

SUPREME COURT OF THE STATE OF NEW YORK  
BRONX COUNTY

IN THE MATTER OF FOUR SUBPOENAS DATED OCTOBER 30, 2007, MAY 6, 2008, MAY 6, 2008 AND MAY 8, 2008	: : : : : : :	Index No. 08-  <b>AFFIDAVIT OF GUR TSABAR IN SUPPORT OF MOTION TO QUASH SUBPOENAS DUCES TECUM</b>
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STATE OF NEW YORK             )        ss

1. My name is Gur Tsabar. I am Vice President, Interactive Strategies Group, and New Media Specialist for the public relations firm, Ketchum. Along with Ben Smith, I am one of the principals of Room Eight LLC and a co-founder of the Room Eight blog, located on the Internet at [www.r8ny.com](http://www.r8ny.com). Among other responsibilities, I do most of the technical work required to maintain the Room Eight blog.

2. In September, 2007, I received several threatening voice mail messages from Dawn Sandow, both at work and on my cell phone. She complained about statements about herself that had been posted on the Room Eight blog. Her messages threatened to prosecute us and to sue us. One of the messages gave me a twenty-four hour deadline to call her back, or she was going to take legal action against us.

3. I called Ms. Sandow back, and she said that she had gone to the police about the postings, and that they had told her that she needed to get from us the "IP addresses" of the postings about which she was complaining. Internet Protocol numbers (or IP addresses) are numbers that indicate the computer from which a computer user is accessing the Internet at the time the user is visiting a web site, including the computer from which someone is making a posting on a message board or blog. Web servers are, by default, set to record those IP addresses and the time of access. Generally speaking, an IP address can be read to determine which Internet Service Provider ("ISP") is providing Internet access to the user. Although some IP addresses are assigned statically, to a particular individual or company who always gains access to the Internet through that address, most IP addresses are assigned "dynamically" – that is, a given ISP will control a large block of IP addresses, and will assign specific addresses to specific users depending on need at any given time. ISP's, in turn, keep records of the customers to whom each of the IP numbers under the ISP's control are assigned at a given time.

4. I told Sandow that, pursuant to our normal practice, when we receive a complaint about specific postings claimed to be abusive or defamatory, we review the content and remove it if we believe that it violates our Terms of Service. However, I also explained that we do not simply hand over IP information, because we value our users' privacy and we believe our users rely on us to protect their privacy.

5. After our conversation ended, Sandow tried to call me back. However, my wife and I had sat down to dinner, so I did not take her call.

6. I believe most web site hosts would want to protect the privacy of their users, but such protections are especially important for a blog like Room Eight. Posters on our blog address politically sensitive topics, and they often criticize powerful political figures who have the capability

of inflicting serious harm on users even if the users are ultimately found not to have done anything wrong. If our users thought that we would too easily give up their private information, and thus subject them to the risk of being identified to those who may want to retaliate against them, I believe they would be much less likely to participate in discussions on our blog.

7. The date of the original subpoena seeking to identify the posters of fourteen comments on our blog (many of them harshly critical of Dawn Sandow) was October 30, 2007, about one month after my telephone conversation with Sandow. (However, we did not receive that first subpoena until January 2008). I am concerned that Sandow has been able to get the prosecutors to use their authority to help her attack her online critics. And equally important, I believe that our users would conclude that there is a real possibility that the grand jury is being used to harass critics of Dawn Sandow. In light of the fact that Sandow is not only a former Bronx Republican Party official, but is reportedly the girlfriend of the current leader of the Republican Party in the Bronx, I am concerned that our users would be chilled in the exercise of their right to use our blog to criticize political leaders in the Bronx unless the courts protect their right to criticize anonymously.

8. On April 15, 2008, the blogger Republican Dissident deleted all of his blog entries, and all the posts made in response to his blog entries. We do not routinely archive entries on the Room Eight blog, and we have do not have any archive of the Republican Dissident blog entries. Republican Dissident first began his blog on Room Eight in November, 2006.

9. When I received the subpoenas to provide identifying information about the blogger Republican Dissident, and about the anonymous individuals posting comments on his blog, I noted the legend at the bottom of the subpoena, which I understand to threaten Room Eight, as well as Ben Smith and me personally, with criminal prosecution if we criticize the subpoena publicly, or even if we notified the blogger and/or the posters that their right to remain anonymous is at risk. We feel

strongly that it is our obligation as web hosts to notify our users of the risk to their free speech rights, and indeed I believe that posters to our blog would feel that we had fallen short of our moral obligations to them if we turned over their identifying information without first giving them notice so that they could try to defend themselves legally. In addition, although we can ask our lawyer to articulate arguments about why anonymity should be protected, the blogger and commenters themselves are best situated to explain why they should not be identified, and why any reasons advanced for compelling disclosure, based on assertions about the possible wrongfulness of the speech, might not have merit.

10. Because the blogger Republican Dissident had to provide an email address when setting up his blog, we attempted to provide notice by email. Anonymous posters who simply comment on the blog, however, do not leave email addresses; hence the only way for us to notify them of the receipt of a subpoena seeking to identify them would be by posting a notice on the Room Eight blog.

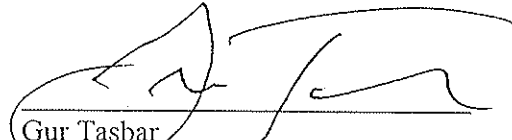
11. Through our counsel, we have been pressing the District Attorney to permit us to send email to Republican Dissident and to post a notice of the subpoena on Room Eight, notwithstanding the general threat of prosecution for disclosing the existence of the subpoena. For several months, it was my understanding that such permission was refused.

12. On May 8, 2008, I learned from my lawyer, Paul Alan Levy, that the District Attorney's office was willing to allow us to send an email to Republican Dissident, but not to post anything on the blog. I understood that posting a notice of subpoena on the blog would result in the possibility of criminal prosecution. On that same date, I sent an email to the address provided by Republican Dissident when he registered to begin his blog, notifying him of the subpoena. That email address appears to consist of the initial of a first name and a last name, combined with a common domain

name for email. That email bounced back, because, apparently, Republican Dissident stopped using that particular email address.

13. On May 14, 2008, I discovered a second email address associated with the Republican Dissident account, and sent out a second notice of subpoena. That email has not bounced back. However, I have no confirmation that the email has been received.

14. The Room Eight blog supports its costs through advertising. In 2006, we had a net loss of \$526, but in 2007 we had a net gain of \$1372. I believe that we are, similarly, in the black so far in 2008. However, this revenue is not enough for us to pay lawyers to represent us in seeking to protect the privacy of our users. We are being represented pro bono by our counsel in this case.

  
Gur Tasbar

Subscribed and Sworn before me this 21 day of May, 2008

  
Notary Public

