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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA .
VERSUS . Criminal Action
EHAB ASHOOR, . No. H-09-CR-307
Houston, Texas
January 11, 2010
Defendant. .
.

EXCERPT OF TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DAVID HITTNER AND A JURY
TESTIMONY OF **WARREN JAY WIDENER, LEE CHIEFFALO,**
DEWAN CURESTON BRITTON, AND DANIEL NUGENT

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PROCEEDINGS RECORDED BY STENOGRAPHIC MEANS,
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1 EXCERPT OF PROCEEDINGS

2 January 11, 2010

3 THE COURT: All right, ladies and gentlemen,
4 we're ready to proceed.

02:30:29 5 Government, call your first witness.

6 MR. VARNADO: Thank you, your Honor. The United
7 States calls Warren Widener.

8 THE COURT: Are you going to use that or not?

9 MR. VARNADO: I think I will, your Honor.

02:30:48 10 THE COURT: Okay. You need to aim it towards the jury
11 a little bit.

12 MR. VARNADO: I'm going to be using this camera a
13 whole lot.

14 THE COURT: Okay, whatever you want.

02:30:54 15 All right, sir, you want to come down the center.
16 You've already been sworn; is that correct?

17 THE WITNESS: Yes, sir.

18 THE COURT: Have a seat.

19 Pull the mike in a little bit.

02:31:09 20 THE WITNESS: Sure.

21 THE COURT: Don't do it too far. It carries real
22 well.

23 THE WITNESS: Okay.

24 THE COURT: We got a new sound system put in about a
02:31:14 25 year ago.

Widener - Direct/Varnado

1 All right, counsel, go right ahead.

2 MR. VARNADO: Thank you, your Honor.

3 (The witness, **WARREN JAY WIDENER**, called on behalf of the
4 Government, was previously sworn.)

5 DIRECT EXAMINATION

6 BY MR. VARNADO:

7 **Q** Good afternoon, Mr. Widener.

8 **A** Good afternoon.

9 **Q** Please state your full name and spell it for the court
02:31:21 10 reporter, please.

11 **A** Warren Jay Widener; W-a-r-r-e-n, J-a-y, W-i-d-e-n-e-r.

12 **Q** And where are you employed, Mr. Widener?

13 **A** I'm employed with Cisco Systems.

14 **Q** And tell the ladies and gentlemen of the jury what does
02:31:34 15 Cisco Systems produce as a company?

16 **A** Well, we're a technology company. In layman's terms,
17 essentially, we make the products that the Internet runs on. So
18 the data that runs across the Internet, our products are that
19 backbone that delivers the data.

02:31:49 20 **Q** And in more specific terms, would it be the production of
21 computer hardware and machinery?

22 **A** Absolutely. Yeah, primarily computer hardware, computer
23 software, as well; but primarily, we're known for our networking
24 hardware.

02:32:00 25 THE COURT: What's your position at Cisco?

Widener - Direct/Varnado

1 THE WITNESS: I'm with the Cisco Brand Protection
2 Team.

3 THE COURT: What kind, Brand Protection?

4 THE WITNESS: Brand Protection.

02:32:07

5 BY MR. VARNADO:

6 Q And Mr. Widener, where is Cisco based as a company?

7 A San Jose, California.

8 Q So it's an American company?

9 A Yes, sir.

02:32:13

10 Q And how many individuals does it employ globally?

11 A Globally, about 65,000.

12 Q Do you have a number for how many are employed here in the
13 United States?

14 A I don't have the current number for the US.

02:32:21

15 Q And is it fair to say tens of thousands of people?

16 A Absolutely.

17 Q And this company -- spell the name of Cisco.

18 A C-i-s-c-o.

19 Q This isn't the food service company, S-y-s-c-o?

02:32:33

20 A This is not the company that you see the trucks running
21 down the side of the road.

22 Q Have you been asked that question before?

23 A Many times, yes.

24 Q When did you first join Cisco?

02:32:42

25 A I joined Cisco in July of '98.

Widener - Direct/Varnado

1 Q And in what position did you join Cisco in '98?

2 A At the time I was what's called an inside channel account
3 manager.

02:32:53

4 Q And we're going to get into some of Cisco's sales channel,
5 the aspects of it. But tell the ladies and gentlemen of the
6 jury what does an inside sales channel person do at Cisco?

02:33:10

7 A So the channel team is who deals with our resellers. So
8 there's a community of people that resells Cisco products for
9 Cisco to end customers. As an inside channel account manager, I
10 was based in RTP Raleigh, North Carolina, and dealt with,
11 specifically, for me, the partners in the State of Minnesota;
12 and I was, essentially, the person that if you're a reseller and
13 you had a question about Cisco, how to deal with Cisco, any sort
14 of things like that, you pick up the phone and call your inside
15 channel account manager. And that's the role that I performed.

02:33:27

16 Q And how long were you an inside sales channel manager?

17 A I was an inside sales channel manager for probably about
18 two and half years.

19 Q And what was your next position at Cisco?

02:33:37

20 A I then became a channel account manager, which is,
21 essentially, the field version of the inside channel account
22 manager. So I moved to Des Moines, Iowa; covered Iowa,
23 Nebraska, and Kansas. And my job there was, essentially, to be
24 the liaison between our partner community, or our resellers, and
25 Cisco as a company.

02:33:54

Widener - Direct/Varnado

1 Q And you said you were in Iowa at that point in time?

2 A That's correct.

3 Q And when did you join the Brand Protection Team?

4 A Joined the Brand Protection Team in the January time frame,
02:34:08 5 2002. So just about -- I'm sorry, 2004. So just about six
6 years ago.

7 Q All right. And what -- describe your duties when you first
8 arrived with the Brand Protection Team and took that job with
9 Cisco?

02:34:20 10 A Sure. So my duties then were --

11 THE COURT: You can pull the microphone back a little
12 bit.

13 THE WITNESS: Back a little bit, okay.

14 THE COURT: Yeah, that's fine.

02:34:26 15 THE WITNESS: All right. My duties when I joined the
16 Brand Protection Team, essentially, were to handle case work;
17 and what that meant was any assistance that either our Cisco
18 account managers needed or end users or partners might need
19 understanding our policies around unauthorized product,
02:34:43 20 potentially counterfeit product, or policies around the terms
21 and conditions of our partner agreements.

22 BY MR. VARNADO:

23 Q So focusing really on two areas: the policies regarding
24 products and dealing with the distribution network, is that fair
02:34:56 25 to say one of them?

Widener - Direct/Varnado

1 **A** That's correct, yes.

2 **Q** And then, the other one dealing with counterfeit, that also
3 being part of brand protection?

4 **A** Correct, correct.

02:35:02 5 **Q** Have you moved up in the Brand Protection Team as the years
6 have gone by?

7 **A** I am currently the manager. My title is the manager of the
8 government -- governance operations team. So my team deals
9 primarily with unauthorized markets and partner channel help, if
02:35:19 10 you will, so, essentially, working with partners that may be in
11 violation of our contracts and dealing with that.

12 **Q** And do you also have some exposure to some of the
13 counterfeiting aspects of the Brand Protection Team in your
14 position as a manager?

02:35:32 15 **A** I do at times, yes.

16 **Q** I want to talk a little bit about that brand -- that brand
17 protection. I'm going to show you what's been marked and is
18 actually admitted as Government's Exhibit 1. Can you tell me if
19 you're familiar with those documents, have you seen them before?

02:35:46 20 **A** I have. These are trademark registrations.

21 **Q** Okay. And do you recognize each of these, if you'll look
22 at the last one, also?

23 **A** I do.

24 **Q** Okay. Show these up on the overhead.

02:36:00 25 THE COURT: Okay. Now, you may want to -- just make

Widener - Direct/Varnado

1 sure -- if the jurors have a problem, you may want to pull the
2 screen a little closer to this side.

3 Can you-all see that?

4 A JUROR: (Indicated no.)

02:36:10 5 THE COURT: A little problem?

6 A JUROR: (Indicated yes.)

7 THE COURT: Which way? Which way do you need it?

8 MR. VARNADO: Need to go a little more this way?

9 THE COURT: Toward here?

02:36:22 10 A JUROR: Yes.

11 THE COURT: Angled to you and this way, both.

12 A JUROR: Better.

13 THE COURT: Is that better?

14 A JUROR: Yes.

02:36:30 15 MR. VARNADO: Everybody see that?

16 Thank you.

17 BY MR. VARNADO:

18 **Q** Can you still see that, Mr. Widener --

19 **A** I can, yes.

02:36:34 20 **Q** -- if you don't mind leaning forward?

21 **A** Not at all.

22 THE COURT: We'll have to level it off. Why don't you
23 stick a pad under there or something.

24 MR. VARNADO: We were having trouble leveling it

02:36:46 25 earlier.

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1 THE COURT: Here we go. Hold it. Let's try that.

2 All right. Let's work on it during the break.

3 Can you get -- I guess that's the best we can do for now.

4 MR. VARNADO: Advanced government technology, your
02:37:04 5 Honor.

6 THE COURT: All right.

7 BY MR. VARNADO:

8 Q Mr. Widener, I'm showing you Government's Exhibit 1 which
9 is a trademark ending in the numbers '746.

02:37:11 10 THE COURT: Why don't you zoom that out?

11 BY MR. VARNADO:

12 Q Do you recognize this particular trademark?

13 THE COURT: The other way. The other way, please.

14 All right. So they get some feel for the
02:37:21 15 document.

16 THE WITNESS: I do. That's the trademark for the name
17 Cisco.

18 BY MR. VARNADO:

19 Q And so just the word itself, "Cisco," is actually
02:37:27 20 trademarked?

21 A That's correct.

22 Q And used on Cisco's products?

23 A Absolutely.

24 Q Okay. Show you the next one. Again, similar page,
02:37:35 25 trademark ending in '957 from Government's Exhibit 1. What

Widener - Direct/Varnado

1 trademark is this?

2 **A** That's the trademark for Cisco Systems.

3 **Q** Again, the word itself, "Cisco Systems," is under trademark
4 by Cisco?

02:37:47 5 **A** It is.

6 **Q** And is it used on its products?

7 **A** It is.

8 **Q** Lastly, the third trademark in Government's Exhibit 1
9 ending in '700 for the registration number. What is this
02:37:58 10 particular trademark?

11 **A** That is Cisco Systems with the Cisco logo.

12 **Q** And what does that logo -- just tell the jury what that's
13 intended to represent.

14 **A** It actually represents the Golden Gate Bridge in San
02:38:12 15 Francisco.

16 **Q** And what part of California is Cisco based in?

17 **A** San Jose, northern California, just outside of San
18 Francisco.

19 **Q** Okay. And is this yet another trademark that Cisco
02:38:21 20 maintains and does use on its products and has used on its
21 products?

22 **A** Yes, it is.

23 **Q** Now, are you the person at Cisco that's responsible for
24 obtaining trademarks for Cisco?

02:38:31 25 **A** I'm not, no.

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1 Q Are you, generally, familiar with what that process is to
2 get a trademark registered?

3 A I know that a trademark is applied for; and if it's
4 approved, it's registered. Outside of that, I don't -- can't
5 really speak to it.

02:38:45

6 Q Okay. And just those -- and is it your understanding that
7 these are trademarks that have, in fact, been applied for and
8 granted by the United States Patent and Trademark Office?

9 A That's correct.

02:38:56

10 Q And that goes the same for all three of those?

11 A Yes, sir.

12 Q Now, tell the ladies and gentlemen of the jury why, in
13 general, it's important for a company like Cisco to obtain
14 trademarks for its name and its logo?

02:39:09

15 A Well, it's all, essentially, in an effort to protect our
16 brand. If we don't have those marks trademarked, then somebody
17 else could manufacture products using the name Cisco or using
18 our logo and that would cause confusion in the marketplace.

02:39:27

19 And it would be impossible, essentially, for
20 somebody buying Cisco products to know whether or not they're
21 getting the Cisco products manufactured by us or the Cisco
22 products manufactured by the -- whoever else is trying to use
23 the name Cisco.

02:39:38

24 So it's important for us to have the name and the
25 logo trademark so that nobody else can use those, you know, as

Widener - Direct/Varnado

1 they manufacture products.

2 **Q** And again, important for Cisco as a company to protect its
3 own brand, correct?

4 **A** Absolutely.

02:39:46 5 **Q** But also to protect the consumer from not being confused
6 about other goods?

7 **A** Sure. We want a consumer -- if they buy something that
8 says Cisco on it, we want them to know that it is, in fact,
9 manufactured by Cisco.

02:39:57 10 **Q** And have there been any ratings or studies that show how
11 valuable Cisco's brand is just in terms of business in the
12 United States?

13 **A** There have been. In June of 2009, Business Week rated us
14 the 14th most valuable brand globally. And not Business Week
02:40:18 15 but Fortune Magazine ranked Cisco the number one most respected
16 networking company. So I think those speak to the value of our
17 brand, essentially, if you think of brand as reputation in the
18 marketplace.

19 And Cisco is somewhat of a unique company. It's
02:40:33 20 not necessarily maybe as well known to the average citizen
21 because, you know, you don't necessarily as just a private
22 citizen have a need to buy networking equipment; but if you were
23 in the networking industry or have a business, you know, that
24 has a critical network, the value of the Cisco brand is very
02:40:44 25 much recognized --

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1 THE COURT REPORTER: I'm sorry, you need to slow down.

2 THE WITNESS: Oh, sure, sorry. Sorry.

3 But if you are in the networking industry, then
4 buying Cisco products is something that you generally can do
5 with confidence because our brand is ranked as highly as it is.

02:40:58

6 BY MR. VARNADO:

7 **Q** I want to talk a little bit about what you mentioned, the
8 Cisco distribution network and the partner program. The jury
9 has already heard a little bit about that. Can you give the
10 jury a general description of how Cisco sells the majority of
11 its products?

02:41:13

12 **A** Yes. The majority of our products are sold not directly by
13 Cisco but sold through our reseller community or our partners.
14 The term is somewhat interchangeable. But close to 90 percent
15 of Cisco products are sold through Cisco resellers.

02:41:29

16 **Q** And are there different levels in this reselling and
17 distribution network?

18 **A** There are. When you -- when you sign up to become a
19 registered partner, it is -- you're accepting a partnership
20 agreement with Cisco. That's the -- kind of the base, you know,
21 partnership agreement.

02:41:46

22 Then as -- you as a company demonstrate that you
23 have the technical savvy necessary to design and implement some
24 of our product solutions, then you can go up through certain
25 levels. So there are silver-certified partners, gold-certified

02:42:04

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1 partners. Those are partners that have demonstrated that they
2 have the technical ability to design and implement the solutions
3 that the customers need.

02:42:20 4 **Q** I'm putting up on the screen for demonstrative purposes the
5 following diagram. Have you briefly seen this previously?

6 **A** I have.

7 **Q** And while we're talking, let me just back up a little bit
8 and ask you: Why is it necessary for Cisco to go through -- use
9 the -- utilize this distribution network and this registered
02:42:32 10 partner program as opposed to selling these products just on its
11 own?

12 **A** Well, it's -- essentially, it's much easier to scale. It's
13 much -- you know, Cisco employs, as I mentioned, 65,000 people
14 globally. We have several -- tens of thousands of partners
02:42:47 15 globally, as well. Each of those partners ostensibly will have
16 multiple salespeople. So they can touch more end customers than
17 Cisco alone could if we were selling direct.

18 **Q** So as a matter of efficiency, you're sort of setting up
19 this network to get Cisco's products out into the marketplace?

02:43:05 20 **A** That's correct.

21 **Q** Now, can you tell us -- I think everybody can gather what
22 Cisco is up to. What is this second level here on this
23 distribution network of authorized distributors?

24 **A** That's a representation of the authorized distributors in
02:43:16 25 the US currently. So most of our resellers purchase not

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1 directly from Cisco but purchase through our authorized
2 distributors and only through our authorized distributors.

3 **Q** And when you say your resellers, are those the folks that
4 fall into this registered partner category at the bottom?

02:43:34 5 **A** That's correct.

6 **Q** And you mentioned to some -- so the registered partners
7 generally get their product from the authorized distributors; is
8 that correct?

9 **A** As a registered partner, you are contractually bound to
10 source only through authorized distributors. So if you were to
11 buy outside of that, you would actually be in violation of your
12 contract.

13 **Q** And explain the process by which a company might register
14 to become a registered partner.

02:43:59 15 **A** You -- essentially, you go online. There is a partner
16 agreement that is online. You read through the agreement and
17 click to accept it, acknowledge that you've read and understand
18 the terms of the agreement. At that point, you become a
19 registered partner.

02:44:12 20 **Q** And I'm going to show you what's already in evidence as
21 Government's Exhibit 2. I'm going to show you a page beginning
22 with PC Vision 008 Bate's number. And I'm going to -- first
23 off, have you seen -- let me just show it to you. Have you seen
24 these pages previously and know what they are?

02:44:33 25 **A** Yes. This is a copy of the indirect channel partner

1 agreement.

2 **Q** Is this the contract that a registered partner would click
3 to accept when they registered with Cisco?

4 **A** It is.

02:44:45 5 **Q** And I'm showing you this one that has a 12-1-03 at the top.
6 Would this be the agreement that was in place on or about that
7 time?

8 **A** On or about?

9 **Q** Sometime in 2003, 2004?

02:45:02 10 **A** That's correct, yes.

11 **Q** And I want to -- again, I'll just try to zoom in on some of
12 this. And I want to focus on Part A, the definitions.

13 **A** Okay.

14 **Q** How would one know as registering as a partner what
02:45:21 15 authorized sources they could buy products from in this
16 distribution network?

17 **A** Well, you see the second definition is authorized source.
18 And I'll have to lean forward. But authorized source means the
19 distributors located within the territory. You see a link
02:45:37 20 associated with that contract. That is a link that you can go
21 to at any time, put in the country where you're a reseller; and
22 it will give you a list of the authorized distributors.

23 **Q** And if you're in the United States, what's the territory --
24 if you're somebody clicking to service in the United States as a
02:45:54 25 registered partner, what would be your territory?

1 **A** Your territory would be the United States.

2 **Q** And so if you're a registered partner and you clicked to
3 accept this agreement, the Definition Number 2 is telling you
4 where to go to find an authorized distributor in your area?

02:46:08 5 **A** That's correct.

6 **Q** And that's available at any time to a registered partner?

7 **A** That is. It's a -- that link actually still works. It's
8 still a currently available link.

9 **Q** And is that language -- we mentioned this contract was in
02:46:19 10 place in '04. Would this language still be in a contract for a
11 company that, say, registered in 2008?

12 **A** It would be.

13 **Q** I'm going to show you in Part B -- you mentioned that the
14 registered sellers -- registered partners were, in fact,
02:46:32 15 required to buy through the authorized distributors as part of
16 this agreement --

17 **A** That's correct.

18 **Q** -- is that correct?

19 I want to see if you can direct the jury to where
02:46:43 20 that language is included in this contract. I'm going to have
21 to zoom out a tad bit.

22 **A** Yeah. It's under Part B, 1.1, Cisco authorization.

23 **Q** And if you could, please read that to the jury. Some of
24 them can't see it.

02:46:57 25 **A** Sure. It says, "During the term of this agreement, Cisco

1 hereby authorizes reseller to purchase and/or license Cisco
2 services and products only from an authorized source, and to
3 resell and/or redistribute such Cisco services and products
4 directly to end users who deploy products and receive Cisco
5 services within the territory."

02:47:14

6 **Q** And again, authorized source, was that that same definition
7 we looked at where you can click on the link and figure out who
8 you can buy your products from?

9 **A** Correct. It is defined in Number 2.

02:47:27

10 **Q** Now, in Cisco's indirect channel partner agreements, why is
11 this language included that you need to buy from authorized
12 distributors? Why is Cisco concerned about that?

13 **A** Well, essentially, it ensures -- if you buy product only
14 through authorized distributors, it ensures that the product
15 that you're buying that you're ultimately delivering to the end
16 user is genuine authentic Cisco.

02:47:43

17 Our authorized distributors source product
18 directly from Cisco. If you were to purchase from a source
19 outside of our authorized distributor, there is no -- there's no
20 way that Cisco can guarantee or maintain that that product is
21 genuine. It's only through our authorized channel that we have
22 the ability to ensure, you know, that it's genuine authentic
23 product.

02:47:57

24 **Q** And are there any benefits that accrue to folks who do
25 actually ensure that they've gone through the distribution

02:48:13

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1 network and do, in fact, have genuine Cisco product in terms of
2 down the road after they get their products?

3 **A** From the standpoint of an end user?

4 **Q** Yes.

02:48:25

5 **A** Yes. One of our primary policies --

6 THE COURT REPORTER: I'm sorry, you really need to
7 slow down.

8 THE COURT: Is he going too fast?

9 THE COURT REPORTER: Well, they both are.

10 THE WITNESS: Okay.

11 THE COURT: And both talking at the same time.

12 All right, go on.

13 THE WITNESS: So there is -- our policy states that if
14 you, as an end user, obtain product that was sourced outside of
15 the authorized channel, then Cisco is not -- Cisco does not
16 support that product; and essentially, what that means is we
17 won't replace it, we won't provide technical support unless you
18 then get it -- you pay an additional fee to get a license and to
19 have an inspection performed on it.

02:48:46

20 Now, if you -- if you buy product that is from an
21 authorized channel, then that product comes available for
22 support from Cisco without any additional fees or inspections or
23 charges or anything.

24 BY MR. VARNADO:

02:49:03

25 **Q** And so as an end user, if you went through the distribution

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1 channel, you'd be ensured of getting this support as part of
2 your purchase through that authorized network?

3 **A** You would ensure that the product is available for support.
4 So the product comes with -- inherently with a warranty. It's a
02:49:29 5 limited warranty. There is a -- there is a service offering
6 that Cisco has called SMARTnet. And SMARTnet provides for that
7 product to be -- if you have an issue with that product, instead
8 of shipping that product out to Cisco and Cisco receiving it and
9 then shipping your replacement, if you have SMARTnet, you can
02:49:45 10 call up and you can get an advanced replacement. You don't have
11 to wait for the product to be shipped back to you.

12 You also get software updates as Cisco makes them
13 available; and you also get 24-hour technical support,
14 essentially, 365 days a year.

02:49:58 15 **Q** Now, I showed you parts of Government's Exhibit 2, the 2004
16 -- December of 2003 channel partner agreement. And I want to
17 direct your attention to that time period in 2004. The
18 Defendant's name is Ehab Ashoor. Have you had occasion to have
19 any prior dealings with the Defendant prior to the facts leading
02:50:19 20 to this case?

21 **A** I did have an occasion to have interactions with him in
22 2004.

23 **Q** And can you tell the ladies and gentlemen of the jury what
24 the circumstances were that you had an interaction with
02:50:30 25 Mr. Ashoor in 2004.

Widener - Direct/Varnado

1 **A** I was contacted by the local account team in Houston. They
2 were concerned that their end customer, the City of Houston, had
3 received product from PC Vision that was not, in fact, sourced
4 through the authorized channel. So they contacted me.

02:50:46

5 I was provided by the city with a list of serial
6 numbers of the product that they had. I did a search of our
7 records, determined that the products that they had received --
8 at least some of the products they had received had originally
9 been sold to other end users.

02:51:00

10 **Q** So what does that mean, practically speaking?

11 **A** Practically, what that means is that product could not have
12 been sourced through the authorized channel by PC Vision when
13 they delivered it to the City of Houston.

02:51:12

14 **Q** And you said it was the City of Houston that actually
15 brought this to the attention of the account manager?

16 **A** It's -- I don't know for sure. I know that the account
17 manager and the city were both concerned that the product they
18 had might not be eligible for support.

02:51:25

19 **Q** And is that why the city -- as far as your understanding,
20 why they were concerned, the City of Houston, about the
21 unavailability of SMARTnet?

22 **A** That's my understanding.

23 **Q** Okay. So what did you do as a result of these actions?
24 Did you -- how did you get involved?

02:51:37

25 **A** Well, as I mentioned, I did the research on the serial

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1 numbers to identify how they were originally sold, who they're
2 originally sold to. At some point, I was involved in
3 communication with PC Vision, Mr. Ashoor, to inquire as to where
4 he sourced the product and discussed with him, you know, the
02:51:55 5 fact that the product had not been sourced through authorized
6 channels and was, therefore, not eligible for support and not
7 properly titled to the end customer.

8 **Q** And Mr. Ashoor was the person that you interfaced with at
9 PC Vision?

02:52:09 10 **A** He is.

11 **Q** I want to show you the first few pages of Government's
12 Exhibit 2. If I can put those on the screen. They continue
13 over. Can you read starting at -- with the bottom message there
14 on the screen --

02:52:23 15 THE COURT: Why don't you try to angle it -- angle it,
16 Mr. Varnado, there on your screen to make it vertical.

17 Come on, keep going.

18 There you go.

19 How about that?

02:52:36 20 BY MR. VARNADO:

21 **Q** Can you read that, Mr. Widener?

22 **A** I can. The bottom message is a message from me to
23 Mr. Ashoor that says, "I received your voicemail questioning the
24 termination of your partner status with Cisco. Can you let me
02:52:47 25 know what specific questions you have and I'll make sure and

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1 have the appropriate people within Cisco respond to your
2 question."

3 **Q** And have you reviewed these e-mails prior to testifying
4 today?

02:52:56 5 **A** I have.

6 **Q** And did you get a response from Mr. Ashoor?

7 **A** I did. I believe that's what's on the screen now.

8 **Q** And I guess, in general terms -- well --

9 THE COURT: What did he tell you?

02:53:06 10 BY MR. VARNADO:

11 **Q** What did he tell you in response to that?

12 THE COURT: What did he tell you generally?

13 THE WITNESS: I believe in general terms what he was
14 telling me was, you know, "We're a small business. We're not

02:53:14 15 sure why we were terminated." I'm not sure -- let me check and
16 see if it says in this e-mail. He, essentially, says, you know,
17 "All of our customers are satisfied. I believe the cancellation
18 is part of a big conspiracy."

19 BY MR. VARNADO:

02:53:34 20 **Q** In essence, was he upset with the intent to terminate and
21 asked you to investigate further?

22 **A** He was. He was.

23 **Q** And did you further respond to Mr. Ashoor?

24 **A** I did.

02:53:45 25 **Q** And how did you respond?

1 **A** As you can see in the e-mail here, I explained that "The
2 decision to decertify PC Vision was not based on sales credit
3 issues." And I think that was, essentially, his stance in the
4 previous e-mail.

02:53:59

5 THE COURT: What was it based on?

6 THE WITNESS: It was based on the fact that they had
7 violated --

8 THE COURT: In the microphone.

02:54:05

9 THE WITNESS: I'm sorry. The decision was based on
10 the fact that they had violated their contract by sourcing
11 product outside of our authorized channel.

12 BY MR. VARNADO:

13 **Q** And do you direct Mr. Ashoor to any parts of that indirect
14 channel partner agreement that we've already looked at?

02:54:16

15 **A** I do. In my response I explained that decertification is a
16 result of PC Vision violating --

17 THE COURT: Slow down, please.

02:54:26

18 THE WITNESS: I'm sorry -- is a result of PC Vision
19 violating Part B, Section 1.1, of the indirect channel partner
20 agreement.

21 BY MR. VARNADO:

22 **Q** And again, is that the part of the agreement that we looked
23 at that requires authorized resellers to purchase from the
24 authorized source?

02:54:34

25 **A** It is.

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1 **Q** And did he, in fact, further respond to you?

2 **A** He did.

3 **Q** In general, what was he questioning?

02:54:49

4 **A** He says that, you know, "Part B, Section 1.1, does not say
5 that we must buy only from Ingram, Tech Data, or Comstor." And
6 those are the three distributors that were in place at the time.
7 It says, "It only says that we must buy from authorized sources.
8 An authorized source could be any authorized source, including
9 gold partners, et cetera. How can a person like me" --

02:55:06

10 THE COURT: Slow down, please.

11 People have a tendency, by the way, to speed up
12 all the time when they read, okay?

13 THE WITNESS: Sorry about that.

02:55:13

14 THE COURT: That doesn't take into consideration the
15 court reporter.

16 THE WITNESS: He says, you know, "How can a person
17 like me assume that authorized source means only authorized
18 distributors like you said, Ingram, Tech Data, and Comstor?"

19 BY MR. VARNADO:

02:55:23

20 **Q** And what does he say on the line below that for the record?

21 **A** It says, "For the record, we only buy through distributors
22 anyway."

23 **Q** So in response to that, did you direct Mr. Ashoor to any
24 other part of the agreement?

02:55:35

25 **A** I did.

1 Q What did you do?

2 A I point out, say, "Please note that Part A, Definition 2,
3 authorized source, is defined as the distributors located within
4 the territory, in this case, the United States," and a link
02:55:51 5 provided to review a list of those distributors. "Also, in Part
6 B, Section 1.3, there's a clause preventing resellers from
7 selling to other resellers."

8 And I point that out because he mentions that,
9 you know, a gold partner could be an authorized source; and I
02:56:06 10 explained that a gold partner couldn't be because our gold
11 partners are contractually prevented from selling to other
12 resellers, also.

13 Q And in the first part of that e-mail, you pointed him to
14 that Part A, again, this same Definition 2; and again, that lets
02:56:20 15 Mr. Ashoor know in no uncertain terms where he should go to get
16 genuine Cisco products; is that true?

17 A That's correct.

18 Q And again, these e-mails were exchanged on or about this
19 time period in June of 2004?

02:56:34 20 A That's correct.

21 THE COURT: All right. Why don't we, at this point,
22 take our first break? We got underway about -- well, everybody
23 was out here and ready to go at 1:30. It's now almost 3:00
24 o'clock. Ellen needs to come back in to visit with you.

02:56:50 25 If you would, you know, fix that. If you can,

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1 make it more visible by moving that table or moving the
2 projector or whatever during the break.

3 It's now about three minutes to 3:00. We'll get
4 back in ready to resume at 3:15.

02:57:07

5 You may stand and go into the jury room.

6 (Court recessed at 2:57 p.m.)

7 (Court resumed at 3:23 p.m.)

8 BY MR. VARNADO:

03:23:43

9 **Q** Mr. Widener, when we left off, we were talking about the
10 events in 2004 and your dealings with the Defendant, Mr. Ashoor,
11 at PC Vision at the time. Do you recall that?

12 **A** I do.

03:23:56

13 **Q** As a result of what happened and the concerns of the City
14 of Houston, did they proceed with this contract with PC Vision
15 and go ahead and accept the goods that PC Vision was offering?

16 **A** I believe the goods had already been delivered. What
17 happened to the goods after this, unfortunately, I can't tell
18 you. I can only speak to the interaction I had as a result of
19 this.

03:24:10

20 **Q** And based upon -- you said you were able to analyze some of
21 the serial numbers of those products and determine that, while
22 they may have been genuine, they were purchased in an
23 unauthorized manner; is that correct?

24 **A** Correct.

03:24:26

25 **Q** Were you able to analyze all of the serial numbers in that

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1 particular shipment?

2 **A** I believe at the time we only analyzed a handful. And once
3 we -- once we had evidence that, at least, some of them had been
4 sourced outside the authorized channel, that's specifically what
5 we talked about.

03:24:37

6 Now, we're talking five years ago. I believe I
7 probably received all the serial numbers that were available and
8 made a determination based on that but --

9 **Q** And the determination to do what at that time?

03:24:49

10 **A** A determination that these products had been sourced
11 outside of the authorized channel.

12 **Q** And what action, if any, was taken by Cisco against PC
13 Vision?

14 **A** We chose to terminate the partner agreement of PC Vision.
15 So we removed them from the partner program.

03:25:03

16 **Q** And so did that particular investigation continue on to
17 analyze every part to determine if they were counterfeit or did
18 the matter, basically, stop there?

19 **A** The matter stopped there at that point.

03:25:20

20 **Q** Now, we've talked about Cisco's trademarks and some of the
21 efforts that the partner program takes to protect Cisco's brand.
22 I want to turn to some of the other efforts that Cisco does to
23 protect its own brand. First off, in connection with this case,
24 have you become familiar with the parts that are alleged to be
25 counterfeited in this case?

03:25:39

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1 **A** I have.

2 **Q** I'm showing you what's in evidence as Government's Exhibit
3 10, one of the modules there, and just ask if you've seen this
4 product before?

03:25:48 5 **A** I have.

6 **Q** And does this purport to be a particular Cisco product?

7 **A** It does have our logo on it.

8 **Q** Okay. And have you -- do you see that this purports to be
9 a GLC-LH-SM product?

03:26:03 10 **A** That's correct.

11 **Q** And in general terms, what is this product known as in
12 Cisco's terminology?

13 **A** A GBIC or an SFP. GBIC is probably the most common term.

14 **Q** What does SFP stand for, just for the jury?

03:26:16 15 **A** I believe it's small form-factor or something along those
16 lines. I'm not an engineer so I apologize.

17 **Q** But it's also known as a GBIC?

18 **A** It's, essentially, also known as a GBIC.

19 **Q** And have you seen these products during the course of your
03:26:27 20 work at Cisco from time to time?

21 **A** I have.

22 **Q** And this product that was intercepted and is being
23 represented to you today, would you be able to tell that product
24 from an authentic genuine Cisco product, GBIC, this particular
03:26:39 25 model?

1 **A** I personal wouldn't.

2 **Q** And included with this particular packaging, does there
3 appear to be, I guess, an installation note guide here included
4 with the product?

03:26:51 5 **A** Yes.

6 **Q** And do you recognize any of the logos on that particular
7 product?

8 **A** I do. It has the Cisco logo that we reviewed earlier on
9 the trademark.

03:27:00 10 **Q** Just so the jury can see what we're talking about.

11 On the installation note document, is this that
12 trademark that I was just -- you were just referring to?

13 THE COURT: Okay. Now, can you see back there? Are
14 you having trouble?

03:27:16 15 A JUROR: I can stand up.

16 THE COURT: Okay, that's fine, if that's okay. We'll
17 do the best we can.

18 BY MR. VARNADO:

19 **Q** Do you see that mark there? Does that appear to be one of
03:27:28 20 Cisco Systems' trademarks?

21 **A** It does.

22 **Q** In fact, is it the third trademark we looked at under
23 Government's Exhibit 1?

24 **A** It is.

03:27:36 25 **Q** Same question for the GBIC that is called the product

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1 GLC-LH-SM. Let me try to zoom in on this. Is that that product
2 I just showed you?

3 **A** Yes, it is.

4 **Q** And the numbers I just read off, are those contained on
03:27:55 5 that label -- I mean, I'm sorry, the letters?

6 **A** The letters, yes, they are, the GLC-LH-SM.

7 **Q** I'm just going to turn it slightly.

8 Do you recognize the mark that is on these
9 intercepted counterfeit parts?

03:28:09 10 **A** I do. That's the Cisco logo.

11 **Q** And can you tell the jury how much this product would list
12 price for if you were going to buy it from Cisco?

13 **A** Well, the list price is 995, \$995.

14 **Q** So close to a thousand dollars?

03:28:25 15 **A** Close to a thousand.

16 **Q** Now, based on your knowledge, does it cost a thousand
17 dollars to put the parts into this product?

18 **A** I would assume it does not.

19 **Q** What is built into Cisco's pricing in addition to the cost
03:28:37 20 of the product itself, as far as you're aware?

21 **A** Well, you know, you got certainly manufacturing costs. You
22 know, primarily you got research and development costs. Cisco
23 spends \$5 billion a year -- more than \$5 billion a year in
24 research and development.

03:28:52 25 So it's, you know, the research and development.

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1 It's the engineering. It's the testing during manufacturing.
2 It's the testing after manufacturing. Essentially, you know, we
3 -- there are additional steps that would go through testing
4 engineering-wise for any Cisco product to ensure that they
03:29:07 5 comply and work with our other products. You know, all the
6 items have to fit together to form the solution.

7 **Q** Now, you mentioned a Cisco list price of 995 or close to a
8 thousand dollars. What would be -- can that product be procured
9 for less money by a registered partner?

03:29:24 10 **A** It can be.

11 **Q** And give the jury a description of, in general, how much
12 that product might cost for a registered partner to purchase.

13 **A** For a registered partner, you're, typically, looking at
14 probably somewhere around 35 percent off list.

03:29:39 15 **Q** So if it was about a thousand dollars, it was 35 off list
16 price, that would be ball park \$650?

17 **A** Ball park, yes.

18 **Q** And if you were -- could you get an even lower price if you
19 were a more established partner in the program?

03:29:53 20 **A** You could. Our gold partner -- as I mentioned, you know,
21 as partners obtain certifications and have their employees
22 trained and demonstrate the ability to sell more technical
23 solutions, they are given a price break or a price advantage, a
24 higher discount. So a gold partner, which is our highest
03:30:08 25 leveled partner, would be able to purchase that at about 42

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1 percent off.

2 **Q** Okay. So even under \$600?

3 **A** Correct.

4 **Q** Somewhere in the 580s --

03:30:15 5 **A** That's correct.

6 **Q** -- is that a fair assessment?

7 Okay. I'm going to ask you the same questions
8 with respect to Government's Exhibit 11. And the product
9 purports to be WS-G5486.

03:30:33 10 **A** That's correct.

11 **Q** Have you seen this before?

12 **A** I have.

13 **Q** And have you seen the packaging that it came inside of?

14 **A** I have.

03:30:38 15 **Q** And have you seen Cisco's legitimate product that's labeled
16 WS-G5486?

17 **A** I have.

18 **Q** And would you be able to tell the difference between that
19 product and this counterfeit product?

03:30:51 20 **A** I wouldn't, not being an engineer, no.

21 **Q** Ask you the same questions with respect to the packaging.
22 On the document, the installation guide, included with the
23 product, do you see that same trademark that we looked at
24 earlier with the Golden Gate Bridge logo?

03:31:08 25 **A** I do.

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1 **Q** I'm setting the product here. On the product itself, do
2 you actually see that same Cisco logo on this product?

3 **A** I do.

03:31:25

4 **Q** And again, that's the logo with the Golden Gate Bridge and
5 the Cisco Systems?

6 **A** Correct.

7 **Q** All right. And what is the list price for this particular
8 product?

9 **A** It's the same list price.

03:31:32

10 **Q** And do these GBICs -- would the discount pricing for being
11 a partner work about the same way for those products as the one
12 we looked at before?

13 **A** It would.

03:31:48

14 **Q** So get it in the neighborhood of under \$600 to somewhere
15 around \$650?

16 **A** Yes.

17 **Q** But it does have the same list price of 995?

18 **A** It does.

03:31:59

19 **Q** Okay. Now, tell the ladies and gentlemen of the jury, does
20 Cisco manufacture all of its own parts?

21 **A** We don't manufacture all of our own parts. There are
22 certain items that we have -- that we contract out to contract
23 manufacturers, and then those items are produced, you know, to
24 Cisco's exact standards.

03:32:13

25 **Q** And what's the reasoning that Cisco doesn't produce all its

1 own parts?

2 **A** There are certain items that, you know, for -- there are
3 certain items that maybe there are other companies that already
4 make similar items and Cisco may contract with them to produce
03:32:29 5 those items or to produce them with slightly different
6 variations so that to ensure that they're working properly with
7 Cisco's products.

8 **Q** And are these two products -- the first GBIC here, the
9 GLC-LH-SM product, is that one that's manufactured by Cisco or
03:32:52 10 that Cisco contracts out to a third party to manufacture?

11 **A** That's manufactured by a third party.

12 **Q** And at whose direction is that manufacturing done?

13 **A** It's at Cisco's direction.

14 **Q** Who provides the specifications for the manufacture of the
03:33:06 15 legitimate Cisco parts of that product number?

16 **A** Cisco would.

17 **Q** Okay. And what about this other GBIC here, the WS-G5486,
18 the larger one?

19 **A** Same thing. Manufactured by a third party.

03:33:19 20 **Q** At Cisco's direction?

21 **A** Yes.

22 **Q** According to Cisco's specifications?

23 **A** That's correct.

24 **Q** And are you aware of which companies manufacture these two
03:33:28 25 products?

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1 **A** There are two companies, Avago and Finisar, which I believe
2 both manufacture these items.

03:33:51

3 **Q** Now, in your experience in brand protection, are products
4 like these GBICs that we just looked at -- and by the way, are
5 they also called transceivers or network cards?

6 **A** Transceivers, network cards, connectors, a lot of lay terms
7 for them.

8 **Q** In your experience, is it more common or less common for
9 Cisco parts like these to be counterfeited?

03:34:04

10 **A** Those are fairly commonly known to be highly counterfeited
11 products, the GBICs.

12 **Q** Why is that, based on your understanding?

13 **A** I'm not sure why they are. You know, I believe it's
14 because they are less technical than some of our other items.

03:34:23

15 If you're talking about one of our switches or one of our
16 routers, those are highly technical items. They have Cisco's
17 native IOS software on them.

18 **Q** What is IOS software?

03:34:38

19 **A** IOS is, essentially, the software, the operating system,
20 for our devices. A GBIC or an SFP wouldn't have the IOS
21 software on it. I believe it's probably a little bit easier for
22 somebody to counterfeit an item such as this versus one of our
23 more technical items.

03:34:52

24 **Q** So this would be compared to a switch or a router, those
25 terms you used? This would be a less complex computer part --

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1 **A** It would be.

2 **Q** -- to manufacture?

3 **A** It would be.

4 **Q** Now, we talked about -- a little bit about counterfeiting.

03:35:02 5 Is there a particular area in the world or geographic area that
6 Cisco is particularly concerned about with respect to
7 counterfeiting?

8 **A** China.

9 **Q** And why do you say that so emphatically?

03:35:13 10 **A** The -- I believe to this point everything that we've seen
11 that has been counterfeited we believe has come out of China.

12 **Q** With respect to these parts here, these particular GBICs,
13 in your experience in brand protection and working at Cisco, do
14 you have any real world examples of the risks associated with
03:35:33 15 the counterfeiting of these two products?

16 **A** We do. We have -- we had a scenario or a situation where a
17 medical center purchased about 260 of these GBICs, or
18 transceivers. Ultimately, those products started to fail. They
19 called Cisco. Cisco did some testing and determined that those
03:35:54 20 products were, in fact, counterfeit. And there was --

21 **Q** Where were those products being used?

22 **A** This was in Hackensack University Medical Center.

23 **Q** Okay. So at a hospital?

24 **A** At a hospital. Actually, in use in the radiology and the
03:36:09 25 neurology departments.

1 Q And so what did Cisco do as a result of getting this
2 information that products were failing?

3 A Well, we came in, did some tests on, you know, the Cisco
4 products, the Cisco network; tested the switches to make sure
03:36:22 5 they were performing properly. Ultimately, we were able to
6 determine that the GBICs were counterfeit, and that's where the
7 point of failure was.

8 Q Sorry, go ahead.

9 A I was going to say the issue there, being a hospital and
03:36:32 10 being the neurology and radiology department where they first
11 started to see that the network was failing, was as they were
12 trying to trans -- the radiologists were transmitting digital
13 x-rays.

14 Those transmissions were failing, and they would
03:36:45 15 have to go in and reboot the entire network before they could
16 try to transmit those x-rays again. So, you know, I think
17 certainly in their mind that was a significant issue.

18 Q And is that of concern to Cisco when a customer calls up
19 and believes that it's Cisco parts that have failed but, in
03:37:00 20 reality, they're counterfeit parts?

21 A It is, yes.

22 Q And how does that negatively impact Cisco, if at all?

23 A Well, going back, as I mentioned earlier, our brand, which,
24 you know, brand -- I would, you know, substitute brand and
03:37:11 25 reputation, essentially, as the same term. You know, if you

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1 have a customer that has purchased products with your name on it
2 and they believe them to be manufactured by you and they fail,
3 then, naturally, they're going to feel that Cisco has let them
4 down.

03:37:23

5 It's important for us to determine whether or not
6 that is a product manufactured by Cisco and something we need to
7 understand so that we can correct or if that's an item, you
8 know, in fact, not made by Cisco.

03:37:38

9 **Q** And is that part of your -- part of the role of the Brand
10 Protection Team in terms of conducting investigations and the
11 like?

03:37:49

12 **A** It is, conducting investigations. We have engineers, you
13 know, that are able to, you know, run traces; that are able to
14 test the equipment and make sure -- make a determination on
15 whether or not it's authentic.

03:38:09

16 **Q** What activities or steps does Cisco take, if any, to work
17 in coordination with law enforcement to combat counterfeiting?

18 **A** We work quite a bit with law enforcement. We do a
19 significant amount of work with Customs because, as I mentioned,
20 you know, these products -- from what we've seen so far, all
21 these products that are counterfeited come from outside of the
22 borders of the US.

03:38:21

23 **Q** How does Cisco work with Customs?

24 **A** We've worked with Customs. We've trained Customs officials
25 at airports, at seaports, provided them manuals or information

1 on, you know, things to look for that might indicate that the
2 product that's being shipped is not, in fact, a genuine Cisco.

03:38:43

3 **Q** I'm showing you what's already in evidence as Government's
4 Exhibit 7A. And I want to ask you -- first, have you -- have
5 you seen this document prior to testifying today?

6 **A** I have.

7 **Q** And I want you to tell the ladies and gentlemen of the jury
8 what -- this first e-mail address, ciscoipr@cisco.com, what is
9 that?

03:38:55

10 **A** Essentially, that's an alias that was created by members of
11 my team so that government agents, if they did run across
12 suspect shipments, then they could send an e-mail to one place
13 and know that the appropriate people within Cisco would get that
14 e-mail and would take the appropriate action.

03:39:12

15 **Q** And in general, what do -- what does law enforcement or
16 Customs do in terms of using that website?

03:39:30

17 **A** Well, I believe, typically, if they run across a suspect
18 shipment, then they would take pictures or other identifying,
19 you know, examples of that product. Typically, it was a digital
20 photo; and then, they would e-mail it over and ask our engineers
21 to take a look.

22 **Q** And in this instance, I'm directing your attention to the
23 "sent" line. Does this appear to be from daniel.nugent@dhs.gov?

24 **A** It does.

03:39:47

25 **Q** Again, to that ciscoipr address?

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1 **A** Correct.

2 **Q** And attached to that e-mail -- and actually, just reading
3 it, does it say, "Attached are photos of suspected counterfeit
4 Cisco mods coming out of Hong Kong. Please review for
03:39:59 5 legitimacy and provide an MSRP value"? Do you see that?

6 **A** I do, yes.

7 **Q** And do you see that attached there are some digital
8 photographs to that e-mail?

9 **A** Uh-huh.

03:40:08 10 **Q** And is that consistent, in your experience, with Cisco that
11 law enforcement might e-mail something like this to that e-mail
12 address?

13 **A** It is consistent.

14 **Q** I'm going to show you what's in evidence as Government's
03:40:20 15 Exhibit 7B and ask if you see that original e-mail dated Monday,
16 the 28th -- July 28th of 2008 at the bottom --

17 **A** I do.

18 **Q** -- of the e-mail I just read?

19 **A** Uh-huh.

03:40:33 20 **Q** And do you see whether there's a response to that e-mail?

21 **A** There is. There's a response from Michael Heidecker; and
22 he responds that "The enclosed GLC-LH-SM, the enclosed GBIC,
23 module was found to be non-genuine and the MSRP for the GBIC is
24 995."

03:40:53 25 **Q** Okay. And again, is that -- is this the GLC-LH-SM GBIC --

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1 I have no idea why that just went off. Our lamp went out.

2 Is that this same smaller GBIC --

3 **A** It is.

4 **Q** -- that we just looked at?

03:41:08

5 **A** It is.

6 **Q** And who is Michael Heidecker?

7 **A** Michael Heidecker is an engineer on the Brand Protection
8 Team who -- essentially, his role is to make a determination
9 such as you see there, whether or not product is genuine.

03:41:18

10 **Q** And in this particular instance, he provided the
11 determination to Customs that this product was not genuine?

12 **A** He did.

13 MR. VARNADO: Your Honor, if I could have just a
14 moment?

03:41:32

15 THE COURT: Okay.

16 BY MR. VARNADO:

17 **Q** You had mentioned that in part of the investigation back in
18 2004 involving PC Vision that you were able to look at serial
19 numbers?

03:42:00

20 **A** Correct.

21 **Q** Is that one methodology to which Cisco can track whether
22 there's believed to be genuine products or non-genuine products
23 based upon manufacturing serial number data?

03:42:16

24 **A** Well, it is, from the standpoint that if we're provided a
25 serial -- any product we've manufactured would have a serial

Widener - Cross/Ferrari

1 number associated with it and we would have certain databases
2 that we could track, both our engineering, manufacturing
3 databases, as well as our point of sale. So if we get a serial
4 number and run it through our system and it does not match with
5 anything in our databases, that would be cause for concern.

03:42:31

6 **Q** And is that generally what occurs? If these digital
7 photographs are sent, there's some analysis of serial numbers,
8 among other things --

9 **A** Right.

03:42:41

10 **Q** -- to make a determination of whether a product is genuine?

11 **A** Yeah. That would be a part of the analysis, certainly.

12 MR. VARNADO: Pass the witness, your Honor.

13 CROSS EXAMINATION

14 BY MR. FERRARI:

03:43:06

15 **Q** Good afternoon, Mr. Widener. I'm Erich Ferrari. I'm the
16 counsel for the Defendant.

17 **A** Good afternoon.

18 **Q** Now, you mentioned that you were aware of the removal of PC
19 Vision from the Cisco indirect channel partnership agreement,
20 correct?

03:43:17

21 **A** Correct.

22 **Q** And you're aware of the part Mr. Ashoor played in that
23 removal?

24 **A** I am.

03:43:23

25 **Q** And that removal was because Mr. Ashoor arranged for the

Widener - Cross/Ferrari

1 purchase of goods from outside of the authorized distribution
2 network; is that correct?

3 **A** That's correct.

03:43:36

4 **Q** Now, in mentioning that, you didn't say those goods were
5 counterfeit. They were just bought outside of the distribution
6 network, correct?

7 **A** That's correct.

8 **Q** And the problem that was reported to Cisco was never that
9 those goods were counterfeit?

03:43:49

10 **A** I don't believe that it was reported they were counterfeit.

11 **Q** Are you aware of Mr. Ashoor's position at PC Vision at that
12 time?

13 **A** I am not. I don't have a recollection of what his title
14 was, no.

03:43:57

15 **Q** Do you have a recollection of whether PC Vision pleaded
16 ignorance to the requirement from -- to buy from authorized
17 distributors?

18 **A** They did. I think the e-mails, you know, explain that.

03:44:12

19 **Q** And is this a common occurrence amongst members in the
20 partnership program?

21 **A** It has been brought up before; and you know, I don't know
22 if it's common or not.

23 **Q** How often -- if you had to gauge, how often do you hear it?

03:44:28

24 **A** You know, I don't know. I mean, I've been doing this for
25 six years now. I've certainly heard that before; but you know,

1 I don't -- and it's not something that's on a daily basis or
2 weekly or monthly or anything like that.

3 **Q** So just so I can get this straight --

4 **A** Uh-huh.

03:44:41 5 **Q** -- just because they -- PC Vision bought outside of the
6 authorized distribution network doesn't mean they violated a
7 trademark, does it?

8 **A** I don't believe they would have violated the trademark.
9 They violated the contract between Cisco and they as a partner.

03:44:56 10 **Q** Okay. So it was a contractual breach then?

11 **A** Correct.

12 **Q** And to your knowledge, they were never charged with any
13 crime in connection for buying outside of that authorized
14 distribution network, were they?

03:45:07 15 **A** Not to my knowledge.

16 **Q** Now, the question I have for you is if one were to buy
17 Cisco products from outside of the authorized distribution
18 network, is that definitive knowledge that those products are
19 counterfeit?

03:45:21 20 **A** No, not that they're counterfeit.

21 **Q** That they're just not guaranteed by Cisco as being genuine?

22 **A** Sure, sure.

23 **Q** And you stated there's three US authorized distributors who
24 could sell to resellers in the partnership program?

03:45:37 25 **A** There were in 2004.

1 Q In 2004?

2 A Yes.

3 Q At the time when the incident with PC Vision --

4 A Correct.

03:45:41 5 Q -- occurred, correct?

6 A Correct.

7 Q And now, those were US-authorized distributors. Are there
8 also authorized distributors globally?

9 A Well, there are other distributors that are authorized
03:45:55 10 globally. They're not authorized to sell to a reseller, say, in
11 the United States, though.

12 Q Okay. And you also mention that there's tens of thousands
13 of resellers?

14 A That's correct.

03:46:02 15 Q And they're located globally?

16 A They are.

17 Q Now, the indirect channel partnership agreement doesn't
18 impose a minimum on what the resellers have to charge, does it?

19 A It does not.

03:46:16 20 Q Does it impose a minimum on what authorized distributors
21 have to charge?

22 A It does not.

23 Q And just to clarify, a seller of Cisco goods who's not a
24 member of the program does not have to buy from an authorized
03:46:30 25 distributor, it's only the people in the program?

1 **A** That's correct.

2 **Q** You mentioned Cisco spends five billion a year on research
3 and development?

4 **A** Uh-huh.

03:46:41 5 **Q** Is that correct?

6 **A** That's correct.

7 **Q** And would you say the bulk of what one of these costs goes
8 towards research and development at the end of the day?

9 **A** I don't know that I could speak to, you know, what
03:46:56 10 percentage is research and development. As I mentioned, I'm not
11 part of engineering or manufacturing.

12 **Q** Okay. But the purchaser of these products is not paying a
13 thousand dollars just because that's what it costs to make it
14 plus a reasonable profit?

03:47:10 15 **A** I'm not sure that I understand the question.

16 **Q** Okay. Let me rephrase it for you. The total -- it doesn't
17 cost a thousand dollars to make one of these things, correct?

18 **A** I don't believe so.

19 **Q** Okay. But you can't say definitively?

03:47:23 20 **A** I assume there is profit built in.

21 **Q** Sure. And you also mentioned to Mr. Varnado that Cisco
22 doesn't manufacture its own parts?

23 **A** There are certain parts we don't manufacture.

24 **Q** Okay.

03:47:36 25 **A** There are certain parts we do manufacture.

1 Q What about these parts that we're discussing today?

2 A Those items are manufactured by a third party to our
3 specifications.

4 Q And that third -- well, one of them is Finisar?

03:47:47

5 A Correct.

6 Q And the other is Avago?

7 A Correct.

8 Q And when they manufacture these products, are they
9 manufactured in the United States, to your knowledge?

03:47:55

10 A To my knowledge, they are not.

11 Q They're manufactured overseas?

12 A I believe they are.

13 Q Do you know where they're manufactured?

14 A I can't speak directly to where they're manufactured.

03:48:05

15 Q And you said that these two products, this one here --

16 A Uh-huh.

17 Q -- and this one right here --

18 A Yes.

19 Q -- those are the two products that are most highly
20 counterfeited?

03:48:19

21 A I don't know that I said they were the two most highly
22 counterfeited. They are two highly counterfeited products, yes.

23 Q And so you find that a lot of times when people have
24 violated the Cisco trademark for either trafficking or

03:48:33

25 purchasing -- or selling, rather, counterfeit goods and these

Widener - Redirect/Varnado

1 are the goods in question that -- that they're coming from
2 overseas?

3 **A** Correct.

4 **Q** They're not coming from the United States?

03:48:45

5 **A** They are not manufactured in the United States. The
6 counterfeit products, no.

7 MR. FERRARI: I'll pass the witness, your Honor.

8 MR. VARNADO: Your Honor, very briefly.

9 REDIRECT EXAMINATION

03:48:57

10 BY MR. VARNADO:

11 **Q** Mr. Ferrari asked you about purchasing products outside the
12 distribution network.

13 **A** Correct.

14 **Q** If somebody wanted to be 100 percent sure they were

03:49:04

15 purchasing a genuine Cisco product, how would they go about
16 doing that if they were a registered partner?

17 **A** They would do what their contract requires, which is to buy
18 through our authorized channels; and if they do that, there
19 should be an assurance that the end customer is going to receive
20 genuine Cisco products.

03:49:19

21 **Q** And if they purchase from outside that channel, is there a
22 risk that they will get non-genuine product?

23 **A** There is a risk, yes.

24 MR. VARNADO: No further questions, your Honor.

03:49:30

25 THE COURT: Anything further?

1 MR. FERRARI: One more question, your Honor.

2 RECCROSS EXAMINATION

3 BY MR. FERRARI:

4 **Q** Mr. Widener, is it possible for somebody to purchase
03:49:42 5 outside an authorized distribution network and obtain a genuine
6 Cisco product?

7 **A** It is possible.

8 MR. FERRARI: No more questions, your Honor.

9 THE COURT: All right. Thank you, sir. You may step
03:49:52 10 down. You're excused. You're free to leave. You can remain in
11 the courtroom should you desire.

12 Call your next witness.

13 MR. COSTA: The United States calls Lee Chieffalo,
14 your Honor; and he was not sworn earlier.

03:50:06 15 THE COURT: Okay.

16 Please raise your right hand to be sworn.

17 (The witness, **LEE CHIEFFALO**, called on behalf of the
18 Government, was sworn.)

19 THE COURT: Have a seat, please.

03:50:35 20 DIRECT EXAMINATION

21 BY MR. COSTA:

22 **Q** Good afternoon, Staff Sergeant Chieffalo.

23 **A** Good afternoon, sir.

24 **Q** Would you please state your name and spell your last name
03:50:49 25 for the court reporter.

Chieffalo - Direct/Costa

1 **A** My name is Staff Sergeant Lee Chieffalo, C-h-i-e-f-f-a-l-o.

2 **Q** And what is that uniform you're wearing in court today?

3 **A** It's a Marine Corps Service Alpha uniform.

4 **Q** And how long have you been with the Marine Corps?

03:51:04 5 **A** Ten years.

6 **Q** And what is your current rank?

7 **A** Staff sergeant.

8 **Q** And what are your duties as a staff sergeant?

9 **A** My current -- my current military occupational specialty
03:51:10 10 is networking systems engineer.

11 **Q** And did you have any computer experience before you joined
12 the Marine Corps?

13 **A** Just a little bit of low voltage control work. But all the
14 training that I have is from the Marine Corps.

03:51:22 15 **Q** How did you -- once you got into the Marine Corps, how did
16 you get directed into technology work?

17 **A** I came in and was guaranteed the communications field.
18 From there, they decided to put me in data communications, and I
19 found a passion for it and been doing it ever since.

03:51:37 20 **Q** And where are you currently stationed?

21 **A** Currently stationed at Camp Foster in Okinawa, Japan.

22 **Q** And have you done any tours in Iraq since you joined the
23 Marine Corps?

24 **A** I've done two tours in Iraq. One was from January of '06
03:51:51 25 to March of '07 and then January of 2008 to February, 2009.

Chieffalo - Direct/Costa

1 Q Did you enjoy your tours in Iraq?

2 A I did.

3 Q Was it challenging work?

4 A It was very challenging work.

03:52:03 5 Q Staff Sergeant Chieffalo, I'm going to direct your
6 attention to a demonstrative exhibit.

7 MR. COSTA: And your Honor, may he step down to direct
8 on the map where he was stationed?

9 THE COURT: Sure.

03:52:27 10 Angle it a little bit this way, just a shade.

11 That's fine.

12 BY MR. COSTA:

13 Q Staff Sergeant Chieffalo, do you recognize this map?

14 A I do.

03:52:38 15 Q Please tell the jury what this map shows.

16 THE COURT: Sir, could you just get to the side there
17 so everybody can see the map.

18 THE WITNESS: This is a map of Iraq and where most of
19 the major cities are located.

03:52:48 20 BY MR. COSTA:

21 Q And where were you stationed -- you said you did two tours
22 of duty in Iraq. Were you stationed at the same location during
23 both tours?

24 A I was. I was stationed at Al Taqaddum.

03:53:03 25 Q And what is Al Taqaddum?

1 **A** Al Taqaddum is a Marine Corps airbase where the first
2 Marine -- or the Marine Logistics help was stationed.

3 **Q** And could you please show the jury on that map of Iraq
4 where Al Taqaddum is located.

03:53:11 5 **A** Al Taqaddum is located right around the eastern side of
6 this lake right here.

7 **Q** What is that lake called?

8 **A** It's Lake Habbaniyah.

9 **Q** And so how far is that base, Al Taqaddum, from Fallujah?

03:53:28 10 **A** It's about 30 kilometers.

11 **Q** And what can you tell the jury generally about Fallujah and
12 its role in the war over there?

13 **A** Fallujah was where the MEF, Marine Expeditionary Force,
14 staff was located, basically, the highest command element for
03:53:42 15 the Marine forces in Al Anbar. It was also the -- where the
16 terrorists' hub was that we took over in 2005.

17 **Q** And then, Baghdad is on that map, the capital. How far was
18 your base, Al Taqaddum, from Baghdad?

19 **A** 60 to 65 kilometers.

03:54:00 20 **Q** You can stay there. I want to show you just a closer up
21 map that magnifies that area and ask you to point out for the
22 jury the base you've been talking about, Al Taqaddum.

23 **A** I was -- Al Taqaddum Airbase (indicating).

24 **Q** So is there an airplane on the map --

03:54:16 25 **A** Yes.

Chieffalo - Direct/Costa

1 Q -- that would indicate the airbase?

2 A It was an Iraqi Air Force base.

3 Q And how many Marines were stationed at that base?

4 A Three to 4,000.

03:54:27 5 Q And how does the size of that base compare to other
6 military bases that the United States set up in Iraq?

7 A I can only speak for the Marine Corps bases that are pretty
8 much in the Al Anbar province. Taqaddum was the second largest
9 Marine Corps installation in Iraq.

03:54:46 10 Q You can go back to the stand, please. Thank you.

11 I want to show you one more photograph, Staff
12 Sergeant Chieffalo. This one is going to be on that screen,
13 hopefully.

14 There it is. Do you recognize this photograph?

03:54:59 15 A I do, sir.

16 Q And what is this photograph?

17 A That is an aerial photograph of Taqaddum.

18 Q Of the base that you've been talking about?

19 A Yes, sir.

03:55:09 20 Q What's this bluish area in the bottom right corner?

21 A That's the lake, Habbaniyah.

22 Q And I'm going to hand you a laser pointer. If you can just
23 describe some key parts of the base and maybe where you worked
24 to the jury using that laser pointer.

03:55:27 25 A This is the primary airstrip right here. It was large

Chieffalo - Direct/Costa

1 enough to land all the C5 Galaxies, which is the largest
2 logistics plane that we operate, which is the reason why we
3 wanted this base so bad.

03:55:44 4 This right here is the main side area. That's
5 where -- the headquarters element, and I worked right around in
6 this area, is where the communications company was. This over
7 here is the -- we called it lakeside. That's where all the
8 logistics was done. All the cargo would come in and get
9 stationed over here -- staged over here to be convoyed out.

03:56:04 10 The Army was mainly up in this area. That's
11 where the Combat Service Support Brigade was. Then, we had a
12 lot of security forces down in here. That's pretty much where
13 everything was.

14 **Q** You said you were with the communications group?

03:56:18 15 **A** Yes, sir.

16 **Q** And what was your main task that you were working on during
17 these two tours of duties?

18 **A** I was the technical control chief. The TCF is the
19 facility -- was the primary network operations center where all
03:56:32 20 the data and voice communications would come in, and I was in
21 charge of maintaining and administering all that equipment.

22 **Q** And when did the United States establish this base?

23 **A** This base was established in the middle of 2005.

24 **Q** And in this area, the surrounding areas, what was the state
03:56:52 25 of the existing infrastructure for things like telephones there

1 in Iraq?

2 **A** Outside -- this was an Iraqi military base. So on the base
3 itself, it had a basic infrastructure. Outside in the City of
4 Habbaniyah, which was the closest area, had very archaic
03:57:10 5 telephone and very little data infrastructure in place when we
6 first got there.

7 The Navy combat -- Navy Seabees and Navy
8 Construction Regiment, they've upgraded a lot of that since
9 then.

03:57:21 10 **Q** And so your group was working on the computer network for
11 this base, is that fair to say?

12 **A** Yes, sir.

13 **Q** Why don't you tell the jury what type of training you've
14 had to work on a computer network like you did in Iraq.

03:57:32 15 **A** The -- I was trained as a small computer systems specialist
16 initially. The -- which is basic computer repair and basic
17 networking. I then went to a network engineering course in Twin
18 Oak Palms, California, where I got advanced Microsoft and Cisco
19 training. I've since then since been in multiple courses and
03:57:57 20 critiques for Cisco and Microsoft and been certified by both
21 companies.

22 **Q** And you mentioned this network engineering class out in
23 California?

24 **A** Yes, sir.

03:58:07 25 **Q** When did you take that course?

Chieffalo - Direct/Costa

1 **A** In 2005.

2 **Q** How long did the course last?

3 **A** Seven months.

4 **Q** And who's attending this course, generally?

03:58:14 5 **A** The people that are attending this course are the most --
6 more highly skilled data Marines in my field. There's some
7 pretests that you have to take to get into it in order to even
8 be accepted into the school; and we're all the ones that are
9 becoming network and systems engineers to be dispersed to places
03:58:32 10 like this to build and maintain the infrastructures.

11 **Q** And are the instructors all military or were there some
12 private companies that bring instructors into this course?

13 **A** There were both. We had military and instructors from
14 Cisco and Microsoft there.

03:58:45 15 **Q** And you said you received Cisco certification. Was that in
16 part from completing this course?

17 **A** I have. Yes.

18 **Q** Why was there such an emphasis on Cisco trainers there and
19 the Cisco certification? Why was Cisco a big part of that?

03:58:59 20 **A** The Marine Corps' network infrastructure is solely Cisco
21 equipment.

22 **Q** Why is that?

23 **A** We have -- we have -- we send out specifications for what
24 we need equipment to do, and Cisco meets those specifications on
03:59:17 25 pretty much everything. They custom design a lot of equipment

Chieffalo - Direct/Costa

1 for the military use, and we use that -- that equipment
2 exclusively. And as well, we have an enterprise level contract
3 with Cisco so we could -- if there's any hardware or training
4 issues that we need, we can just contact the company directly
5 and get those handled.

03:59:34

6 **Q** And once you've set up a network and it's running with
7 Cisco equipment, when you need to replace parts or get
8 additional parts, would you want to also use Cisco parts?

9 **A** Yes.

03:59:45

10 **Q** Why is it when you're adding parts you want them to also be
11 Cisco?

12 **A** A lot of -- a lot of the equipment that Cisco uses has
13 proprietary protocols and software on them that operates only
14 with other Cisco gear; and that's primarily the reason why we
15 use Cisco. Also, it's built to specifications that we use for
16 reliability and environmental hardness per se.

04:00:01

17 **Q** In that contract you have for service with Cisco?

18 **A** Yes.

19 **Q** What was the network you were helping to build there at Al
20 Taqaddum? What was that network being used for by the Marines?

04:00:19

21 **A** It was being -- we had two operational networks, one
22 classified and one unclassified. It was used to provide
23 Internet e-mail, voice and video services to anybody that needed
24 it throughout all the base, anywhere on base, and combat
25 outposts and forward operating bases outside of TQ.

04:00:37

Chieffalo - Direct/Costa

1 Q And TQ, is that the name you-all gave this base?

2 A Yes.

3 Q You said the network also affected operations outside the
4 base. Can you explain that?

04:00:51 5 A We had multiple forward operating bases and combat outposts
6 that came back to us for communications either via radio,
7 microwave, or satellite transmission.

8 Q And so I think you said part of this was just to establish
9 e-mail and Internet access?

04:01:07 10 A Yes. Yes, sir.

11 Q And there was non-classified e-mails that the Marines could
12 use?

13 A Yes, sir.

14 Q Maybe to send messages back to family back home? Would
04:01:15 15 that be one use?

16 A Yes, sir.

17 Q I want to talk about the classified network. What were
18 some of the uses of the classified network that ran on this
19 computer network you helped build?

04:01:24 20 A The classified network, we mainly -- we did all of our
21 battle operations on the classified. A lot of intelligence was
22 shared back and forth between commanders and different
23 locations. The -- a lot of convoy operations, troop movements,
24 air operations, call for fire, medevacs, all that stuff was done
04:01:45 25 over the classified network.

1 **Q** Any intelligence get transmitted through that classified
2 network?

3 **A** All of the intelligence got transferred through the
4 classified network.

04:01:55 5 **Q** Generally, what types of intelligence?

6 **A** Aerial photos, the predators' video feeds, weapons caches
7 that were found, identifications of enemy locations, enemy
8 strongholds, the BATS System which was used to identify
9 fingerprints of all the Iraqis that worked on base so they could
10 move from one base to another. We'd know who they were. And if
11 they got in trouble in one location, we would know who they were
12 at another.

13 **Q** You called it the BAT System?

14 **A** BATS.

04:02:27 15 **Q** BATS?

16 Was that BATS System a key part of the security
17 at the base?

18 **A** It was integral to the security of the base. We had a lot
19 of Iraqis that worked on it, and that's how we controlled who
20 they were and if they were allowed on base or not.

04:02:34 21 **Q** What about communications between the base and Marines who
22 might be out on a mission on the front lines? Were there any
23 radios that would be used that relied on the computer network?

24 **A** All the -- we had what was called a Rippernet, radio over
04:02:52 25 IP network, which was, basically, the combat outposts and the

1 forward deployed Marines would use their satellite radios.
2 Instead of being traditionally re-transed through another radio
3 system, it would come back through the data network and be
4 routed -- could be routed to anywhere in Iraq and any commander
04:03:08 5 can look at -- listen to those radio signals.

6 **Q** What would the effect be if the network went down for a
7 significant amount of time?

8 **A** The ultimate effect is people could die.

9 **Q** Why is that?

04:03:20 10 **A** Marines could die. I mean, if they were under fire and
11 they needed to call for air support or artillery support or
12 CASEVAC, I mean, that was all done over the classified network.

13 **Q** I want to focus on your second tour. And you were there
14 during 2008 --

04:03:37 15 **A** Yes, sir.

16 **Q** -- as part of the second tour?

17 What was -- when you got back for your second
18 tour, what was the status of the network at that time?

19 **A** We moved mainly to a commercial-based network environment,
04:03:49 20 something that you'd see in your own cities for the most part.

21 **Q** Why did you want to move to this commercial network?

22 **A** Iraq was becoming less of a combat fluid environment and
23 more of commercialized. We were trying to rebuild the
24 infrastructure; and we were becoming a permanent presence there
04:04:07 25 for the most part, sir.

Chieffalo - Direct/Costa

1 Q And when you were trying to get the network commercialized,
2 are you constantly adding new parts and replacing old parts?

3 A Yes, sir.

04:04:20

4 Q What would you do when you needed some new parts for the
5 network? Just briefly explain that process.

04:04:38

6 A Once the need was identified and the part to fill that need
7 was identified, we'd go out online and find two or three vendors
8 to get a general price estimate of how much that part would
9 cost; and then we'd send it up to our maintenance folks. Gunny
10 Catrell was our maintenance chief. He would handle it from
11 there to forward it up to get the contract and whatnot.

12 Q And are there Marines whose main job is dealing with
13 contracts?

14 A Yes, sir.

04:04:48

15 Q And so it would ultimately get sent to them and they would
16 handle getting the supplies?

17 A Yes, sir.

18 Q You said you would get a price quote, though, when you
19 submitted the need for the parts?

04:04:58

20 A Uh-huh.

21 Q Why did you want to get a few price quotes?

04:05:13

22 A The pricing would depend on how and who had the authority
23 to approve that purchase. Anything under \$25,000, we could
24 locally approve. So we didn't have to send it up to a board to
25 get reviewed.

Chieffalo - Direct/Costa

1 Q But if it was more than 25,000, you had to get that
2 approval process?

3 A Yes, sir.

4 Q And why would you want to send those price quotes as part
04:05:21 5 of your submission of needing the parts?

6 A Our maintenance guys who put in the parts, they required
7 that price quote so they could gauge on how to spend the money
8 that they had so they could prioritize what needed to be bought
9 and what didn't.

04:05:37 10 Q Are you familiar with a Cisco part called a GBIC?

11 A I am.

12 Q And very generally, what does a GBIC do?

13 A What a GBIC is used for is, when you're running fiber
14 communications, unlike -- unlike copper, which most of you have
04:05:51 15 in your home where it has the same jack that you plug into all
16 the time, fiber has -- there's different types of fiber and
17 different types of tips you can put on it. And the GBIC is the
18 adapter that you plug into to go into your switch or router.

19 Q I'm going to show you two parts which are part of
04:06:10 20 Government Exhibit 6; hand them to you and ask you if you
21 recognize the type of products those are.

22 A These are both GBICs. They're different -- different types
23 of fiber go into these.

24 Q And so how would you plug that into the network?

04:06:27 25 A We would have a Cisco switch that have ports on there for

Chieffalo - Direct/Costa

1 these to fit into; and depending on the type of tip that we put
2 in, you just plug these into the port, plug the fiber into this
3 end; and it plugs like you would anything else, just slides
4 right in.

04:06:43 5 **Q** And are these -- did you use a lot of these GBICs in the
6 computer network you set up over at Al Taqaddum?

7 **A** Yes. I can estimate anywhere between a thousand and 1200
8 online at any given time.

9 **Q** About that many are in the network at any point in time?

04:07:01 10 **A** Uh-huh.

11 **Q** So was this a part that you would have to reorder
12 periodically?

13 **A** Yes, sir.

14 **Q** Why would you have to keep ordering these?

04:07:10 15 **A** The main reason that we found was not only because we were
16 scaling the network constantly so we'd have to add new fiber
17 connections so we'd need the parts but also --

18 **Q** What does that mean, scaling the network?

19 **A** Growing. Adding parts to the network. The network would
04:07:25 20 grow so we'd have to purchase new GBICs to incorporate the new
21 fiber lines that we were running, as well as the environment
22 itself was not very friendly for fiber. So we had to replace
23 them because they were going bad.

24 **Q** What about the environment caused some of these to go bad?

04:07:42 25 **A** The dust in Iraq was very -- it's very small, very

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1 granular, and it would get inside the connectors and scratch the
2 fiber tips, and that would cause the fiber links to either be --
3 attenuate or just go bad.

04:07:59 4 **Q** So sometimes you were replacing parts; sometimes you were
5 just needing new ones because the network was growing?

6 **A** Yes, sir.

7 **Q** Do you recall in your second tour of duty, 2008, requesting
8 about 200 of these GBICs?

9 **A** There were multiple times that we did request that number.

04:08:12 10 **Q** And when you make that request -- and you discussed this a
11 little bit -- did you give a -- submit a document called -- with
12 the specifications?

13 **A** Yes. Yes, sir.

04:08:30 14 **Q** I'm going to show you what's in evidence as Government
15 Exhibit 5B, and it's Bate's label gmail 121 and 120. And Staff
16 Sergeant Chieffalo, do you recognize this type of document,
17 generally?

18 **A** Generally speaking, yes, sir.

04:08:57 19 **Q** And at the top it says, "Attachment one, specifications of
20 requested items." Is that something that gets submitted so the
21 contracting officers know exactly what types of parts you need?

22 **A** Yes, sir. That would all be the information that myself --
23 that I would gen up to send to the maintenance guys.

04:09:17 24 **Q** So we'll zoom in on part of this. If you can just
25 summarize for the jury what type of information is in this part

1 of the specifications page.

2 **A** Those are the product specifications for a GBIC.

3 **Q** It says, "Product description, Cisco transceiver module"?

4 **A** Yes, sir.

04:09:31 5 **Q** Is that right?

6 And then what is that "max transfer distance"?

7 What does that mean?

8 **A** That's how far the fiber can be between each end point that
9 that GBIC will handle.

04:09:42 10 **Q** 6.2 miles?

11 **A** Yeah.

12 **Q** And is there some other technical information on here about
13 the exact needs you have for these parts? Networking, it says
14 -- what is some of that information?

04:09:56 15 **A** The cabling type is the type of fiber that we're running.
16 The gigabit Ethernet is the speed that we require. The fiber
17 needs -- the GBIC needs to be able to transmit at one gigabit
18 per second. The transfer distance is how far between end
19 points. The optical wavelength is the diameter of the fiber
04:10:20 20 itself. And the 802.3 is the IEEE standard for fiber
21 communications.

22 **Q** And if you're ordering 200 of these, would you need 200 on
23 one particular day or why are you ordering that many?

24 **A** We were constantly growing -- the network was constantly
04:10:36 25 growing; and we had GBICs go bad pretty frequently, as well as

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1 supplying all the outlying forces that we were supplying from
2 TQ. They'd all require these parts.

3 **Q** And so when you would receive the 200 GBICs, would they all
4 get installed at once or were they kept --

04:10:58 5 **A** Throughout a period of time.

6 **Q** I want to direct your attention to the top of this
7 specifications page. I'm going to read that top paragraph which
8 says, "These items must be genuine Cisco products, not an
9 imitation brand that claims the same specifications. We have
10 experience with substitute brands that do not deliver the
11 required performance and cause signal attenuation and degrade
12 beyond use before the required distance. Not only is this a
13 quality issue, it is a possible security issue. These items
14 must be genuine Cisco GBICs that meet exactly the standards
04:11:35 15 listed below."

16 Around the summer of 2008, do you know what was
17 going on with the technology being used by the military in Iraq
18 that would cause language like that to be included in this
19 specifications page?

04:11:50 20 **A** We -- Cisco and DISA, which is the Defense Information
21 Security Agency, discovered that there were counterfeit Cisco
22 parts being sold to the US military; and we had to do a
23 serialized inventory of all of our computer parts -- all of our
24 Cisco parts on the network, send them back to Cisco so they
04:12:08 25 could verify whether or not they were legitimate Cisco equipment

1 or not.

2 **Q** Do you know how it was first discovered that some of the
3 parts that people thought were Cisco parts, in fact, were
4 counterfeit?

04:12:18 5 **A** They were -- they weren't meeting the specifications that
6 we sent. They were going bad, and we'd be sending them back to
7 Cisco, and they'd discover that they didn't build them.

8 **Q** And you said you did a serialized inventory. Was that
9 taking down serial numbers?

04:12:33 10 **A** Yes, sir.

11 **Q** And you did that for all the Cisco parts?

12 **A** All the Cisco equipment that we had on the network. It
13 wasn't the serial number that was on the outside that you could
14 just read. That would be something that -- that was part of
04:12:45 15 what was counterfeited. We had to actually take the machine off
16 line, open it up, and take the serial number of the motherboard
17 inside of it.

18 **Q** And then you submitted that to Cisco and they were able to
19 tell you which parts were counterfeit?

04:12:57 20 **A** Yes, sir.

21 **Q** Do you recall approximately how many parts came back as
22 counterfeit?

23 **A** On TQ we had 16 or 18. I don't remember exactly. We had
24 16 or 18 switches and routers that were counterfeit that we had
04:13:07 25 to replace.

1 Q And these counterfeit parts were parts that the Marines
2 like you working on the network had installed because you
3 thought they were legitimate parts?

4 A Yes, sir.

04:13:20

5 Q Anything else going on during 2008 with other technology
6 that was found to be counterfeit being used by the military in
7 Iraq?

04:13:38

8 A The primary thing that was found was Lenovo laptops. IBM
9 Think Pads were outsourced to a company in China called Lenovo
10 to be built. A large amount of Lenovo laptops were sold to the
11 US military that had a chip encrypted on the motherboard that
12 would record all the data that was being inputted into that
13 laptop and send it back to China.

04:13:52

14 That was a big problem. That was a huge security
15 breach. We don't have any idea how much data they got, but we
16 had to take all those systems off the network.

17 Q All those laptops?

18 A All those laptops.

04:14:02

19 Q Do you know who was getting this information sent back to
20 them in China?

21 THE COURT: Who was receiving it?

22 BY MR. COSTA:

23 Q Who was receiving the information that was -- that this
24 chip was pulling off those computers?

04:14:11

25 A The PRA is what we estimated. PRA was our best assumption.

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1 THE COURT: PRA is?

2 THE WITNESS: People's Republic Army of China.

3 They're --

4 THE COURT: The military.

04:14:23

5 THE WITNESS: The military of China.

6 BY MR. COSTA:

7 Q And with these counterfeit Cisco products that were found,
8 do you know where they were coming from?

9 A They were built in China.

04:14:42

10 Q I want to show you now what is marked as Government Exhibit
11 10 and ask if you recognize the sticker on the outside of this
12 Ziploc bag?

13 A Yes, sir.

14 Q And do you recognize -- what does it say in the upper
15 left-hand corner?

04:15:02

16 A It's the Cisco logo.

17 Q Does it also have the name Cisco?

18 A It does, sir.

19 Q And what does the Cisco logo look like?

04:15:10

20 A It's the Golden Gate Bridge.

21 Q And there's a TM next to it. Do you know what TM is?

22 A Trademark.

23 Q And when it's opened up, is there a similar sticker on this
24 bag --

04:15:22

25 A Yes, there is.

1 Q -- silver bag?

2 What's this silver bag called?

3 A It's an antistatic bag.

4 Q Is that typical for computer parts to be packaged in that?

04:15:32 5 A Yes, sir.

6 Q What does that bag do?

7 A It prevents static electricity from getting into that bag
8 to prevent any type of damage to the circuitry inside of it.

9 Q And so this Cisco label on the outside of the Ziploc bag
04:15:42 10 and then this label on the antistatic bag, from your experience,
11 do those look like Cisco labels, typically, look?

12 A That is the Cisco label.

13 Q Inside, do you recognize this -- what type of part this is?

14 A It's a GBIC for a small form-factor pluggable GBIC.

04:16:00 15 THE COURT REPORTER: I'm sorry, for?

16 THE WITNESS: Small form-factor pluggable. It's an
17 FFP. It's the type of GBICs that we use.

18 BY MR. COSTA:

19 Q And if you look closely on the label that's on the part
04:16:15 20 itself, do you recognize a name and logo?

21 A There's another Cisco logo on it, yes, sir.

22 Q And in your experience, if you saw this, if someone shipped
23 this over to you in Iraq, would you -- would this look like a
24 genuine Cisco product?

04:16:30 25 A Yes, sir.

Chieffalo - Cross/Ferrari

1 Q I'm also going to show you part of Government Exhibit 11,
2 just another GBIC, just a little bit larger?

3 A Yes, sir.

4 Q The Cisco logo and name on that product, as well?

04:16:48 5 A Yes, sir.

6 Q And if you had received these in Iraq, would you -- do
7 those look like genuine Cisco products?

8 A They do.

9 Q And would you have plugged those into the network?

04:16:58 10 A We would have treated them like any other.

11 Q And you're someone who spent seven months in a training
12 course on network engineering; is that right?

13 A I was, yes, sir.

14 Q And has the training certification from Cisco, correct?

04:17:09 15 A Yes, sir.

16 Q To your naked eye, these look like real genuine Cisco
17 parts?

18 A Yes, sir.

19 MR. COSTA: One moment, your Honor.

04:17:26 20 Pass the witness, your Honor.

21 CROSS EXAMINATION

22 BY MR. FERRARI:

23 Q Good afternoon, Staff Sergeant Chieffalo. My name is Erich
24 Ferrari. I'm the counsel for the Defendant.

04:17:41 25 Now, you said you had Cisco training, correct?

1 **A** I have.

2 **Q** And you're aware that there are counterfeiters of Cisco
3 products that were trafficking these goods globally, correct?

4 **A** Yes, I am aware of that.

04:17:48 5 **Q** Are you aware of Cisco's partnership program to ensure the
6 authenticity of their goods in the marketplace.

7 **A** They do their resellers like that, yes, sir.

8 **Q** Okay. So you are aware of that --

9 **A** Yes, sir.

04:18:00 10 **Q** -- that resellers are supposed to buy from authorized
11 distributors?

12 **A** Correct, sir.

13 **Q** Now, that attachment that's up on the screen, that's
14 Government's Exhibit 5B, I believe, correct? Did you write that
04:18:13 15 attachment?

16 **A** I did not.

17 **Q** Did you supply the language to the individual who did write
18 the attachment?

19 **A** I just supplied the requirements, that's all.

04:18:20 20 **Q** Okay. So what part did you play in the contract with the
21 Marines and CDS Federal for these 200 GBICs in 2008?

22 **A** I didn't play any part in the contract; I just supplied the
23 need.

24 **Q** Okay. So you just requested these products then?

04:18:35 25 **A** Yes, sir.

1 Q And you said you would check prices on the various goods;
2 is that correct?

3 A Yes, sir.

04:18:43

4 Q So you knew generally what these things were going for in
5 the marketplace?

6 A For the most part, sir.

7 Q And would it be fair to say that you also knew what a
8 reseller or a provider of these goods would pay for those
9 products?

04:18:54

10 A Not what they'd buy directly from Cisco.

11 Q Okay. Is there anywhere in that attachment -- you can take
12 a second to read it -- where it says that the awarded party of
13 this contract needs to buy from an authorized distributor? Take
14 a second.

04:19:13

15 A It's just saying they need to buy Cisco parts, not who he
16 needs to buy it from.

17 Q Genuine Cisco parts and not imitation brands, correct?

18 A Correct.

04:19:33

19 Q So the Marines were aware that there was counterfeiters of
20 these products that are moving the products globally and they
21 are aware that there is a partnership program whereby the source
22 can be determined to make sure the Marines are getting genuine
23 Cisco products but they didn't put it in the attachment; is that
24 correct?

04:19:52

25 A That's all the contracting side of the house. It's outside

1 of my purview. I only deal with the technical specifics.

2 **Q** I understand. Is it fair to say from reading that that
3 whoever read it that was awarded the contract would think they
4 had to buy from an authorized distributor?

04:20:10 5 **A** Well, in order to buy genuine Cisco parts, you have to buy
6 them from an authorized distributor.

7 **Q** Are you sure about that?

8 **A** I'm pretty sure about that. I mean, that's the way that we
9 do business.

04:20:23 10 **Q** That you do business. But you work for the Marines,
11 correct?

12 **A** I work for the Marines, yes.

13 MR. FERRARI: I'll pass the witness, your Honor.

14 MR. COSTA: Nothing further, your Honor.

04:20:34 15 THE COURT: Thank you, sir. You may step down.

16 You're excused. You're free to leave. You can remain in the
17 courtroom, if you desire; but you're free to leave.

18 THE WITNESS: Thank you, sir.

19 THE COURT: Call your next witness.

04:20:47 20 MR. VARNADO: The United States calls Gunnery Sergeant
21 Dewan Britton.

22 THE COURT: Do you want to come forward, sir.

23 (The witness, **DEWAN CURESTON BRITTON**, called on behalf of
24 the Government, was sworn.)

04:21:13 25 THE COURT: Have a seat right there, sir.

Britton - Direct/Varnado

1 MR. VARNADO: May I proceed, your Honor?

2 THE COURT: Go on.

3 DIRECT EXAMINATION

4 BY MR. VARNADO:

04:21:39 5 Q Good afternoon, Gunnery Sergeant Britton.

6 A Good afternoon, sir.

7 Q Could you please state your full name for the record and
8 spell it for the court reporter.

9 A Sure. It's Gunnery Sergeant Dewan Cureston Britton.

04:21:54 10 That's spelled D-e-w-a-n; middle name spelled C-u-r-e-s-t-o-n;
11 last name spelled B-r-i-t-t-o-n.

12 Q And Gunnery Sergeant Britton, what branch of the military
13 are you in?

14 A I'm with the United States Marine Corps, sir.

04:22:08 15 Q And where are you currently stationed?

16 A I'm stationed in Kaneohe Bay, Hawaii, sir.

17 Q And when did you first join the Marines?

18 A In 1998, sir.

04:22:20 19 Q And any other members of your family been part of the
20 Marine Corps?

21 A Yes, sir.

22 Q Who?

23 A My grandfather and my father.

04:22:27 24 Q All right. When you joined the Marine Corps in 1998, where
25 were you first stationed?

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1 **A** Camp Lejeune, North Carolina.

2 **Q** And what were your duties generally as a Marine in Camp
3 Lejeune?

4 **A** I was a basic supply Marine, sir.

04:22:37 5 **Q** And how long were you in Camp Lejeune?

6 **A** From 1998 to 2002.

7 **Q** And what happened in 2002 in terms of where you were
8 stationed?

9 **A** I reenlisted and I actually lat moved into my current MOS
04:22:51 10 which is a contracting specialist.

11 THE COURT: MOS, military occupational specialty.

12 THE WITNESS: Yes, that's correct, sir.

13 THE COURT: I remember that.

14 BY MR. VARNADO:

04:22:58 15 **Q** So you moved into that particular military occupation
16 specialty. And what was that occupation specialty?

17 **A** It was contracting, sir.

18 **Q** And is that where you remain today in terms of that
19 specialty?

04:23:09 20 **A** Yes. I'm currently a procurement purchasing and
21 contracting specialist.

22 THE COURT: Where are you stationed now?

23 THE WITNESS: Kaneohe Bay, sir. That's in Hawaii,
24 sir.

04:23:19 25 //

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1 BY MR. VARNADO:

2 Q How long did you spend in Okinawa, Japan?

3 A One year, sir.

4 Q And where did you go after being in Okinawa, Japan?

04:23:27 5 A I received PCS orders to Camp Pendleton, California.

6 Q What is a PCS order, just so the jury knows?

7 A It's a permanent change of station, sir.

8 Q And how long were you assigned to Camp Pendleton in
9 California, is it?

04:23:40 10 A Yes, sir. Roughly four years.

11 Q And during your time at Camp Pendleton, did you have
12 occasion to do any tours of duty in Iraq?

13 A Absolutely, sir. I did -- served two tours in Iraq.

14 Q What were the dates of your first tour of duty?

04:23:53 15 A 2005, I served a tour for six months, Camp Fallujah.

16 Q And what was your rank at that time?

17 A I was a sergeant, E-5.

18 Q And you said you were assigned to Camp Fallujah?

19 A Yes, sir, that's correct.

04:24:06 20 Q Is that actually in the City of Fallujah in Iraq?

21 A Yes, sir, it is.

22 Q And what were your duties during that first tour of duty in
23 2005?

04:24:18 24 A I was a contracting officer; but basically, pretty much a
25 worker bee. My assignment was to, basically, procure supplies

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1 and services as fast as possible to, basically, fill the need
2 for anything that my Marines needed while they were out there on
3 the field.

04:24:35

4 **Q** And what, in general, does a contracting officer do with
5 the Marine Corps, just in general terms?

04:24:53

6 **A** A customer submits a requirement to us for whatever they
7 may need. It's my job to actually find what they need and buy
8 it, procure it, as quick as possible and make sure that I'm
9 receiving the best value for the government because we're using
10 the government's tax dollars.

11 **Q** I'm going to show you what the jury has already seen and
12 I'll tilt it towards you so you can see it a little more. Can
13 you see that map from there, sir?

14 **A** Yes, I can, sir.

04:25:04

15 **Q** And in terms of where you were assigned, is it here --
16 where it says Al Fallujah, is that where you were based during
17 your first tour of duty in Iraq?

18 **A** Yes, sir.

04:25:21

19 **Q** You mentioned you did two tours. When did you have your
20 second tour of duty in Iraq?

21 **A** In 2008, sir.

22 **Q** And how long were you there that time?

23 **A** Six months.

04:25:29

24 **Q** And what was your rank at that time during your second tour
25 of duty?

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1 **A** Staff sergeant, E-6.

2 **Q** And where does that fall in relation to your rank
3 currently?

4 **A** One rank below what I am today.

04:25:39 5 **Q** You've moved up one rank since this tour of duty?

6 **A** Yes, sir.

7 **Q** All right. And again, where were you assigned in 2008?

8 **A** Camp Fallujah, as well.

9 **Q** Same location that you were in 2005?

04:25:48 10 **A** Yes, sir.

11 **Q** And what was your job duties during this time during your
12 second tour of duty in Iraq?

13 **A** I was, basically, a manager. I still had duties to
14 purchase supplies and services for my Marines; however, since I
04:26:02 15 was a manager, I had Marines under me. So I was responsible for
16 their contract oversight. I was in charge of roughly four
17 Marines and one airman.

18 **Q** And so this is still in the contracting division and still
19 working in the same military occupational specialty that you are
04:26:20 20 today?

21 **A** Yes, sir, that's correct.

22 **Q** So focusing on that second tour of duty at Camp Fallujah,
23 was there a larger or an oversight contracting command in Iraq
24 during your tour of duty there?

04:26:34 25 **A** Yes, sir.

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1 Q What was that called? Please tell the jury.

2 A JCCI. And that stands for Joint Contracting Command.

3 Q And how did it work -- where you were stationed, did that
4 have a particular name or acronym that referred to where you
04:26:47 5 were stationed in Fallujah?

6 A Yes. RCC. That stands for the Regional Contracting
7 Center, Fallujah.

8 Q And so you were at the RCC, Fallujah; is that correct?

9 A That's correct, sir.

04:26:57 10 Q And sort of on top of that or over that was the JCCI; is
11 that accurate?

12 A JCCI, Joint Contracting Command, Iraq.

13 Q How did JCCI impact what your RCC in Fallujah did?

14 A JCCI -- all contracting authority flows down from JCCI.
04:27:19 15 They empower our contracting officer with a warrant which gives
16 us the power to actually procure supplies and services for the
17 United States Government.

18 And they are also responsible for contract
19 oversight and all the policies that actually we're responsible
04:27:35 20 for. They're responsible for, you know, putting out policy and
21 guidance that we get, you know, as far as doing our job.

22 Q All right. I want to talk a little bit about the product
23 procurement process during your second tour of duty in Iraq. If
24 you could, walk the jury through -- and we'll just start with
04:27:55 25 the basics. How would a particular request for a product end up

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1 landing on your desk? Was there any criteria it had to meet
2 before it would be handled by the RCC?

3 **A** Yes. It has to be over a certain amount, certain dollar
4 threshold. In order for it to be procured by my office, it has
04:28:18 5 to be over \$25,000. If it's not over \$25,000, it gets procured
6 by a government credit cardholder.

7 Now, if it's over \$25,000, there's someone on the
8 lower level that actually scans the requisition; and we had
9 warehouses in Iraq onsite that sees if they can fill the
04:28:42 10 requirement. Now, if they cannot fill the requirement, then
11 that requirement goes to the contracting office for procurement.

12 Once that contract -- once that requirement hits
13 my desk, it's my job to actually go out and find where I can get
14 this product or the service from. Whether I have a vendor list
04:28:59 15 or whatever, I need to pick up the phone and I need to get in
16 contact with whoever I may need to in country or outside of the
17 country to see who can procure these services.

18 **Q** So there may be a request, Gunnery Sergeant Britton, for
19 maybe a service on some level?

04:29:15 20 **A** Yes, sir.

21 **Q** But you could also receive requests for products?

22 **A** Yes, sir, that's correct.

23 **Q** It wasn't going to rise up to your level of dealing with it
24 unless it was over \$25,000?

04:29:24 25 **A** \$25,000.

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1 **Q** And I want to focus on requests over that amount that you
2 specifically dealt with. How would a specific request for a
3 product come into your office? How would you physically receive
4 that?

04:29:37 5 **A** Everything was done electronically through some sort of
6 system that we called the whopper. Once it was received, again,
7 like I said, we would scan it for accuracy. There was a whole
8 process that doesn't really go into -- I don't want to go into
9 detail; but if the requisition was good, it was assigned a
04:29:58 10 certain code or what we call appropriation data, which was,
11 basically, funding that is used with US taxpayers' dollars,
12 okay?

13 Once we get that requisition, we, basically,
14 either post it on a website. If the requirement is over -- and
04:30:17 15 for instance, this requirement was over \$100,000. So it had to
16 be posted on a -- on a website for bid.

17 **Q** Gunnery Sergeant, I don't mean to interrupt. Before we get
18 into the posting, I want to ask you a couple of questions --

19 **A** Sure.

04:30:31 20 **Q** -- about when the bid comes in.

21 **A** Okay.

22 **Q** Do you receive any pricing information or ball park
23 estimates from the individuals or branch that's actually asking
24 for these products?

04:30:41 25 **A** Yes. It's the customer's duty to always submit on the

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1 requisition some sort of government estimate or pricing. It's
2 their duty to actually conduct some sort of market research
3 prior to submitting their requisition to my office.

04:31:00 4 **Q** And would your office consider market research done through
5 Ebay something that would provide a reasonable basis for the
6 Marine Corps to rely upon?

7 **A** Negative. Ebay is an unreasonable and unreliable source.

8 **Q** And so the Marine Corps would not use that as a source of
9 trying to estimate what the ball park product costs would be?

04:31:14 10 **A** Negative. It's an unreliable source, sir.

11 **Q** You say that you would get a requisition from a customer.
12 Let's just talk -- a requisition, what does that mean in
13 layman's terms? Is that the request for products?

14 **A** It's the request for products or services.

04:31:26 15 **Q** And your customers, who are your customers when you're
16 stationed over there in Fallujah, at Camp Fallujah?

17 **A** My customer would be that Marine on the battlefield or that
18 Marine that actually needs that supply. In this instance, it
19 was the prior Marine that just came in here. He was the one
04:31:41 20 asking for the supplies that we're actually covering in this
21 case.

22 **Q** And now, let's assume -- and again, we're just walking
23 through this generally and we'll talk specifically about this
24 case. But if you receive the requisition and all the paperwork
04:31:56 25 is in order and it's over \$25,000 or actually over hundred

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1 thousand dollars -- we'll stick with that -- what's the process
2 that you go to next in processing this request?

04:32:15

3 **A** Since the requirement is over \$100,000, it has to be -- we
4 can't just pick up the phone or e-mail selected vendors. It has
5 to be put out for bid in a public place for everyone to see. So
6 what we do is JCCI had established a website in Iraq for which
7 we publicly post all of our requirements over hundred thousand,
8 and that's what we do. I posted this requirement out there for
9 everyone to see; and basically, I got bids back for it.

04:32:37

10 **Q** Now, JCCI's website in Iraq, was there any effort at that
11 time in 2008 to direct any contracts towards entities that can
12 service that in-country, meaning in Iraq?

13 **A** Absolutely.

14 **Q** And tell the jury what that program was called?

04:32:53

15 **A** The program was called Iraqi First implemented by Joint
16 Contracting Command, Iraq; and it, basically, gives precedence
17 to Iraqi contractors, the reason being we're out there on a
18 fight against global war terrorism and we, basically, were
19 trying to help Iraqis by stimulating their economy.

04:33:13

20 So a lot of problems that we faced were -- we
21 were seeing was that in the beginning of our tour, a lot of the
22 contractors that we were dealing with were not Iraqi vendors.
23 So a lot of -- all of the money that we were pumping into the
24 country was not staying in the country because these contractors
25 were not Iraqi.

04:33:30

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1 So we implemented the Iraqi First program to make
2 sure that the money was going to Iraqi vendors so that they can
3 feed their families, these Iraqis could get jobs and we can help
4 stimulate their economy and rebuild what we had destroyed during
5 this war.

04:33:47

6 **Q** And if under the Iraqi First program there was not a
7 business that could satisfy the needs that you had, what would
8 be the next step in the contracting process?

9 **A** Then we would go -- reach back state side for procurement.

04:33:59

10 **Q** And if you're procuring something state side, what's the
11 method through which the Marines in your department procures
12 products?

13 **A** We would default back to our normal state side procurement
14 procedures; and that would result in, if the procurement is over
15 \$25,000, we would actually post our requirement on the
16 government website that we use state side, which is Federal Biz
17 Ops, federalbusinessopportunities.com.

04:34:13

18 **Q** Is it dot-com or dot-gov that you believe or do you know?

19 **A** I'm not familiar at this time.

04:34:28

20 **Q** Okay.

21 **A** It's either one or the other.

22 **Q** All right. But it's Fed Biz Ops on the Internet?

23 **A** federalbusinessopportunities.gov, I do believe.

24 **Q** And so what is posted on Fed Biz Ops? What would somebody
25 see if they went on that website to look?

04:34:44

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1 **A** If you go on Federal Biz Ops, you'll, basically, see for
2 the Department of Defense all branches, Marine Corps, Navy,
3 Army, and Marines, all the requirements that we have out there
4 that we're looking -- that we're soliciting for to acquire; and
04:35:02 5 if you're a contractor interested in doing business with the
6 government, you can submit your bid through that website; and a
7 contracting officer will contact you.

8 **Q** Okay. Let's just say, again, talking generally, it's been
9 posted on fedbizops.gov, and you receive bids back. What would
04:35:19 10 be your process after you receive -- is there a time limit on
11 how long bids can be received?

12 **A** Yes, sir. There's a closing date posted on the
13 solicitation.

14 **Q** And after the closing date is run, let's assume you got
04:35:29 15 some bids. What would be your next process?

16 **A** To pull the bids in and evaluate them to determine who's
17 suitable for the award.

18 **Q** And what sort of evaluation do you conduct, just generally?

19 **A** It will be either on a lowest price technically acceptable
04:35:44 20 basis or best value.

21 **Q** Does the Marine Corps always award the contract to simply
22 the lowest bidder?

23 **A** Negative, sir. Sometimes we have a philosophy "Sometimes
24 you get what you pay for." Just because it's the lowest price
04:35:58 25 doesn't mean it's the best value.

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1 **Q** So what sort of analysis -- or how does that factor in in
2 terms of doing a value analysis in your department, just
3 generally?

4 **A** Well, sometimes you have to sometimes pay a little bit more
04:36:09 5 to get a better quality product. So you determine -- you look
6 at your requirement, you figure if -- if it's a little bit more,
7 then you pay a little bit more just to get a better value for
8 the government. Better value encompasses all, delivery time,
9 quality of product, specifications are good. It just doesn't
04:36:27 10 encompass just the lowest price.

11 **Q** Now, if you received bids from entities in China, would you
12 be allowed to go forward on a bid from a Chinese company?

13 **A** Negative, sir.

14 **Q** Why not?

04:36:40 15 **A** We don't procure any items from China. There's trade
16 agreements involved; and according to the federal acquisition
17 regulations, we do not procure any items from China.

18 **Q** Now, let's say you've gone through your process and made
19 your value assessment and picked a winning bidder. What happens
04:37:00 20 next, again, just generally, after you select the winning bid?
21 What would you do?

22 **A** We immediately notify the contractor, let them know that
23 they have been awarded the contract, send them a copy of the
24 contract award and let them know to assign -- basically, fill
04:37:16 25 out the appropriate paperwork and send it back to me so that we

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1 can go ahead and start making arrangements to get the stuff
2 logistically worked out.

04:37:32

3 **Q** How -- you say, you know, you're communicating back and
4 forth and receiving bids. How is all of these -- how are all of
5 these communications taking place?

6 **A** By e-mail.

04:37:48

7 **Q** Now, assuming the person has filled out their paperwork
8 after they've received the award and you're satisfied and they
9 actually deliver the goods, perform on time, how would that
10 contractor be paid?

11 **A** All banking transactions were done by electronic funds
12 transfer in Iraq, sir.

04:38:04

13 **Q** Okay. Now, again, just talking in general terms about the
14 contracting process, is -- you know, your customers, your
15 Marines on the field, are they allowed to say -- specify as a
16 matter of general nature that they want a particular brand of
17 product? Is that something that's customary, that they can just
18 select, "I want a Dell computer" or an Apple iPhone?

04:38:26

19 **A** My customers can tell me what they want, sir; but it's my
20 job as a steward of taxpayers' dollars to get exactly what is
21 suitable for the mission, to meet the minimal needs of the
22 government, basically. So just because they want a specific
23 brand, I don't have to procure that specific brand. Okay?

04:38:46

24 **Q** Are there instances when that is not the case, where a
25 specific brand can be requested and is, in fact, ordered because

1 it is that specific brand?

2 **A** Yes, sir.

3 **Q** And what is that called?

4 **A** It's called the sole source. And basically, when there's a
04:39:00 5 justification for a sole source, it has to be done in writing;
6 and they have to, basically, justify to me or one of my
7 contracting officers why they are requesting a particular item
8 and why no other item will meet their needs, why this particular
9 item is the only item in the world that will meet their needs
04:39:21 10 and no other item or substitute item will suffice.

11 **Q** And if you're going to get a soul source requisition, is
12 that process -- all those approvals need to be in place before
13 you even get the contract?

14 **A** Absolutely, sir.

04:39:32 15 **Q** And what's some of the needs, in your experience, that
16 people would have for -- to justify a sole source purchase of a
17 product?

18 **A** Urgency, compatibility with existing equipment that's
19 already in place, patent; and there's other -- others out there,
04:39:54 20 as well; but those are just a few examples.

21 **Q** All right. I want to talk about the actual procurement
22 process in this case.

23 THE COURT: I'll tell you what, we always take one
24 more break so we don't go all the way through. I always adjourn
04:40:08 25 between 6:00 and 6:05 to give you some idea. It's now 20

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1 minutes to 5:00. Let's get back in at five minutes to 5:00, and
2 then we'll go to plus or minus 6:00 o'clock. So see you back in
3 15 minutes.

4 (Court recessed at 4:40 p.m.)

05:00:46 5 (Court resumed at 5:00 o'clock p.m.)

6 BY MR. VARNADO:

7 **Q** Gunnery Sergeant Britton, when we left off, I started to
8 ask you a question about the procurement process in this
9 particular case. Do you recall that?

05:00:55 10 **A** Yes, sir.

11 **Q** On the screen that's sort of just behind you --

12 THE COURT: Could you speak up a little bit, counsel.

13 BY MR. VARNADO:

14 **Q** -- the screen just behind you in Government's Exhibit 4A,
05:01:05 15 this is a page out of that exhibit. And do you recognize just
16 the first page that I'm showing on the screen right there in
17 front of you?

18 **A** Yes, sir.

19 **Q** Tell the ladies and gentlemen of the jury what is this
05:01:15 20 first page.

21 **A** That's a copy of my solicitation that I put out for bid.

22 **Q** And this would have been the first page of that?

23 **A** Yes, sir.

24 **Q** And what does the -- this box right here where my light is
05:01:26 25 shining, solicitation number, what does that signify?

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1 **A** That's just my tracking number that we use internally for
2 our office. It's nothing more than the "Q" changes to a "P,"
3 and that will be the contract number once it's awarded.

05:01:43

4 **Q** This is the way you track the solicitation number and
5 ultimately the contract number?

6 **A** Yes, sir.

7 **Q** And then what about this next box over here, this
8 solicitation issue date?

05:01:52

9 **A** That's the date I actually issued the solicitation, I
10 posted it on the website.

11 **Q** And then on this particular page of Government's Exhibit
12 4A, it says, "For information call"; and is that your name
13 there?

14 **A** Yes, that's correct, sir.

05:02:02

15 **Q** Is that how you could be reached in Iraq?

16 **A** Yes, sir.

17 **Q** And what does this next box here signify?

18 **A** That's the closing date of my solicitation, sir.

05:02:14

19 **Q** And let's talk about this next box here which I believe is
20 Box 9. I know it's difficult to read that it's nine. What is
21 signified under this box?

22 **A** That's the address of my organization which would be RCC,
23 Fallujah.

05:02:29

24 **Q** All right. And again, that's under the Joint Contracting
25 Command of Iraq?

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1 **A** That's correct, sir.

2 **Q** And then for the attention of who to talk to about this
3 solicitation, whose information is provided there?

4 **A** Mine, sir.

05:02:36 5 **Q** All right. Is that your military e-mail address?

6 **A** Yes, that's correct, sir.

7 **Q** When you were in Iraq in 2008?

8 **A** Yes, sir.

9 **Q** And incidentally, what is the solicitation date on this
05:02:45 10 document?

11 **A** 17, June, 2008, sir.

12 **Q** All right. And what is the next -- this box where my light
13 is on, "deliver to code"? What does that refer to?

14 **A** The location of where the supplies or services are to be
05:02:57 15 delivered.

16 **Q** And where were these supplies/services for this particular
17 contract to be delivered?

18 **A** Al Taqaddum Airbase, Iraq.

19 **Q** I'm directing your attention to this demonstrative here.
05:03:07 20 Is that the base that we see here just west of Fallujah?

21 **A** That's correct, sir.

22 **Q** And is there another name that you-all use for Al Taqaddum?

23 **A** TQ, sir.

24 **Q** Moving down a little further to the block -- next block
05:03:21 25 where my light is, who does it say is the contractor, slash,

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1 offeror?

2 **A** CDS Federal, Inc., doing business as Corporate Data
3 Systems.

4 **Q** And then does it have -- and I'm going to move this up,
05:03:36 5 Gunnery Sergeant. Does it have an address for that particular
6 outfit?

7 **A** Yes, sir.

8 **Q** What is it?

9 **A** 14323 Castlemaine Court, Sugar Land, Texas 77478.

05:03:47 10 **Q** And what's included on this -- under this item here, Number
11 20, schedule of supply, slash, services? What's this
12 information on those two different divisions?

13 **A** Those are the items I requested for my unit, sir.

14 **Q** And for the top one, it's the GLC-LH-SM GBIC from Cisco.
05:04:03 15 You need hundred of them; is that correct?

16 **A** Yes, sir.

17 **Q** And then the request for the second items would be another
18 hundred of another type of GBIC, Product Number WS-G5486?

19 **A** That's correct, sir.

05:04:18 20 **Q** Now, it says here "brand name only." Do you see that?

21 **A** Yes, sir.

22 **Q** Would this have been one of the sole source acquisitions
23 that had been approved prior to hitting your desk?

24 **A** Yes, sir.

05:04:27 25 **Q** All right. Tell the ladies and gentlemen of the jury what

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1 this -- where my light is here, unit price, what is being
2 represented there on this document?

3 **A** That's the price the contractor provided to me. He's
4 saying that he's putting a bid in for \$695 each, a piece, for
05:04:45 5 that item.

6 **Q** And what's he saying the total amount for those 100 Cisco
7 GBICs will be?

8 **A** \$69,500.

9 **Q** And the person bidding or the entity bidding is CDS

05:04:56 10 Federal, correct?

11 **A** Yes, sir.

12 **Q** For the second group in the products, what's the CDS
13 Federal, that contractor, saying is the unit price that he'll
14 bill the Marines?

05:05:08 15 **A** \$495, sir, for a total of \$49,500.

16 **Q** Directing your attention to the bottom of this solicitation
17 response, can you see what name is written here?

18 **A** Yes, sir.

19 **Q** Whose is it?

05:05:21 20 **A** Ehab Ashoor.

21 **Q** And what date is this document signed by Mr. Ashoor?

22 **A** June 19, 2008, sir.

23 **Q** Okay. And so is this what you would receive in response to
24 a solicitation of somebody providing a bid for these products?

05:05:37 25 **A** Yes, sir.

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1 Q I'm showing you the document before this page on
2 Government's Exhibit 4A, and I want to -- can you see -- can you
3 read that in front of you, Gunnery Sergeant?

4 A Yes, sir.

05:05:52 5 Q Can you see who this e-mail is from?

6 A Yes, sir.

7 Q Is it -- who's it from?

8 A Corporate Data Systems.

9 Q And is the e-mail address being used cdsusa@gmail.com?

05:06:06 10 A Yes, sir.

11 Q And who's this message sent to?

12 A Myself, sir.

13 Q And is there somebody copied on this?

14 A Yes, sir.

05:06:10 15 Q kz@cdsfederal.com?

16 A Yes, sir.

17 Q Do you know who that is?

18 A Negative, sir.

19 Q And just reading the e-mail -- tell me if I read this
05:06:21 20 correctly. "Dear Dewan Britton, sorry, I just hit the send
21 button accidental without completing the e-mail. We are
22 submitting our quote attached for only Cisco genuine brand new
23 items as you requested." And is that what was requested in this
24 solicitation was Cisco genuine brand new items?

05:06:39 25 A Yes, sir.

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1 Q I want to read the next sentence: "We are a
2 Cisco-authorized reseller and we 100 percent guarantee" --
3 that's a misspelling -- "and stand behind it." Did I read that
4 sentence correctly?

05:06:51 5 A Yes, sir.

6 Q And receiving this information from -- and again, just
7 looking at the bottom, who is this e-mail from?

8 A Ehab Ashoor.

9 Q Same person who signed that contract?

05:07:02 10 A Yes, sir.

11 Q In receiving this information, "We are a Cisco-authorized
12 reseller," did that have any impact on you in terms of your
13 duties as a contracting officer?

14 A Absolutely, sir.

05:07:13 15 Q What was that impact?

16 A That I was receiving parts from a credible Cisco-authorized
17 reseller or distributor.

18 Q And he notes that he's already filled out some
19 certifications and representations. And then, ultimately, the
05:07:26 20 e-mail ends; is that accurate?

21 A Yes, sir.

22 Q And you received this on June 20th of 2008?

23 A Yes, sir.

24 Q All right. And do you see there at the bottom of this
05:07:36 25 e-mail, it indicates that there are some attachments, PDFs and

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1 documents?

2 **A** Yes, sir.

3 **Q** And I already showed you this one attachment. Is this the
4 bid that we just looked at?

05:07:47 5 **A** Yes, sir.

6 **Q** Another attachment to that e-mail is this document. What
7 does this document mean to you?

8 **A** This is, basically, the contractor is telling me that he
9 can deliver the supplies and services within 30 to 45 days.

05:08:04 10 Payment terms are net 30, and he included all his information
11 based on the CCR registration website.

12 Now, what CCR is is, basically, a website that
13 all contractors have to be in -- or a system that all

14 contractors have to be in in order to do business with the
05:08:21 15 federal government. They're assigned a tax ID number for tax
16 purposes, a DUNS number, and cage code. For all contractors in
17 the United States, they have to be registered with CCR in order
18 to do business with the government.

19 So, basically, this sheet here is telling me,
05:08:37 20 "Look, I've done business with the government before. I'm CCR
21 registered. We're good to go." And that is what I gathered
22 from this sheet -- this documentation here.

23 **Q** And so in addition to being -- representing himself as a
24 Cisco-authorized reseller, he's telling you he's also Central
05:08:52 25 Contractor Registered?

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1 **A** Yes, sir.

2 **Q** And the point of contact, again, Ehab Ashoor. And is that
3 the same e-mail address that you were using to correspond with
4 this person?

05:08:59 5 **A** Affirmative.

6 **Q** I'll show you another page in this Government's Exhibit 4A.
7 Just generally, do you recognize what this document is?

8 **A** Yes.

9 **Q** What is it?

05:09:17 10 **A** The contractor's electronic funds transfer information.

11 **Q** And who does it indicate will be the beneficiary -- and why
12 is this information obtained by the Marine Corps?

13 **A** Upon delivery of supplies and services, that's his
14 information for his bank account to where we would wire the
05:09:34 15 money to.

16 **Q** And it provides a beneficiary named CDS Federal, Inc.; is
17 that correct?

18 **A** Yes, sir.

19 **Q** And does he provide a bank number and routing number?

05:09:44 20 **A** Yes, sir.

21 **Q** And what's the banking facility where he wants the funds
22 eventually sent?

23 **A** Wachovia Bank on Richmond Ave in Houston, Texas.

24 **Q** And what does it say is the name of the company and the
05:09:54 25 address?

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1 **A** CDS Federal.

2 **Q** And is it that same Castlemaine address that we saw
3 earlier?

4 **A** Yes, sir.

05:10:01 5 **Q** And again, who is the individual who is signing this
6 document?

7 **A** Ehab Ashoor, sir.

8 **Q** And so in terms of receiving a bid, is that -- is that sort
9 of the manner in which you would receive a bid, these sorts of
05:10:14 10 documents, and receive them via e-mail?

11 **A** Yes, sir.

12 **Q** Now, in response -- I'm going to show you another page in
13 Government's Exhibit 4A. It's labeled gmail 105. I want to
14 direct your attention to the bottom first and see if we can pick
05:10:32 15 up that same e-mail strand. Do you see the, "Sorry, I hit the
16 send button accidental" --

17 **A** Yes, sir.

18 **Q** -- at the very bottom?

19 And do you realize -- do you recognize that as
05:10:39 20 the e-mail we were reading previously?

21 **A** Yes, sir.

22 **Q** And I want to direct your attention above in the blue
23 writing. Do you see this right here?

24 **A** Yes, sir.

05:10:49 25 **Q** And who are you -- what do you -- what are you -- who is

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1 sending this information?

2 **A** That's me sending questions to the contractor.

3 **Q** And what's the first question you ask?

4 **A** I'm asking him does this price include shipping?

05:11:00 5 **Q** And why do you ask that?

6 **A** Because I'm going to make sure that once we go into an
7 agreement that he doesn't hit me for additional shipping costs
8 on top of the 119 that we agreed on.

9 **Q** Was that some of your concern as a contracting officer over
05:11:14 10 in Iraq?

11 **A** Absolutely, sir.

12 **Q** Then you ask a question about what carrier he intends to
13 use; is that accurate?

14 **A** Yes, sir.

05:11:20 15 **Q** And what's the last thing you ask?

16 **A** I wanted to confirm that he was, in fact, sending me Cisco
17 products that we talked about, 100 percent genuine Cisco
18 products.

19 **Q** And what's the -- what's the point of you asking that
05:11:33 20 question again via e-mail?

21 **A** A lot of times when we do business in another country,
22 Iraq, particularly, we get products that -- that are substandard
23 and not exactly what we asked for. Even if we put in the
24 solicitation until we're blue in the face and tell them
05:11:55 25 specifically what we want, when the supplies are delivered,

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1 they're not exactly what we asked for; and we've confirmed with
2 the contractor in writing, we've told them up front what we
3 asked for; but that's not exactly what we get.

4 So I make it my duty to one last time, before
05:12:07 5 awarding a contract to a contractor, to get it in writing or by
6 e-mail or whatever to, basically, confirm that I'm getting the
7 product that my customer's requesting; and I did it here.

8 **Q** And then, in response to your e-mail, is there a message
9 sent on June 27th from Mr. Ashoor back to you? Do you see that?

05:12:26 10 **A** Yes, sir.

11 **Q** And what does he respond, as far as your questions?

12 **A** He's saying that the price is good for 119,000. This
13 includes shipping. They'll use DHL, FedEx, or UPS, whatever
14 choice I choose.

05:12:43 15 **Q** And what's the next sentence say?

16 **A** "This is to confirm that we quote only brand new genuine
17 Cisco products as requested in bid. If you have any questions,
18 feel free to contact me."

19 **Q** And who's that sent from?

05:12:53 20 **A** Ehab Ashoor, sir.

21 **Q** And what's the e-mail address?

22 **A** cdsusa@gmail.

23 **Q** So after you received that correspondence and the response
24 to your questions -- I'm going to show you what's marked as
05:13:14 25 Government's Exhibit 4B, the first page. What is this document?

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1 **A** That is what I call a contract award notification e-mail,
2 sir.

3 **Q** And what are you communicating through -- and first off,
4 you're sending this e-mail; is that correct?

05:13:32 5 **A** Yes, sir.

6 **Q** And is this on the 28th of June of 2008?

7 **A** Yes, sir.

8 **Q** And who do you send it to?

9 **A** The contractor.

05:13:38 10 **Q** And that same e-mail address, cdsusa --

11 **A** Yes, sir.

12 **Q** -- @gmail.com?

13 Now, you copy a couple of other people on here.
14 Who is this individual here?

05:13:49 15 **A** Brian Catrell is the Marine that actually -- his name was
16 indicated on the purchase request that was submitted to my
17 office. So I was assuming that he is my primary customer. So I
18 wanted to CC him letting him know, "Hey, I'm processing your
19 order. This is the individual that I awarded the contract to."

05:14:08 20 **Q** Okay. And so in this e-mail, what are you communicating to
21 Mr. Ashoor with CDS -- or with Corporate Data Systems?

22 **A** Since I received his last e-mail letting me know that they
23 are, in fact, 100 percent genuine Cisco products, I'm letting
24 him know that I'm awarding the contract to him for 119,000 and
05:14:24 25 I'm letting him know that that's the delivery time, 28, July,

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1 and I'm confirming that he's going to deliver them to Al
2 Taqaddum Airbase.

3 **Q** So based on this, you've communicated the final price of
4 119,000 that he quoted?

05:14:37 5 **A** Yes, sir.

6 **Q** And the delivery date for these goods is about a month, 30
7 days, which is July 28th of '08?

8 **A** Yes, sir.

9 **Q** And where these goods are to be sent by Mr. Ashoor?

05:14:49 10 **A** Confirmed everything that we talked about.

11 **Q** And these are going to TQ?

12 **A** Correct, sir.

13 **Q** And does there also appear to be an attachment to this
14 e-mail?

05:14:57 15 **A** Yes, sir.

16 **Q** And again, is that noted in here, Attached is a copy of the
17 purchase order, the contract?

18 **A** The contract, yes, sir.

05:15:11 19 **Q** I want to show you the finalized contract, again, from
20 Government's Exhibit 4B. And do you recognize this document?

21 **A** Yes, sir.

22 **Q** And again, is this the -- the solicitation number has now
23 got a "Q" in it. What does that mean?

05:15:29 24 **A** Well, that's the solicitation number. The contract number
25 is indicated in Block 2, sir.

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1 Q Okay. So this would be the contract number --

2 A Yes, sir.

3 Q -- at this point now that it has an "M"?

4 A Yes.

05:15:37 5 Q All right.

6 A For manual.

7 Q And again, same information in this block of "issued by,"
8 the Regional Contracting Center in Camp Fallujah; is that
9 correct?

05:15:46 10 A Yes, sir.

11 Q And then this specifies where the goods are to be
12 delivered, is that fair enough, in Block 15?

13 A Yes, sir.

14 Q And again, you use Gunny Sergeant Catrell's e-mail here and
05:15:59 15 copied him on that?

16 A Yes, sir.

17 Q And again, the contractor, just like in the bids, CDS
18 Federal, Inc., with all that information now typed in, is that
19 fair enough?

05:16:08 20 A Yes, sir.

21 Q And memorialized down below, what does it say is the
22 purchase price for the first set of GBICs?

23 A 695, which we agreed on.

24 Q And then the second set of GBICs?

05:16:18 25 A 495 per.

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1 Q And that results in a total contract price?

2 A 119,000.

3 Q And whose signature is that here signing this for the
4 government?

05:16:27 5 A That's mine, sir.

6 Q All right. Now, I want to show you some additional
7 portions of this contract and direct your attention to a
8 document in the same exhibit, 4B, labeled gmail 120. And do you
9 recognize this particular document?

05:16:49 10 A Yes, sir.

11 Q And this is a -- the specifications for the requested
12 items. Do you see that?

13 A Yes, sir.

14 Q And would this same document have been attached to the
05:16:58 15 solicitation and been provided at the time of soliciting the
16 bids?

17 A Absolutely, sir.

18 Q What does this -- what does this specification say
19 regarding these products that would have been attached to the
05:17:09 20 solicitation?

21 A That we're asking for 100 percent genuine Cisco products.

22 Q And have you pointed out that you're not interested in
23 imitation brands that claim the same specifications?

24 A Yes, sir.

05:17:21 25 Q And as they're pointing out in this language here, that the

Britton - Direct/Varnado

1 Marine Corps has had bad experience with substitute brands not
2 providing the same quality and security?

3 **A** That's right, sir.

4 **Q** All right. And so that's made -- that was not only part of
05:17:34 5 the solicitation, it's now made part of the contract; is that
6 true?

7 **A** Correct, sir.

8 **Q** And in response to your e-mail awarding the contract, I
9 want to show you another page of Government's Exhibit 4B. Do
05:17:58 10 you see the e-mail down below, the congratulations e-mail that
11 they've been awarded the contract?

12 **A** Yes, sir.

13 **Q** I want to move up in the chain. Do you see a response to
14 yourself from Mr. Ashoor?

05:18:10 15 **A** Yes, sir.

16 **Q** And what does he say that he's done in terms of right
17 there?

18 **A** He's attached a copy of the signed contract. He has a
19 quick question. "There are two Cisco part numbers indicated
05:18:25 20 within line number one. Please help us understand. We are
21 supposed to ship specific part number, not another part number
22 for line item number one. Both part numbers are good Cisco part
23 numbers. We have no problem supplying either one. We just want
24 to make sure we ship the right parts as your end user intended."

05:18:45 25 **Q** Okay. And focusing on the top part here, I've attached the

Britton - Direct/Varnado

1 front -- the signed front page of the contract. There's another
2 document attached to that e-mail. Is that that same contract
3 that we just looked at?

4 **A** Yes, sir.

05:18:58 5 **Q** And is it now signed not only by yourself but by
6 Mr. Ashoor?

7 **A** Yes, sir. Binding any agreement.

8 **Q** What's the date he signed that contract?

9 **A** 28, June, 2008, sir.

05:19:09 10 **Q** And you mentioned that also in this e-mail he indicates
11 he's got some questions on some part numbers. Do you see that?

12 **A** Yes, sir.

13 **Q** I'm going to show you what's in evidence as Government's
14 Exhibit 4C marked gmail 0126. And do you see that same e-mail
05:19:34 15 with the questions about the part numbers from -- to yourself
16 from Mr. Ashoor?

17 **A** Yes, sir.

18 **Q** I'm going to show you the page in front of that of
19 Government's Exhibit 4C. And do you see there being a response
05:19:50 20 -- or being a message from a Staff Sergeant Lee Chieffalo to
21 Gunny Sergeant Brian Catrell?

22 **A** Yes, sir.

23 **Q** And what is Staff Sergeant Chieffalo saying to Gunny
24 Sergeant Catrell?

05:20:04 25 **A** Which GBICs that they're going to be using for their

Britton - Direct/Varnado

1 mission, sir.

2 **Q** Clarifying those part numbers that the customer -- or that
3 the contractor had a question about?

4 **A** Yes, sir.

05:20:12 5 **Q** And is that information subsequently passed on to you on
6 July 1st by Gunny Sergeant Catrell?

7 **A** Yes, sir.

8 **Q** And clarifying the contract. And what do you do with that
9 information after you get it from Gunny Sergeant Catrell?

05:20:25 10 **A** I passed that on to the contractor, sir.

11 **Q** Okay. Let him know what parts you needed?

12 **A** Yes, sir.

13 **Q** So at this point in time, there's a contract in place for
14 Mr. Ashoor to provide 100 GBICs at \$695 and 100 GBICs at \$495
05:20:53 15 and these are required to be Cisco genuine brand new parts; is
16 that correct?

17 **A** Yes, sir.

18 **Q** Now, at the time you were awarding this contract, if you
19 knew that Mr. Ashoor intended to go on Ebay and buy these
05:21:08 20 products for roughly \$25 each, would you have awarded him this
21 contract paying him \$119,000 to procure those parts at \$25 each?

22 **A** No, sir.

23 THE COURT: Why not? In other words, you said "No."
24 Why?

05:21:25 25 THE WITNESS: Because, sir, if I would have known they

Britton - Direct/Varnado

1 were \$25 a piece, then I would have known something was wrong
2 with the product. There's no way that you would have paid that
3 amount of money -- or those parts would have cost that much
4 money through market research.

05:21:40

5 Any contracting officer would have went online
6 through any market research, whether it was the Cisco website
7 itself or through any historical competition or through any
8 other historical file, and known that \$25 for that part would
9 have been wrong.

05:21:55

10 THE COURT: Are you saying that in and of itself would
11 have been a concern?

12 THE WITNESS: Yes, sir.

13 THE COURT: Okay.

14 THE WITNESS: Absolutely.

05:22:04

15 BY MR. VARNADO:

16 **Q** And if you knew that Gunny Sergeant Catrell -- I'm sorry,
17 Gunny Sergeant Britton, that those parts were going to be
18 procured for \$25, would you have concerns about their legitimacy
19 as authentic Cisco genuine parts?

05:22:15

20 **A** Absolutely, sir.

21 THE COURT: Would anybody in the business also have
22 some concern about that, to the best of your knowledge, being in
23 this area of procurement?

24 THE WITNESS: Yes, sir.

05:22:22

25 //

Britton - Cross/Varnado

1 BY MR. VARNADO:

2 **Q** And do you recall when we first spoke two weeks ago and I
3 asked you if you would have concerns about the legitimacy of
4 those products the answer you gave me two weeks ago when we
05:22:32 5 first spoke on the telephone?

6 **A** Yes, sir, I remember.

7 **Q** And what was your response?

8 **A** Hell no. Sir.

9 **Q** You did say that.

05:22:56 10 MR. VARNADO: I'll pass the witness, your Honor.

11 CROSS EXAMINATION

12 BY MR. FERRARI:

13 **Q** Gunnery Sergeant Britton, I'm Erich Ferrari. I'm the
14 counsel for the Defendant, Ehab Ashoor. I want to put a couple
05:23:11 15 of things up here. This is actually Government Exhibit 4B.
16 This was the acceptance letter for the award, correct? Would
17 you take a look at that and verify that.

18 **A** Yes, sir.

19 **Q** Okay. I also want to use Defendant's Exhibit 9. This was
05:23:30 20 the attachment on the contract between the Marines and CDS
21 Federal, was it not? Can you take a minute and look and see if
22 that looks like Attachment 1 from that contract?

23 **A** That's correct.

24 **Q** Okay. And you were involved in awarding the contract for
05:23:47 25 CDS Federal for the sale of the 200 GBICs; is that correct?

Britton - Cross/Varnado

1 **A** That's correct, sir.

2 **Q** And you were the individual who signed off on the final
3 contract, were you not?

4 **A** That's correct, sir.

05:23:56 5 **Q** Now, have you had prior experience contracting for Cisco
6 products?

7 **A** I've purchased numerous supplies and services for the
8 government, sir.

9 **Q** Okay. So you do have experience procuring and putting out
05:24:09 10 solicitations for Cisco products; is that correct?

11 **A** Yes, sir.

12 **Q** Okay. How often would you say you do that?

13 **A** For Cisco particularly, sir?

14 **Q** Yes, sir.

05:24:20 15 **A** I couldn't tell you, sir.

16 **Q** Okay.

17 **A** Every once in a blue moon for Cisco-specific products.

18 **Q** Okay. Once in a blue moon?

19 **A** Yes, sir.

05:24:29 20 **Q** And when you created this contract, you did -- did you
21 actually write this contract here?

22 **A** Yes, sir.

23 **Q** Okay. And when you created this contract, did you know
24 that Cisco had a distribution network for ensuring the source of
05:24:40 25 its goods?

Britton - Cross/Varnado

1 **A** No, sir.

2 **Q** No, you weren't aware of that?

3 **A** No, sir.

4 **Q** Okay. Gunnery Sergeant Britton, the contract for the 200

05:24:53

5 GBICs stated that they had to be brand new genuine Cisco
6 products; is that correct?

7 **A** That's correct, sir.

8 **Q** No imitation brands were allowed in that contract, were
9 they?

05:25:00

10 **A** That's correct.

11 **Q** And they were to be delivered to the Marines in Iraq?

12 **A** That's correct, sir.

13 **Q** There was no limitation on where the goods could be
14 procured from, was there?

05:25:11

15 **A** That's correct, sir.

16 **Q** And the contract also didn't limit how much profit the
17 awarded party could make on the contract, did it?

18 **A** That's correct, sir.

19 **Q** The contract also did not state that the awarded party had

05:25:24

20 to use Cisco or one of Cisco's authorized distributors, did it?

21 **A** That's correct, sir.

22 **Q** And there was no requirement in the contract that the
23 awarded party be a member of any Cisco partnership program?

24 **A** That's correct, sir.

05:25:38

25 **Q** Now, given the fact that there's no language in the

Britton - Cross/Varnado

1 contract which states that the awarded party had to buy from
2 Cisco or from the Cisco-authorized distributor, would it be fair
3 to say that they didn't -- that the awarded party didn't feel
4 that was a requirement of the contract?

05:26:00 5 MR. VARNADO: Objection. Calls for speculation.

6 THE COURT: Sustained.

7 MR. FERRARI: I'll move on, your Honor.

8 THE COURT: Pardon me?

9 MR. FERRARI: I'll move on.

05:26:07 10 THE COURT: Okay.

11 BY MR. FERRARI:

12 **Q** Sergeant Britton, there's nothing in that contract that
13 stated that CDS Federal had to follow Cisco's rules in carrying
14 out the contract, is there?

05:26:16 15 **A** No, sir.

16 **Q** Now, you've had problems with vendors purchasing goods off
17 Ebay previously; is that correct?

18 **A** We've had problems with vendors purchasing poor products,
19 not specific to Ebay. But I don't know where they get their
05:26:35 20 products from. But they purchase products that were of poor
21 quality. That's what we've had problems with in the past.
22 That's what I'm saying, sir.

23 **Q** Okay. Now, you said Ebay is an unreliable source, though,
24 correct?

05:26:48 25 **A** That's correct, sir.

Britton - Cross/Varnado

1 Q But that's not addressed in the contract, is it?

2 A Negative, sir.

3 Q There is no language in that attachment there that says the
4 awarded party can't buy the goods off of Ebay, is there?

05:27:00 5 A No, sir.

6 THE COURT: Doesn't say it in the contract, okay.

7 BY MR. FERRARI:

8 Q So would it be possible for someone to read that contract
9 and think they could buy the goods from Ebay?

05:27:12 10 MR. VARNADO: Objection. Calls for speculation.

11 THE COURT: Sustained.

12 MR. FERRARI: I'll move on, your Honor.

13 BY MR. FERRARI:

14 Q You also said the Marines don't buy goods from China; is
05:27:19 15 that correct?

16 A That's correct, sir.

17 Q Why was there no language included in the contract to
18 ensure that this didn't happen?

19 A We don't purchase from China, sir. We just don't.

05:27:32 20 Q But you did put this solicitation out into the open market
21 on the Internet so anybody could bid on it, correct?

22 A Yes, sir.

23 Q So the vendor could have thought -- I'll rephrase the
24 question. There was no language in that contract that would
05:27:47 25 state to the awarded party they could not buy goods from China;

Britton - Cross/Varnado

1 is that correct?

2 **A** Should be listed under the Buy American Act, sir.

3 **Q** And was that Buy American Act incorporated into that
4 contract by reference?

05:27:59 5 **A** I'm sure it was, sir.

6 **Q** You're sure it was or you know it was?

7 **A** I'm sure it was.

8 **Q** Now, you said that you would have concerns about the
9 legitimacy of the products if you knew that the awarded party
10 was paying \$25 per unit for it, correct?

05:28:12

11 **A** Absolutely, sir.

12 **Q** Did the Defendant or did CDS Federal represent to you that
13 they had already sourced the products and they knew where they
14 were getting it from?

05:28:28 15 **A** No, sir.

16 **Q** Did they make any indication to you that they would be
17 getting the products for \$25?

18 **A** No, sir.

19 **Q** And they didn't make any indication to you that they
20 already knew where they were getting the products from?

05:28:41

21 **A** No, sir.

22 MR. FERRARI: I'll pass the witness.

23 THE COURT: Anything further?

24 MR. VARNADO: Yes, your Honor, briefly. Thank you.

05:28:48

25 //

Britton - Redirect/Varnado

1 REDIRECT EXAMINATION

2 BY MR. VARNADO:

3 **Q** You were just asked by Mr. Ferrari whether the -- whether
4 or not the contract has a specific requirement listed in it that
05:28:59 5 you have to be a member of a partnership program. Do you
6 remember that question?

7 **A** Yes, sir.

8 **Q** But in fact, Mr. Ashoor in Government's Exhibit 4A
9 communicated to you in responding to the solicitation and
05:29:15 10 providing his bid that he was a Cisco-authorized reseller,
11 correct?

12 **A** Yes, sir.

13 **Q** And that meant something to you, as you testified on direct
14 testimony, didn't it?

05:29:23 15 **A** Absolutely, sir.

16 THE COURT: Hold it. Put the rest up. Some of it was
17 cut off.

18 MR. VARNADO: I was focusing on that language.

19 THE COURT: Is that what you were referring to, "We
05:29:45 20 are a Cisco-authorized reseller"?

21 MR. VARNADO: Yes.

22 THE COURT: And "We 100 percent guarantee and stand
23 behind it"? Is that your position?

24 MR. VARNADO: Yes, your Honor.

05:29:53 25 //

1 BY MR. VARNADO:

2 **Q** And again, Gunnery Sergeant Britton, that's the language
3 that we discussed on direct and that that did have an impact on
4 you as far as the legitimacy of these goods --

05:30:00 5 **A** Yes, sir.

6 **Q** -- that you expected to receive?

7 **A** Absolutely, sir.

8 **Q** You were asked about whether there were any limitations on
9 profit in the contract. And there's no limitations on a
10 contract -- on the profit, is there?

05:30:10

11 **A** No. I don't care how much a contractor makes. That's --
12 he put a bid in. He won the contract. It doesn't matter to me.

13 **Q** But on some level -- you expect -- you expect contractors
14 to make some profit --

05:30:21 15 **A** Absolutely.

16 **Q** -- in servicing these goods?

17 **A** Yes, sir.

18 **Q** Would you expect a contractor out of a \$119,000 contract
19 price to spend roughly \$25, \$26 per product that would result in
20 a gross profit of \$113,500 out of that total contract price?

05:30:39

21 **A** Sir, there's something wrong with that. That's impossible.
22 That's not even possible. There's something wrong with that.
23 That would be a red flag.

24 **Q** And that would be unusual for you to see somebody make a
25 profit of 2,000 percent on a contract with the United States

05:30:56

Britton - Recross/Ferrari

1 Marine Corps?

2 **A** Yes, sir. There is no way possible that can happen unless
3 the products were not legitimate.

4 MR. VARNADO: Pass the witness.

05:31:14

5 RECROSS EXAMINATION

6 BY MR. FERRARI:

7 **Q** Gunnery Sergeant Britton --

8 **A** Yes, sir.

05:31:23

9 **Q** -- Mr. Ashoor represented that he was 100 percent
10 authorized reseller of these products, correct?

11 **A** Yes, he did, sir.

12 **Q** But the contract didn't require him to be 100 percent
13 authorized reseller of these products, did it?

14 **A** No, sir.

05:31:33

15 **Q** So if he had never said that to you, would you have still
16 awarded the product to CDS Federal?

17 **A** Most likely, yes.

05:31:50

18 **Q** And he never mentioned Cisco's indirect channel partner
19 program when he held himself out as an authorized reseller, did
20 he?

21 **A** Can you rephrase the question, sir?

22 **Q** Well, he said he was an authorized reseller but he didn't
23 say he was an authorized reseller under Cisco's program, did he?

24 **A** No, sir.

05:32:00

25 MR. FERRARI: No more questions, your Honor.

Nugent - Direct/Costa

1 MR. VARNADO: Nothing further, your Honor.

2 THE COURT: Thank you, sir. You may step down.

3 You're excused. You're free to leave. You can remain in the
4 courtroom if you'd like, but you're free to leave.

05:32:11 5 THE WITNESS: Thank you, sir.

6 THE COURT: Call your next witness.

7 MR. COSTA: Your Honor, the Government's next witness
8 is Daniel Nugent.

9 THE COURT: Okay.

05:32:16 10 MR. COSTA: He's here. We're happy to put him on but
11 we are -- I don't know what the time -- we're looking great on
12 overall time.

13 THE COURT: No. Call him. Let's put him on. It's
14 5:30 -- 5:32. We're going to go to 6:00 to 6:05. We'll get it
05:32:32 15 in, and maybe we'll give the jury a little time back.

16 Sir, do you want to come down the center, please.

17 Raise your right hand to be sworn.

18 (The witness, **DANIEL NUGENT**, called on behalf of the
19 Government, was sworn.)

05:32:54 20 DIRECT EXAMINATION

21 BY MR. COSTA:

22 **Q** Good afternoon, Agent Nugent.

23 **A** Good afternoon.

24 **Q** Would you please state your name and spell your last name
05:32:59 25 for the court reporter.

Nugent - Direct/Costa

1 **A** Daniel Nugent.

2 THE COURT: You don't have to get that close.

3 THE WITNESS: N-u-g-e-n-t.

4 BY MR. COSTA:

05:33:07 5 **Q** And what do you do for a living, Mr. Nugent?

6 **A** I'm a special agent with Immigration and Customs
7 Enforcement.

8 **Q** And is Immigration and Customs Enforcement -- does that go
9 by the acronym ICE?

05:33:20 10 **A** It does.

11 **Q** I-C-E?

12 **A** Yes, sir.

13 **Q** How long have you been an ICE agent?

14 **A** A little over a year.

05:33:26 15 **Q** And what are your current duties as an ICE agent?

16 **A** I investigate people who attempt to smuggle contraband into
17 the United States.

18 **Q** And what city are you located in?

19 **A** Chicago, Illinois.

05:33:34 20 **Q** Before becoming an ICE agent a year ago, what was your
21 occupation?

22 **A** I was an inspector with US Customs and Border Protection.

23 **Q** And what was your title with US Customs and Border
24 Protection?

05:33:46 25 **A** Inspector.

Nugent - Direct/Costa

1 **Q** Were you based in Chicago when you had that job?

2 **A** Yes, sir.

3 **Q** What's the difference between being a Customs inspector and
4 now being an ICE agent?

05:33:56

5 **A** When I was an inspector, I handled -- my main duties were
6 inspecting merchandise and people entering the United States and
7 searching them and searching conveyances for contraband.

8 **Q** The Customs and Border inspectors, are those the folks that
9 people have to talk to when they come back from a foreign flight
10 at the airport?

05:34:19

11 **A** Yes.

12 **Q** Or if you're driving across the border?

13 **A** Yes.

14 **Q** Where were you -- what did you do as a Customs inspector,
15 specifically?

05:34:27

16 **A** I worked at the international mail unit in Chicago
17 inspecting international mail entering the United States.

18 **Q** And where is that international mail facility located near
19 in Chicago?

05:34:40

20 **A** It is located at Chicago O'Hare International Airport.

21 **Q** So this mail is sent through O'Hare Airport?

22 **A** Yes.

23 **Q** How many of these international mail facilities exist in
24 the United States, approximately?

05:34:53

25 **A** Approximately five or six.

Nugent - Direct/Costa

1 **Q** Is there a special type of mail, international mail, that
2 the facility at O'Hare Airport handles?

3 **A** We predominately handled mail coming from Asia.

05:35:07

4 **Q** So there might be another facility somewhere else in the
5 country that handles incoming European mail?

6 **A** Correct.

7 **Q** What are you looking for in this international mail?

8 **A** We are looking for any type of contraband that would be
9 smuggled into the United States that was illegal.

05:35:21

10 **Q** What types of contraband?

11 **A** We got -- find a lot of drugs, a lot of counterfeit
12 merchandise, child pornography.

13 **Q** Let's talk about the counterfeit merchandise. What type of
14 counterfeit merchandise did you typically see?

05:35:38

15 **A** We saw a wide variety of different things, everything from
16 counterfeit clothing to counterfeit computer software to
17 counterfeit pharmaceuticals.

18 **Q** In terms of clothing, what were the commonly counterfeited
19 items?

05:35:52

20 **A** We would see a lot of counterfeit Nike shoes, Gucci
21 handbags, high end -- high end merchandise.

22 **Q** What about the counterfeit pharmaceuticals, which ones were
23 common?

24 **A** The most common was Viagra and Cialis.

05:36:09

25 **Q** Okay. You said that the mail facility you worked at in

Nugent - Direct/Costa

1 Chicago was handling mainly Asian mail. Were there particular
2 countries in Asia that were the source countries for counterfeit
3 goods?

05:36:27

4 **A** The two main source countries for counterfeit merchandise
5 were China and Hong Kong.

6 **Q** And for mail purposes, is Hong Kong treated separately than
7 China?

8 **A** Yes, it is.

9 **Q** And for Customs purposes, as well?

05:36:37

10 **A** Yes.

11 **Q** You mentioned that one type of the counterfeit products was
12 computer or technology parts; is that correct?

13 **A** That is correct.

05:36:49

14 **Q** What -- in your experience as an inspector, what type of
15 counterfeit computer parts did you typically see?

16 **A** We would see a lot of counterfeit Microsoft software, Adobe
17 Software, Hewlett Packard, Dell, Cisco.

05:37:09

18 **Q** And why don't we walk through the process. When a package
19 comes from China or some other country, lands at O'Hare Airport,
20 walk the jury through the steps you take to inspect those
21 packages.

22 **A** Okay. The package would -- the mail would arrive on a
23 foreign flight and would be brought over to our facility where
24 the US Postal Service would present the parcels to us.

05:37:26

25 THE COURT: Now, come in what, not just through

Nugent - Direct/Costa

1 Chicago, all over the country?

2 THE WITNESS: Yes, sir.

3 THE COURT: Okay.

4 THE WITNESS: It would --

05:37:32 5 BY MR. COSTA:

6 Q So does the postal service, basically, route mail from Asia
7 through Chicago?

8 A Yes. Predominately, yes.

9 Q And then after it goes through Chicago, does it go to Texas
05:37:42 10 or other parts of the United States?

11 A That is correct.

12 Q So go ahead with the steps.

13 A Okay. It would come off the plane. It would be brought
14 over to the US Postal Service facility where we were located
05:37:51 15 that handled only international mail, and we would -- the postal
16 service would present the mail to Customs where we would either
17 run the parcels with a drug dog or the parcels would get
18 x-rayed.

19 Q Do you have any estimate of how many pieces of mail go
05:38:09 20 through that facility each day?

21 A We estimated about 200,000 pieces a day would go through
22 there.

23 THE COURT: A day?

24 THE WITNESS: Yes, sir.

05:38:16 25 //

Nugent - Direct/Costa

1 BY MR. COSTA:

2 **Q** So you said there's the drug dog and you also have x-rays?

3 **A** Yes, sir.

4 **Q** Does every package get x-rayed?

05:38:27 5 **A** If it's not run by a drug dog, it gets x-rayed.

6 **Q** And what are you looking for when the package is x-rayed?

7 **A** We're looking for any type of contraband that is attempted
8 to be smuggled into the United States.

05:38:42 9 **Q** And if you see something on that x-ray that raises some
10 suspicions, what's the next step you take?

11 **A** We would open the parcel and inspect the merchandise
12 inside.

13 **Q** And as Customs inspectors, you're legally authorized to
14 open packages?

05:38:51 15 **A** Yes.

16 **Q** Just like you might open someone's suitcase who is flying
17 back through -- from China through O'Hare Airport?

18 **A** Correct.

05:39:02 19 **Q** And what do you do when you open the suitcase -- the
20 package and inspect the product?

21 **A** We inspect the product; and if we find drugs or anything
22 else that's illegal, we will seize the merchandise.

23 **Q** I think you mentioned drugs was one of the things you're
24 looking for?

05:39:17 25 **A** Correct.

Nugent - Direct/Costa

1 **Q** I take it you can often tell with your own eyes if what you
2 see inside is drugs?

3 **A** Correct.

4 **Q** And the same with child pornography?

05:39:24 5 **A** Correct.

6 **Q** When we're talking about counterfeit parts, however, how
7 were you able to tell after opening the package whether those
8 parts are, in fact, counterfeit?

9 **A** Often times companies would come out to our facility and
05:39:40 10 would give us -- would educate us on what to look for in terms
11 of the counterfeit -- you know, what to look for on different
12 types of merchandise to see if it's counterfeit; and if -- if we
13 felt that there was something on these products that made it
14 look counterfeit, then we would reach out to the company and
05:39:59 15 have them verify it.

16 **Q** And with computer parts -- you get some computer parts
17 being sent from Asia, you open the package, they have a
18 trademark on there, do you send the part themselves? What do
19 you do to figure out if it's counterfeit?

05:40:17 20 **A** We would generally take photographs, close-up photographs
21 of the merchandise, and then e-mail it to a representative or an
22 engineer from these companies; and they would review the
23 pictures to determine whether they were genuine or non-genuine
24 items.

05:40:33 25 **Q** And what do you do with the package while you're waiting to

Nugent - Direct/Costa

1 hear back from the company?

2 **A** We would keep it on the side.

3 **Q** I want to direct your attention to this box which is
4 admitted in evidence as Government Exhibit 6. Do you recognize
05:40:54 5 this box?

6 **A** I do.

7 **Q** Did you also have a chance to look at it yesterday when you
8 arrived from Chicago?

9 **A** Yes.

05:40:59 10 **Q** And what -- when do you remember approximately seeing this
11 box when you were working as a Customs inspector at O'Hare?

12 **A** When?

13 **Q** Approximately when, what time?

14 **A** What time, the year or --

05:41:11 15 **Q** Right.

16 **A** 2008.

17 **Q** Around the summer of 2008?

18 **A** Yes.

05:41:23 19 **Q** And on the bottom of this box, do you recall that there's a
20 shipping label and an invoice?

21 **A** Yes.

22 **Q** And did we turn the box over and look at that yesterday?

23 **A** Yes, we did.

05:41:33 24 **Q** Okay. And if I do that today, might it all spill out all
25 over the courtroom?

Nugent - Direct/Costa

1 **A** It probably would.

2 **Q** I'm going to show you instead on the screen this shipping
3 label. Do you recognize this?

4 **A** I do.

05:41:41 5 **Q** And is that the shipping label that, if we turn this box
6 over, would be on the bottom?

7 **A** Yes.

8 **Q** I'm also going to show you this document labeled "invoice."
9 Was that also -- was that invoice also part of this shipment
05:41:57 10 that you saw in the summer of 2008?

11 **A** Yes.

12 **Q** And when you received this box -- let's first look in the
13 left-hand side. What information there do you have from the
14 sender?

05:42:15 15 **A** You have a return address and a declaration.

16 **Q** And can you -- are you familiar with the city from which --
17 where this sender resides supposedly?

18 **A** Shenzhen, China, I am familiar with.

19 **Q** Is that the city in China, Shenzhen?

05:42:34 20 **A** To my knowledge, yes.

21 **Q** Had you ever come across Shenzhen in your duties as a
22 Customs inspector?

23 **A** I had.

24 **Q** And what did you learn about Shenzhen?

05:42:44 25 **A** That was a big area that was counterfeiting Cisco products.

Nugent - Direct/Costa

1 **Q** And can you tell from this label where this package was
2 mailed from, what country or --

3 **A** Hong Kong.

4 **Q** Up there, Hong Kong Post?

05:42:57 5 **A** Yes.

6 **Q** And again, Hong Kong right there?

7 **A** Yes.

8 **Q** So this was, basically, Hong Kong's postal service --

9 **A** Correct.

05:43:03 10 **Q** -- is that correct?

11 **A** Correct.

12 **Q** But the city where it's shipped from is actually -- that's
13 a city in China?

14 **A** That is correct.

05:43:10 15 **Q** If you look in this purple area, what's this purple area on
16 the shipping label?

17 **A** That is the declaration.

18 **Q** And what does it say? What's it declaring these goods to
19 be?

05:43:22 20 **A** Computer parts.

21 **Q** And does it tell you how many?

22 **A** 200 pieces.

23 **Q** And on the bottom right of that purple box, it says, "total
24 value." What does it list?

05:43:32 25 **A** 200.

Nugent - Direct/Costa

1 **Q** Explain to the jury what a Customs declaration is.

2 **A** A Customs declaration is used for entry purposes. It gives
3 us an idea, as Customs inspectors, what is contained inside the
4 parcel and a -- a value of what the merchandise is worth.

05:43:50

5 **Q** And can that value be used for Customs duties if there are
6 duties on a particular product?

7 **A** Yes. It's used for taxation purposes.

8 **Q** And is there a threshold amount of valuation where there's
9 additional requirements?

05:44:06

10 **A** Yes.

11 **Q** Explain that to the jury.

12 **A** Anything that is valued over \$2,000 must go through what's
13 called a Customs broker process or a formal entry process where
14 the merchandise needs to -- the importer needs to hire a Customs
15 broker who will file the paperwork for them and ensure that
16 taxes will get paid to the government before the merchandise is
17 released to them.

05:44:24

18 **Q** And so if it's under 2,000, if it's declared as under
19 2,000, it doesn't have to go through those steps; is that right?

05:44:39

20 **A** Correct.

21 **Q** If we look on the right-hand side of this shipping label,
22 does that tell you who's going to receive that package, the
23 intended recipient?

24 **A** Yes.

05:44:51

25 **Q** And who is that in this case?

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1 **A** Ehab Ashoor.

2 **Q** It says he's the director of sales?

3 **A** Correct.

4 **Q** For the company CDS Federal, Incorporated?

05:45:02 5 **A** Correct.

6 **Q** And does it tell you which city this package is being
7 shipped to?

8 **A** Houston, Texas.

9 **Q** And is it an address on Sage Road?

05:45:12 10 **A** Yes.

11 **Q** Suite Number 603?

12 **A** Yes.

13 **Q** And if we look at the invoice, the second document that was
14 included with the shipment, what does the invoice tell you, just
05:45:27 15 generally?

16 **A** The same --

17 **Q** Are the invoices typically included?

18 **A** The invoice is typically included; and it, basically,
19 provides the same information that the declaration provides.

05:45:40 20 **Q** And again, this has this "from." It lists that Shenzhen in
21 China?

22 **A** Yes.

23 **Q** So when you received this package, was it -- if you look at
24 the condition this package is in, is that generally what it
05:45:52 25 looked like the day you received it back in the summer of 2008?

Nugent - Direct/Costa

1 **A** Yes.

2 **Q** Is that a typical condition of a package?

3 **A** Coming out of China or Hong Kong, that's similar looking.

4 Everything would look the same.

05:46:05 5 **Q** And so what was the first thing you did when you came
6 across this package?

7 **A** I came across the package, x-rayed the package, saw that
8 the package was declared as computer parts. I was familiar with
9 counterfeiting of computer parts coming out of that area, Hong
05:46:23 10 Kong or China; and so I x-rayed it. It looked like there were
11 computer parts contained inside. I opened it, inspected the
12 merchandise, and suspected that it may be counterfeit
13 merchandise. So I took pictures of the merchandise and
14 forwarded it to Cisco for review.

05:46:48 15 **Q** And you could tell just from the label that it claimed to
16 be computer parts from China; is that right?

17 **A** From Hong Kong, correct.

18 **Q** Well, shipped from Hong Kong but from the Shenzhen in
19 China?

05:47:00 20 **A** Correct.

21 **Q** So the fact that it's from China, being shipped from Hong
22 Kong, and is listed as computer parts, what does that indicate
23 to you? What kind of suspicions does that raise?

24 **A** That it contains counterfeit merchandise.

25 **Q** And then once you x-rayed it and you opened it up, you saw

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1 that they were actually parts with Cisco labels; is that
2 correct?

3 **A** Correct.

4 **Q** And you mentioned Cisco as one of the companies you had
05:47:18 5 experience with in terms of counterfeit parts. During your time
6 as an inspector, how many times ball park would you say you came
7 across Cisco -- goods that looked to be Cisco goods being
8 shipped from China or Hong Kong?

9 **A** Approximately 50 or 60 times.

05:47:36 10 **Q** Was that one of the more common types of technology parts
11 you saw? You mentioned Microsoft and Dell earlier. How does
12 Cisco --

13 **A** Cisco's right up there with everybody else. They were
14 getting counterfeited a lot.

05:48:04 15 **Q** I'm going to hand you one of the packages that's contained
16 inside Exhibit 6. Do you recall that this is -- what those
17 packages -- what was inside that package?

18 **A** Yes.

19 **Q** And do you see the Cisco label on the Ziploc-type bag?

05:48:21 20 **A** Yes.

21 **Q** And then on the antistatic bag?

22 **A** Yes.

23 **Q** On this manual?

24 **A** Yes.

05:48:28 25 **Q** And then did you open up one of these bags?

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1 **A** I did.

2 **Q** And again, did you see a Cisco label on the actual part?

3 **A** Yes.

4 **Q** Had you come across parts that looked like this before?

05:48:39 5 **A** Yes.

6 **Q** And Cisco -- you said some of these companies --

7 THE COURT: You mean -- by "yes," you mean in your
8 business?

9 BY MR. COSTA:

05:48:46 10 **Q** As an inspector, you come across --

11 **A** As an inspector, I had come across that before, those
12 types.

13 **Q** Shipped from Asia?

14 **A** Yes.

05:48:53 15 **Q** And I think you mentioned that a lot of these companies
16 provide training to Customs inspectors?

17 **A** Yes.

18 **Q** And was Cisco one of those companies?

19 **A** Yes.

05:49:00 20 **Q** What types of things did you -- generally, did you learn
21 from the Cisco representative?

22 **A** We learned about what to look for on certain products to
23 tell if they're suspected counterfeit and also source countries
24 that were making these items.

05:49:18 25 **Q** So after opening up and seeing that this was claiming to be

Nugent - Direct/Costa

1 a Cisco part, is that when you took the pictures?

2 **A** Yes.

3 **Q** I'm now going to show you what's in evidence as Government
4 Exhibit 7A. And do you recognize that e-mail?

05:49:56 5 **A** Yes, I do.

6 **Q** That's your e-mail address, daniel.nugent@dhs.gov?

7 **A** Yes.

8 **Q** And DHS is Department of Homeland Security?

9 **A** Correct.

05:50:09 10 **Q** And Customs is part of Homeland Security?

11 **A** Correct.

12 **Q** And Monday, July 28, 2008, does that refresh your memory
13 about the time you came across this package?

14 **A** Yes.

05:50:18 15 **Q** And who are you sending this e-mail to?

16 **A** I was sending this e-mail with the attached photographs to
17 ciscoipr, which stands for intellectual property rights, to
18 their engineers for their review along with Corbin Wickman.

19 **Q** And this ciscoipr address, is that the e-mail where you,
05:50:42 20 typically, would send these photos to see if the products were
21 counterfeit?

22 **A** Yes.

23 **Q** And I take it -- why do you have to send that e-mail to
24 Cisco to determine if it's counterfeit?

05:50:51 25 **A** Because they know more about their products than I knew,

Nugent - Direct/Costa

1 and they could give an official reason as to why they were
2 counterfeit along with an MSRP value.

3 **Q** Could you tell just from looking at this -- and putting
4 aside that you knew it was from China, would you be able to tell
05:51:09 5 just from looking at this whether it was counterfeit or not?

6 **A** No.

7 **Q** And the logo to you looked just like a Cisco logo?

8 **A** Yes.

9 **Q** So you would contact these Cisco engineers?

05:51:19 10 **A** Correct.

11 **Q** And it also says Corbin Wickman. Who is Corbin Wickman?

12 **A** He was a -- he is a special agent with ICE in Houston,
13 Texas.

14 **Q** Why did you include him on this e-mail to Cisco?

05:51:29 15 **A** Because he was -- he was going to be somebody who was
16 probably going to follow up with this seizure and investigate
17 it.

18 THE COURT: Why? Why him?

19 THE WITNESS: Why Corbin Wickman? I had dealt with
05:51:40 20 Corbin Wickman in the past because he's part of the commercial
21 fraud group with ICE, and he had worked some Cisco stuff before
22 that I had found.

23 THE COURT: Where was he located?

24 THE WITNESS: Houston, Texas.

05:51:53 25 THE COURT: Was that the reason why you figured that

Nugent - Direct/Costa

1 he may come in on it?

2 THE WITNESS: That is correct.

3 THE COURT: All right.

4 BY MR. COSTA:

05:51:58 5 Q Because the shipment was going --

6 A Going to Houston.

7 Q -- to Houston, correct?

8 A Yes.

9 Q And just if you want to go ahead and read that -- that
05:52:07 10 e-mail you sent on July 28th.

11 A Read it?

12 Q Yes, please.

13 A "Hi, all. Attached are photos of suspected counterfeit
14 Cisco mods coming out of Hong Kong. Please review for
05:52:19 15 legitimacy and provide an MSRP value."

16 Q And then there's a number of attachments; is that right?

17 A Yes.

18 Q And are those the photographs?

19 A Yes.

05:52:31 20 Q Is that a photograph of the packaging?

21 A Yes.

22 Q Photograph of the part?

23 A Yes.

24 Q Another view of the part?

05:52:43 25 A Yes.

Nugent - Direct/Costa

1 Q Is that one of the serial numbers?

2 A Yes.

3 Q Do you know why the serial numbers are important for Cisco
4 to look at?

05:52:55 5 A Pardon me?

6 Q Do you know why -- why do you want a picture of the serial
7 number?

8 A I just took pictures of every angle that I could of the
9 part.

05:53:04 10 Q And I'm now going to show you Government's 7B. Do you
11 remember getting a response from Cisco?

12 A Yes.

13 Q And at the bottom there, is that that same e-mail we just
14 saw that starts, "Hi, all. Attached are photos"?

05:53:21 15 A Yes.

16 Q And above it is the response you received?

17 A Yes.

18 Q And is that dated the next day, Tuesday, July 29th?

19 A Yes, it is.

05:53:28 20 Q And is it from an individual, Mike Heidecker, at Cisco
21 Brand Protection?

22 A Yes.

23 Q And what is he telling you?

24 A He's telling me that the part that I had sent pictures of
05:53:39 25 was non-genuine and provided an MSRP value for it of \$995.

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1 THE COURT: You mean for the real thing?

2 THE WITNESS: For the real thing.

3 BY MR. COSTA:

4 Q Why did you want the price, the actual retail price?

05:53:55

5 A The retail price is used for -- to get a general ball park
6 of how much the shipment would have been worth had it been a
7 legitimate shipment.

8 Q And there's an attachment to this e-mail. Do you know what
9 that Finisar name at the top is? Do you know what that means?

05:54:12

10 A Yes.

11 Q And tell the jury, please.

12 A Finisar gets contracts -- Cisco contracts out to other
13 companies to make products for them, and Finisar was the
14 official contractor to make this particular product for Cisco.

05:54:28

15 Q So is this Cisco sending this along? And it's entitled
16 "Analysis of product based on photograph analysis." And does it
17 give some of the reasons that, just from those photographs, some
18 specialized people were able to determine that this was
19 counterfeit?

05:54:44

20 A Correct.

21 Q And what are a couple of those reasons?

22 A The serial numbers for a module that does not exist in
23 their database and the label of the module is not a genuine
24 Finisar label.

05:54:55

25 Q And then does it say down at the bottom that they would

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1 like later to have the opportunity to physically inspect those?

2 **A** Yes.

3 **Q** To do a more thorough investigation?

4 **A** Yes.

05:55:06 5 **Q** Do you recall how many different types in this shipment --
6 do you recall how many types of products like this were
7 contained in it?

8 **A** There were 100 pieces of that particular product.

9 **Q** Was there any other -- was it just 100 of these or was
05:55:21 10 there --

11 **A** No. There was 100 of another separate product.

12 **Q** Looked something like this?

13 **A** Correct.

14 **Q** So a total of 200?

05:55:29 15 **A** Correct.

16 **Q** 100 of each type?

17 **A** Correct.

18 **Q** Did you also take photographs of this other type of
19 product?

05:55:35 20 **A** I did.

21 **Q** Where did you e-mail those photographs?

22 **A** I sent that to the same e-mail address, ciscoipr@cisco.com.

23 **Q** I'm now going to show you what's in evidence as
24 Government's 8A. Is this your e-mail account again?

05:55:58 25 **A** Yes.

Nugent - Direct/Costa

1 Q That same day, July 28th?

2 A Yes.

3 Q And sending it to the same ciscoipr address?

4 A Yes.

05:56:07 5 Q And Agent Wickman?

6 A Yes.

7 Q And what do you say in this e-mail?

8 A "Attached are photos from the same shipment containing
9 above-listed merchandise. Please review for legitimacy and

05:56:17 10 provide an MSRP value."

11 Q So these were photographs of the other type of product?

12 A Correct.

13 Q Continuing on in Government 8A, is that a photograph of the
14 part?

05:56:30 15 A Yes.

16 Q Of the packaging and manual?

17 A Yes.

18 Q The packaging on the silver antistatic bag?

19 A Yes.

05:56:42 20 Q And other views of the part itself?

21 A Yes.

22 Q Is that a close-up of the label that's on the part itself?

23 A Yes.

24 THE COURT: All right, Mr. Costa, if we're ready to
05:57:04 25 move to a different area, maybe we'll take our break right now.

Nugent - Direct/Costa

1 Is that all right?

2 MR. COSTA: Sure.

3 THE COURT: Or are you wanting -- you want to get --

4 MR. COSTA: I have one last page of paper.

05:57:13 5 THE COURT: One more page.

6 MR. COSTA: Thank you, your Honor.

7 THE COURT: Everybody, one more page.

8 BY MR. COSTA:

9 Q And did you get a response on those other photos for the
05:57:19 10 hundred parts that were different?

11 A Yes.

12 Q And what was the response?

13 A That they were non-genuine.

14 Q And if we look at Government Exhibit 8B which is in
05:57:25 15 evidence, is that an e-mail from the same Michael Heidecker?

16 A Yes.

17 Q On Wednesday, July 30th?

18 A Yes.

19 Q So that's two days after you sent the photos for this type?

05:57:35 20 A Yes.

21 Q And what does he say?

22 A "The enclosed product was found to be non-genuine. The
23 MSRP for the WS-G5486 product is \$995."

24 MR. COSTA: I'm at a good place, your Honor.

05:57:49 25 THE COURT: Okay.

1 Ladies and gentlemen, thank you for your
2 attention today. It's moving along quickly.

3 Is that correct, counsel?

4 MR. COSTA: Yes, very much so.

05:57:55

5 THE COURT: Okay. So we're doing fine. We'll see you
6 tomorrow morning ready to resume at 10:00 a.m. You can take
7 your books and leave them in there, and we'll see you tomorrow
8 at 10:00 a.m. Thank you and good afternoon.

9 (Court recessed for the day at 5:58 p.m.)

10

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12

13

C E R T I F I C A T E

14

15 I certify that the foregoing is a correct transcript
16 from the record of proceedings in the above-entitled matter, to
17 the best of my ability.

18

19 By: /s/ Gayle L. Dye 01-16-2010

20 Gayle L. Dye, CSR, RDR, CRR Date

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