



**Cut To Trial, Day 7:
Transcript of 11.24.2003
Docket #301&315(AMENDED)**

Page 1229, Lines 15-25

ACCUSED: “Could I get a printed list, then, of the dates, Your Honor, that these subpoenas were issued?”

Judge: “No. I don’t think those are discoverable or relevant. What specific - - “

Accused: It goes to impeachment of one of - - the witness who was requesting - - Agent Cugno. I’m trying to impeach his testimony. I believe he’s committed perjury in one or more affidavits and in testimony under oath. And I believe that - -

Interrupted By Judge:

**Cut To Trial, Day 3:
Subpoena of Debra Yang, U.S. Attorney, Central
District of California
Transcript of 11.14.2003
Docket #296**

Page 451, Lines 2-11

Judge: I mean, I have no doubt, based on the evidence I have heard so far, that the prosecution is being conducted in good faith, with a sufficient factual basis that the grand jury already found to return the superseding indictment; **and it would be a huge sea change in the administration of justice to have the personal backgrounds of whoever happens to be U.S. Attorney at a given time become a basis to issue subpoenas.**

[Selective prosecution](#), which you hinted at, has already been ruled upon. So I don’t need further argument on Ms. Yang.”

Cut To Pre Trial: Transcript of 08.27.2003

Docket #188

Page 52, Lines 6-19

Prosecutor: "I just had a procedural point while Mr. Nicolaysen was still up here. In terms of the subpoenas, early on in the case, when Mr. Harris was representing Mr. Sutcliffe, the court had ordered me [\[See 01.14.2003\]](#) to ensure that Mr. Gary Winnick, who had been subpoenaed by Mr. Harris, was made available. Mr. Nicolaysen had indicated to me that that availability was no longer necessary or required. So I have indicated that to Mr. Winnick's attorney, and *he is not under my subpoena anymore*. I just wanted to make that clear because that was kind of left hanging, and I don't think there's any written communication that would be in the file between myself and Mr. Nicolaysen on that point."

Judge: "Thank you for clarifying."

Cut To Pre Trial: Transcript of 01.14.2003

Docket #113

Page 27-28

Harris: "I've got Gary Winnick under subpoena. I'd like to tell Mr. Winnick he doesn't have to appear. That took a lot of hoops to get the CEO under subpoena. Mr. Sutcliffe wanted that."

Judge: "I assumed that the government was going to put him on the stand, no?"

Harris: "I don't think so. ... So if this trial is going to be continued, one of the things that I'll want to do is somehow withdraw that in a manner that we can get Mr. Winnick again, if and when."

Judge: "I can arrange that."

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Judge: "There's one other thing, before you ask your question, before I forget. There is a subpoena that recently has been served on Gary Winnick. I notice that Gary Winnick is not identified on the government's witness list. And, I assume, correct me if I'm wrong, that the government has the ability to communicate with Mr. Winnick or with his lawyer, is that correct?"

Prosecutor: "I have the ability, Your Honor."

Judge: “I want you to communicate to the lawyer or to Mr. Winnick or to both, that although he doesn’t have to respond to the subpoena on the date or under the terms that it may have contained, he remains responsible to respond on whatever date he is later notified. In effect, what I’m saying is that the subpoena, although issued and served through the auspices of

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Mr. Harris, it’s like a court subpoena. I don’t want anybody to have to go through any protracted or new ground of efforts to subpoena him anew. So the subpoena remains outstanding, although the trial date has been continued. Please communicate that to Mr. Winnick and his lawyer.”

RELATED ISSUES: “Finally, federal law may limit the ability of law enforcement agencies to track down stalkers and other criminals in cyberspace. In particular, the Cable Communications Policy Act of 1984 (CCPA) prohibits the disclosure of cable subscriber records to law enforcement agencies without a court order **and advance notice to the subscriber.** See [47 U.S.C. 551\(c\), \(h\)](#). As more and more individuals turn to cable companies as their ISPs, the CCPA is posing a significant obstacle to the investigation of cybercrimes, including cyberstalking. For example, under the CCPA, a law enforcement agency investigating a cyberstalker who uses a cable company for Internet access would **have to provide the individual notice that the agency has requested his/her subscriber records**, thereby jeopardizing the criminal investigation.”¹

[47 U.S.C. 551\(c\), \(h\)](#)

(c) Disclosure of personally identifiable information

(1) Except as provided in paragraph (2), a cable operator shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or cable operator.

(2) A cable operator may disclose such information if the disclosure is—

(D) to a government entity as authorized under chapters 119, 121, or 206 of title [18](#), except that such disclosure shall not include records revealing cable subscriber selection of video programming from a cable operator.

(h) Disclosure of information to governmental entity pursuant to court order

Except as provided in subsection (c)(2)(D) of this section, a governmental entity may obtain personally identifiable information concerning a cable subscriber

¹ See Cyberstalking: A New Challenge for Law Enforcement and Industry
A Report from the Attorney General to the Vice President, August 1999 @
<http://www.usdoj.gov/criminal/cybercrime/cyberstalking.htm> - N 7

pursuant to a court order only if, in the court proceeding relevant to such court order—

- (1) such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and
- (2) the subject of the information is afforded the opportunity to appear and contest such entity's claim.

RELATED ISSUES: [SELECTIVE PROSECUTION](#)

RELATED ISSUES: RIGHT TO COMPELL WITNESSES IN ONE'S DEFENSE

UNDER THE VI AMENDMENT & RIGHT TO [CONFRONT WITNESSES](#)