we talked yesterday about
7 Giles Kaehlin and Canal+, and I want to go back to that for
8 just a moment.

9 First of all, who is Giles Kaehlin?

10 A Giles Kaehlin was the head of investigations for
11 Canal+.

12 Q He did work similar to what you do?

13 A Yes.

14 Q And did you understand that at some point Giles Kaehlin
15 and Canal+ investigated the defendants?

16 A Yes.

17 Q And investigated their relationship with Chris
18 Tarnovsky and Allen Menard?

19 A Yes.

20 Q And what was the reason that they were conducting that
21 investigation? In other words, what happened for them to
22 start that investigation?

23 MR. STONE: Objection. Hearsay, your Honor.
24 Irrelevant.

25 THE COURT: Overruled.

1 This is his understanding. It's not for the truth
2 of the matter asserted, but it's why he acted or his
3 activities regarding this investigation. You've already
4 heard about these allegations regarding Canal+, the lawsuit
5 with NDS.

6 THE WITNESS: My understanding was that NDS had
7 hacked Canal+'s technology and had released it out for
8 others to receive.

9 BY MR. HAGAN:

10 Q And that code was posted on Mr. Menard's website,
11 www.dr7.com; is that correct?

12 A Yes.

13 Q And Mr. Menard testified that he got that code from a,
14 quote, "anonymous donor." Did your investigation marshal
15 any evidence or information that you believe that anonymous
16 donor to be Chris Tarnovsky?

17 A With the relationship that Mr. Tarnovsky had with NDS
18 and the allegations that Canal+ had, I did believe that
19 Tarnovsky was the source of that to Mr. Menard.

20 Q Now, Mr. Gee, you are familiar with files having a date
21 and time stamp, correct?

22 A Yes.

23 Q And can -- can you tell the jury what that means for a
24 file to be associated with a particular date and time stamp.

25 A My understanding is that when you make something on

1 a -- a computer, it indicates when you made it off -- based
2 off of the computer time.

3 Q And we heard Mr. Mordinson testify that his
4 understanding that the file posted on Menard's website --

5 MR. STONE: I object --

6 (Interruption in the proceedings.)

7 MR. STONE: I object to the rehash of testimony.

8 THE COURT: Overruled. It's foundational.

9 Counsel?

10 BY MR. HAGAN:

11 Q We heard Mr. Mordinson, the defendants' engineer,
12 testify that the file Canal+ code posted on Menard's website
13 had the same date and time stamp as the file that the
14 defendants extracted from the Canal+ Smart Card in their
15 Haifa facility. Can you tell the ladies and gentlemen of
16 the jury what that means for two files to have the same date
17 and time stamp?

18 A My understanding of that is that that's very rare. It
19 is almost impossible for that to happen.

20 Q Beyond coincidental?

21 A Yes.

22 Q Now, Mr. Gee, finally, I want to talk about the effects
23 of piracy. A large part of your job is investigating the
24 problem of piracy and the theft of EchoStar's programming.
25 Are you familiar, generally, with -- with what those effects

1 are to the company, both your company, NagraStar and
2 EchoStar?

3 A Yes, I am.

4 Q And can you just generally describe for the jury what
5 those effects are on the companies.

6 A Certainly. Anytime there's piracy, you -- you lose a
7 customer, you lose revenue, you lose profit. But what also
8 is lost is maybe a possibility of a contract with a
9 provider. Maybe HBO doesn't want to give you -- provide you
10 for -- at \$50 for HBO programming, they are going to charge
11 you \$60 for it. And what that -- so it could cost the
12 company either not carrying HBO for the customer or
13 requiring customers not to do that. So that's a way of
14 deflecting them from wanting to purchase their content from
15 DISH Network. The --

16 Q And -- and do these devastating effects of piracy and
17 the theft of EchoStar's signal, do they have any negative
18 impact on the American consumers and EchoStar's legitimate
19 paying subscribers?

20 A Yes, it does, and that would be in regards to higher
21 bills, higher cost, the -- again, maybe some unavailability
22 of some content.

23 Q Now, Mr. Gee, I understand that through your
24 investigation and the -- and the years that you dedicated to
25 that investigation, there was a number of different people

1 that you spoke to and a number of different evidence that
2 you looked at, a number of different witnesses that you
3 debriefed and documents that you looked at. Based on the
4 totality of that evidence and those witness statements, were
5 you able to reach a conclusion in your mind as to who was
6 responsible for the distribution of these West Group dr7 E3M
7 cards?

8 A Yes, and that was Al Menard and Chris Tarnovsky.

9 Q And were you able to reach a conclusion as to who was
10 responsible for the publication of a hack recipe for
11 EchoStar system and the E3M code to create these pirate
12 cards on Mr. Menard's website?

13 A Through my investigation, I believe that is
14 Chris Tarnovsky.

15 Q Is there any doubt in your mind?

16 A No.

17 MR. HAGAN: Thank you, Mr. Gee.

18 Pass the witness.

19 THE COURT: Redirect by Mr. Stone on behalf of
20 NDS.

21 REDIRECT EXAMINATION

22 BY MR. STONE:

23 Q Mr. Gee, when you testified about the devastating
24 effects of piracy, were you aware in the year following
25 these postings EchoStar's revenues went up by \$1.25 billion?

1 A I don't recall that, no.

2 Q Were you aware that was the single largest increase in
3 revenues, both on an absolute basis and percentage basis, in
4 the history of EchoStar?

5 A No, I'm not.

6 Q Are you aware not a single programming provider has
7 ever refused to contract with EchoStar because of any
8 alleged piracy?

9 A No.

10 Q Sir, you summarized a bunch of conversations that you
11 supposedly had with folks, and you'd agree that we pretty
12 much have to take your word on what was said at this point,
13 right?

14 A No, I've provided supplemental reporting on my notes
15 from that.

16 Q Your notes, your notes?

17 A My notes, yes.

18 Q Yeah.

19 Let's go back to Exhibit 1148 if we could, please, sir.

20 A I have it here.

21 Q Satan's Playhouse?

22 A Yes, I have it.

23 Q Now, go to the page number 5.

24 A I'm there.

25 Q You weren't trying to suggest to the jury that you were

1 buying unmodified P4 cards as part of evidence, were you,
2 sir?

3 A I was purchasing the P4 cards, and then they would be
4 brought in. Anything we purchased from a pirate I would
5 consider evidence to whether it's from somebody in Canada,
6 somebody in Asia.

7 Q Well, you weren't tasked with investigating P4 piracy,
8 were you, sir?

9 A No, I was not.

10 Q And didn't you testify yesterday you obtained these
11 cards just for curiosity?

12 A Yes, it was being advertised as a hack, and I was -- as
13 I stated, we wanted to see if that was true.

14 Q Have those P4 cards been used as evidence in any legal
15 proceeding?

16 A No.

17 Q And so you traveled thousands of miles or sent a
18 private investigator thousands of miles away to go to
19 Satan's Playhouse to buy P4 cards so you could keep them in
20 an evidence locker for four years?

21 A No. I sent an investigation company that was located
22 in Toronto to do that work, but yes, I did send somebody to
23 go there.

24 Q And they didn't buy any EchoStar piracy devices or
25 cards while they were up there; isn't that true?

1 A Not on this particular task, but previously they had.

2 Q And did you bring the P4 cards with you here today?

3 A No.

4 Q And you had those since 2002, right?

5 A Yes.

6 Q Are you aware that NagraVision in Switzerland has hired
7 many of the same consultants and employees who worked on the
8 P4 card with NDS?

9 A Yes, I am.

10 Q And that's just a coincidence, right?

11 A I don't know if it's coincidence or their skill set.

12 Q Well, are they working on the same technology that's
13 incorporated in the P4 card, sir?

14 A I don't know what they're work -- the -- I don't know
15 the premise of the technology.

16 Q Well, you know that the P4 cards have an ASIC in them,
17 right, application specific integrated circuit?

18 A Yes.

19 Q Isn't that the new technology the folks in Switzerland
20 are currently developing?

21 A I am not fully aware of all the -- we are developing
22 new technology, but the details of that I do not know.

23 Q So I want to go back over this reliable evidence that
24 you claim you relied upon in making your conclusions here to
25 the jury.

1 Now, for over four years, you claimed Chris Tarnovsky
2 was xbr21, right?

3 A Yes, I did.

4 Q And you thought that was so reliable that you swore to
5 that under penalty of perjury in June of 2000, right?

6 A Yes, I did.

7 Q And so you were saying under oath that was reliable
8 information, Tarnovsky is xbr21, right?

9 A As I stated before, Tarnovsky used multiple, multiple,
10 multiple aliases, and my belief, that xbr21 was one of
11 those.

12 Q Not just your belief, you stated it under oath that it
13 was a reliable fact, didn't you, sir?

14 A Yes, I did.

15 Q All right. And let's look at Exhibit 1296, please.
16 It's in evidence, and I'm looking at page 4.

17 At lines 25 through 26, the source of this reliable
18 information that Chris Tarnovsky was xbr21 was, in part,
19 Jan Saggiori, Graham James, Ron Ereiser and Anthony Dionisi,
20 correct?

21 A Yes.

22 Q These same people who gave you this supposedly reliable
23 evidence that Mr. Tarnovsky was involved with Al Menard in
24 some distribution network, right?

25 A Yes, but they did not provide me any information about

1 xbr21.

2 Q Who did?

3 A That was based on our assumption with him.

4 Q So you're saying you put under oath as a fact a mere
5 assumption?

6 A Yes.

7 Q And so your testimony here today could, likewise, be
8 assumption that you are taking under oath?

9 A No.

10 Q Well, when -- let's back up a second. When you
11 investigated Mr. Maldonado within months of these postings,
12 you asked him if he knew who Nipper was, right?

13 A Yes, I did.

14 Q And you didn't ask him if he knew Chris Tarnovsky or
15 Al Menard; isn't that right?

16 A I don't believe I did, no.

17 Q And you didn't ask him, is Chris Tarnovsky Nipper, did
18 you, sir?

19 A No, I did not.

20 Q And you weren't paying Mr. Maldonado anything at the
21 time, were you, sir?

22 A No.

23 Q And would you agree that if somebody went to prison as
24 a result of these postings and provided information, that
25 would be pretty credible information?

1 A Mr. Maldonado did not go to prison for the posting of
2 the Nipper post.

3 Q Do you know if anyone did?

4 A Well, Mr. Tarnovsky is not in prison.

5 Q Do you know if anyone went to prison for threatening
6 Nipper?

7 A No.

8 Q Now, you didn't really say when you talked to these
9 folks that you identified that supposedly gave you the
10 reliable evidence. When you spoke to Mr. Ereiser, he was
11 already a paid consultant, correct?

12 A Yes, he was.

13 Q And when you spoke to Mr. James, he was a paid
14 consultant of NagraStar, correct?

15 A Not when I first spoke to him, no.

16 Q When did he become a paid consultant, shortly
17 thereafter?

18 A Yes.

19 Q And when you spoke to Mr. Love, he wasn't a consultant
20 or informant, was he?

21 A I'm sorry, did you say Dean Love?

22 Q Dean Love.

23 A Yes.

24 Q And when you spoke to Mr. Harmon, you'd been paying his
25 attorneys' fees, correct?

1 A Yes.

2 Q And Mr. Saggiori, when you spoke to him, you were
3 paying him money, right?

4 A Yes.

5 Q And when did these conversations take place? Let's
6 take Mr. Love.

7 A I believe Mr. Love was 2002 to 2004.

8 Q So some of those conversations occurred after the
9 lawsuit was filed, right?

10 A Yes.

11 Q And what about Mr. Ereiser?

12 A Conversations with Mr. Ereiser began in 2001.

13 Q And what about with respect to Mr. James?

14 A I believe Mr. James was 2006.

15 Q And that was after the lawsuit filed?

16 A Yes.

17 Q And you began paying him money thereafter?

18 A Yes.

19 Q And Mr. Saggiori, he was already being paid at the time
20 you spoke to him, right?

21 A No, I don't believe so.

22 Q When did you speak to Mr. Saggiori?

23 A I believe 2002, 2003.

24 Q Wasn't Mr. Saggiori being paid in 2003?

25 A I don't recall. I don't know.

1 Q So these people get paid money. They then say
2 Tarnovsky is involved. You then rely upon that to say
3 Tarnovsky is involved in the lawsuit; do I have the circle
4 about right?

5 A No, you do not. Speak to them, they state that they
6 have information that Tarnovsky was responsible for the
7 code, and we developed a relationship after that.

8 Q Mr. Dionisi was being paid, correct?

9 A Yes, he was.

10 Q And he wouldn't provide those statements until you paid
11 him; isn't that right?

12 A He had spoken to us -- that is correct.

13 Q And how many of those people you talked to had grudges
14 against NDS; Mr. Ereiser for sure, right?

15 A Yes.

16 Q Dean Love for sure, because they just raided him,
17 right?

18 A Yes.

19 Q Jan Saggiori was no fan of Mr. Tarnovsky or NDS
20 anymore, right?

21 A No.

22 Q Mr. James had a grudge, didn't he?

23 A Yes.

24 Q Now, did you get any card that you claim was
25 reprogrammed by some device that you claim Mr. Tarnovsky was

1 responsible for; do you have that card?

2 A I do not.

3 Q You don't have any device either, do you?

4 A No.

5 Q So this vast distribution network, you don't have a
6 single Smart Card that you can show to this jury and say was
7 supposedly reprogrammed by some device that Mr. Tarnovsky
8 had involvement in, correct?

9 A Correct.

10 Q You don't even have a report of such a device; isn't
11 that right?

12 A No. Within my notes and the -- of meetings speaking
13 about the Stinger device --

14 Q Do you have a Smart Card analysis report like you have
15 for other pirate organization that you have investigated?

16 A No.

17 Q And you don't have a single analysis report of any
18 device that you claim was manufactured or created by
19 Chris Tarnovsky; isn't that right?

20 A That is correct.

21 Q But you had one for the black box that came from the
22 Barrie Group that Mr. Maldonado was dealing with, correct?

23 A We were able to get a black box, yes.

24 Q And you heard from Switzerland that the black box was
25 connected to the postings, right?

1 A (No audible response.)

2 Q We talked about that yesterday.

3 A It wasn't the report that I -- yes.

4 Q And so we could probably put an end to all this
5 speculation if we just had the black box. Do we still have
6 it?

7 A Does Mr. Tarnovsky have it, I don't know; I don't.

8 Q Mr. Tarnovsky never had it. You folks had it. Do you
9 still have it so we can put an end to all this speculation?
10 Let's just open up the black box, and let's look at the
11 code; do you have it?

12 A No.

13 Q Where is it?

14 A I do not know.

15 Q Well, wouldn't that be critical evidence, a black box
16 that the folks in Switzerland says are connected to the
17 postings that is the reason we're all here?

18 A Yes.

19 Q And it's just gone?

20 A I don't know the status of it.

21 Q But we have notes of conversations of paid consultants
22 with grudges against NDS, that's our evidence; is that your
23 testimony?

24 A No, that is not all my testimony.

25 Q The same folks who said that Mr. Tarnovsky was xbr21?

1 A As I stated, we believe that Tarnovsky was xbr21 due to
2 the multiple aliases that he was using.

3 Q Now, sir, you testified about a video and a meeting of
4 Mr. Tarnovsky with Mr. Menard in Toronto; do you recall
5 that?

6 A Yes, I do.

7 Q And Mr. Frost; do you recall that?

8 A Yes.

9 Q And did you know that that was part of an undercover
10 operation?

11 A No.

12 Q Do you know that after that meeting, that arrests were
13 made of certain of the attendees of the Toronto summit?

14 A No.

15 Q Did you know that Mr. Frost was arrested as a result
16 and convicted?

17 A I know that Mr. Frost was charged by, I believe, the
18 customs.

19 Q And it wasn't your company, it was NDS and DirecTV
20 who -- who was involved in that prosecution; isn't that
21 right?

22 A It was DirecTV.

23 Q And NDS --

24 A And so was Mr. Rissler, who had directed me to
25 Mr. Frost.

1 Q And whose customer, again, was DirecTV?

2 A NDS.

3 Q And how much money has your company paid to Mr. Love;
4 do you know?

5 A I don't know what his legal fees have been, several
6 thousand.

7 Q Now, you made a couple statements about Mr. Menard's
8 website and it was just Al Menard. The truth is that two of
9 your consultants, Mr. Perlman and Mr. Scullion were running
10 that website in December of 2000; isn't that right?

11 A Yes.

12 Q And so when you said no one else was operating the dr7
13 website, that was just a mistake to the jury, correct?

14 A I stated previously that as -- there were -- as an
15 administrator, Mr. Perlman and Mr. Scullion were
16 administrators.

17 Q And you talked a little bit about Dawn Branton. Did
18 you ever raid Dawn Branton's?

19 A No, we did not.

20 Q Do you know why Ms. Branton was receiving so much mail
21 from your company through M & M freight forwarding?

22 A No.

23 Q And it's true, sir, you never conducted any
24 investigation to try to trace that December 24th posting
25 through Dawn Branton?

1 A No, I did not.

2 Q And I know you testified about people can fake things
3 and do things, but you didn't take the very basic step of
4 going to Ms. Branton and conducting an investigation as a
5 result of that posting; is that a fair statement?

6 A I did not do that.

7 Q And speaking of modifying things, are you aware that
8 Mr. Mordinson also testified that date and time stamps can
9 be modified quite easily?

10 A I was not aware of that.

11 Q And you don't have technical expertise in that field;
12 is that a fair statement?

13 A That's correct.

14 Q You don't purport to be an expert on that in front of
15 this jury, do you?

16 A No.

17 Q Now, you also testified that your investigative load
18 has increased to 500 active cases?

19 A Yes.

20 Q And I think you said in 2001, you started out with one,
21 and you had, I don't know, 40, 50 at the end of the year,
22 something like that?

23 A I believe that was -- sounds right.

24 Q Sound about right?

25 A (No audible response.)

1 Q Now, you've got 500?

2 A Yes.

3 Q And isn't what happened that there was an explosion in
4 what's called free-to-air piracy in the 2003 time frame?

5 A Yes.

6 Q And you understand we're not being blamed for
7 free-to-air piracy in this case; you understand that, right?

8 A I do understand that.

9 Q So that isn't one of the accusations flying around this
10 courtroom. Just so we are clear, nobody is claiming NDS has
11 anything to do with free-to-air piracy, right?

12 A Correct.

13 Q And nobody is claiming that NDS has anything to do with
14 the fact that the cards that were used in the card swap were
15 immediately hacked; you are aware of that, aren't you?

16 A Yes.

17 Q And what is free-to-air piracy?

18 A Free-to-air piracy is -- free-to-air, there is
19 programming that is programming that is provided via
20 satellite that you pay for, which is DISH Network, DirectTV.
21 There is also some content that is free, freely broadcast
22 off the satellite, same satellites, maybe not the ones for
23 DirectTV or DISH Network, but there's satellites out there
24 broadcasting programming that somebody doesn't have to pay
25 for.

1 There is a business out there where you have -- you
2 sell a free-to-air receiver, and you can receive that
3 content as it is sent down freely.

4 Q And it's a huge problem, isn't it?

5 A The piracy of free-to-air is that they have developed a
6 hack to take a free-to-air receiver in order to -- instead
7 of receiving the free programming, they receive the
8 scrambled programming from DISH Network. So they are
9 stealing -- using those free-to-air boxes to steal from DISH
10 Network currently, now.

11 Q And it's a huge problem, isn't it?

12 A Yes.

13 Q It's the single biggest piracy problem EchoStar has
14 ever faced, isn't it?

15 A I wouldn't word it that way, no. It's a -- it's a
16 problem now with free-to-air. We are doing litigation on
17 the people who are behind it. We are conducting
18 countermeasures to stop it. But as the biggest ever, I
19 could not say that, no.

20 Q And to be clear, it began before the card swap, right?

21 A Yes, it did.

22 Q Did you see any memos or e-mails that explain the
23 reason for the card swap in 2004, four years after
24 December 2000?

25 A I don't recall seeing any.

1 Q And hasn't Mr. Norris assisted in investigating and
2 prosecuting folks engaged in free-to-air piracy of the
3 EchoStar system?

4 A Not that I'm aware of.

5 Q Didn't you congratulate him on his efforts against
6 Dr. Randy Long in North Carolina?

7 A No, I did not.

8 Q Are you aware of Mr. Norris's efforts to stop Dreambox
9 distribution by Mr. Long in North Carolina?

10 A I am aware of the Long investigation that was conducted
11 by the FBI in North Carolina. I have know details on the
12 work that NDS had done with that and have not spoken to
13 Mr. Norris about that.

14 Q Well, did you speak to the prosectors and find out what
15 assistance Mr. Norris had provided in that prosecution?

16 A I have not spoken to the prosector, but I've spoken to
17 the FBI agent. This Dr. Long was -- from -- I know from
18 what he was doing against us, but I believe he was also
19 doing work against NDS on another system that they have, but
20 I don't know the details of that.

21 Q Well, isn't it true your company did not initiate the
22 investigation of Dr. Randy Long?

23 A We did not.

24 Q And wasn't Mr. Long a major distributor of the Dreambox
25 free-to-air devices in the United States?

1 A I could not speak to the volume that he was
2 distributing the Dreambox.

3 Q Did you talk to Special Agent Doug Rentz, R-e-n-t-z, of
4 the FBI about Mr. Norris's assistance in that matter?

5 A Yes, I have.

6 Q And what did Special Agent Doug Rentz tell you about
7 Mr. Norris's assistance in the prosecution of Mr. Long?

8 A He didn't provide the details on the -- on it, but he
9 stated that Mr. Norris was the person who had -- who was
10 driving the investigation against Mr. Long.

11 Q And you never thanked Mr. Norris for those efforts?

12 A No, I have not.

13 Q Do you know a gentleman named Mr. Mullen, Marty Mullen?

14 A Yes, I do.

15 Q He was another consultant to your company, correct?

16 A He wasn't a consultant. We were speaking to him to
17 provide his testimony in this litigation.

18 Q And are you aware that he was arrested in Florida in
19 2004?

20 A Yes, he was arrested in Florida for piracy against
21 DirecTV.

22 Q And hadn't he been sued by your sister company, Bell
23 ExpressVu, in Canada for 100 million for piracy?

24 A I don't recall the figure that he was sued for, but he
25 was sued in a -- he was at -- Bell ExpressVu was contacted

1 by NDS to see if they would join in in the litigation with
2 them, because Mr. Mullen had programmed some Bell ExpressVu
3 receivers.

4 Q And do you recall the name of the prosector who pursued
5 Mr. Mullen?

6 A In the United States or Canada under the Bell
7 ExpressVu?

8 Q United States.

9 A Assistant U.S. Attorney Peluso.

10 Q And during the course of that prosecution, did you ever
11 try to discourage Mr. Peluso from pursuing Mr. Mullen for
12 piracy?

13 A I wouldn't use the word "discourage." I spoke with
14 Mr. Peluso to share with him that Mr. Mullen was providing
15 us assistance in testimony in our investigation that was
16 being run out of the AUSA's office on the west coast in
17 San Diego, and that although Mr. Mullen was involved with
18 DirecTV piracy, that the information that Mr. Mullen was
19 providing to us was stating that he felt that the hacks that
20 he was providing to his customers were coming from NDS.

21 Q Sir, did --

22 A And I was expressing that to Mr. Peluso for him in
23 consideration for Mr. Mullen.

24 Q And then didn't Mr. Mullen plead guilty?

25 A Mr. Mullen did plead guilty to piracy against the

1 DirecTV system.

2 Q And did your company continue to pay Mr. Mullen's
3 attorneys' fee after he pled guilty?

4 A We paid Mr. Mullen's attorney fees associated with any
5 testimony that he was providing for us in this litigation.

6 Q Well, didn't you pay for his attorney, Darlene Barr
7 (phonetic), to attend his deposition?

8 A That would be in regards to this trial.

9 Q And you attended the sentencing proceeding for
10 Mr. Mullen, correct?

11 A Yes, I did.

12 Q And you weren't there for the prosecution, were you?

13 A No, I was not.

14 Q And you were there several days in Florida,
15 Mr. Mullen's sentencing?

16 A Yes, I was.

17 Q And in fact, you were going to be a witness on
18 Mr. Mullen's behalf, correct?

19 A It was considered with it, but I was not -- on his
20 behalf of his support for us and what he was telling us, but
21 not against his activities that he had done against DirecTV.

22 Q Now, let's go back to the point in time when you spoke
23 to -- to Mr. Maldonado; do you recall that?

24 A Yes.

25 Q And it's your testimony Mr. Maldonado did not offer any

1 further cooperation in tracking down Nipper after your
2 interview with him on March 22nd, 2001?

3 A I do not recall that he had provided that to us.

4 Q And you didn't follow up with Mr. Maldonado and seek
5 further information from him, correct?

6 A No.

7 Q And you didn't follow up with his business partner,
8 Mr. St. James; isn't that correct?

9 A That is correct; I did not.

10 Q And you didn't track down Jim Waters in Barrie, Ontario
11 through the address and cell phone number and internet
12 nicknames you had; isn't that correct?

13 A That is correct.

14 Q And if I recall correctly, the ECM and patch for
15 dealing with the postings that occurred in December 2000
16 came down in February of 2001; does that sound about right?

17 A Yes.

18 Q Did you ever receive any information about the success
19 of that patch and electronic countermeasure?

20 A It was successful in knocking out the pirates for a
21 little while, yes.

22 Q Well, for more than a little while, wasn't it?

23 A It depends on how you put "little while," a range of --
24 range of time. It was awhile. But they were successful for
25 a while, but the pirates were able to get back into it.

1 Q Well, let's look at Exhibit 1186, which is in evidence,
2 if we could, please.

3 This is an e-mail from Joel Conus -- bless you -- from
4 Joel Conus dated March 2nd, 2001 to various people,
5 including yourself, correct?

6 A Yes.

7 Q Why does your e-mail address say "jjgee@echostar.com"?

8 A When I first came into the company, there was a mess-up
9 on my -- I had both EchoStar and NagraStar accounts.

10 Q And Mr. Conus's job for NagraVision was to monitor the
11 internet for the status of piracy, amongst other things,
12 correct?

13 A Yes.

14 Q And you would receive reports from him in your capacity
15 as an investigator for NagraStar, correct?

16 A Yes.

17 Q And NagraStar was the company that would buy the Smart
18 Cards from NagraVision or NagraCard, correct?

19 A Yes.

20 Q In other words, you were the customer of the folks in
21 Switzerland who were providing these reports?

22 A In that category, yes.

23 Q And you would expect that the people in Switzerland
24 would provide accurate reports to its customer in the United
25 States, right?

1 A As accurate as the information on the internet that
2 they are monitoring is knowledgeable to it. Sometimes it's
3 accurate, sometimes it's not accurate.

4 Q So are you telling us stuff on the internet isn't
5 always accurate?

6 A Yes.

7 Q In fact, a lot of times it's not accurate; is that what
8 you are saying?

9 A Wikipedia is a good example of that.

10 Q But who would have the best knowledge about the status
11 of the security of the ROM 3 card?

12 A The people that are monitoring the internet for the
13 piracy chatter.

14 Q Okay. Looking at the middle of this page where it
15 begins "Not much is happening on the forums now." It's the
16 first big paragraph.

17 A Okay.

18 Q Mr. Conus wrote "Not much is happening on the forums
19 now." You understand that to mean the piracy forums,
20 correct?

21 A Yes, I do.

22 MR. STONE: Could be a little bigger, there. It's
23 a little hard to read.

24 There we go.

25

1 BY MR. STONE:

2 Q It says "The hacking is stalling, it seems. The number
3 of hackers who still have non-updated cards is very
4 limited."

5 Do you see that?

6 A I do see that.

7 Q Now, when it says not updated, that means cards that
8 haven't taken the patch or been killed by the electronic
9 countermeasure, right?

10 A I believe that's what he was stating.

11 Q And then he goes on to say "Therefore, the blocker code
12 that has been published, cannot be widely used," right?

13 A Yes.

14 Q And you understand Mr. Conus to mean that for all the
15 cards that had been hit with the patch code and the
16 electronic countermeasure, that thereafter, blocker code
17 would be useless for those cards, right?

18 A Until they developed a new blocker to get around from
19 the ECM, because they'll monitor the ECM and the stream on
20 how it's responding. And then the coders that we discussed
21 previously would evaluate a workaround on it, and then try
22 and get it working as quickly as possible.

23 Q Well, actually, let's look down at the status as of
24 March 2nd, 2001 for DNASP-003.

25 Now, you understand that to refer to the ROM 3 version,

1 correct?

2 A Yes.

3 Q And what's the status?

4 A It states "secured VIP rights in some cards, cards in
5 blockers affected by the update."

6 Q All right. And those are the cards that he said were
7 very limited up above, right?

8 A I have a correction. If I can reread that, I missed a
9 word here. "Secured VIP rights in some cards. Cards in
10 blockers not affected by the update."

11 Q And those would be the very limited cards that he
12 referenced up above, correct?

13 A That is correct.

14 Q And what does it list for the status for ROM 2?

15 A It says "Compromised freeware available, many cards
16 dead."

17 Q And you understand in this lawsuit, once again, they
18 are not blaming NDS for the ROM 2 piracy, correct?

19 A That is my understanding.

20 Q And what does it show for the DNASP-010, which would be
21 the ROM 10 card as of March 2nd, 2001?

22 A "Not compromised."

23 Q And I'm not going to go through each of these reports
24 you got, but you would receive reports like this --

25 Bless you. Do you need a drink?

1 A Thank you.

2 Thank you.

3 Q You would receive reports like this on a routine basis
4 all the way up until the end of 2003, correct?

5 A Yes.

6 Q And isn't it true, sir, there's not a single report
7 from Mr. Conus where he shows on any basis of time that the
8 ROM 3 card was compromised or that the hole was open after
9 March of 2001?

10 A I don't know.

11 Q Is that something that would have stuck out in your
12 mind if something that was secured all of a sudden became
13 compromised again?

14 A The -- I -- the cards did come open again, and as
15 continuing part of the investigation, you mentioned the
16 49-50 cases that I had in 2001. That was part of that.
17 I -- I don't recall seeing something or not seeing something
18 on it, but I do --

19 Q Do you recall the -- were you receiving any report for
20 a period of more than a month listing the ROM 3 card as
21 compromised after March of 2001?

22 A I don't know.

23 Q If such a report existed, it would have come from
24 Mr. Conus?

25 A Not definitively. They would -- a group within

1 NagraVision sends a daily report every day to us, and it's
2 just given us little highlights on some of the discussion
3 chatter that's going on within the IRC channels in the
4 forums, so not specific for Mr. Conus, but would receive
5 something daily from somebody from Switzerland.

6 Q And you don't recall receiving any report that listed
7 the status of ROM 3 as compromised after March of 2001;
8 isn't that correct?

9 A I don't know.

10 Q Are there documents that would tell us the extent of
11 free-to-air piracy that began in 2003?

12 A Oh, what kind of documents?

13 Q Something like this, anything that would say
14 "free-to-air piracy exists, here's how much it's affecting
15 us," anything like that?

16 A Yes, there would be monitoring indicating that
17 free-to-air was being used in the use of piracy.

18 Q And would there be reports showing the extent of that
19 piracy?

20 A The extent of it, yes.

21 Q And how did the pirates hack the card swap cards; do
22 you know?

23 A Details of that, I don't know, but I -- we have -- the
24 technical or the -- we know who was behind the -- that hack,
25 and those people have been sued.

1 Q Now, one of your other reliable sources that you listed
2 was Mr. Harmon; do you recall that?

3 A Yes, I do.

4 Q Did it ever come to your attention that Mr. Harmon had
5 mental health problems?

6 A Yes, Mr. Harmon was committed to a mental health
7 facility in Alberta.

8 Q And did Mr. Harmon at one point tell you that he
9 thought Chris Tarnovsky was in the CIA?

10 A Yes, he did. I laughed, too.

11 Q Becoming part of a lawsuit, it's funny, I suppose.

12 A He -- he didn't say it was Tarnovsky, but he said
13 the -- he felt that the coder for Menard had connections to
14 the CIA.

15 MR. STONE: Thank you, sir.

16 No further questions.

17 THE COURT: Recross?

18 MR. HAGAN: Yes.

19 RE CROSS EXAMINATION

20 BY MR. HAGAN:

21 Q Mr. Gee, we looked, again, at Exhibit 1148, Satan's
22 Playhouse. And the evidence bag of cards that you got, the
23 P4 cards, has nothing to do with this lawsuit, right?

24 A No.

25 Q Now, you haven't provided those cards to DirecTV, but

1 have you engaged in efforts, joint investigative efforts,
2 with DirecTV in the past?

3 A Yes, we have.

4 Q Hasn't, in fact, NagraStar provided evidence and
5 information to DirecTV to help them prosecute pirates?

6 A Yes, I've -- actually, from a confidential informant
7 who had received code for a new high-definition set-top box
8 that had never -- hadn't even made it on the market, yet,
9 for DirecTV for the P4 system, was provided to a
10 confidential source of mine. And that code was given to
11 him, asking him to assist him in developing a hack for the
12 P4 card, and I had provided that -- all that communication,
13 all the support, all the software to DirecTV. DirecTV was
14 able to prosecute that person and put them in prison for the
15 efforts that they were trying to do through my confidential
16 source on hacking that P4 card.

17 Q In addition to providing evidence and assistance to
18 DirecTV, hasn't NagraStar and -- and yourself personally
19 also done joint investigations with DirecTV into piracy?

20 A Yes, we have.

21 Q And your phone line is always open. In fact, you take
22 calls routinely from individuals at DirecTV that provide
23 them with the assistance and evidence, correct?

24 A Yes, we have a good working relationship.

25 Q And you are aware, sir, at one time DirecTV was

1 considering switching to NagraVision, NagraStar's
2 conditional access technology; is that correct?

3 A That is correct.

4 Q And you are aware that they decided not to do that
5 after EchoStar's security system was hacked, the posts were
6 made on the internet, correct?

7 A That's my understanding, yes.

8 Q And is your understanding that those -- those first
9 posts were made in November of 1998; is that correct?

10 A Yes.

11 Q And that was when DirectTV was considering leaving NDS;
12 is that correct?

13 MR. STONE: I object --

14 (Interruption in the proceedings.)

15 MR. STONE: I object. There is no foundation. My
16 understanding is he didn't start until 2001.

17 THE COURT: No. Overruled. He didn't start until
18 2001, but obviously he's knowledgeable about the history
19 and -- once he became employed by EchoStar, NagraStar.

20 You may answer the question.

21 THE WITNESS: I'm sorry, can you repeat the
22 question, please?

23 BY MR. HAGAN:

24 Q November of -- of 1998, that's when DirectTV was
25 considering NagraVision's security system, correct?

1 A That is correct.

2 Q And based on your investigation and what you've learned
3 through the defendants' documents, November of 1998 is when
4 they created the written report on how to hack EchoStar's
5 security system, correct?

6 A That is my understanding.

7 Q Do you believe that's just a coincidence?

8 A No.

9 Q Now, Mr. Gee, you testified about these E3M cards and
10 then Mr. Frost and these other distributors up in Canada.
11 Did your investigation conclude that these cards were also
12 being sold and distributed in the United States?

13 A Yes.

14 Q And these E3M cards were being used --

15 THE COURT: Slower.

16 BY MR. HAGAN:

17 Q -- to circumvent EchoStar's security system here in the
18 United States?

19 A Yes.

20 Q And these E3M cards from the West Group were used to
21 steal EchoStar's encrypted copyright program?

22 A Yes.

23 Q And that was here in the United States?

24 A Yes.

25 Q I also talked again about the -- the Dawn Branton

1 issue. Now, that card, the card that we looked at in that
2 earlier exhibit --

3 What's that number?

4 Give me just a second.

5 A Of Exhibit 1510?

6 Q That card was in circulation for over a year before the
7 Nipper posting; is that correct?

8 A It states that the account activates on 12/27/1996.

9 Q That card could have been anywhere by the time of the
10 December 2000 postings, correct?

11 A Yes.

12 Q Now, you also talked briefly about xbr21. There came a
13 point in time that NagraStar became aware that
14 Chris Tarnovsky did not use that alias; is that correct?

15 A Yes.

16 Q And isn't it true, sir, that NagraStar immediately
17 amended its discovery responses and took that xbr21 alias
18 off for Chris Tarnovsky?

19 A That is correct.

20 Q And the reason, sir, that -- that that alias was
21 initially linked to Mr. Tarnovsky was because it was simply
22 a repost of the NipperClause hack recipe; is that correct?

23 A It was a copy and paste.

24 Q In fact, Mr. Pizzo testified yesterday that -- to that
25 exact same thing, it was a copy and paste of the

1 NipperClause post. Is that consistent with your
2 investigation?

3 A After what we've learned, yes.

4 Q Now, you also testified that EchoStar's profits went
5 up in 2001 despite the piracy; do you recall that
6 testimony -- I'm sorry, the revenues went up in 2001
7 despite the piracy?

8 A I was informed that that had, but I wasn't aware of it.

9 Q Revenues aren't the same thing as profits, right,
10 Mr. Gee?

11 A Correct.

12 Q And you understood that EchoStar, in fact, in 2001, was
13 continuing to grow its subscriber base here in the United
14 States?

15 A That is correct.

16 Q EchoStar didn't just simply stop trying to get new
17 subscribers after the posting of the defendants' hack
18 methodology, correct?

19 A No, they did not.

20 Q Now, you also spoke briefly about free-to-air piracy.
21 Do you know an individual named Jung Kwak?

22 A I do know Jung -- I do know of an individual,
23 Jung Kwak.

24 Q Have you conducted an investigation into Jung Kwak?

25 A Yes, we have. We have sued Jung Kwak here in

1 California.

2 Q Did there come a point in time in your investigation
3 where you concluded there was an affiliation between Jung
4 Kwak and Chris Tarnovsky?

5 A Yes, I was informed that Chris Tarnovsky and Al Menard
6 were at an Atlanta -- at an Atlanta satellite show with
7 Jung Kwak, and as my source told me about, his posse hanging
8 out together. And I've never received any -- any
9 information from NDS about any affiliation with Tarnovsky
10 with Jung Kwak, and we have sued Jung Kwak's operation of --

11 Q But free-to-air piracy and Chris Tarnovsky and Jung
12 Kwak, that's not part of this case, correct?

13 A It is not a part of this case.

14 Q Now, you also talked briefly about an electronic
15 countermeasure in February of 2001; do you recall that?

16 A Yes.

17 Q And an electronic countermeasure is, as you understand
18 it, an effort by EchoStar and NagraStar to combat piracy,
19 correct?

20 A Yes.

21 Q It's a signal that's sent down from the satellite to
22 try to repair certain cards or to -- to disable certain
23 pirate devices?

24 A Correct.

25 Q Now, you are familiar with the term "glitching"; is

1 that right?

2 A Yes, I am.

3 Q And can pirates use what's called "glitching" to get
4 around software patches or ECMs?

5 A Yes, they can.

6 Q And how about blockers?

7 A I am familiar with blockers.

8 Q Can pirates use blockers to get around patches and
9 ECMs?

10 A They use the blocker to stop the code from going to the
11 card, to block it.

12 Q In fact, in Exhibit 1185 that Mr. Stone showed you, it
13 says just that?

14 A I --

15 Q You looked at a -- a copy of it with Mr. Stone a moment
16 ago. Does that -- does that talk about blockers?

17 A Yes, that states "cards and blockers not affected by
18 the update."

19 Q Which would mean not repaired by the February ECM?

20 A Correct.

21 THE COURT: What Exhibit, again, Counsel?

22 MR. HAGAN: 1185, your Honor.

23 THE COURT: Just a moment.

24 THE WITNESS: It's actually 1186.

25 THE COURT: Let's make sure of the Exhibit Number.

1 THE WITNESS: I'm looking at 1186.

2 MR. STONE: 1186, correct, Mr. Gee.

3 THE COURT: Now, just a moment.

4 What's the date of this?

5 THE WITNESS: The date is March 2nd, 2001, your
6 Honor.

7 THE COURT: Just a moment.

8 THE WITNESS: I'm --

9 THE COURT: Who is it from, and who is it to?

10 THE WITNESS: I'm -- it was from Joel Conus to
11 many people, and I'm going off the date of the e-mail for
12 the -- my comments of March 2nd, 2001.

13 THE COURT: Who is it to?

14 THE WITNESS: It's to Christophe Nicolas,
15 Christophe Gaillard, Henri Kudelski, Alan Guggenheim,
16 Cedric Groux, Marco Sasselli and JJ Gee.

17 THE COURT: Now, show the jury and the Court the
18 comment, again, down on the bottom.

19 BY MR. HAGAN:

20 Q Mr. Gee, do you see an indication on this exhibit
21 talking about blocked cards not being affected by the ECM?

22 A Yes, cards and blockers not affected by the update.

23 Q And what does that mean?

24 A That if you had a blocker on your card, it's not going
25 to allow the patch to come to the card.

1 Q Now, Mr. Stone, I think, was trying to make the point
2 that -- that there were only a few of these blocked cards
3 out there. Let's take a look at Exhibit 41.

4 Your Honor, this is an e-mail from Chris Tarnovsky
5 that's already been admitted into evidence.

6 Mr. Gee, look at the bottom e-mail on the first page of
7 Exhibit 41. Mr. Tarnovsky is e-mailing various people
8 within NDS saying that "there are at least 100,000 original
9 cards, professional E3M or EchoStar 3M"; do you see that
10 language?

11 MR. STONE: I'm sorry, I apologize. I am going to
12 object to this questioning as irrelevant, because it's prior
13 to the date of the update.

14 THE COURT: Overruled.

15 MR. STONE: It's February 7th.

16 THE COURT: Thank you.

17 Overruled.

18 BY MR. HAGAN:

19 Q Do you see that language, Mr. Gee?

20 A Yes, I do.

21 Q And that's as of February 2001?

22 A Yes.

23 Q And the hundred thousand E3M cards that Mr. Tarnovsky
24 is referring to, those are the EchoStar 3M that you were
25 talking about earlier?

1 A Yes.

2 Q And are those the same cards being distributed by the
3 West Group?

4 A Yes.

5 Q And that was the group run by Al Menard and
6 Chris Tarnovsky, correct?

7 A Yes.

8 Q Now, let's take a look at Exhibit 1270.
9 Your Honor, this has already been received into
10 evidence.

11 THE COURT: Thank you.

12 BY MR. HAGAN:

13 Q Now, Mr. Gee, if you would turn to page 9 of 10. At
14 the top, there will be a page number that says "9 of 10."

15 This document is called "Marketing Competitive
16 Intelligence." It's an NDS document, and it's dated May of
17 2001. Do you see where it says "Section 5.1"?

18 A Yes.

19 Q And it says "Our estimate is that this commercial loss
20 to EchoStar probably accounted for over 100,000 non-paying
21 subscribers"; do you see that language?

22 MR. STONE: I'm sorry, I don't, Counsel.

23 MR. HAGAN: Page 9 of 10, Exhibit 1270.

24 MR. STONE: Same objection. This is the end of
25 January of 2001.

1 THE COURT: Overruled.

2 THE WITNESS: I -- I do see that.

3 BY MR. HAGAN:

4 Q And Mr. Gee, do you see a date at the bottom?

5 A May 13th, 2001.

6 Q Thank you.

7 Now, Mr. Gee, if the February 2001 ECM had somehow
8 fixed this problem and fixed these hundred thousand E3M
9 cards being distributed by Mr. Menard and Tarnovsky, would
10 EchoStar have expended \$90 million or over \$90 million to
11 swap out the DNASP-II system?

12 A No.

13 Q That wouldn't make any sense, would it, Mr. Gee?

14 A No, it wouldn't.

15 Q Now, Mr. Tarnovsky also testified that with this hack
16 recipe, pirates could use P1 cards to steal EchoStar's
17 programming. Are you familiar with the P1 card?

18 MR. STONE: Objection, your Honor. That
19 mischaracterizes the testimony, actually.

20 THE COURT: Overruled.

21 THE WITNESS: I am familiar with the P1 card.

22 BY MR. HAGAN:

23 Q And Mr. Tarnovsky testified that, in fact, he
24 reprogrammed the P1 card and put it into an EchoStar
25 receiver, and it was able to steal all EchoStar programming?

1 MR. STONE: Objection, your Honor. That
2 mischaracterizes the testimony of where that hack came
3 from.

4 THE COURT: Overruled.

5 THE WITNESS: I'm sorry, I'm not understanding
6 your question.

7 BY MR. HAGAN:

8 Q Mr. Tarnovsky testified that he reprogrammed the P1
9 card with an EchoStar hack from the internet, and he was
10 able to use it to steal all EchoStar programming.

11 A Okay.

12 Q Were P1 cards, based on your investigation, able to
13 steal EchoStar's programming?

14 A No, I wasn't aware that that could be done.

15 Q But if Mr. Tarnovsky testified that he was able to do
16 that, you don't believe that he's incorrect, do you?

17 MR. STONE: Objection. Calls for speculation.

18 THE WITNESS: I --

19 THE COURT: Sustained.

20 THE WITNESS: As a coder --

21 THE COURT: Sustained.

22 You're not answering that question.

23 The jury will rely upon the testimony of all the
24 witnesses.

25 They'll sort that out.

1 BY MR. HAGAN:

2 Q Now, Mr. Gee, the date and time stamp of the file that
3 was posted on Mr. Menard's website, Mr. Mordinson testified
4 that that matched identically, his understanding anyways, to
5 the date and time stamp of the code extracted by the
6 defendants in Haifa. Now, is it possible to modify a date
7 and time stamp before posting something on the internet?

8 A Yes.

9 Q And if you were going to modify a date and time stamp,
10 you would change it to whatever you wanted to, correct?

11 A You would change it.

12 Q But the date and time stamp for that file posted on
13 Menard's website is the same as the Haifa file, so wouldn't
14 someone have had to know the date and time stamp that the
15 defendants extracted the code?

16 MR. STONE: Objection. Calls for speculation.
17 Argument.

18 THE COURT: Yeah, Counsel, this is part of the
19 argument.

20 MR. HAGAN: Okay, your Honor.

21 THE COURT: I think we've been over that, also, in
22 your cross-examination previously, so you're tracing the
23 same area.

24 MR. HAGAN: I'll move on, your Honor.
25

1 BY MR. HAGAN:

2 Q Now, Mr. Gee, Mr. Stone asked you some questions about
3 Marty Mullen; do you recall that?

4 A Yes.

5 Q And you requested that the AUSA in Florida, Mr. Peluso,
6 not prosecute Mr. Mullen; is that correct?

7 A No, I never said not to prosecute him, but to consider
8 the information and the circumstances behind the -- what
9 Mr. Mullen is being charged with.

10 Q And in fact, Mr. Gee, didn't you inform Mr. Peluso that
11 Mr. Mullen was providing evidence to the U.S. Attorneys
12 Office in California?

13 A I told him that he was willing to, yes.

14 Q Now, at the time that you spoke with Mr. Saggiori, you
15 couldn't recall whether or not he was a consultant of -- of
16 NagraStar; is that correct?

17 A I cannot recall if he had a previous relationship with
18 NagraStar or not.

19 Q Based on your understanding, did Mr. Saggiori have a
20 consultancy relationship with a company called "Titus" at
21 any time?

22 A Yes.

23 Q And who is Titus?

24 A I believe Titus is associated with Canal+ somehow.

25 Q Not associated with NagraStar?

1 A No.

2 Q Now, some of the witnesses that you gathered
3 information from, they are consultants of NagraStar; is that
4 correct?

5 A Yes, they are.

6 Q But NagraStar didn't pay any of those witnesses for any
7 information; is that right, sir?

8 A That is correct.

9 Q NagraStar provided legal counsel to a number of those
10 counsel; is that correct?

11 A That's correct.

12 Q Legal counsel to represent them in this lawsuit,
13 correct?

14 A That is correct.

15 Q For purposes of them providing sworn deposition
16 testimony; is that right?

17 A Yes.

18 Q Now, you also received evidence from Larry Rissler of
19 DirecTV; is that correct?

20 A Yes, I have.

21 Q And that included the -- the reports linking
22 Chris Tarnovsky to Nipper, correct?

23 A Yes.

24 Q Were you paying Larry Rissler at any point in time?

25 A No.

1 Q He was employed by DirecTV; is that correct?

2 A Yes.

3 Q During the time that DirecTV was investigating the
4 defendants and suing the defendants, correct?

5 A That is correct.

6 Q Now, let's talk about those reports for a minute.

7 Some of those reports that you received and EchoStar
8 received from DirecTV included reports from Internet Crimes
9 Group. Has NagraStar ever paid Internet Crimes Group to
10 conduct an investigation?

11 A No.

12 Q And at the time that Internet Crimes Group conducted
13 that investigation and generated those reports, they were
14 being employed by DirecTV; is that correct?

15 A Yes.

16 Q How about the TDI reports, has NagraStar ever used or
17 paid TDI to investigate this case in any way?

18 A No.

19 Q TDI, in fact, was an independent third-party company
20 used by DirecTV; is that correct?

21 A Yes.

22 Q During their investigation and lawsuit against the
23 defendants, correct?

24 A That is correct.

25 Q Now, the -- the black box, I know you said that -- that

1 we don't have the black box any longer. You have looked at
2 an analysis of that black box; is that correct, Mr. Gee?

3 A I don't believe I have.

4 Q You also received evidence from the Hays County
5 Narcotics Task Force linking Chris Tarnovsky to this
6 distribution network; is that right?

7 A Yes.

8 Q Did you pay the Hays County Narcotics Task Force any
9 money to conduct an investigation?

10 A No.

11 Q Did you pay anyone within the Hays County Narcotics
12 Task Force any money whatsoever for those reports or their
13 investigation?

14 A No.

15 Q That was complete independent third-party investigative
16 work done by the government, correct?

17 A Yes.

18 Q You also received fingerprint analysis from the RCMP
19 through the -- Hays County; is that correct?

20 A Yes, we did.

21 Q And that fingerprint analysis came off of the shipments
22 being sent from Menard to Tarnovsky through that mail
23 account in Texas; is that right?

24 A Yes.

25 Q And that fingerprint analysis by the Canadian

1 government linked those packages to an associate of
2 Al Menard, correct?

3 A Yes.

4 Q Did you pay any money to the Royal Canadian Mounted
5 Police to do any investigation into Tarnovsky or Menard?

6 A No.

7 Q Thank you, Mr. Gee.

8 THE COURT: All right. Now, Mr. Gee, we are going
9 to place you on call. We are doing that with all of the
10 witnesses within the continental United States. We will be
11 as courteous as possible, but I believe that 48 hours is
12 enough time to return to court. So therefore, I need to be
13 able to get ahold of you, and you have 48 hours within the
14 time of notification to be back to this court; is that
15 understood?

16 THE WITNESS: Yes.

17 THE COURT: All right. Thank you very much, sir.
18 You may step down.

19 THE WITNESS: Thank you.

20 THE COURT: All right. Why don't we take a
21 recess.

22 You're admonished not to discuss this matter
23 amongst yourselves, nor form or express any opinion
24 concerning the case.

25 We'll come and get you in about 20 minutes.

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Okay, Counsel. Have a nice recess.

(Recess.)

-oOo-

CERTIFICATE

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

Date: April 26, 2008

JANE C.S. RULE, U.S. COURT REPORTER

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