

QUINN NORTON'S TESTIMONY

The docket of Aaron Swartz' prosecution made it clear that Quinn Norton, Swartz' ex-girlfriend, testified with immunity. It also made it clear that someone – or some people – handed over communications, including LISTSERVs, to DOJ.
[See update]

In the Atlantic, she provides her side of the story. While it includes a range of useful details, the most significant revelation is that – she believes – she was the first to alert Prosecutor Stephen Heymann to the Guerilla Open Manifesto.

Steve asked if there was anything I knew of to suggest why Aaron would do this, or what he thought about academic journals. I cast around trying to think of something, something that made sense to them, when Aaron had just gathered these datasets for years, the way some people collect coins or cards or stamps.

I mentioned a blog post. It was a two-year-old public post on Raw Thought, Aaron's blog. It had been fairly widely picked up by other blogs. I couldn't imagine that these people who had just claimed to have read everything I'd ever written had never looked at their target's blog, which appeared in his FBI file, or searched for what he thought about "open access" They hadn't.

So this is where I was profoundly foolish. I told them about the Guerrilla Open Access Manifesto. And in doing so, Aaron would explain to me later (and reporters would confirm), I made everything worse. This is what I must live with.

I opened up a new front for their cruelty. Four months into the

investigation, they had finally found their reason to do it. The manifesto, the prosecutors claimed, showed Aaron's intent to distribute the JSTOR documents widely. And I had told them about it. It was beyond my understanding that these people could pick through his life, threaten his friends, tear through our digital history together, raid his house, surveil him, and never actually read his blog. But that seemed to be the fact of it.

I'll come back to this Manifesto; I think people keep forgetting that almost all of what it espouses is legal. That while the government treated it as a Rosetta Stone, it didn't do all they claimed it did.

But before I do that, consider the terms of Norton's testimony. She was first interviewed without counsel, then served a subpoena, in San Francisco.

They said they were from the Secret Service and that they wanted to ask me a few questions. Shocked and unsure of myself, I let them in to talk to me. One should never, ever do this.

They asked about Aaron, I told them I didn't know anything. They pointed out that he'd called me, and asked what he told me. I told them I hadn't asked anything about his arrest, and they were incredulous.

Eventually I ran out of things to tell them, and they produced the real reason for their visit: a subpoena.

At this point, Norton would have been locked into the testimony she gave the Secret Service – including her claim that when Swartz called her to help arrange bail after he was arrested, he didn't tell her why he had been arrested – or risk false statement charges. (I'm not saying

she didn't tell the truth, just that interviews without counsel can prove sticky going forward.)

In addition, in the guise of seeking her communications with Swartz, the Feds were getting close to her computer, with all her reporting on it.

As strange as it seems now, when I was first subpoenaed, Aaron was more worried about me than him, and both of us were worried about Ada, my seven-year-old daughter. She was the light of both of our lives, and we wanted to make sure none of this would touch her. The problem was my computer. It contained interviews and communications with confidential sources for stories going back five years. The subpoena didn't actually call for my computer, but materials on my computer. Jose and Adam implied that if the prosecutor didn't think I was being honest, he might move against me, seize things.

And if the prosecutor took my computer, I would have to go to jail rather than turn over my password.

Norton had been reporting on a range of hacker culture, including Anonymous and WikiLeaks. So while the subpoena only mentioned CFAA and wire fraud violations (see page 4), I can see why she – and the lawyers she first got, who didn't challenge the subpoena as a violation of DOJ's rules on subpoenaing journalists – might have been worried. I can see why Swartz would have been worried: by going after Norton, DOJ was going after someone who might have real evidence on the other more serious crimes they were trying to investigate. And by going after her, they may well have been trying to tie Swartz, by association, to that blacker hat hacker culture.

They eventually talked her into taking an immunity deal.

They told me Steve wanted to meet me, and they wanted me to meet him. They wanted to set up something called a proffer – a kind of chat with the prosecution. Steve offered me a “Queen for a day” letter, granting me immunity so that the government couldn’t use anything I said during the session against me in a criminal prosecution.

[snip]

I was outraged and disturbed. I didn’t want a deal, I didn’t want immunity, I just wanted to sit down and talk about the whole terrible business, to tell them why this case wasn’t worth their time, and Aaron didn’t deserve their attention. I didn’t need a deal, and in fact, given that I had nothing to offer the government’s case, I didn’t think I even qualified for it.

I asked my lawyers to refuse, and we fought about it, repeatedly. They brought up things from my past that could be used against me; not criminal behavior per se, even they admitted, but they wanted me to have immunity. I had a terrible headache, and eventually gave in.

And in fact, that appears to have been how Heymann looked at Norton. In the proffer session, they described Norton as “being connected to hackers.”

They said I must have known something because I was connected with hackers. They knew this, they told me, because they’d read everything I’d ever written online.

This, then, is the background to why she testified. She was a broke single mother, relying on pro bono lawyers who had probably been warned about Norton’s purported ties with

hackers, under a tremendous amount of stress.

I've long noted that Swartz' story, awful as it is, is in some ways far better than what most people experience with prosecution, because he had the financial wherewithal, at least at first, to fight back. Norton did not.

One thing that's not clear is what would have happened if these first lawyers had complained about what amounted to a very broad subpoena to a journalist.

I found out it was DOJ policy to subpoena journalists last, yet I had been subpoenaed first. Jose didn't seem to know that the journalist rules might apply to my hard drive, despite being a former federal prosecutor.

Norton started to pursue these questions only after she had gotten new counsel. It's not clear it would have made any difference. Aside from the fact that they were demanding stuff partly outside of her journalistic work (the LISTSERVs presumably would overlap her personal relationship with Swartz and her work), by the end of the year DOJ would formalize a policy that offered freelance journalists and bloggers almost zero protection as journalists. Norton didn't have – and still doesn't – the institutional affiliation and the million dollars to fight a subpoena that association with the NYT would have brought.

I am, however, curious whether her first lawyers discussed this, because it's pretty clear DOJ doesn't believe any journalist with ties to hacker culture, as Norton has, counts as a journalist. It would have been nice to test that belief legally.

Also note: the very first thing the subpoena asked for was any computers Swartz may have given Norton.

All computers, hard drives, USB drives, DVDs, CDs and other electronic and

optical Storage devices currently or previously owned or possessed by Aaron Swartz at any time from September 1, 2010 to the present. These shall include, without limitation, all computers and hard drives transferred to you by Aaron Swartz, loaned by you to Aaron Swartz, loaned to you by Aaron Swartz, or stored by or on behalf of Aaron Swartz at any premises over which you have custody or control.

Remember, by that point of the investigation (and to this day, as far as I've been able to tell from the public record), DOJ had not found the Macintosh Swartz had used remotely in some of the earlier downloads. I've long assumed that Mac was one of Swartz' personal computers, with a mix of JSTOR files and his personal business (including, just as an example, records from Demand Progress and the SOPA/PIPA fight), though for all we know it could have been someone else's computer. It appears they believed Norton might have that computer.

So rather than call his lawyer after getting arrested, Swartz called his girlfriend, who just happened to have extensive professional ties to the hackers DOJ would love to nail. The fact that he used his one call to call her made DOJ believe that she could verify Swartz' motive. And they clearly suspected he had given her the Mac that might tie the JSTOR downloads to larger issues.

I'm still not convinced the focus on the Manifesto is evidence of anything so much as DOJ's criminalization of open source culture. It incriminates DOJ more than it ever did Swartz.

But (presumably though not definitely in addition to personal communications), that's what they got by hammering on someone far more vulnerable than Swartz.

Update: Via Twitter, Norton says she did not turn over any LISTSERV material. Someone else

must have.