

NACCHIO GETS A NEW TRIAL

In news that may have repercussions for Bush's attempt to hide all details of his warrantless wiretapping program, Joseph Nacchio just won a new trial (h/t scribe). Mind you, the reason his trial was overturned does not relate directly to his claim that the Administration retaliated against him because he refused to illegally wiretap Americans. Rather, the Appeals Court overturned his case because he was not allowed to make a case for his expert witness.

A federal appeals court ordered a new trial Monday for former Qwest CEO Joe Nacchio, saying the trial judge wrongly excluded expert testimony important to Nacchio's defense in his insider trading case.

[snip]

Attorneys for Nacchio told the 10th U.S. Circuit Court of Appeals in December the case against him didn't meet standards set by previous court rulings.

Nacchio's attorney, Maureen Mahoney, also told the court that U.S. District Court Judge Edward Nottingham wrongly prevented a defense witness from testifying and that Nottingham's instructions to the jury were inadequate.

[snip]

At the appeals hearing, the judges repeatedly asked Oestreicher why Nottingham denied Daniel Fischel from testifying in Nacchio's defense. Prosecutors say the defense didn't establish the reliability of Fischel's opinions or disclose how he arrived at them.

Nacchio's attorneys say Fischel, an

expert on corporate law and markets, was a core part of his defense and could have explained to jurors what must be publicly disclosed and that Nacchio's stock sales were to diversify his portfolio. Mahoney said a reasonable jury hearing testimony from Fischel would have acquitted Nacchio.

So the Appeals Court has not specifically said Nacchio should be able to tell us about being strong-armed to wiretap Americans (that's not why they accepted his appeal). But given another trial—not to mention the House's recent confirmation that different carriers responded to government requests differently (that is, AT&T happily wiretapped us, while Qwest resisted)—Nacchio might have the opportunity to explain why he thinks he was retaliated against because he believes in the Fourth Amendment.