

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

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ECHOSTAR SATELLITE CORP., et)	
al.,)	
)	
Plaintiffs,)	
)	
vs.)	No. SACV 03-950 DOC
)	Day 17, Volume I
NDS GROUP PLC, et al.,)	
)	
Defendants.)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Jury Trial

Santa Ana, California

Wednesday, May 7, 2008

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Federal Official Court Reporter
United States District Court
411 West 4th Street, Room 1-053
Santa Ana, California 92701
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EchoStar 2008-05-07 D17V1

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I N D E X

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PROCEEDINGS

PAGE

Plaintiffs' Closing Argument

11

1 SANTA ANA, CALIFORNIA, WEDNESDAY, MAY 7, 20908

2 Day 17, Volume I

3 (8:16 a.m.)

4 (Outside the presence of the jury.)

5 THE COURT: Okay. We're back on the record.

6 Good morning, Counsel.

7 This is out of the presence of the jury.

8 The Court's carefully reread the Unilogic case
9 again after our discussion last evening. I want to
10 reiterate so there's no misunderstanding that defendants
11 will be able to argue that they were damaged for the
12 purposes of satisfying the element of their CUTSA
13 counterclaim, although you'll not be able to send the
14 question of damages amount to the jury.

15 Now, you told me last evening that you weren't
16 going to state a specific amount of damages. The difficulty
17 from your perspective is that the jury has no place to place
18 damages.

19 So I understand, Mr. Snyder, from our discussion
20 last evening, you weren't going to say it was worth a
21 hundred thousand dollars. You've been damaged and you need
22 to be able to argue that to the jury and I agree.

23 In the Unilogic case the court explained that it
24 was not necessary to submit the liability issue to the jury
25 in order to allow the trial court thereafter to determine a

1 reasonable royalty or impose an injunction because no
2 evidence was presented to allow the court to determine what
3 royalty would be reasonable, and the court was obviously not
4 willing to seek injunctive relief, quote/unquote.

5 Citing *Unilogic v. Burroughs Corporation* at
6 10 Cal.App.4th 612, the language being found at 628,
7 1992 case. This language in *Unilogic* implies that if the
8 court had been willing to consider injunctive relief, then
9 it would have been proper to submit the liability question
10 to the jury.

11 Here, this Court has made no indication that it
12 would be unwilling to grant injunctive relief if liability
13 was found. Accordingly, the Court will submit the liability
14 question to the jury.

15 However, *Unilogic* also makes clear that the claims
16 for damages should not go forward where the party raising
17 the claim did not present evidence of damage specific to the
18 dispute at hand and relevant to the measure of damages.
19 That's found at page 627.

20 Here, there's been no evidence regarding the
21 amount of damages, although there has been evidence that
22 damage occurred. Accordingly, the determination of the
23 damage amount will not be submitted to the jury, as
24 indicated in the Rule 50 order. And plaintiffs' Rule 50
25 motion on the CUTSA counterclaim was granted as to damages

1 only.

2 Also, the informal request last evening to remove
3 the entire counterclaim by plaintiffs is denied.

4 Now, one more question before you argue this
5 morning.

6 Is everyone satisfied with the language on page 75
7 in the jury instructions? And I sent out an e-mail last
8 night about 10:30 -- I don't know what time, 11:00,
9 regarding, along with others, with respect to the RICO
10 enterprise. You previously agreed to that, it was written
11 that way, there were brackets around it. I just want to
12 make certain everybody's looked at that.

13 Mr. Hagan, are you satisfied?

14 MR. HAGAN: Yes, Your Honor.

15 THE COURT: Mr. Snyder?

16 MR. SNYDER: Yes, Your Honor. Thank you.

17 THE COURT: Now, if there's nothing further, I'll
18 summon the jury at 8:30.

19 Anything further, Mr. Hagan?

20 MR. HAGAN: No, Your Honor.

21 MR. WELCH: We've got to get our PowerPoints.

22 THE COURT: Okay. Let me get out of your way,
23 then, so you can get clear.

24 Mr. Snyder, anything further?

25 MR. SNYDER: Nothing further, thank you.

1 THE COURT: Okay. Let me give you a 10-minute
2 break, and we'll get back to you.

3 (Recess held at 8:19 a.m.)

4 (In the presence of the jury.)

5 THE COURT: The jury's present. All counsel are
6 still present.

7 Counsel, if you would please be seated. The
8 parties are present. Thank you for your courtesy.

9 First of all, good morning.

10 MEMBERS OF THE JURY: Good morning.

11 THE COURT: It's been a long journey. This is the
12 closing arguments by counsel.

13 Let me remind you that just as opening statements
14 are not evidence, the closing arguments by counsel are not
15 evidence. You've heard the evidence. It's come from the
16 witness stand and from depositions and stipulations.

17 We're a day ahead of schedule. I told you that
18 last evening. I thought that we'd conclude all of the
19 evidence Tuesday, somewhat forewarned you of that; but
20 because of counsel's hard work with both parties, we're
21 prepared for those closing arguments by both sides and the
22 jury instructions today.

23 If we can accomplish that, what that means is that
24 when you come back next Tuesday --

25 And you're returning Monday evening --

1 A JUROR: 10:00 o'clock.

2 THE COURT: -- 3:00 o'clock in the morning and
3 coming directly to court. I'm just kidding.

4 A JUROR: I'll come straight here.

5 THE COURT: What that means is you're able to come
6 right into session on Tuesday and start your deliberation
7 process.

8 We're well-aware that one or more of you have
9 personal obligations. You'll keep those obligations as you
10 told us about. But I want to make certain that there's no
11 rush to judgment in this matter because of any personal
12 obligation. We're going to make this work. And that's
13 because you've been so kind, literally, to donate your time.

14 Neither counsel wants to lose any of the eight of
15 you. We've discussed how we will proceed, and it's just
16 very clear that all counsel on all sides want to keep this
17 jury intact, and they're very appreciative of your service,
18 as, of course, the Court is humbled and appreciates your
19 service.

20 The last thing is you know I have no hours. My
21 hours are -- literally, I'm a workaholic. I think there was
22 a sun out yesterday. Did anybody see it?

23 But I have to tell you, and I'll compliment all
24 counsel before we begin. They've been here many, many times
25 until midnight. They've been here most of the weekends.

1 And one of the benefits is that we haven't had any sidebars.
2 You've seen minimal disruption. We haven't been out in the
3 hallway. We tried to keep your lunches to an hour. We've
4 tried to usually start promptly at 8:00 o'clock and go until
5 5:00 on most occasions.

6 So it's a real compliment to them that the
7 enthusiasm for their case and their willingness to work
8 those hours with the Court have really given us, I think, a
9 trial that really could have taken six or seven weeks,
10 frankly, with some of the interruptions that can occur, and
11 have literally taken us four weeks almost to the day.

12 Lastly, if you decide to deliberate -- you may
13 decide to start deliberating this evening after I read the
14 jury instructions to you. That's fine. Just call out about
15 5:00 or 6:00 o'clock and give us some indication of how long
16 you'd like to be here.

17 The light's always on. So if you want to stay
18 until 8:00 o'clock, that's great. I'm not encouraging you,
19 but I'm not discouraging you either. And you'll see how
20 that unfolds. You'll set your own hours.

21 Sometimes, if you approach a loggerhead and just a
22 clear mind the next day leads to going home at 4:00 or
23 5:00 o'clock, do that. Get off to a fresh start.

24 At all times remember this: During your
25 deliberations, the only time you're gathering to discuss

1 this matter is as a collective body, our jury.

2 And therefore, when counsel starts -- I have to
3 tell you I'm very, very proud of this system. And the
4 reason it works is because we have conscientious, ethical,
5 honest jurors who come in and come together with commonsense
6 experience, all that wisdom, follow the law that I'll
7 instruct you at the end of this case.

8 Now, counsel for a moment may have different
9 styles. I've told them when I was practicing, it was okay,
10 and I give counsel the opportunity to what I call "strut." So
11 they can use this center portion if they'd like to and strut
12 around. And that means some of them may use charts on
13 different occasions. And if they do, you may see other
14 counsel informally move to this side of the courtroom so
15 they can see what's occurring. But I don't want to take
16 away their enthusiasm of their presentation.

17 Now, if any of them get in the jury box with you,
18 we'll stop that. But I don't need to be so formal that it
19 stops their style. But that's style, just because another
20 counsel's quieter or another counsel's more boisterous, that
21 has nothing to do with the presentation of the evidence.
22 It's not a likability contest or a dislikability contest.
23 It's the evidence.

24 So, Counsel, as long as we can hear both of you
25 and as long as you go slowly -- all right. Then, this is

1 closing arguments. The way they'll be divided is as
2 follows: Each side has two and a half hours. They'll call
3 their own recesses when they get to a logical point.

4 Mr. Welch will argue on behalf of plaintiffs
5 EchoStar and NagraStar. He has two hours for his opening.
6 He'll call a break someplace in between for about
7 20 minutes.

8 Then, Mr. Snyder, we'll see where we are.

9 We may send you to lunch early so he can start
10 after lunch. Opposing counsel will decide that. He has two
11 and a half hours as a collective block, and he may call one
12 or more recesses during that period of time.

13 Then Mr. Welch for EchoStar has an hour for
14 rebuttal. Those are the limitations.

15 Mr. Welch, it's 8:46. Your opening statement.

16 MR. WELCH: Thank you, Your Honor.

17 PLAINTIFFS' CLOSING ARGUMENT

18 MR. WELCH: It's been a long time coming. As I
19 said when I did my opening, EchoStar --

20 THE COURT: This isn't going to work. Use the
21 lectern or the microphone.

22 MR. WELCH: -- they're my family and they're my
23 friends. And I've got a lot of passion for this case and
24 I've got a lot of passion for them, as my whole team does.
25 And sometimes we may have gone a little too far. Our styles

1 may have been a little abrupt, and for that I apologize. We
2 care about our client. And they care about us. So we did
3 the best we could do.

4 And now I'm gonna get to the evidence, and I
5 apologize if our styles rubbed anybody the wrong way, but
6 don't hold that against our client. I ask you for that.

7 So let's get to it.

8 So when we started out, I told you about my
9 client. I don't think we need to get into too much detail
10 about that.

11 So what is it that you're here to do? We filed a
12 lawsuit, and we've got five claims. You'll hear about
13 those. You'll see some instructions that the Court reads to
14 you later. And then y'all have some special verdict forms
15 where you answer specific questions.

16 Now our five claims. There's claim 1, which is a
17 DMCA claim. That's a Digital Millennium Copyright Act
18 claim. Then we'll have a second claim, which is a DMCA
19 claim, too. And then we'll have a Communications Act claim
20 and then two California Penal Code claims.

21 And all these claims pretty much center around the
22 fact that we had copyrighted programming. We had it
23 protected, and the defendants engaged in a pattern of
24 conduct designed to override our conditional access system,
25 violate the copyrights of programmers, and put this

1 information out on the Internet for people to use, to harm
2 not only us but to harm consumers, because consumers are the
3 ones that ultimately pay in the end, as we've seen.

4 So let's set the backdrop.

5 We heard the testimony about NDS. It works in the
6 marketplace. And in 1990 through '95 and '96, they had a
7 system that was hopelessly compromised. We all know that.
8 They had the B Sky B system, and they had no digital platform
9 whatsoever.

10 Their first digital platform was DirecTV in the
11 United States. The United States has one of the largest
12 television markets there is. And they saw what was coming
13 on the horizon: Digital satellite television. And from
14 that, they could springboard into a bunch of different
15 products and services. So they desperately wanted to get
16 into that market so they could complete their global
17 domination of the conditional access market. So they lock
18 up the contract with DirecTV in '92, and DirecTV launches in
19 '94.

20 What do we know? We know that DirecTV was
21 hopelessly hacked starting in late '95, early '96, and it
22 stayed that way.

23 Now, they relate to market. They also -- you
24 heard testimony about a company called A Sky B. They wanted
25 not only the conditional access business, but News

1 Corporation wanted to be in the distribution business as
2 well. It wanted to have its tentacles out in as many places
3 as possible.

4 So they formed a company called ASkyB. You have
5 BSkyB in Britain; you have ASkyB in America. But they were
6 late to market, they didn't have a good product. So what
7 did they do? They approached us in 1996.

8 We entered into a merger agreement with 'em, or a
9 letter of intent. This was in February of '97. The terms
10 of that agreement, what was crucial was that the combined
11 entity would use the conditional access system that was most
12 secure and economical. Well, the problem was their system
13 was hopelessly compromised and they could not fix it.

14 At that point in time, you also had DirecTV that
15 was constantly complaining to them, and those concerns began
16 to escalate through '96, '97 and '98.

17 So you had two things coming down simultaneously.
18 You had their dispute with DISH Network where they had to
19 prove that their system was better, and they also had to
20 save the DirecTV contract.

21 So we can skip through the DISH Network launching.

22 So NDS attempts to get us to switch. NDS was in
23 crisis. This is important. They continued to be hacked
24 worldwide, but we didn't have a worldwide epidemic. You
25 heard various individuals. You heard Mr. Peled testify

1 about that; you also heard Mr. Rubin testify about that.
2 And their relationship with their important customer,
3 DirecTV, was in jeopardy. That's pretty much a given at
4 this point.

5 You may recall that DirecTV paid -- they
6 approached Nagra and they paid Nagra a hundred thousand
7 dollars to get into that. You'll see that. That's
8 Exhibit 1565. I'm gonna identify some of the key exhibits
9 for you, and some of 'em you'll have to read. Some of 'em
10 you'll recall.

11 So they paid a hundred thousand dollars, and NDS
12 had to come up with a solution to maintain this
13 relationship. So what was their solution? Did they try to
14 make a better product? Did they try to give DirecTV
15 something that would secure their revenues? No.

16 What they did, as you will see in Exhibit 189 --
17 this is a document that went to Reuven Hasak, and this
18 talked about how they were going to proceed. And we call
19 this the "main story" document. And so you'll be able to
20 see this. And they talk about the problems that they have,
21 and they talk about how they want to get into the market in
22 the United States.

23 So that's one of the critical documents that I
24 think you need to look at to set the stage in your own mind.
25 And they clearly say in here that they've got reputation

1 problems, people don't trust 'em, and their system's not
2 secure and their product's not good.

3 So what was their solution? Their solution was to
4 go out, not make their situation better but to harm
5 everybody else. You can either climb over somebody with a
6 better product, or you can drag them down. They chose to
7 drag the marketplace down because they couldn't keep up with
8 the piracy.

9 So what did they do? They hired the two best
10 hackers in the world. They hired Christopher Tarnovsky and
11 Oliver Kommerling. You didn't get to hear from Oliver
12 Kommerling because he was not able to come. But you did
13 hear from Christopher Tarnovsky.

14 So what do we know about Christopher Tarnovsky?
15 He's an admitted satellite pirate. He was hired by NDS in
16 1997. NDS knew he was a criminal at the time they hired
17 him. He admits to hacking their own client both before and
18 after they hired him. He continued his other pirate
19 activities while employed by NDS. And he used numerous
20 aliases. And these aliases will be important because they
21 go to undermine the defendants' entire claim that somebody
22 else was Nipper.

23 They're very crafty. They know how to cover their
24 tracks.

25 So what else did they do? You heard Mr. Peled

1 talk about Mr. Kommerling designing, and then they
2 manufactured this lab. And the lab became operational in
3 '97. This was part of their plan. So they create the Black
4 Hat team. It's located in Israel, and the members include
5 Mr. Shkedy, Mr. Mordinson, and Mr. Chaim Shen-Orr.

6 The goal was to hack not only the EchoStar code
7 but other competitors' codes.

8 So who's Zvi Shkedy? Mr. Shkedy was the principal
9 hardware engineer. He worked at the Haifa research lab, and
10 he deconstructed the card itself. He was the hardware
11 engineer. He's the guy that first took the card and he
12 de-layers it and he does all these steps.

13 So who's David Mordinson? He's also a member of
14 the Black Hat team. You'll remember, Mr. Hagan
15 cross-examined Mr. Mordinson. He's a software engineer.
16 He's the guy that takes the information, and he turns all
17 this binary stuff into something we can actually understand.
18 He's also located at the Haifa lab, and he developed the
19 hack software that you ultimately see in Exhibit 98.

20 Now, this is an important document. This is 1568.
21 Because they knew ultimately one day they may have a
22 problem. So this is an internal document. And it shows
23 you -- when they get up here and they want to talk about
24 this user ID resolves to somebody else, this is very
25 important because this is internal, talking to the internal

1 lab people. And it instructs them they need to be
2 absolutely certain there is not the hidden possibility of
3 identifying the ID of the EchoStar card that their code
4 comes from.

5 Now, if they're not doing anything wrong, why did
6 they need to hide the ID of the EchoStar card? This is
7 their own internal document.

8 So they need to make sure that some kind of a
9 fingerprint or receiver serial number in the code is
10 developed. They can do this if they have a code from a
11 second card. And we know they'll sit there and they'll talk
12 about Dawn Branton and all these things. These are all
13 misdirections. The point is they needed to cover their
14 tracks, and so they tried to find a variety of ways to do
15 it.

16 But what we found out is -- if you also look in
17 this document, it talks about the box ID that they actually
18 used. It says, "box CA ID." It starts with an R number.
19 And the critical thing for now, remember that it ends in
20 2225. Okay.

21 One of the last things that happened in the trial
22 was we read in a stipulation. And you probably didn't know
23 what it was about because we didn't go through the screen
24 shots. But what's significant about that stipulation --
25 it's Exhibit 2600. This is a screen shot from EchoStar, and

1 it shows you that this box resolves to Christopher
2 Tarnovsky. So they're starting their plan. They say they
3 have to hide where the box comes from, but they left their
4 tracks in that one document. And we were able to track it
5 back to Mr. Tarnovsky. So don't let 'em say Mr. Tarnovsky's
6 not involved.

7 So they get the box and they get the card from
8 Mr. Tarnovsky. We've all seen the DISH Network Smart Card.
9 The first thing they did was they had to remove the gold
10 chip from the card, and that's what they worked from.
11 That's the brains of the card. And it's protected by the
12 metallic covering.

13 So what they had to do was remove the metallic
14 covering so they could expose the internal working of the
15 chip. They did that by using the nitric acid to dissolve
16 the metal layer. And this is what they end up looking at.

17 So what did they do next? They used the FIB that
18 we talked about. It's very expensive.

19 Now, remember, News Corporation paid for this lab.
20 They paid for the operations of this lab because it assisted
21 them in building their media empire not only for conditional
22 access but for programming and for the distribution of that
23 programming.

24 Next thing they did is they used a probing station
25 to extract the code from the chip. These were the things

1 that Mr. Shkedy did.

2 So we take all those things, and what do we get?
3 They get a dump of the code from the card. So that code is
4 then given to Mr. Mordinson to do something with it. So he
5 takes all these ones and zeros and he comes up with
6 something that's readable, because not everybody is trained
7 in reading the ones and zeros. They had a plan. They had
8 to figure it out. They had to figure it out how to make it
9 user friendly.

10 And you'll see all these things in the Headend
11 Report, which is Exhibit 98. He did all this work, all
12 these different charts.

13 So the next thing he had to do, once we know that
14 he dumped the code -- as we talked about in the opening, you
15 have to marry the card to the box. You can't just take any
16 card, because when you activate the card, it has an
17 additional layer of protection so that you couldn't take the
18 card out and just put it in anybody else's box -- go to your
19 neighbors and move down the street and everybody gets free
20 TV.

21 So EchoStar had placed an additional layer of
22 protection for itself, and this was called the box pairing
23 keys. So what they had to do is they had to figure out how
24 are we going to get the box pairing keys. So they had to
25 come to the United States. This is what we call the

1 "planes, trains and automobiles."

2 They flew overseas. They stop off in Washington.
3 They get in the car, they drive to one location and they use
4 the sniffer. Now, you remember, Mr. Tarnovsky helped design
5 and build the sniffer. So what they did is they used the
6 sniffer to log the stream. Because what comes down in the
7 stream are the box pairing keys.

8 So now that they have the box pairing keys in
9 their hand, what do they do? They fly back to Israel to
10 understand how they work. And so what did they do? They
11 came up with E3M, the EchoStar Three Musketeers. And what
12 does that mean? All for one, one for all.

13 And so they were able to take a card with basic
14 programming, and they were able to get all the entitlements.
15 That was their plan.

16 Okay. Now, we come to a fork in the road with
17 NDS. They want to say what they did was legitimate reverse
18 engineering. If that was true, the proof would be in the
19 pudding. It would be in Exhibit 98.

20 But they hit a path. And they could have taken
21 the road less traveled. They chose not to. What they did
22 is they went down a path designed to create harm, because
23 they didn't need to take these additional steps from this
24 point forward.

25 So what do they do? They come over to make sure

1 their hack works. And if it was legitimate, they wouldn't
2 do all these different steps. They wouldn't go one place
3 and another, rent a car, drive around.

4 So they go to a subscriber's home to get a
5 receiver. They pick up the receiver. They go back to
6 Baltimore. They fly to Cleveland. They rent another car,
7 and then they head into Canada.

8 Now, what's important to remember is where they
9 go. They go to Ontario, Canada. Why is Ontario important?
10 Because they're gonna tell you that Jim Waters in the Barrie
11 group are in Ontario and that Jim Waters is Nipper. Okay.

12 They go to Ontario. They probably have a
13 connection to Jim Waters if you believe that Mr. Waters is
14 Nipper. Why do they choose to go to Ontario? They could
15 have chose anywhere.

16 They could have just asked us and got our
17 authorization or our approval if they weren't trying to fly
18 below the radar.

19 So they determine that their hack works. And
20 you'll see in the report what's important is section 4.
21 What they design is a commercial hack. They don't say, "We
22 found that their chip is better and that we need to change
23 our chip. We've learned how to do better ECM's." They
24 don't do these things.

25 In fact, as you recall Mr. Peled testifying and

1 everybody testifying, they thought our chip was inferior.
2 And if it was inferior, why did it take six months? If you
3 knew it was bad, you knew you weren't going to learn
4 anything from it, then just throw it by the wayside or be
5 able to crack it fairly quickly.

6 This took a large industrial commercial effort.
7 They had to have the state-of-the-art lab. They had to have
8 two of the brightest engineers in the world along with
9 having Mr. Tarnovsky and Mr. Kommerling, who is an expert in
10 attacking Smart Cards. They had all these people. They
11 took their best brains, they took their money and they put
12 it on this project.

13 What they should have been doing -- did they put
14 any evidence that Mr. Mordinson and Mr. Shkedy went and
15 attacked their own card, tried to figure out how to make it
16 better, determine what those vulnerabilities are?

17 Where is a project NDS report? How come they
18 didn't bring that? How come they didn't bring a single
19 document to show that they took the findings that are set
20 forth in Exhibit 98. Ask 'em when Mr. Snyder gets up here,
21 "Where is the report where you made your chip better?"

22 He's not gonna be able to do it.

23 So they prepare the detailed written report, and
24 important sections are gonna be, like I said, 4 and 4.3.
25 And those are the 3M Hack in Practice.

1 Why would you call it "Hack in Practice"? Why not
2 call it "reverse engineering and let's make our chip
3 better"? They don't do that. And we know it's targeted
4 towards DISH Network in the USA. Why not just call it the
5 Thomson chip and, "Here's the flaws. Let's make sure we
6 don't suffer from those same flaws. And here's what we
7 learned from it." But they don't do it.

8 And you can look through the report. It's very
9 detailed. They did a good job of making a manual for
10 hacking. It included the code. It's got the Nipper phrase
11 in there. We know it's our code.

12 So what do we know happened next? We know from
13 Mr. Shkedy that he shared the report with Oliver Kommerling,
14 the master at attacking Smart Cards.

15 In addition, both Mr. Mordinson and Mr. Tarnovsky
16 admit that the report was shown to Mr. Tarnovsky in
17 California. Now, there's some dispute as to when the report
18 was shown. We say it was shown in '98 or '99. They say it
19 was shown in 2001. But what's important to know is that it
20 was shown during the P3 period.

21 Now, the P3 period started in February of '99. So
22 it clearly falls within our time frame. If he didn't show
23 it until 2001 -- you've got to remember the state of piracy
24 in 2001. Our card was already hacked. We were trying to
25 run ECM's. We were putting the patches out. So this would

1 have been old news in 2001.

2 So if it was old news when he takes it to
3 Mr. Tarnovsky's house, why are they so secretive about it?
4 Why does Mr. Tarnovsky not want to touch it? What's so
5 valuable about this report anymore?

6 The reason that he didn't want to touch it and the
7 reason that they shredded it is because it was during the
8 operative time period, and they knew what they were going to
9 do with the information. They were going to use it.
10 Because if you go back and you look at the earlier white
11 paper that we have with Mr. Hasak's name on it, the main
12 story, and some of the other exhibits, they needed money,
13 money, money.

14 And to fund these pirate operations, they have to
15 come up with a distribution network. And the distribution
16 network provides them with cash so they can conceal their
17 operations.

18 So another thing that's interesting -- if you have
19 any doubt that they were involved in this, we start talking
20 about coincidences, coincidences, coincidences. The Headend
21 Report is dated November 1st of '98. It's clear in this
22 litigation the first time anybody saw a posting of a partial
23 code of EchoStar was also in November '98. You'll see that
24 in Exhibit 2008. It's by Nipper. And it's dated
25 November 12th, 11 days after the Project Headend Report

1 comes out.

2 Coincidence? I don't think so.

3 Now, what are the odds that you had two
4 state-of-the-art labs, two of the world's best hardware and
5 software engineers, two of the best hackers on your payroll?
6 It took them six month to do this. Who else was putting six
7 months and all these resources into hacking our system? If
8 you believe them, this post was done by somebody totally
9 unrelated to NDS. That makes no sense. Two people at the
10 same time, spent the same amount of money, hired the same
11 people and created the same recipe? It doesn't make any
12 sense.

13 So what else do we know?

14 Mr. Tarnovsky learned the contents of the report,
15 and he built the infamous Stinger. And then he hired his
16 friend Al Menard. We all know that Al Menard was a
17 well-known pirate with the website called dr7 in Canada.
18 And Mr. Menard and Mr. Tarnovsky had been friends.

19 So what NDS did is they task him to go utilize his
20 friends to create a distribution network. Because,
21 remember, this operation has to self-fund. They have to get
22 cash, and they also want to do harm to us.

23 And what's important about the way they release
24 the information? In '98 we knew they were in negotiations
25 with DirectTV. So what they did to stop the train was they

1 posted the information on the Internet. But just a little
2 bit, enough to cause DirecTV some concern, not to go
3 forward.

4 So what they probably did in negotiations was,
5 hey, look at this website. It's up there. We all know from
6 Mr. Peled's testimony that they tell people when other
7 systems are hacked.

8 You also saw Exhibit 1270, which is their internal
9 top secret marking guide where they flaunt how badly
10 EchoStar is hacked. So we know that's their modus operandi.

11 And if you have any doubts as to whether Al Menard
12 is involved in this scheme with Mr. Tarnovsky, all you have
13 to do is look at Exhibits 988, 989, 990 and 991. These are
14 e-mails from Al Menard.

15 And now we remember that one of Mr. Tarnovsky's
16 aliases or nics was "Von." So if you look at the e-mail --
17 and these are in '99. Now, in '99 they hadn't yet come out
18 with a device to reprogram the cards. I don't want to jump
19 over the rail there. So they just originally posted part of
20 the ROM code to stop the DirecTV train.

21 And then in '99 some significant things happened.

22 You recall from Dr. Peled's testimony, Chris
23 Tarnovsky admitted to posting the Canal+ code. He admitted
24 that to Oliver Kommerling, who's an employee and a
25 consultant of NDS. And he did that in March of '99. Okay.

1 They didn't have devices yet. They were still working on
2 'em. And at the same time he sends an e-mail to Mr. Ron
3 Ereiser, and what he does is -- Mr. Ereiser wants the Canal+
4 code. Chris Tarnovsky screws up. He sends him the EchoStar
5 code. And that's March '99. Eerily similar. They'll tell
6 you it's merely a coincidence or the e-mail's a fake.

7 So going back to the Al Menard e-mails. "I called
8 Von on the phone, mentioned the problem. He told me that he
9 is sending another box." We all know "Von" is Chris
10 Tarnovsky.

11 What else?

12 10-21-99, "Vonnie is on the job."

13 March of 2000, "Get some coin together. I've got
14 to ship to Von this week."

15 So he's got to pay Mr. Tarnovsky money. So he's
16 dealing with his distributors. And then also July of 2000.
17 All these relate to Christopher Tarnovsky, if there's any
18 doubt in your mind that he was part of this operation.

19 And I'll get to it. There's one of these that's
20 real important. He mentions the word in one of the
21 e-mails -- and I'll find it. He says "we." Now, his e-mail
22 is to an individual, and he says "we are providing
23 information."

24 It's not one of these. I'll find it.

25 Now, why would he be writing an e-mail? If I was

1 writing an e-mail to you and I said "Here's the
2 information," I wouldn't say "We are providing information."
3 I'd say "Here it is" or "I'm providing information." So
4 I'll show you that when we get to it.

5 So what did they do? We all know from Mr. Peled's
6 testimony that to have a successful hack -- remember, he was
7 on the stand. First he said, "I don't know what you're
8 talking about, a successful hack. I've never given a
9 presentation."

10 Then I showed him a presentation. The first thing
11 you've got to do is you've got to reverse-engineer. Then
12 you've got to get the keys. Then you have to create a
13 pirate device. And then you have to distribute that pirate
14 device.

15 So did they do that here? We know they
16 reverse-engineered. That's in '98. We know they got the
17 box keys and card keys from planes, trains and automobiles.
18 We know they created a pirate device called a Stinger and a
19 sniffer. And the last thing, they've got to distribute this
20 pirate device and the cards. So they set up the
21 distribution network.

22 You've got the Black Hat team, which includes
23 Shkedy and Mordinson. Then you've got Tarnovsky. They
24 provide the report to Tarnovsky. And then you have Allen
25 Menard and Chris Tarnovsky. Allen Menard would send money

1 to Chris Tarnovsky. And in exchange for that, Chris
2 Tarnovsky would provide him with cards or reprogram 'em.

3 And what happened from that point down is you had
4 Mr. Menard used his friends, which are Dave Dawson, Andre
5 Sergei, Sean Quinn and Stan Frost. Now, you all remember
6 Mr. Frost. He was tethered to the mic. He took the Fifth
7 Amendment on everything related to the piracy. But he
8 didn't get a white pony from NDS, and he didn't use Mary
9 Poppins. So we know he knows the difference.

10 But when it came to implicating NDS, he took the
11 Fifth for a very good reason, because they set all this up.
12 They knew about it. They knew about the checkered past of
13 all these people, and they knew of Chris Tarnovsky's ties.

14 So what happened is these individuals would send
15 money to Al Menard, he'd ship 'em cards, and then these
16 cards would go out. And they could be used against
17 EchoStar.

18 So the next exhibit we have, if there's any doubt
19 that Mr. Tarnovsky was involved --

20 Have you got that one, Chad?

21 Well, we'll skip through that for now.

22 This is "Jon Segoli," where he ships a code, and
23 you can see that it is the Thomson chip, which is our chip,
24 the 16CF54. We're all aware of that.

25 So we know that Arthur Von Neumann is Chris

1 Tarnovsky. We know he had it in his possession. We know he
2 was sending it around. We know he admits to doing the same
3 thing with Canal+.

4 And we also know -- we found out when we took Abe
5 Peled's deposition. We got to depose him the Wednesday of
6 last week. And we found out that Mr. Kommerling had told
7 Mr. Peled that Chris Tarnovsky was involved in the EchoStar
8 piracy and posted the code. Just like he did with Canal+.
9 Canal+, he did it on dr7. Our code was posted on dr7.

10 You have all these tracks leading to the Haifa lab
11 and leading to Mr. Tarnovsky.

12 Another thing you have is a chat room log. You
13 have "Von." We all know who "Von" is. This is
14 September 27th of '99. "I am the only person who knows how
15 to hack Nagra's card." That is not entirely true.
16 Mr. Mordinson and Mr. Shkedy know as well. And what does
17 Mr. Tarnovsky say? "I shall lead you to the promised land
18 at \$350 a card."

19 We'll get to that one later.

20 The next thing they do is they order him to create
21 an account on PiratesDen. And what's significant about
22 this, this is in October of 2000. You'll see an e-mail on
23 it. What happened before October of 2000? In August of
24 2000 Mr. Tarnovsky gets found out.

25 You remember Detective Cumberland. Detective

1 Cumberland got on the stand. He told us about the cash. He
2 got two shipments that they found. But what they also
3 found, and you'll see it in Exhibit 1034, is that he was
4 receiving these packages almost every other day. It's just
5 what they were able to find. Remember the belated birthday
6 gift, four, five, six months late?

7 Now, what's important about the PiratesDen and the
8 dr7 is he creates an account on PiratesDen, and that's
9 gonna be the December 24th post. And he uses the Nipper
10 alias. And this contains the instructions for posting it.
11 And also he uses NipperClause. He's the only one that
12 there's any evidence that Nipper is tied to. You'll see
13 that in Exhibit 39, which is the e-mail registration for
14 ChrisVon@s4.interpass.com.

15 You have ICG reports, Exhibit 27 and Exhibit 19.
16 And those clearly tie Christopher Tarnovsky to the Nipper
17 alias.

18 So really what this comes down to is: Do you
19 believe that Mr. Tarnovsky is Nipper? Once you reach that
20 conclusion, everything else falls into place.

21 So how else do we know that Chris Tarnovsky posted
22 the infamous NipperClause post? Nobody has the actual post
23 'cause it was only up for a short while. But you have
24 Exhibit 113.

25 Now, Mr. Pizzo got on the stand. And they'd like

1 to talk about 511-A a lot. That's Mr. Pizzo's post on
2 December 23rd. He says he was the first one to actually
3 post.

4 But he's wrong. How do we know he's wrong?
5 Because on December 22nd, Mr. Tarnovsky, allegedly from
6 Belgium, writes "the cat's out of the bag" e-mail. This is
7 significant for a variety of reasons. The first one is that
8 it is December 22nd; it is before Marco Pizzo. And you'll
9 see in there that Mr. Tarnovsky says that the EchoStar code
10 was posted on dr7. Dr7's his friend.

11 Now, if the post was only up for a short period of
12 time, how did Mr. Tarnovsky, sitting over in Belgium, get a
13 hold of this post, know it was up there and tell everybody?
14 He's bragging about it on December 22nd.

15 Now, they say that one of Mr. Tarnovsky's job was
16 to keep his eye on piracy on the Internet.

17 Now, let's think about this for a second. That
18 was his job, and he's trying to figure out the state of
19 piracy. In reality, what would happen? If he saw the
20 EchoStar code posted, he wouldn't label this "Cat's out of
21 the bag." He would say, "FYI. Hey, guys, look what I
22 found." Before you can have a cat get out of the bag, you
23 have to have a cat in the bag. If they had the cat in the
24 bag, Mr. Tarnovsky let it out. And once the cat's out, you
25 can't get it back in, and they knew that. So why did he

1 choose to phrase it this way, and why did he send it to the
2 higher-ups at NDS?

3 Because they told him to.

4 And then you have ultimately the December 24th
5 post, which is the recipe.

6 Now, Exhibit 998 is a NipperClause text file. And
7 that becomes important because you remember Dr. Rubin's
8 testimony, Avi Rubin. He says that the 998 and the 98 are
9 pretty much the same. They have the same DNA. They have
10 the same four pillars. And that's another way that you can
11 tie the Nipper post to NDS. There's so many ways to tie
12 Nipper to NDS.

13 With all the resources that they've used, all the
14 money that they've spent, how come they didn't put Nipper on
15 the stand? And I'll tell you why. Because we did. Nipper
16 is Chris Tarnovsky. What they have is a lot of smoke and
17 mirrors. They have a cleaning crew. They've got
18 Jim Waters. They have a variety of people. But none of
19 these people ever had motive to do this.

20 You've got to ask yourself who had a reason to do
21 this? They haven't told you any reason. The best they've
22 got is that there was a dispute between Jim Waters and his
23 engineer. Now, why would they put themselves out of
24 business? If they're in the business of selling black
25 boxes, selling cards, when they post, they automatically put

1 themselves out of business. That doesn't make any sense.

2 But NDS, on the other hand, their goal and their
3 desire was to hurt Nagra, keep the DirectTV contract, and pay
4 EchoStar back. And they were successful in doing those
5 things.

6 So the other evidence, Exhibit 39: You can look
7 at the e-mail registration, NiPpEr2000,
8 ChrisVon@s4.Interpass.com. All this becomes a foregone
9 conclusion when you remember Dr. Peled's testimony that
10 Chris Tarnovsky admitted it. That's Exhibit 998. It has
11 the Nipper terminology in it.

12 And then you've got Exhibit 12-A, which is the
13 NiPpEr2000 post on December 24th. So you get to look at
14 those.

15 This is the "cat's out of the bag" e-mail where he
16 says, "There is a public file on the Internet. I saw
17 www.Interesting Devices.com as well as www.dr7.com."
18 That's December 22nd. He was Johnny-on-the-spot, the very
19 first one, because he posted it. Nobody else beats him to
20 it. They have no evidence that anyone else beat him to it.
21 All roads lead to Chris Tarnovsky.

22 You also have the trap door report, which is
23 Exhibit 19 by ICG. And remember, ICG did not have a dog in
24 this fight at the time they prepared all these documents:
25 17, 19 and 27. They were retained by DirectTV when DirectTV

1 was in litigation with NDS. And what they found out was
2 that Chris Tarnovsky was Nipper. That didn't help them in
3 their lawsuit. So we got lucky that we were able to get
4 this stuff.

5 And remember that the News Corporation bought
6 DirecTV. And unfortunately, one of the things that happened
7 is, we were stuck with just these reports, because after
8 DirecTV was purchased, what happened at ICG is, they
9 destroyed their underlying documents. But what we do know
10 about these documents is, Mr. Bedser got up here on the
11 stand, and he said, "I still stand by the information
12 today." They can come up -- and they can come up with all
13 sorts of reasons why you shouldn't believe 17, shouldn't
14 believe 19, and shouldn't believe 27. But he still stands
15 by it today. And they had no reason to point Chris
16 Tarnovsky as the same person as Nipper, none whatsoever.

17 So you'll see in the charts, and it will tie
18 Mr. Tarnovsky to Nipper.

19 So what did all that mean? You had our code. In
20 the beginning, you had very limited security breach. So we
21 just did a visual here so you kind of get an understanding.
22 I'm sure you already do. You sat through this thing for
23 four weeks. Everybody's probably tired. We'll just roll
24 through these slides.

25 So they have the EchoStar code, and so they put

1 some holes in it. We've got to picture this dam as all our
2 revenues. There's our subscribers. And Nagra built us a
3 sturdy dam, a dam that has stood the test of time.

4 You heard Mr. Kudelski get on the stand. And they
5 want to say, "Well, you just started up with a digital
6 system." Let's talk about Mr. Kudelski's analog system v.
7 their analog system. Five cards in six years. That's their
8 track record. Mr. Kudelski's track record? An analog
9 system: 10 years. Digital system: They get cracked almost
10 immediately after going live with DirecTV. Mr. Kudelski's
11 system: steady and strong until they do the reverse
12 engineering, until they put their plan in play to, instead
13 of making their product better, to tear the competitors
14 down.

15 So what we tried to do was plug up these holes.

16 They want to talk about the patch and the ECM. We
17 did the best we could. What's important to remember is --
18 and you remember this from Dr. Peled -- they want to say you
19 should have changed it out faster. You should have patched
20 it. You should have done all these things. But remember
21 Dr. Peled said it is the satellite platform operator's
22 decision, and NDS does not second-guess a platform
23 operator's decision, because they have a variety of
24 consequences they need to think about. They don't just have
25 knee-jerk reactions and go out and start swapping cards.

1 You try to fight it in a measured response. And that's what
2 we tried to do.

3 So after February 21, you had the hackers, and
4 they were given this recipe. Now you can put a little salt
5 here; you can put a little pepper here. Everybody has their
6 different flavor. And once they got this cookbook, this
7 recipe, this hacking manual for dummies -- and you remember
8 Mr. Kudelski got on the stand -- they told you allowed a
9 moderate-level hacker for the first time to create their own
10 cards.

11 NDS no longer could retain control of this
12 distribution network because the trail was getting closer
13 and closer to them. They had to run from
14 Detective Cumberland. They had to run from the
15 investigation into their activities. So we tried to fight
16 it off with ECMs, and ultimately the holes get bigger.

17 We can't combat the piracy, and ultimately the
18 whole dam breaks, and we have to do a card swap.

19 Now, what's important to know is Exhibit 1270.
20 This is the internal marketing document at NDS. And if you
21 recall that document, it's dated May of 2001. And in that
22 document, they flaunt the fact that EchoStar's hacked. And
23 if you look in that document, it also says that EchoStar and
24 Nagra cannot effectively combat the piracy with ECMs.
25 They'll get up here, and they'll talk about ad nauseam ROM

1 hole opened, ROM hole closed, ROM hole opened, ROM hole
2 closed. But listen to their own people that were involved
3 in this hack. They said you can't fix it with an ECM, and
4 it will eventually lead to a swap-out. And that's what
5 happened.

6 So did NDS do it? You've got NDS engineer
7 David Mordinson admit that you need -- to develop the hack,
8 a person would need the Project Headend Report. Okay. We
9 know that Mr. Tarnovsky had it. We know that NDS had it.
10 You would need the code, which they got. You would need the
11 CPU, which they had. And you'd need technical knowledge of
12 software codes.

13 And Mr. Mordinson admitted he's not aware of
14 anyone else in the world that was capable of a hack that NDS
15 engineers developed for DISH other than NDS, which brings me
16 to another point.

17 You remember the testimony of Mr. Mordinson when
18 he said he was at Christopher Tarnovsky's house and they
19 were talking about the ECM that Nagra and EchoStar put out.
20 And what he said was, he was personally offended that
21 somebody was able to shut down the hack. Now, if it wasn't
22 his hack, why would he care? Why would he be personally
23 offended that somebody was smarter than he was? Because if
24 it wasn't his hack, he wouldn't have any dog in that hunt.

25 So that's one of the things that you just need to

1 think about: Why would he react that way?

2 So what other evidence do you need to know? We've
3 got Chris Tarnovsky linked to Nipper. You don't need to
4 link the NipperClause to the Project Headend Report. But if
5 you want to, Dr. Rubin tells you that the project Headend
6 Report, the NipperClause post, are materially identical.
7 They exploit the same buffer overflow vulnerability. They
8 utilize the same RAM ghost effect. These are his four
9 pillars. This is where he says the DNA is the same. It
10 requires sophisticated understanding of EchoStar's index
11 variable. And they use invalid checksums to hack EchoStar's
12 Smart Card. And Dr. Rubin links the Nipper post to NDS's
13 hacking in Israel. It's either one in the same, or they
14 work together.

15 So you've got Mr. Tarnovsky under investigation.
16 We know about the Mail and More accounts in San Marcos. He
17 lies to the Mailbox [sic] and More people saying he's a
18 student at Southwest Texas University. And the interesting
19 thing is that you've got NDS paying for this. They're
20 paying for this mailbox scheme. Why? Their undercover cop
21 story just doesn't work.

22 Now, another thing that I want you to look at in
23 Exhibit 1034: They want to sit there and try and argue that
24 the contact between Mr. Mordinson and Mr. Shkedy is tenuous
25 at best. But if you look in Exhibit 1034, what you'll find

1 is that there is a section in there that talks about prior
2 to them finding the cash, there's like 80 to 100 telephone
3 calls between Mr. Tarnovsky and various places in Europe.

4 So if they want to argue that wait a minute, he
5 didn't have any way to get this information, Mr. Tarnovsky's
6 a smart, smart guy. Who's to say that Mr. Tarnovsky was not
7 involved in planes, trains, and automobiles when they fly
8 over in '98? If they wanted to conclusively prove to you
9 that these two men didn't get together, where are their
10 passports? They didn't show you any of that information.
11 But it's firmly within their control. They could have shown
12 you, "Hey, Mr. Mordinson's passport -- I've got no entries.
13 I didn't go to California." They could have shown
14 Mr. Tarnovsky's passport if he was truly in Belgium. But
15 whether you believe he's in Belgium or not, he's still
16 involved. Because when he's in Belgium, where was he going?
17 He was with his wife for Christmas, and he was going to a
18 technical interchange in Israel at the same time the cat's
19 out of the bag.

20 So they find the 40,000 in cash. It's hidden in
21 the CD players. You'll see it in Exhibit 1034. He talks
22 about how he finds the cash. So you can go through those.

23 And we know that it's related to Al Menard because
24 they check the fingerprints with the R.C.M.P. And the
25 R.C.M.P. traces the fingerprints back to Al Menard's friend,

1 Mr. Mervin Main.

2 Now, another interesting document -- you can take
3 this, and you can have a handful of documents, and you can
4 figure this case out. I mean, it's complex. But there's
5 little bitty crumbs everywhere.

6 And one of 'em happens to be 782, which is
7 Mr. Tarnovsky's tax return. It's very interesting on the
8 very last page. You've got \$7500 cash coming from
9 Mr. Menard in the year 2000. You've got a \$5,000 bonus from
10 NDS Israel that Mr. Peled says, "He must have done something
11 good for us." Now, I don't know if it was a Christmas bonus
12 or not, but it came some time in 2000. And it's the only
13 time Mr. Tarnovsky ever got a bonus from NDS Israel. Why?
14 He's working for Harper Collins. NDS Americas is paying for
15 his equipment, paying for his Mailbox (sic) and More.
16 They've got this big scheme to cover all this stuff up. And
17 you've got Al Menard tied in. And the interesting thing
18 here is, we talk about our \$20,000. We know it's not the
19 first time he got cash because this is the Ron Ereiser money
20 when they let him pirate DirectTV.

21 So we went through all this. The package would be
22 delivered. We've got the fingerprints.

23 So what do they do? What's their big
24 investigation? We know that Dr. Peled was informed that
25 Mr. Tarnovsky admitted to Oliver Kommerling that

1 Mr. Kommerling was involved with offering the Canal+ code.
2 They've got all these signs. So what is their big
3 investigation? They send Mr. Hasak to go talk to
4 Mr. Tarnovsky. Okay. How come we can find the cash tied up
5 to Mr. Tarnovsky but they can't? They say they fire
6 Mr. Tarnovsky in April of 2007 -- based on information we
7 gave them.

8 They want to talk about shoddy investigations:
9 Mr. Gee didn't do this, Mr. Gee didn't do that. They sent
10 Mr. Hasak to go talk to Mr. Tarnovsky and get to the bottom
11 of everything. So what do they do? They give him a lie
12 detector test. They only ask him if he's got loyalty to
13 NDS.

14 Okay. We've got all this information. We've got
15 cash. We've got Mr. Kommerling offering the Canal+ code.
16 We've got Mr. Kommerling being told by Mr. Tarnovsky that he
17 was involved in Canal+ piracy, he was involved in Canal+
18 posting, he was involved in EchoStar piracy, he was involved
19 in EchoStar posting. What didn't they ask him? They never
20 asked him about posting EchoStar. They never asked him
21 about the shipments from Menard. And they didn't ask him
22 about piracy of any NDS competitor. If you're truly trying
23 to get to the bottom of it, why didn't they do that?
24 Because they knew.

25 Now, is this the first time they've done this.

1 And this is gonna be very important because we're asking you
2 not only for damages, but we're asking you for punitive
3 damages, and we also have a RICO claim. And in connection
4 with the RICO claim, you're gonna be asked if they had a
5 pattern and practice of engaging in these type of
6 activities.

7 And we know that they did because it's not the
8 first time they used this mailbox trick. They used it with
9 Manassas, Virginia where they had the \$20,000. This was the
10 Operation Johnny Walker that they let Mr. Tarnovsky keep the
11 cash even after they terminated him. And he ultimately
12 spent that money.

13 They don't file any customs forms. They try to
14 keep this whole thing under the radar. They do not turn the
15 money over to copyright holders. They do not inform law
16 enforcement. They keep it in Mr. Tarnovsky's bank account.
17 So it's not NDS's first time.

18 For the EchoStar, we know they reverse-engineered
19 it, they hacked it, they created and used a reprogramming
20 device. They concealed cash payments to Mr. Tarnovsky.
21 They disclosed the instructions and information to assist
22 piracy of the system, and they posted that hack on dr7 and
23 Canal+.

24 Now, we don't represent Canal+, so we're not here
25 to litigate the Canal+ case. But what we've been able to

1 determine is that they reverse-engineered, and they hacked
2 it. They disclosed the instructions on the website, and the
3 website was dr7. So it's similar conduct.

4 Okay. Is it just Canal+? Now, we know DirecTV.
5 They created and used a reprogramming device. We know that.
6 Mr. Ereiser told us that. Okay. They concealed cash
7 payments? Yes. Disclosed instructions and information to
8 assist piracy of the system? Yes. That was Operation
9 Johnny Walker. So you can put all this together and see
10 that there's the same pattern. They're running the same
11 play over and over and over again because it's been
12 effective.

13 Now, this is not the only time. There's also this
14 October '99 document. And this talks about a company called
15 ASTRO. And they had other activities that were part of
16 their pattern. Remember how we talked about they had to
17 mask the card I.D. or create a fake card I.D. so they
18 wouldn't be found out? If you look at Exhibit 610, it
19 says -- okay, this is from Avigail Gutman to Ray Adams.

20 Now, we know that Mr. Adams was head of worldwide
21 security. He was over in Europe. Remember, he's the guy
22 that -- whose document supposedly got stolen, but we know
23 better because even Dr. Peled didn't believe it because the
24 guy's wife's car got broken into. I mean, they can't even
25 tell you that one with a straight face.

1 So what does Ms. Gutman tell Mr. Adams? "I would
2 like to use it to avert their attention away from the
3 system. But I want to make sure with you that there is
4 nothing about the box or card that can trace it back to us,
5 is there?"

6 It's the same play: Hack it, make it look like
7 another box that's not tied to them.

8 So we found you another piece. All these things
9 come together. We just found the most pieces in our lawsuit
10 because that's who I represent.

11 And do we know that Mr. Tarnovsky did this? If
12 you look at the November 2000 e-mail -- remember Mr. Norris
13 was on the stand? Mr. Noll was questioning him. Mr. Norris
14 was at Mr. Tarnovsky's home, and right there in front of
15 Mr. Norris, Mr. Tarnovsky reprogrammed an EchoStar access
16 card. And you can see that in Exhibit 51.

17 So if there's any doubt in your mind that
18 Mr. Tarnovsky, Mr. Norris, and NDS Americas were involved in
19 this, that should be the end of the matter.

20 And what do they do? It wasn't just, you know,
21 intellectual curiosity, Mr. Norris asking Mr. Tarnovsky,
22 "Hey, can you do this? Let's watch some TV." What did they
23 do? They reported up the chain. We don't have the blow-up
24 for that one, but if you look at Exhibit 51, you'll see they
25 reported up the chain to Yoni Shiloh. So it must have been

1 important to NDS Group to know that Mr. Tarnovsky could do
2 this.

3 Now, this is about the same time that we have the
4 black box. And remember Mr. Dionisi was on the stand, and
5 Mr. Dionisi described his conversation with Chris Tarnovsky.
6 Mr. Tarnovsky described the Stinger to him. He described
7 his box.

8 Mr. Dionisi also told you that he met with
9 Mr. Al Menard in Canada and another gentleman. And he saw a
10 box that sounded much like the Stinger. And this box spit
11 out 52 EchoStar cards. So it's another link Mr. Dionisi
12 testified to.

13 So you've got Exhibit 2009. This is the cover-up.
14 So make sure you look at this because you've got Oliver
15 Kommerling involved. "Alex" is Oliver Kommerling, and it
16 talks about what they did with his computer so that there
17 would be no traces in the USA. One of the things that
18 they're gonna argue is all this happened overseas or only
19 affected places other than the United States. But you'll
20 see that they constantly refer to USA.

21 Nothing existed technically to connect Alex to the
22 card in either Canada, the USA, or Germany because they knew
23 that what they were doing violated United States laws, the
24 very laws that you're gonna be enforcing.

25 So we've got this slide. It's the timing. It

1 says in June 2003 we have had no choice but to file a
2 lawsuit. Actually, as you recall, we originally filed our
3 claim in September 2002. That was where we intervened in
4 the Canal+ litigation. So we come up there, they settle
5 their dispute, they resolved it with Canal+. So we had to
6 come down here and file our lawsuit with Judge Carter. And
7 what did they do? Shortly after that, they hired Al Menard.
8 You would think they'd want to be running as far away from
9 Al Menard as they could. But they hired him to surf the
10 Internet at 6,000 bucks a month.

11 Now, this is the world's largest security and
12 conditional access company. They can hack cards, they can
13 design pirate software, pirate products, but they've got to
14 pay this guy 380 grand to surf the Web.

15 Now, what do they do that's interesting? If these
16 gentlemen are not tied together, why do they fire them both
17 three days before Mr. Tarnovsky's deposition? I mean, only
18 they know the answer, but they couldn't explain it to us.

19 MR. WELCH: Your Honor, at this time it would
20 probably be a good time for a break.

21 THE COURT: All right. Ladies and gentlemen,
22 you're admonished not to discuss this matter amongst
23 yourselves nor form or express any opinion concerning the
24 case.

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

1 a nice recess.

2 Have a nice recess, Counsel.

3 (Recess held at 9:50 a.m.)

4 (Further proceedings reported by Jane Rule in
5 Volume II.)

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3 CERTIFICATE

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

11
12 Date: May 8, 2008

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14
15 _____
16 DEBBIE GALE, U.S. COURT REPORTER

17 CSR NO. 9472, RPR
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A				
Abe 31:4	42:17 47:9 48:7 48:9	assist 44:21 45:8	belated 32:5	bring 23:18,18
able 4:11,13,22 8:5 15:19 16:12 19:4 21:13,14 23:5,22 32:5 36:3 39:21 44:25	Alex 47:15,21	assisted 19:20	Belgium 33:6,12 41:14,15,16	brings 39:15
above-entitled 50:8	alias 32:10,17	ASSOCIATES 2:4	believe 22:13 26:8 32:19 36:13,14 36:14 41:15 45:23	Britain 14:5
abrupt 12:1	aliases 16:20,20 27:16	ASTRO 45:15	benefits 9:1	broken 45:24
absolutely 18:2	allegedly 33:5	attacked 23:15	best 12:3 16:9 23:11 26:4,5 34:21 37:17 40:25	BSkyB 13:8 14:5
access 12:24 13:17,25 14:11 19:22 46:15 48:12	Allen 29:24,25	attacking 23:10 24:14	better 14:19 15:14 16:4,6 22:22,23 23:16 23:21 24:3 37:13 45:23	bucks 48:10
accomplish 7:23	allow 4:25 5:2	attempts 14:22	big 42:16,23 43:2	buffer 40:7
account 31:21 32:8 44:16	allowed 38:8	attention 46:2	bigger 38:16	build 21:5
accounts 40:16	Amendment 30:7	Attorneys 2:7,14 2:19	binary 17:17	building 19:21
acid 19:15	America 14:5	August 31:23	birthday 32:5	built 26:15 37:2
Act 12:17,19	Americas 42:14 46:18	authorization 22:17	bit 27:2	bunch 13:14
activate 20:16	amount 4:14,16 5:21,23 26:10	automatically 34:25	bitty 42:5	Burroughs 5:5
activities 16:19 38:15 44:6 45:15	Ana 1:16,23 4:1	automobiles 21:1 29:17 41:7	black 17:3,14 29:22 34:24 47:4	business 13:25 14:1 34:24,24 35:1
actual 32:22	analog 37:6,7,8	Avenue 2:20	block 11:11	C
ad 38:25	Andre 30:4	avert 46:2	blow-up 46:23	CA 18:18
Adams 45:19,20 46:1	Angeles 2:21	Avi 34:8	body 10:1	California 1:2,16 1:23 2:15,21 4:1 12:20 24:17 41:13
addition 24:15	answer 12:15 48:18	Avigail 45:19	boisterous 10:20	call 9:14 10:10 11:2,6,11 15:18 20:25 24:1,2,4
additional 20:17 20:21 21:23	anybody 8:22 12:5 20:18 25:22	aware 30:24 39:13	bonus 42:9,11,13	called 13:24 14:4 20:22 26:17 28:7 29:18 45:14
admit 24:16 39:7	anymore 25:5	a.m 4:3 7:3 49:3	bottom 43:10,23	calls 41:3
admits 16:17 31:2	apologize 12:1,5	B	bought 36:5	Cal.App.4th 5:6
admitted 16:15 27:23,23 35:10 39:13 42:25	APPEARANCES 2:1	back 4:5 7:2,24 19:5 21:9 22:5 25:10 28:7 33:25 35:4 41:25 46:4	box 10:17 18:17 18:18 19:1,3,7 20:15,18,22,24 21:7,8 28:9 29:17 46:4,7 47:4,7,10,10	Canada 22:7,9 26:17 47:9,22
admonished 48:22	approach 9:21	backdrop 13:4	bragging 33:14	Canal 27:23 28:3 31:3,8,9 43:1,15 43:17,17 44:23 44:24,25 45:4 48:4,5
agree 4:22	approached 14:7 15:6	bad 23:3	brains 19:11 23:11	capable 39:14
agreed 6:10	approval 22:17	badly 27:9	boxes 34:25	car 21:3 22:3,6 45:24
agreement 14:8 14:10	April 43:6	bag 33:6,21,22,23 33:24 35:15 41:19	brackets 6:11	card 17:10,11 18:3,6,11 19:7,8 19:10,11 20:3 20:15,16,16,18 21:13 23:15 24:24 29:17 31:15,18 38:18 40:12 45:17,17 46:4,16 47:22
ahead 7:17	argue 4:11,22 6:4 11:4 40:23 41:4 47:18	Baltimore 22:6	break 7:2 11:6 48:20	
al 1:5,8 2:3,11 26:16,16 27:11 27:14 28:7 30:15 41:23,25	Argument 3:3 11:17	bank 44:16	breaks 38:18	
	arguments 7:12 7:14,21 11:1	Barrie 22:10	brightest 23:8	
	Arthur 30:25	based 43:6		
	asked 22:16 43:20 43:20 44:4	basic 21:13		
	asking 44:1,2 46:21	beat 35:20		
	ASkyB 13:24 14:4 14:5	beats 35:19		
		Bedser 36:10		
		began 14:15		
		beginning 36:20		
		behalf 11:4		

cards 23:10 24:14 27:18 29:20 30:2,15,16 34:25 37:7,25 38:10 47:11 48:12	28:9 29:25 30:1 30:1,13,25 31:7 32:21 34:16 35:10,21 36:2 36:15 40:3 47:5 CHRISTINE 2:5 Christmas 41:17 42:11	11:11 Collins 42:14 combat 38:17,24 combined 14:10 come 7:15,24 8:4 8:5 10:5,5 15:12 16:12 20:25 21:16,25 23:17 23:18 25:15 27:17 34:14 36:12,12 43:4 46:9 48:4,6,25	13:17,25 14:11 19:21 48:12 conduct 12:24 45:3 Conference 50:10 conformance 50:9 connect 47:21 connection 22:13 44:3 conscientious 10:4 consequences 37:24 consider 5:8 constantly 14:15 47:20 consultant 27:25 consumers 13:2,2 contact 40:24 contains 32:10 contents 26:14 contest 10:22,22 continued 14:23 16:18 contract 13:18 14:20 35:3 control 38:11 41:11 conversation 47:5 cookbook 38:6 cop 40:20 copyright 12:17 44:15 copyrighted 12:22 copyrights 12:25 CORP 1:5 Corporation 2:3 5:5 14:1 19:19 36:5 correct 50:7 counsel 4:6 7:5,7 7:12,14 8:14,16 8:24 10:2,8,10 10:14,24 11:10 49:2 counsel's 7:20 10:20,20 counterclaim	4:13 5:25 6:3 course 8:18 court 1:1,21,22 4:5,23,25 5:2,3 5:8,11,13 6:15 6:17,22 7:1,5,11 8:2,3,5,18 9:8 11:20 12:13 48:21 50:15 courtesy 7:8 courtroom 10:14 Court's 4:8 cover 16:23 18:13 42:16 covering 19:12,14 cover-up 47:13 CPU 39:11 crack 23:5 cracked 37:9 crafty 16:23 create 17:3 21:22 26:20 29:12 31:20 38:9 45:17 created 26:11 29:18 44:19 45:5 creates 32:8 crew 34:17 criminal 16:16 crisis 14:23 critical 15:23 18:19 cross-examined 17:15 crucial 14:10 crumbs 42:5 CSR 1:21 50:16 Cumberland 31:25 32:1 38:14 curiosity 46:21 customer 15:2 customs 44:13 CUTSA 4:12 5:25
cash 25:16 26:22 32:1 41:2,20,22 42:8,19 43:4,15 44:11,20 45:6 cat 33:22,23,23 cat's 33:6,20,24 35:15 41:18 cause 27:2 32:23 CD 41:21 center 2:14 10:11 12:21 CENTRAL 1:2 certain 6:12 8:10 18:2 CERTIFICATE 50:3 certify 50:5 Chad 2:5 30:20 Chaim 17:5 chain 46:23,25 change 22:22 changed 37:19 charts 10:12 20:12 36:17 chat 31:12 check 41:24 checkered 30:12 checksums 40:11 chip 19:10,15,25 22:22,23 23:1 23:21 24:2,5 30:23,23 choice 48:1 choose 22:14 34:1 chose 16:6 21:21 22:15 Chris 27:22 28:4	CHRISTINE 2:5 Christmas 41:17 42:11 Christopher 16:10,13,14 19:1 28:17 32:16 39:18 ChrisVon@s4.i... 32:14 35:8 Citing 5:5 claim 5:17 12:16 12:17,18,18,19 12:19 16:21 44:3,4 48:3 claims 5:15 12:12 12:16,20,21 cleaning 34:17 clear 5:15 6:23 8:16 9:22 25:21 clearly 15:25 24:22 32:16 Cleveland 22:6 client 12:2,6,9 16:17 climb 16:5 closed 39:1,2 closer 38:12,13 closing 3:3 7:12 7:14,21 11:1,17 code 12:20 17:6 18:3,9,10 19:25 20:3,3,14 24:10 24:11 25:23 27:20,23 28:4,5 30:22 31:8,9 33:9,20 36:19 36:25 39:10 43:1,15 50:6 codes 17:7 39:12 coin 28:13 coincidence 26:2 28:6 coincidences 25:20,20,20 collective 10:1	comes 18:4 19:3 20:5 21:6 26:1 32:18 coming 8:3 11:18 13:12 14:17 42:8 commercial 22:21 23:6 commonsense 10:5 Communications 12:19 company 13:24 14:4 45:14 48:12 competitor 43:22 competitors 17:7 37:13 complaining 14:15 complete 13:16 complex 42:4 compliment 8:23 9:6 compromised 13:7 14:13 computer 47:16 conceal 25:16 concealed 44:20 45:6 concern 27:2 concerning 48:23 concerns 14:15 conclude 7:18 conclusion 32:20 35:9 conclusively 41:8 conditional 12:24	4:13 5:25 6:3 D D 2:5,19 3:1 dam 37:1,3,3 38:18	

damage 5:17,22 5:23	21:22	19:8 24:4 39:15	44:22 45:3	employee 27:24
damaged 4:11,21	designing 17:1	dislikability	Dr7's 33:10	encouraging 9:18
damages 4:14,16 4:18 5:16,18,21 5:25 44:2,3	desire 35:3	10:22	dummies 38:7	ends 18:19
DARIN 2:13	desperately 13:15	dispute 5:18 14:18 24:17 34:22 48:5	dump 20:3	enforcement 44:16
Date 50:12	destroyed 36:9	disruption 9:2	dumped 20:14	enforcing 47:24
dated 25:21,24 38:21	detail 12:9	dissolve 19:15	D17V1 1:25	engaged 12:23
Dave 30:4	detailed 23:23 24:9	distribute 29:13 29:19	E	engaging 44:5
David 1:3 2:6,13 2:24 17:13 39:7	Detective 31:25 31:25 38:14	distribution 14:1 19:22 25:15,15 26:20 29:21 38:12	E 3:1	engineer 17:9,11 17:15 34:23 39:6
Dawn 18:12	detector 43:12	DMCA 12:17,18	earlier 25:10	engineering 21:18 24:2 37:12
Dawson 30:4	determination 5:22	DNA 34:9 40:9	early 11:9 13:21	engineers 23:8 26:5 39:15
day 1:8 4:2 7:17 9:11,22 17:21 32:4	determine 4:25 5:2 22:19 23:16 45:1	DOC 1:7	EBERHART 2:13	entered 14:8
days 25:25 48:17	develop 39:7	document 15:17 15:19 17:20,22 18:7,17 19:4 23:19 38:20,21 38:22,23 42:2 45:14,22	EchoStar 1:5,25 2:3 11:5,13,19 17:6 18:3,6,25 20:21 21:11 25:23 27:10 28:4 30:17 31:7 33:9,20 35:4 36:25 38:23 39:19 43:18,19 43:20 44:18 46:15 47:11	enterprise 6:10
dealing 28:16	developed 17:18 18:10 39:15	documents 15:23 35:24 36:9,10 42:3	EchoStar's 38:22 40:10,11	enthusiasm 9:7 10:16
Debbie 1:21 50:15	device 27:18 29:13,14,18,20 44:20 45:5	dog 35:23 39:24	ECM 37:16 39:3 39:19	entire 6:3 16:21
December 32:9 33:2,5,8,14 34:4 35:13,18	devices 28:1	doing 18:5 23:13 31:2 35:4 47:23	ECMs 38:16,24	entirely 31:15
decide 9:12,13 11:10	Devices.com 35:17	dollars 4:21 15:7 15:11	ECM's 22:23 24:25	entitlements 21:14
decision 37:22,23	de-layers 17:12	domination 13:17	economical 14:12	entity 14:11
deconstructed 17:10	difference 30:9	donate 8:13	Eerily 28:5	entries 41:12
DEFENDANT 2:11	different 10:8,13 13:14 20:12 22:2 38:6	door 35:22	effect 40:8	epidemic 14:24
defendants 1:9 4:10 12:23 16:21	difficulty 4:16	doubt 25:19 28:18 30:18 46:17	effective 45:12	equipment 42:15
deliberate 9:12	digital 12:17 13:8 13:10,13 37:5,9	doubts 27:11	effectively 38:24	Ereiser 28:3,3 42:19 45:6
deliberating 9:13	Dionisi 47:4,5,8 47:11	Dov 2:24	effort 23:6	escalate 14:16
deliberation 8:6	directly 8:3	Dr 27:22 34:7 35:9 37:18,21 40:5,12 42:24 45:23	eight 8:14	et 1:5,8 2:3,11
deliberations 9:25	DirecTV 13:10,18 13:18,20 14:14 14:20 15:3,5,14 26:25 27:2,20 35:3,25,25 36:6 36:8 37:10 42:20 45:4	drive 21:3 22:3	either 9:19 16:5 40:13 47:22	ethical 10:4
delivered 42:22	disclosed 44:21 45:2,7	drag 16:6,7	element 4:12	Europe 41:3 45:21
denied 6:3	discouraging 9:19	dr7 26:17 31:9,9 32:8 33:10	else's 20:18	evening 4:9,15,20 6:2 7:18,25 9:13
depose 31:5	discuss 9:25 48:22		em 14:8 15:9,9 16:1 19:5 23:20 28:2 30:2,15 42:6	eventually 39:4
deposition 31:5 48:17	discussed 8:15		Embarcadero 2:14	everybody 16:5 20:6,19 23:1 33:13 38:5
depositions 7:16	discussion 4:9,19		empire 19:21	everybody's 6:12 36:23
described 47:5,6 47:6	DISH 14:18,21		employed 16:19	evidence 5:2,17 5:20,21 7:14,15 7:15,19 10:21 10:23 12:4 23:14 32:12 35:6,20 40:2
design 21:4 22:21 48:13				exchange 30:1
designed 12:24				exhibit 15:8,16

<p>17:19 18:25 20:11 21:19 23:20 25:24 27:8 30:18 32:3 32:13,15,15,24 34:6 35:6,10,12 35:23 38:19 40:23,25 41:21 45:18 46:16,24 47:13 exhibits 15:8 25:12 27:13 existed 47:21 expensive 19:18 experience 10:6 expert 23:9 explain 48:18 explained 4:23 exploit 40:7 expose 19:14 express 48:23 extract 19:25 eye 33:16 e-mail 6:7 27:16 28:2,21,25 29:1 31:22 32:13 33:6 35:7,15 46:12 e-mails 27:14 28:7,21 e-mail's 28:6 E3M 21:11</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>face 45:25 fact 12:22 22:25 38:22 fairly 23:5 fake 28:6 45:17 falls 24:22 32:20 family 11:22 far 11:25 48:8 faster 37:19 February 14:9 24:21 38:3 Federal 1:21 FIB 19:17 Fifth 30:6,11 fight 35:24 38:1 38:15</p>	<p>figure 20:8,8,23 23:15 33:18 42:4 file 34:6 35:16 44:13 48:1,6 filed 12:11 48:2 find 18:14 28:21 28:24 32:5 40:25 41:20 43:4 finding 41:2 findings 23:19 finds 41:22 fine 9:14 fingerprint 18:9 fingerprints 41:24,25 42:22 fire 43:5 48:16 firmly 41:11 first 7:9 13:10 17:11 19:9 25:22 29:7,10 33:2,7 35:19 38:9 42:19 43:25 44:8,17 five 12:12,16 32:6 37:7 fix 14:13 39:3 flaunt 27:9 38:22 flavor 38:6 flaws 24:5,6 flew 21:2 fly 21:9 22:6,17 41:7 follow 10:6 follows 11:2 foregoing 50:6 foregone 35:8 forewarned 7:19 fork 21:16 form 48:23 formal 10:18 format 50:9 formed 14:4 forms 12:14 44:13 forth 23:20 forward 5:16 21:24 27:3 found 5:6,13,19 18:16 22:22</p>	<p>31:4,6,24 32:2,3 33:22 36:1 45:18 46:8,9 Fountainview 2:7 four 9:11 32:6 34:10 36:23 40:8 frame 24:22 Francisco 2:15 frankly 9:10 free 20:19 fresh 9:23 friend 26:16 33:10 41:25 friendly 20:9 friends 11:23 26:18,20 30:4 front 46:14 Frost 30:5,6 fund 25:14 further 6:17,19 6:24,25 49:4 FYI 33:21</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>Gale 1:21 50:15 gathering 9:25 Gee 43:9,9 gentleman 47:9 gentlemen 48:16 48:21 Germany 47:22 getting 38:12 ghost 40:8 gift 32:6 give 7:1 9:15 10:10 15:14 43:11 given 9:8 15:3 20:4 29:8 38:4 global 13:16 go 5:16 9:4 10:25 16:4,21 18:23 20:18 22:2,4,5,9 22:9,12,14 25:10 26:19 27:2 30:16 37:25 41:13,22 43:3,10 goal 17:6 35:2</p>	<p>going 4:16,20 8:12 9:22 11:20 15:18 20:24 23:3 25:8,9 28:7 37:10 41:16,17 gold 19:9 gonna 12:4 15:8 22:10 23:22,24 32:9 44:1,4 47:18,24 good 4:6 7:9,10 14:6 16:2 24:9 30:11 42:11 48:20 grand 48:14 grant 5:12 granted 5:25 great 9:18 group 1:8 2:11 22:11 47:1 guide 27:9 Gutman 45:19 46:1 guy 17:11,16 41:6 45:21 48:14 guys 33:21 guy's 45:24</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>hack 17:6,19 22:1 22:19,21 23:25 24:1 29:6,8 31:15 39:3,7,14 39:21,22,24 40:11 44:22 46:6 48:12 hacked 13:21 14:23 24:24 27:7,10 38:22 44:19 45:1 hacker 38:9 hackers 16:10 26:5 38:3 hacking 16:17 24:10 26:7 38:7 40:13 Hagan 2:5 6:13 6:14,19,20 17:14 Haifa 17:9,18</p>	<p>31:10 half 11:2,11 hallway 9:3 hand 5:18 21:9 35:2 handful 42:3 happen 33:19 happened 18:21 24:12 27:21 30:3,14 31:23 36:6,8 39:5 47:18 happens 42:6 hard 7:20 hardware 17:9,10 26:4 harm 13:1,2 16:4 21:22 26:22 Harper 42:14 HARTSON 2:18 Hasak 15:17 43:3 43:10 Hasak's 25:11 Hat 17:4,14 29:22 head 22:7 45:20 Headend 20:10 25:20,25 39:8 40:4,5 hear 10:24 12:12 16:11,13 heard 7:15 13:5 13:24 14:25,25 15:1 16:25 37:4 held 7:3 49:3 50:8 help 36:2 helped 21:4 hey 27:5 33:21 41:12 46:22 He'll 11:6 hidden 18:2 41:20 hide 18:6 19:3 higher-ups 34:2 hired 16:9,10,15 16:16,18 26:10 26:15 48:7,9 hit 21:20 HOGAN 2:18 hold 12:6 33:13 holders 44:15 hole 39:1,1,1,1</p>
--	---	--	--	--

holes 37:1,15 38:16	indication 5:11 9:15	42:24 43:3	21:7,8 29:12,17 29:17	Ladies 48:21
home 9:22 22:4 46:14	individual 28:22	investigations 43:8	kidding 8:3	land 31:17
honest 10:5	individuals 14:25 30:14	involved 19:6 25:19 27:12	kind 8:13 18:8 36:21	language 5:6,7 6:6
Honor 6:14,16,20 11:16 48:19	industrial 23:6	30:19 31:7 39:2	KLEIN 2:19	large 23:6
HONORABLE 1:3	infamous 26:15 32:22	41:7,16 43:1,17	knee-jerk 37:25	largest 13:11 48:11
hopelessly 13:7 13:21 14:13	inferior 23:1,2	43:17,18,18	knew 16:16 17:21 23:3,3 25:8	Lastly 9:12
horizon 13:13	inform 44:15	46:18 47:15	26:24 30:12,12	late 13:21 14:6 32:6
hour 9:3 11:13	informal 6:2	Israel 17:4 21:9 40:13 41:18	30:13 33:25	launches 13:18
hours 8:20,21 9:8 9:20 11:2,5,11	informally 10:14	42:10,13	43:24 47:22	launching 14:21
house 25:3 39:18	information 13:1 17:16 25:9	issue 4:24	know 6:8 8:20 13:7,20,20	law 2:7,14,19 10:6 44:15
Houston 2:8	26:24 27:1	I.D 45:17,17	16:14,23 18:11	laws 47:23,24
humbled 8:18	28:23 29:2,2,3	<hr/> J <hr/>	18:22 20:13	lawsuit 12:12 36:3 46:9 48:2,6
hundred 4:21 15:6,11	36:11 41:5,10	Jane 49:4	24:3,11,12,12	layer 19:16 20:17 20:21
hunt 39:24	43:6,14 44:21	jeopardy 15:3	24:19 26:13,16	lead 31:17 35:21 39:4
hurt 35:3	45:7	Jim 22:10,11,13 34:18,22	27:5,10 28:9	leading 31:10,11
<hr/> I <hr/>	informed 42:24	job 24:9 28:12 33:15,18	29:5,7,15,16,18	leads 9:22
ICG 32:15 35:23 35:23 36:8	injunction 5:1	Johnny 44:10 45:9	30:9,25 31:1,1,2	learn 23:3
ID 17:24 18:3,6 18:17,18	injunctive 5:4,8 5:12	Johnny-on-the-... 35:18	31:4,13,16	learned 22:23 24:7 26:14
identical 40:6	instruct 10:7	Jon 30:22	32:21 33:4,13	lectern 11:21
identify 15:8	instructions 6:7 7:22 9:14 12:13	journey 7:11	36:9 38:19 39:9	left 19:3
identifying 18:3	32:10 44:21	Judge 1:3 48:6	39:9 40:2,16	legitimate 21:17 22:1
II 49:5	45:2,7	judgment 8:11	41:23 42:11,18	
immediately 37:10	instructs 18:1	Judicial 50:10	42:24 44:7,18	letter 14:9
implicating 30:10	intact 8:17	July 28:16	45:4,5,20,22	let's 12:7 13:4 24:2,5 33:17
implies 5:7	intellectual 46:21	jump 27:18	46:11,20 47:1 48:18	24:2,5 33:17
important 14:23 15:2 16:20	intent 14:9	June 48:1	knowledge 39:11	37:6 46:22
17:20,25 22:8,9	interchange 41:18	JUROR 8:1,4	knows 30:9 31:14	liability 4:24 5:9 5:12,13
22:20 23:24	interesting 25:18 40:18 42:2,7,17	jurors 10:5	Kommerling 16:11,12 17:1	lie 43:11
24:19 26:23	48:15	jury 1:15 4:4,7,14 4:17,22,24 5:10	23:9 24:13	lies 40:17
28:20 32:7 34:7	internal 17:22,25 17:25 18:7	5:14,23 6:7,18	27:24 31:6	light's 9:17
37:17 38:19	19:14 27:8	7:4,10,22 8:17	42:25 43:1,15	likability 10:22
44:1 47:1	38:20	9:14 10:1,17	43:16 47:15,15	limitations 11:14
impose 5:1	Internet 13:1 27:1 33:16 35:16	jury's 7:5	Kudelski 37:4 38:8	limited 36:20
include 17:4	48:10	<hr/> K <hr/>	Kudelski's 37:6,8 37:10	link 40:4 47:11
included 24:10	interruptions 9:10	keep 8:9,16 9:3 16:7 33:16 35:3	<hr/> L <hr/>	linked 40:3
includes 29:22	intervened 48:3	44:10,14,16	L 2:18	links 40:12
index 40:10	invalid 40:11	KENNETH 2:19	lab 17:2,2,9,18 18:1 19:19,20	listen 39:2
indicated 5:24	investigation 38:15 40:15	key 15:8	23:7 31:10	literally 8:13,21 9:11
		keys 20:23,24	label 33:20	litigate 44:25
			labs 26:4	litigation 25:22

<p>36:1 48:4 little 11:25 12:1 27:1 38:4,5 42:5 live 37:10 located 17:4,18 location 21:3 lock 13:17 log 21:6 31:12 loggerhead 9:21 logical 11:3 long 7:11 9:15 10:24,25 11:18 longer 38:11 look 15:24 18:16 24:8 25:10 27:5 27:13,16 33:21 35:6,13 38:23 40:22,25 45:18 46:6,12,24 47:14 looked 6:12 looking 19:16 Los 2:21 lose 8:14 lot 11:23,24 33:1 34:16 loyalty 43:12 lucky 36:3 lunch 11:9,10 lunches 9:3</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>M 2:5 Mail 40:16 mailbox 40:17,20 42:15 44:8 main 15:19 25:11 42:1 maintain 15:12 making 24:9 37:13 Manassas 44:9 manual 24:9 38:7 manufactured 17:2 March 27:25 28:5 28:13 Marco 33:8 Marcos 40:16 market 13:16,17</p>	<p>13:23 14:6 15:21 marketing 38:20 marketplace 13:6 16:7 markets 13:12 marking 27:9 marry 20:15 Mary 30:8 mask 45:17 master 24:14 materially 40:6 matter 8:11 10:1 46:19 48:22 50:8 mean 21:12 36:19 42:4 45:24 48:17 means 7:23 8:5 10:12 measure 5:18 measured 38:1 media 19:21 member 17:13 members 7:10 17:4 men 41:9 Menard 26:16,16 26:18 27:11,14 28:7 29:25,25 30:4,15 41:23 42:9,17 43:21 47:9 48:7,9 Menard's 41:25 mentioned 28:8 mentions 28:20 merely 28:6 merger 14:8 Mervin 42:1 met 47:8 metal 19:16 metallic 19:12,13 mic 30:6 microphone 11:21 midnight 8:25 Millennium 12:17 mind 9:22 15:24 28:18 46:17 minimal 9:2</p>	<p>minute 41:4 minutes 11:7 48:25 mirrors 34:17 misdirections 18:13 misunderstandi... 4:10 moderate-level 38:9 modus 27:10 moment 10:8 Monday 7:25 money 23:11 25:12,13,13 26:10 28:15 29:25 30:15 34:14 42:19 44:12,15 month 26:6 48:10 months 23:2 26:7 32:6 Mordinson 17:5 17:13,15 20:4 23:14 24:15 29:23 31:16 39:7,13,17 40:24 Mordinson's 41:12 morning 4:6 6:5 7:9,10 8:2 Moskowitz 2:24 motion 5:25 motive 34:19 move 10:14 20:19 Musketeers 21:11 MYERS 2:12</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>N 3:1 Nagra 15:6,6 35:3 37:2 38:24 39:19 NagraStar 11:5 Nagra's 31:15 name 25:11 nauseam 38:25 NDS 1:8 2:11 13:5 14:22,22 15:11</p>	<p>16:15,16,19 21:17 23:17 26:9,19 27:25 30:8,10 34:2,11 34:12 35:2 36:1 37:22 38:11,20 39:6,6,9,14,15 40:19 42:10,13 42:14 43:13,22 46:18 47:1 NDS's 40:12 44:17 necessary 4:24 need 4:21 10:18 12:9 15:24 18:1 18:6,8 21:23 22:22 37:24 39:7,8,10,10,11 39:25 40:2,3 needed 18:13 25:12 negotiations 26:24 27:4 neighbors 20:19 Neither 8:14 network 14:18,21 19:8 24:4 25:15 25:16 26:20 29:21 38:12 Neumann 30:25 never 29:8 43:19 43:20 news 13:25 19:19 25:1,2 36:5 nice 49:1,2 nics 27:16 night 6:8 Nipper 16:22 22:11,14 24:10 25:24 32:9,12 32:16,19 34:11 34:12,14,15 35:11 36:2,16 36:18 40:3,12 NipperClause 32:11,22 34:6 40:4,6 NiPpEr2000 35:7 35:13 nitric 19:15</p>	<p>Noll 2:6 46:13 Norris 46:12,13 46:15,18,21 November 25:21 25:23,25 46:12 number 18:9,18 numerous 16:19</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>O 1:3 obligation 8:12 obligations 8:9,9 obviously 5:3 occasions 9:5 10:13 occur 9:10 occurred 5:22 occurring 10:15 October 31:22,23 45:14 odds 26:3 offended 39:20,23 offering 43:1,15 Official 1:21 okay 4:5 6:22 7:1 10:9 18:20 21:16 22:11 27:25 39:8 43:4 43:14 45:4,6,19 old 25:1,2 Oliver 16:11,11 24:13 27:24 42:25 47:14,15 once 20:13 32:19 33:24 38:6 ones 13:3 20:5,7 Ontario 22:9,9,11 22:12,14 oOo 49:7 50:1 opened 39:1,1 opening 7:13 11:5 11:15,19 20:14 operandi 27:10 operation 26:21 28:18 44:10 45:8 operational 17:2 operations 19:20 25:14,17 operative 25:8</p>
--	---	---	---	---

operator's 37:21 37:23	payroll 26:5	5:24 6:3 11:4,17	PRESIDING 1:3	punitive 44:2
opinion 48:23	Peled 14:25 16:25 22:25 31:7	plan 17:3 19:2 20:7 21:15	pretty 12:21 15:3 34:9	purchased 36:8
opportunity 10:10	37:18,21 42:10 42:24 45:23	37:12	previously 6:10	purposes 4:12
Opposing 11:10	Peled's 27:6,22	planes 21:1 29:17 41:7	principal 17:8	pursuant 50:5
order 4:25 5:24 31:20	29:5 31:5 35:9	platform 13:8,10 37:21,22	prior 41:1	put 12:25 20:18 23:11,13 34:14 34:23,25 36:25 37:12 38:4,5 39:19 45:9
originally 27:19 48:2	Penal 12:20	play 37:12 45:11 46:6	probably 18:22 22:12 27:4 36:23 48:20	putting 24:25 26:6
Outside 4:4	people 13:1 16:1 18:1 23:10 26:9	players 41:21	probing 19:24	P3 24:20,21
overflow 40:7	26:11 27:6	PLC 1:8 2:11	problem 14:12 17:22 28:8	
override 12:24	30:13 34:18,19 39:2 40:17	please 7:7	problems 15:20 16:1	Q
overseas 21:2 47:18	pepper 38:5	plug 37:15	proceed 8:15 15:18	question 4:14 5:9 5:14 6:4
o'clock 8:1,2 9:4 9:15,18,23	period 11:12 24:20,21 25:8 33:11	point 11:3 14:14 15:4 18:13 21:24 30:3 36:15 39:16	proceedings 1:14 3:2 49:4 50:8	questioning 46:13
O'MELVENY 2:12	person 31:14 36:16 39:8	pony 30:8	process 8:7	questions 12:15
P	personal 8:9,11	Poppins 30:9	product 14:6 15:14 16:6 37:13	quickly 23:5
package 42:21	personally 39:20 39:22	portion 10:11	products 13:15 48:13	quieter 10:20
packages 32:4	perspective 4:17	possession 31:1	product's 16:2	Quinn 30:5
page 3:2 5:19 6:6 42:8 50:9	phone 28:8	possibility 18:2	programmers 12:25	quote/unquote 5:4
paid 15:5,6,11 19:19,20	phrase 24:10 34:1	possible 14:3	programming 12:22 19:22,23 21:14	R
pairing 20:22,24 21:7,8	pick 22:5	post 26:8 32:9,22 32:22 33:1,3,11 33:13 34:5,11 34:25 35:13 40:6,12	product's 16:2	R 2:13 18:18
paper 25:11	picture 37:1	posted 27:1,19 31:8,9 32:21 33:10,20 35:19 44:22	programmers 12:25	radar 22:18 44:14
part 17:3 27:19 28:18 45:15	piece 46:8	posting 25:22 27:23 32:10 43:18,19,20	project 23:12,17 25:25 39:8 40:4 40:5	rail 27:19
partial 25:22	pieces 46:9	PowerPoints 6:21	promised 31:17	raising 5:16
parties 7:8,20	pillars 34:10 40:9	practice 23:25 24:1 44:5	promptly 9:4	RAM 40:8
party 5:16	piracy 16:8 24:23 30:7 31:8 33:16 33:19 38:17,24 43:17,18,22 44:22 45:8	practicing 10:9	proof 21:18	Ray 45:19
passion 11:23,24	pirate 16:15,18 25:14 26:17	prepare 23:23	proper 5:9	reach 32:19
passport 41:12,14	29:13,13,18,20 42:20 48:13,13	prepared 7:21 35:24	protected 12:23 19:11	react 40:1
passports 41:10	PiratesDen 31:21 32:7,8	presence 4:4,7 7:4	protection 20:17 20:22	reactions 37:25
patch 37:16	Pizzo 32:25 33:8	present 2:23 5:17 7:5,6,8	project 23:12,17 25:25 39:8 40:4 40:5	read 9:13 15:9 18:22
patched 37:19	Pizzo's 33:1	presentation 10:16,21 29:9 29:10	promised 31:17	readable 20:6
patches 24:25	place 4:17,17 22:2 32:20	presented 5:2	promptly 9:4	reading 20:7
path 21:20,22	placed 20:21		proof 21:18	reads 12:13
pattern 12:23 44:5 45:10,16	places 14:2 41:3 47:19		proper 5:9	real 9:6 28:20
pay 13:3 28:15 35:3 48:14	PLAINTIFF 2:3		protected 12:23 19:11	reality 33:19
paying 40:19,20 42:14,15	plaintiffs 1:6 3:3		protection 20:17 20:22	really 9:8,9 32:18
payments 44:20 45:7			proud 10:3	reason 10:4 25:6 25:7 30:11 34:20,21 36:15

22:25 27:22 38:21 48:2 receiver 18:9 22:5 22:5 receiving 32:4 recess 7:3 49:1,2 49:3 recesses 11:3,12 recipe 26:11 34:5 38:4,7 record 4:5 37:8,8 refer 47:20 regarding 5:20 6:9 registration 32:13 35:7 regulations 50:10 reiterate 4:10 relate 13:23 28:17 related 30:7 41:23 relationship 15:2 15:13 release 26:23 relevant 5:18 relief 5:4,8,12 remember 9:24 17:14 18:19 19:19 21:4 22:8 24:23 26:21 27:15 29:6 30:5 31:25 32:5 34:7 35:9,23 36:5 37:17,18,20 38:7 39:17 45:16,21 46:12 47:4 remind 7:13 remove 6:2 19:9 19:13 rent 22:3,6 report 20:11 22:20 23:17,21 23:23 24:8,13 24:16,17 25:5 25:21,25 26:14 29:24 35:22 39:8 40:4,6 reported 46:23,25 49:4 50:7 Reporter 1:21	50:15 REPORTER'S 1:14 reports 32:15 36:7 represent 44:24 46:10 reprogram 27:18 30:2 reprogrammed 46:15 reprogramming 44:19 45:5 reputation 15:25 request 6:2 requires 40:10 reread 4:8 research 17:9 resolved 48:5 resolves 17:24 19:1 resources 26:7 34:13 respect 6:9 response 38:1 retain 38:11 retained 35:25 return 42:7 returning 7:25 Reuven 15:17 revenues 15:15 37:2 reverse 21:17 24:2 37:11 reverse-engineer 29:11 reverse-enginee... 29:16 44:18 45:1 RICHARD 2:18 RICO 6:9 44:3,4 right 8:6 10:25 46:14 48:21 road 21:16,21 roads 35:21 roll 36:23 ROM 27:20 38:25 39:1,1,1 Ron 28:2 42:19 room 1:22 31:12	royalty 5:1,3 RPR 1:21 50:16 rubbed 12:5 Rubin 2:24 15:1 34:8 40:5,12 Rubin's 34:7 Rule 5:24,24 49:4 run 24:25 38:13 38:14 running 45:10 48:8 rush 8:11 R.C.M.P 41:24,25 <hr/> S SACV 1:7 salt 38:4 San 2:15 40:16 Santa 1:16,23 4:1 sat 36:22 satellite 1:5 2:3 13:13 16:15 37:21 satisfied 6:6,13 satisfying 4:12 save 14:20 saw 13:12 25:22 27:8 33:19 35:16 47:9 saying 40:17 says 18:18 28:21 28:22 33:2,9 34:8 35:16 38:23 40:9 42:10 45:19 48:1 schedule 7:17 scheme 27:12 40:20 42:16 screen 18:23,25 screws 28:4 Sean 30:5 seated 7:7 second 12:18 18:11 33:17 second-guess 37:22 secret 27:9 secretive 25:3 section 22:20 41:1	50:5 sections 23:24 secure 14:12 15:15 16:2 security 36:20 45:21 48:11 see 8:22 9:19 10:13,15 11:8 12:13 15:7,16 15:20 17:19 20:10 22:20 25:23 30:23 31:22 32:3,12 33:9 36:17 41:21 45:9 46:16,24 47:20 seek 5:4 seen 9:2 13:3 19:8 Segoli 30:22 self-fund 26:21 selling 34:24,25 send 4:13 11:9 29:25 30:14 34:1 43:3 sending 28:9 31:2 sends 28:2,4 sense 26:9,12 35:1 sent 6:7 43:9 September 31:14 48:3 Sergei 30:5 serial 18:9 service 8:17,19 services 13:15 session 8:6 set 9:20 13:4 15:24 23:19 29:20 30:11 settle 48:4 seven 9:9 shared 24:13 Shen-Orr 17:5 Shiloh 46:25 ship 28:14 30:15 shipments 32:2 43:21 ships 30:22 Shkedy 17:5,8,8 20:1 23:14 24:13 29:23	31:16 40:24 shoddy 43:8 short 32:23 33:11 Shortly 48:7 shot 18:25 shots 18:24 show 23:19 24:22 29:4 41:10 showed 29:10 shown 24:16,18 24:18,19,20 41:11,13 shows 17:22 19:1 shredded 25:7 shut 39:21 sic 40:17 42:15 side 10:14 11:2 sidebars 9:1 sides 7:21 8:16 significant 18:24 27:21 31:21 33:7 signs 43:2 similar 28:5 45:3 simultaneously 14:17 single 23:18 sit 18:11 40:23 sitting 33:12 situation 16:4 six 9:9 23:2 26:6,6 32:6 37:7 skip 14:21 30:21 slide 47:25 slides 36:24 slowly 10:25 smart 19:8 23:10 24:14 40:12 41:6,6 smarter 39:23 smoke 34:16 sniffer 21:4,5,6 29:19 Snyder 2:13 4:19 6:15,16,24,25 11:8 23:20 software 17:15,19 26:5 39:12 48:13 solution 15:12,13
--	--	--	--	---

16:3,3 somebody 16:5,21 17:24 26:8 39:21,23 someplace 11:6 somewhat 7:19 sophisticated 40:10 sorts 36:13 sounded 47:10 Southwest 40:18 special 12:14 specific 4:16 5:17 12:15 spent 26:10 34:14 44:12 spit 47:10 springboard 13:14 stage 15:24 Stan 30:5 stand 7:16 29:7 32:1,25 34:15 36:11,11 37:4 38:8 46:13 47:4 stands 36:14 Stars 2:20 start 8:6 9:4,13,23 11:9 25:19 37:25 started 12:8 24:21 37:5 starting 13:21 19:2 starts 10:2 18:18 state 4:16 24:23 33:18 statement 11:15 statements 7:13 States 1:1,22 13:11,11 15:22 20:25 47:19,23 50:6,10 state-of-the-art 23:7 26:4 station 19:24 stay 9:17 stayed 13:22 steady 37:11 stenographically	50:7 steps 17:12 21:23 22:2 Stinger 26:15 29:18 47:6,10 stipulation 18:22 18:24 stipulations 7:16 stolen 45:22 STONE 2:18 stood 37:3 stop 10:18 21:2 26:25 27:20 stops 10:19 story 15:19 25:12 40:21 straight 8:4 45:25 stream 21:6,7 street 1:22 20:19 strong 37:11 strut 10:10,11 stuck 36:7 student 40:18 stuff 17:17 36:4 42:16 sturdy 37:3 style 10:19,19 styles 10:9 11:25 12:5 submit 4:24 5:9 5:13 submitted 5:23 subscribers 37:2 subscriber's 22:4 successful 29:6,8 35:4 suffer 24:6 Suite 2:8,15,20 summon 6:18 sun 8:22 supposedly 45:22 sure 18:8 21:25 24:5 36:22 46:3 47:14 surf 48:9,14 swap 38:18 swapping 37:25 swap-out 39:4 switch 14:22 system 10:3 12:24	13:7,8 14:11,12 14:19 26:7 37:6 37:6,7,9,9,11 44:22 45:8 46:3 systems 27:7 system's 16:1 <hr/> T <hr/> T 2:4 take 10:15 20:2 20:15,17 21:13 21:23 23:2 42:2 taken 9:9,11 21:20 takes 17:16 20:5 25:2 talk 15:20,21 17:1 17:23 18:11 33:1 37:6,16 38:25 42:18 43:3,8,10 talked 15:18 19:18 20:14 45:16 talking 17:25 25:19 29:8 39:19 talks 18:17 41:1 41:21 45:14 47:16 targeted 24:3 Tarnovsky 16:10 16:13,14 19:2,5 19:8 21:4 23:9 24:15,16 25:4 26:14,18 27:12 27:23 28:4,10 28:15,17 29:23 29:24,25 30:1,2 30:19 31:1,7,11 31:17,24 32:16 32:19,21 33:5,9 33:12,24 34:16 35:10,21 36:2 36:16,18 39:9 40:3,15 41:3,6 42:13,25 43:4,5 43:6,10,16 44:10,20 46:11 46:15,18,21	47:1,5,6 Tarnovsky's 19:5 25:3 27:15 30:13 33:15 39:18 41:5,14 42:7 44:16 46:14 48:17 task 26:19 tax 42:7 team 11:24 17:4 17:14 29:22 tear 37:13 technical 39:11 41:18 technically 47:21 telephone 41:2 television 13:12 13:13 tell 8:23 10:3 22:10 27:6 28:5 33:13 34:15 45:25 46:1 tells 40:5 tentacles 14:2 tenuous 40:24 terminated 44:11 terminology 35:11 terms 14:9 test 37:3 43:12 testified 47:12 testify 14:25 15:1 testifying 22:25 23:1 testimony 13:5,24 27:6,22 29:6 34:8 35:9 39:17 tethered 30:6 Texas 2:8 40:18 text 34:6 thank 6:16,25 7:8 11:16 they'd 10:11 32:25 48:8 thing 8:20 18:19 19:9,24 20:13 25:18 29:10,19 31:3,12,20 36:22 40:19,22 42:17 44:14	things 14:17 18:12,21 19:25 20:2,10 22:24 27:21 35:5 36:6 37:20 39:25 46:8 47:17 think 8:21 9:8 12:9 15:24 26:2 33:17 37:24 40:1 48:8 Thomson 24:5 30:23 thought 7:18 23:1 thousand 4:21 15:6,11 three 21:11 48:17 throw 23:4 tie 32:16 34:11,11 36:17 tied 32:12 42:17 43:4 46:7 48:16 ties 30:13 time 6:8 8:13 9:25 11:12,18 14:14 16:16 24:22 25:8,22 26:10 28:2 33:12 35:24 37:3 38:9 41:18 42:12,13 42:19 43:25 44:8,17 45:13 47:3 48:19,20 times 8:24 9:24 timing 47:25 tired 36:23 Title 50:6 today 7:22 36:12 36:15 told 4:15 7:17 8:10 10:9 12:8 28:8 31:6 32:1 34:3,21 38:8 43:16 45:6 47:8 top 27:9 totally 26:8 touch 25:4,6 trace 46:4 traces 41:25 47:17 track 19:4 37:8,8
--	--	---	--	--

tracks 16:24 18:14 19:4 31:10 trail 38:12 train 26:25 27:20 trained 20:6 trains 21:1 29:17 41:7 transcript 1:14 50:7,9 trap 35:22 traveled 21:21 trial 1:15 4:25 9:9 18:21 trick 44:8 tried 9:3,4 18:14 23:15 37:15 38:2,15 true 21:18 31:15 50:6 truly 41:14 43:22 trust 16:1 try 15:13,14 38:1 40:23 44:13 trying 22:17 24:24 33:18 43:22 Tuesday 7:19,24 8:6 turn 44:14 turns 17:16 TV 20:20 46:22 two 11:2,5,10 12:20 14:17 16:9 23:8 26:3,4 26:5,9 32:2 41:9 type 44:5	unfortunately 36:6 Unilogic 4:8,23 5:5,7,15 United 1:1,22 13:11,11 15:22 20:25 47:19,23 50:6,10 University 40:18 unrelated 26:9 unwilling 5:12 USA 24:4 47:17 47:20,22 use 10:11,12 11:20 13:1 14:11 21:3 25:9 30:8 40:11 46:2 user 17:24 20:9 uses 32:9,11 usually 9:4 utilize 26:19 40:8 U.S 50:15	wait 41:4 Walker 44:10 45:9 want 4:9 6:11 8:10,16 9:17 10:15 15:21 17:23 21:17 25:4,6 26:22 27:18 37:5,16 37:18 40:5,22 40:23 41:4 43:8 46:3 48:8 wanted 13:15,24 14:1,2 41:8 wants 8:14 28:3 Washington 21:2 wasn't 39:21,24 46:20 watch 46:22 Waters 22:10,11 22:13,13 34:18 34:22 way 6:11,22 11:1 12:5 13:22 26:23 34:1,10 40:1 41:5 ways 18:14 34:11 wayside 23:4 Web 48:14 website 26:17 27:5 45:2,3 Wednesday 1:17 4:1 31:5 week 28:14 31:6 weekends 8:25 weeks 9:9,11 36:23 Welch 2:4,6 6:21 11:4,13,15,16 11:18,22 48:19 well-aware 8:8 well-known 26:17 went 15:17 21:22 23:14 42:21 weren't 4:15,20 22:17 23:3 West 1:22 2:14 we'll 7:2 10:18 11:8 12:18,19 30:21 31:19	36:23 48:25 we're 4:5 7:17,20 8:8,12 30:24 44:1,2,24 we've 6:21 8:15 9:3 12:12 13:3 19:8 22:23 37:1 40:2 42:22 43:14,14,15,16 44:25 47:25 whatsoever 13:9 36:16 white 25:10 30:8 wife 41:17 wife's 45:24 WILLETTS 2:5 willing 5:4,8 willingness 9:7 wisdom 10:6 witness 7:16 word 28:20 work 7:20 8:12 9:7 11:20 20:11 21:10 40:14,21 workaholic 8:21 worked 17:9 19:10 working 19:14 28:1 42:14 works 10:4 13:5 22:1,19 world 16:10 23:8 39:14 worldwide 14:24 14:24 45:20 world's 26:4 48:11 worth 4:20 wouldn't 22:1,2 29:2 33:20 39:24 45:18 writes 33:6 writing 28:25 29:1 written 6:10 23:23 wrong 12:5 18:5 33:4,4 www.dr7.com 35:17	www.Interesting 35:17
				<hr/> X <hr/>
				X 3:1
				<hr/> Y <hr/>
				year 42:9 years 37:7,9 yesterday 8:22 Yoni 46:25 y'all 12:14
				<hr/> Z <hr/>
				zeros 20:5,7 Zvi 17:8
				<hr/> \$ <hr/>
				\$20,000 42:18 44:9 \$350 31:18 \$5,000 42:9 \$7500 42:8
				<hr/> 0 <hr/>
				03-950 1:7
				<hr/> 1 <hr/>
				1 12:16 1st 25:21 1-053 1:22 10 5:6 37:9 10-minute 7:1 10-21-99 28:12 10:00 8:1 10:30 6:8 100 41:2 1034 32:3 40:23 40:25 41:21 11 3:3 25:25 11:00 6:8 113 32:24 12th 25:25 12-A 35:12 1270 27:8 38:19 1400 2:20 1565 15:8 1568 17:20 16CF54 30:24 17 1:8 4:2 35:25 36:13
<hr/> U <hr/>	<hr/> V <hr/>			
ultimately 13:3 17:19,21 34:4 38:16,17 44:11 undercover 40:20 underlying 36:9 undermine 16:21 understand 4:19 17:17 21:10 understanding 36:21 40:10 unfolds 9:20	v 5:5 37:6 valuable 25:5 variable 40:11 variety 18:14 33:7 34:18 37:23 various 14:25 41:3 verdict 12:14 violate 12:25 violated 47:23 Virginia 44:9 visual 36:21 Volume 1:8 4:2 49:5 Von 27:16 28:8,9 28:14 30:25 31:13,13 Vonnie 28:12 vs 1:7 vulnerabilities 23:16 vulnerability 40:7			
	<hr/> W <hr/>			
	W 2:13 WADE 2:4,6			

189 15:16	4:00 9:22	96 13:6,21 14:16		
19 32:15 35:23,25 36:14	40,000 41:20	97 14:9,16 17:3		
1990 13:6	411 1:22	98 14:16 17:19		
1992 5:7	415 2:16	20:11 21:19		
1996 14:7	<hr/> 5 <hr/>	23:20 24:18		
1997 16:16	5:00 9:5,15,23	25:21,23 26:24		
1999 2:20	50 5:24,24	29:16 34:8 41:8		
<hr/> 2 <hr/>	51 46:16,24	984-8700 2:16		
20 11:7 48:25	511-A 33:1	988 27:13		
2000 28:13,16	52 47:11	989 27:13		
31:22,23,24	558-8141 1:23	99 24:18,21 27:17		
42:9,12 46:12	<hr/> 6 <hr/>	27:17,21,25		
2001 24:19,23,24	6,000 48:10	28:5 31:14		
25:1 38:21	6:00 9:15	45:14		
2002 48:3	610 45:18	990 27:13		
2003 48:1	612 5:6	991 27:13		
2007 43:6	627 5:19	998 34:6,8 35:10		
2008 1:17 25:24	628 5:6			
50:12	<hr/> 7 <hr/>			
2008-05-07 1:25	7 1:17 4:1			
2009 47:13	700 2:8			
20908 4:1	713 2:9			
21 38:3	714 1:23			
22nd 33:5,8,14	75 6:6			
35:18	753 50:5			
2225 18:20	77057 2:8			
23rd 33:2	782 42:6			
24th 32:9 34:4	785-4600 2:21			
35:13	<hr/> 8 <hr/>			
2401 2:7	8 50:12			
2600 2:15 18:25	8:00 9:4,18			
27 32:15 35:25	8:16 4:3			
36:14	8:19 7:3			
27th 31:14	8:30 6:18			
275 2:14	8:46 11:15			
28 50:6	80 41:2			
<hr/> 3 <hr/>	<hr/> 9 <hr/>			
3M 23:25	9:50 49:3			
3:00 8:2	90067 2:21			
310 2:21	92 13:18			
380 48:14	92701 1:23			
39 32:13 35:6	94 13:19			
<hr/> 4 <hr/>	94111 2:15			
4 22:20 23:24	9472 1:21 50:16			
4th 1:22	95 13:6,21			
4.3 23:24	952-4334 2:9			