

EXHIBIT 5

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Criminal Action No. 05-cr-00545-EWN

UNITED STATES OF AMERICA

Plaintiff,

v.

JOSEPH P. NACCHIO,

Defendant.

DECLARATION OF EDWARD S. NATHAN

EDWARD S. NATHAN, of full age, declares as follows:

1. I am an attorney at law admitted to practice in the District of Colorado and elsewhere, and one of the attorneys representing Defendant Joseph P. Nacchio ("Mr. Nacchio") in this matter. I am fully familiar with the facts herein.

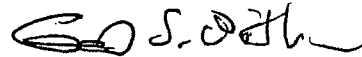
2. On April 12, 2007, at approximately 5:20 p.m., I was accompanying Mr. and Mrs. Nacchio as we walked to the Denver office of Richilano & Gilligan following the jury's excusal at the end of that day.

3. We were on California Street and had just crossed 18th Street when we heard a booming voice scream out, "fuck you, Naccho, fuck you." As I turned towards the voice, out of the corner of my eye I saw Mr. and Mrs. Nacchio move quickly into the building where the office was located. I immediately identified the source of the scream as the driver of a taxicab which was then stopped in the middle of the street some 20-

30 feet in front of us. I quickly strode towards the taxicab and was able to identify it as Metro Taxi No. 639 before the driver, seeing me coming towards him, drove off.

4. I then followed Mr. and Mrs. Nacchio to the Richilano & Gilligan offices, where I found Mrs. Nacchio badly shaken by the episode. She said that her first thought in the street had been that Mr. Nacchio was about to be physically attacked.

PURSUANT TO 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.



EDWARD S. NATHAN

Dated: June 4, 2007

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of June, 2007, a true and correct copy of the foregoing **DECLARATION OF EDWARD S. NATHAN** was served on the following via the USDC CM/ECF system:

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s/Linze R. Harris
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