

QUESTIONSFor Petr (SG)

1. Is it your position that Powell does not offer any protection to the target of a subpoena or that the target of a subpoena can vindicate his interest under Powell only when he happens to find out about the issuance of the subpoena?
2. If we were to decide that a target has a protectable interest under Powell, is there any other stage in the proceeding during which the target could assert that right?

For Resps

1. Aren't you stretching your interpretation of the CA9 opinion quite far when you say that the CA9 did not intend to institute a general notice requirement, but was merely stating that notice was appropriate under the facts of this case? After all, the CA9 did say that "absent special circumstances," the notice requirement should apply. In addition, the opinion does not really address your allegations of misconduct on the part of the SEC.
2. The CA9 left open the question of the proper remedy for the SEC's failure to comply with the notice requirement. What do you perceive the proper remedy to be?