

Hear Today, Gone Tomorrow

By: Monte E. Hester; July 2003

The Ninth Circuit in USA v. Danielson, 325 F3rd 1054, filed March 24, 2003, decided that the government cannot use information from a defendant concerning trial strategy.

The Danielson case involved a charge of transporting in interstate commerce a deer taken without a state-issued tag in violation of the Lacey Act.

After conviction, the appeal was based upon the claim that the government violated the defendant's Sixth Amendment right to counsel. The court found that the government improperly interfered with the defendant's attorney-client relationship by obtaining a recording of an informant's conversation with the defendant. This conversation concerned trial strategy, including the defendant's plan to testify, the content of his planned testimony and the witnesses that would be called.

The court concluded that although it was improper, it still needed to be decided if such improper interference "substantially prejudices" the defendant.

The appellate court remanded the matter back to the local court to hold an evidentiary hearing. At the hearing, it will be the burden of the government to introduce evidence and show by a preponderance that it did not in any way use the improperly obtained information. The court indicated that the government must show that all of the evidence it introduced at trial was derived from independent sources with the same requirement applying to the government's pre-trial and trial strategy.

The disclosure of this information occurred during the trial. It would be a good idea, in any case, to specifically ask pre-trial, in writing, whether or not any tape recordings or evidence exists that relates to the defendant's trial strategies.

End