

1 Second of all, if he's looking for a 302, I don't
2 turn over grand jury subpoenas. So he is correct, he does not
3 have a grand jury subpoena. If he is looking for a 302 that
4 speaks to the issuance of that subpoena, I've located one in a
5 binder that Special Agent Cugno prepared. I would be happy to
6 show it to him. Unfortunately, I don't have a Bates stamped
7 copy. I received this this morning. I didn't have time to
8 look through all of my Bates stamps. I'm sure I turned it
9 over. If he wants to see it now, he can see it now.

10 THE COURT: "See it," meaning the 302?

11 MS. DUARTE: A single page 302.

12 THE COURT: Hand the 302 to Mr. Reed. I'm not sure
13 that that addresses Mr. Sutcliffe's objective.

14 But I find, based upon what has been explained and
15 stated in court and upon my, I think, intimate familiarity with
16 the issues and the facts in this case that have been presented
17 thus far, that the determination as to how and when the FBI
18 agent tracked down the then existing location of the computer
19 to which was assigned the IP address ending in the digits "206"
20 is not within the doctrine of Brady that would establish any
21 basis whatsoever to question the propriety of the prosecution
22 thus far or the compliance of the prosecution with its duties
23 under the Brady doctrine.

24 So I just don't think that there is any relevance --
25 I don't think there is any relevance at all, but it certainly

1 doesn't fall within the Brady doctrine to establish some kind
2 of governmental misconduct.

3 It is not required that the government turn over
4 subpoenas that grand juries issue prior to the return of any
5 indictment. The dates reflected in the affidavit precede the
6 return of the indictment in this case, the initial indictment,
7 but -- I think that there is nothing further that I need to do.

8 The specific affidavit, for the record, states that
9 "The accused requests" -- this is the concluding sentence.
10 "The accused requests and respectfully demands the government
11 be ordered to provide a copy of this subpoena issued on or
12 after February 5, 2002, and prior to February 9, 2002."

13 I don't think that there is a legal basis that has
14 been established that tells me to order that the subpoena be
15 issued -- now, what does the 302 say? -- that the subpoena be
16 produced, I should say. Pardon me.

17 MS. DUARTE: The 302 says, "A grand jury subpoena and
18 2703F letter" -- that's a records preservation letter -- "were
19 issued and transmitted by facsimile to Yahoo! on 2-5-2002,
20 requiring the preservation of evidence and the production of
21 subscriber information for the electronic e-mail address
22 'gary_winnick2002@yahoo.com'. SA Jeffrey Raymond Cugno
23 received a facsimile dated 2-7-2002 responding to the subpoena
24 sent by Linda Isley, a Yahoo! compliance paralegal," followed
25 by an address and phone number. "The documents provided by

1 Isley contain the following information: Registration IP
2 address: 24.61.143.206. Full name: Mr. Gary Winnick.
3 City: Beverly Hills: State, territory, or province:
4 California. Country: U.S. ZIP/postal code: 90210. Account
5 created (reg): Tuesday, February 5, 07:31:53, 2002. Account
6 status: Active. A copy of the Yahoo! facsimile 2703F letter
7 and grand jury subpoena will be maintained in the 1A section of
8 the file.

9 The date of transcription on the 302 is 2-7-2002.
10 And directing the Court's attention to --

11 THE COURT: Who prepared the 302? Cugno?

12 MS. DUARTE: Yes, Special Agent Cugno.

13 THE COURT: Okay.

14 MS. DUARTE: I believe it's Exhibit 34, Your Honor,
15 which contains -- no, my mistake. It's right around there.
16 It's Exhibit 33, Your Honor, which I believe contains
17 precisely -- Government's Exhibit 33 -- precisely the
18 information that is spoken to by that 302.

19 THE COURT: What is Exhibit 33? It says "Yahoo!
20 Account Management Tool." It's in evidence. What is it?

21 MS. DUARTE: Exhibit 33 is records provided by Yahoo!
22 for the account "gary_winnick2002". And those contain the
23 information that's set out in that 302 from the registration IP
24 address through and including all the other account
25 information.