

that Epstein is free from future criminal prosecution, and that in fact, "the threat of prosecution is real, substantial, and present." *Id.*

By this Motion, Plaintiff seeks to compel answers to certain interrogatories and requests for production that were propounded December 9, 2008. Defendant has responded by asserting several [*9] objections, the primary one of which is an assertion of his Fifth Amendment privilege.

The Fifth Amendment serves as a guarantee against testimonial compulsion and provides, in relevant part, that "[n]o person...shall be compelled in any Criminal Case to be a witness against himself." *Id.* In practice, the Fifth Amendment's privilege against self-incrimination "permits a person not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings." *Edwin v. Price*, 778 F.2d 668, 669 (11th Cir. 1985)(citing *Lefkowitz v. Turley*, 414 U.S. 70, 77, 94 S. Ct. 316, 38 L. Ed. 2d 274 (1973)). The privilege is accorded "liberal construction in favor of the right it was intended to secure," *Hoffman v. United States*, 341 U.S. 479, 486, 71 S. Ct. 814, 95 L. Ed. 1118 (1951), and extends not only to answers that would in themselves support a criminal conviction, but extends also to those answers which would furnish a link in the chain of evidence needed to prosecute the claimant for a crime. *Id.*; *Blau v. United States*, 340 U.S. 159, 71 S. Ct. 223, 95 L. Ed. 170 (1950). Thus, information is protected by the privilege not only if it would support a criminal conviction, but also in those instances where "the responses would merely 'provide a lead or clue' to evidence having a tendency to incriminate." *United States v. Neff*, 615 F.2d 1235, 1239 (9th Cir.), cert. denied, 447 U.S. 925, 100 S. Ct. 3018, 65 L. Ed. 2d 1117 (1980).

The Fifth Amendment's privilege against self-incrimination comes into play only in those instances where the witness [*10] has "reasonable cause to apprehend danger from a direct answer." *Hoffman*, 341 U.S. at 486 (citing *Mason v. United States*, 244 U.S. 362, 365, 37 S. Ct. 621, 61 L. Ed. 1198, 4 Alaska Fed. 571 (1917)). "The claimant must be 'confronted by substantial and 'real,' and not merely trifling or imaginary, hazards of incrimination." *United States v. Apfelbaum*, 445 U.S. 115, 128, 100 S. Ct. 948, 63 L. Ed. 2d 250 (1980).

When the Fifth Amendment privilege is raised as a bar to discovery, a blanket refusal to answer questions or to produce documents is improper. *Anglada v. Sprague*, 822 F.2d 1035, 1037 (11th Cir. 1987). Instead, the privilege must be asserted in response to a particular question, and in each instance the burden is on the claimant to justify invocation of the privilege. *Id.* Once a particularized showing has been made, "[i]t is for the court to decide whether a witness' silence is justified and to require him to answer if it clearly appears to the court that the witness asserting the privilege is mistaken as to its validity." *In re Morganroth*, 718 F.2d 161, 166-67 (6th Cir. 1983). In making this determination the judge is instructed to view the facts and evidence presented on a case-by-case basis, and "must be governed as much by his perception of the peculiarities of the case, as by the facts actually in evidence." *Hoffman*, 341 U.S. at 487.

The law is well established that the Fifth Amendment privilege may not apply to specific documents "even though they contain incriminating assertions of fact or belief, because the creation of those documents was [*11] not 'compelled' within the meaning of the privilege." *United States v. Hubbell*, 530 U.S. 27, 35-36, 120 S. Ct. 2037, 147 L. Ed. 2d 24

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