

WHO TURNED OVER THE GOOGLE GROUP CONVERSATIONS INVOLVING AARON SWARTZ?

The legal documents on the investigation into Aaron Swartz show three signs of witnesses cooperating with the prosecution.

Most of the public attention has focused on this detail, which in September 2011 publicly indicated Quinn Norton had been provided immunity to testify before the grand jury.

Promises, rewards, or inducements have been given to witness Erin Quinn Norton. Copies of the letter agreement with her and order of immunity with respect to her grand jury testimony are enclosed on Disk 3.

Norton's account of her testimony is [here](#).

That same motion to compel discovery reveals that an MIT student IDed Swartz in a photo lineup.

Defendant Aaron Swartz was a subject of an investigative identification procedure used with a witness the government anticipates calling in its case-in-chief involving a photospread documented by MIT Police Detective Boulter. Relevant portions of the police report of Detective Boulter and a copy of the photospread used in the identification procedure are enclosed on Disk 3. In both instances, the name of the identifying MIT student has been redacted to protect the student's continuing right to privacy at this initial stage of the case.

There are hints elsewhere that an MIT student gave Swartz some tips on how to get around MIT (someone must have told him about the accessible network closet, after all); I've wondered whether this student, or someone else, is who IDed Swartz.

Finally, a discovery motion dating to June 2012 reveals there are personal communications involving him, including both emails and Googlegroup conversations.

Swartz has received in discovery internet memoranda and chats purporting to be from him. For example, the discovery contains a number of chats on googlegroups.com which contain entries which facially indicate that Swartz was a participant in the communications. The discovery also contains a number of emails which on their faces indicate that they were either to or from Swartz. Swartz requires the additional information requested – the source of these statements and the procedure used by the government to obtain them – to enable him to move to suppress such statements if grounds exist to do so, which he cannot determine without the requested information.

And in response to Swartz' motion for the source of the communications involving him, the government said everything was either turned over willingly or accessed from a public site. It also said it would not turn over the identity of the people who had turned it over because that would identify its witnesses before it had to.

In Paragraph 15, the defendant would require the government to identify the origin of any and all statements of Aaron Swartz in its possession and the legal procedure used to obtain the statements. All of the emails, text messages, chat sessions, and documents

containing statements provided by the defendant relevant to this case were obtained either from individuals with whom the defendant communicated or from publicly available websites stored on the Internet. No emails, texts messages, chat logs, or documents were obtained from Internet service providers using orders under 18 U.S.C. 2703(d). As previously represented to defense counsel, there was no court-authorized electronic surveillance in this case. The government objects to further particularization at this time. First, further particularization would identify witnesses long in advance of the time prescribed by the Local Rules.

Mind you, there's reason to doubt some of this because Swartz' lawyer has made it clear the government subpoenaed Internet Archive to find out more details about changes made to the Guerilla Manifesto, suggesting some of the documents came via subpoena.

Now, the subpoena to Norton demanded "Electronic communications with Aaron Swartz between September 1, 2010 and January 15, 2011." She described that demand this way,

The prosecution wanted my communications with Aaron, anything we'd shared, any time I'd talked about JSTOR or MIT or the case with anyone. It was pages of demands for my digital life with Aaron, the private world we'd shared. There was a grand jury date listed as well: "YOU ARE COMMANDED," it read.

She describes how, with a new lawyer, she managed to scale back the requests for information.

The date was coming up when I'd have to turn over the information the prosecutors had asked for. My lawyers

asked me to come in and let their IT department copy my hard drive. I wasn't trying to be the perfect client anymore. No one, I reminded them, gets my computer. We fought again over it, things more tense than ever. Jose told me that if I didn't have a lawyer Steve might just arrest me when he called and said I'd fired them. With Aaron's help I got a new lawyer, and fired them.

With my new lawyer, I was much more comfortable. I began to research and learn useful things about my case I'd not heard before. I could work to narrow the subpoena, and force Steve to go in front of a judge if he wanted more. 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. When I sought to get Fish and Richardson's written documentation about the proffer session, particularly the notes Adam had taken during the session, they didn't provide them. I was angry, but there was nothing I could do.

So it's clear she tried to protect some of the stuff DOJ had originally subpoenaed.

Update: In the New Yorker she said this:

He was an intensely private person, and they compelled me to hand over our chat logs. The degree to which he hated me the day that I had to hand over our chat logs. . . . It wasn't my fault, and I tried to—I redacted a lot of stuff, but Steve Heymann got to go through years of our personal life together. I don't know if he was ever going to be able to forgive me for that. I was the one who turned over our lives to these people.

Most interesting, though, she just made it clear on Twitter that she was not the source of any LISTSERVs (which is what I was using to refer to the Googlegroup conversations, though technically they may not be the same thing).

 listserv stuff wasn't me, fyi

That makes some sense. After all, last June, the government made it clear it intended to protect the identity of the people who had turned over some of that stuff, and they had already given Swartz' lawyers Norton's identity.

(Note, elsewhere the discovery documents make it clear one witness against Swartz had a criminal record.)

In addition to Norton's revelation that the prosecution seemed surprised when she first mentioned the Guerilla Manifesto, that seems to be another significant revelation implicitly included in her article. She's not the source of whatever Googlegroup conversations the government got. At least according to the government, someone else turned this material over willingly.