

[REDACTED] and I had lunch together on July 25, 2007, and Roy Black's name came up during our conversation. At that time, I relayed to Special Agent [REDACTED] what Mr. Kleiman had told me.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 30<sup>th</sup> day of July, 20

[REDACTED]  
Palm Beach County Sheriff's Office

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

IN RE GRAND JURY SUBPOENAS  
DUCES TECUM NUMBERS

UNITED STATES' SURREPLY TO REPLIES FILED BY WITNESS [REDACTED]  
[REDACTED] AND INTERVENOR JEFFREY EPSTEIN  
RE: MOTION TO QUASH GRAND JURY SUBPOENAS

**UNDER SEAL**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

IN RE GRAND JURY SUBPOENAS  
DUCES TECUM NUMBERS

UNDER SEAL

UNITED STATES' SURREPLY TO REPLIES FILED BY WITNESS  
AND INTERVENOR JEFFREY EPSTEIN  
RE: MOTION TO QUASH GRAND JURY SUBPOENAS

The United States, by and through the undersigned Assistant United States Attorney, hereby files this Surreply to the Replies filed by Witness and Intervenor Jeffrey Epstein,<sup>1</sup> and notes the following:

1. Both the witness and the intervenor assert that was excused from appearing before the grand jury and that did not flout the subpoena by failing to appear. AUSA agreed with Attorney Mr. Black that would not have to appear and produce the disputed items if a motion to quash all aspects of the subpoenas was filed. Neither party's pleading has asserted that the subpoenas should be quashed as to testimony. Thus, the United States does not contend that intentionally disobeyed the subpoena, but notes that the Motion to Quash does not address all aspects of the subpoenas and, therefore, the subpoena for testimony is enforceable. The undersigned has conferred with the office of counsel, and it has been agreed that will appear before the grand jury on September 18, 2007. However,

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<sup>1</sup>Witness did not file an initial motion to quash the grand jury subpoenas, but did file a Reply to the United States' Response to the Intervenor's Motion to Quash. Accordingly, the United States has not previously had the opportunity to respond to the issue raised by .

in footnote 3 of Intervenor Epstein's Reply, counsel asserts that, if "the Court were to sustain the government's standing objection as to Epstein, [REDACTED] and [REDACTED] would file a motion to quash the subpoenas." (Epstein Reply at 5 n.3.) The United States would oppose such a motion on timeliness grounds.

2. In the Reply filed by Intervenor Epstein, counsel asserts that "simple possession of the physical containers [the computers] is not the government's real object here. What the government actually wants is unfettered access to the entire *contents* of Epstein's computers . . ." (Epstein Reply at 2.) Epstein is mistaken. The grand jury has subpoenaed the computers the items as they were removed from Mr. Epstein's home. The grand jury probably has the authority to subpoena the contents of those computers, but, in an abundance of caution, the undersigned's general policy is to seek a search warrant for the contents of a computer once it is securely in custody, and that is the United States' intended approach in this case, as well. This procedure will allow the Court to decide whether adequate probable cause exists for the search of the computers' contents without prematurely exposing to the target matters occurring before the grand jury, and will allow the target to challenge the probable cause for the search on a Motion to Suppress.

3. Epstein argues that he has no obligation to show that the computers (or the production of those computers) are incriminating before he can assert the act of production privilege. (Epstein Reply at 6.) This is not the case; if it were, every person could assert the act of production privilege to refuse to produce anything in response to a subpoena.<sup>2</sup> Instead, a target must address the act of production privilege on a document by document basis explaining how the production of that

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<sup>2</sup>Following Epstein's logic, if a person were subpoenaed to produce her mother's coffee cake recipe, she could assert the act of production privilege because the production would be a "compelled communication that the item produced is the item called for in the subpoena." (Epstein Reply at 6.)

document would tend to incriminate the target. *See, e.g., United States v. Grable*, 98 F.3d 251, 255, 257 (6<sup>th</sup> Cir. 1996) (“The existence of ‘substantial and real hazards of self-incrimination’ is a prerequisite to the proper assertion of the ‘act of production’ privilege.”) (citations omitted); *In re Three Grand Jury Subpoenas Duces Tecum Dated January 29, 1999*, 191 F.3d 173, 178 (2d Cir. 1999) (The act of production privilege applies only where the act is “(1) compelled, (2) testimonial, and (3) incriminating.”) (citing *United States v. Doe*, 465 U.S. 605, 612-14 (1984)); *In re Three Grand Jury Subpoenas Dated January 5, 1988*, 847 F.2d 1024, 1028 (2d Cir. 1988) (subpoenaed party must produce subpoenaed audiotape to Court to allow Court to conduct *in camera* inspection to determine whether act of production privilege applied); *United States v. Bell*,<sup>3</sup> 217 F.R.D. 335, 339 (M.D. Pa. 2003) (Although voluntarily created documents are not protected by the Fifth Amendment, an act of production privilege can be asserted, but only when “it meets two conditions: the evidence must be both (1) testimonial and (2) *incriminating*.”). Later in his Reply, in order to avoid the clear similarity between this case and *United States v. Hunter*, Epstein goes out of his way to assert that the computers are *not* incriminating. Epstein argues: “Unlike a murder weapon or bank robbery proceeds, the computers are not themselves evidence of a crime;” and “Therefore, even were the computers ‘incriminating evidence’ – *which they manifestly are not* – *Hunter* in no way undermines Epstein’s challenges to the subpoena.” (Epstein Reply at 8, 9 (emphasis in original).) Epstein simply cannot have it both ways. Either he is able to show that the production of the

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<sup>3</sup>*Bell* also discusses the “foregone conclusion” rationale, that is, that an act of production privilege exists only where the subpoenaed party’s “production of the documents will *exclusively* establish their existence, authenticity, as well as [the party’s] possession of them.” *Id.* at 340 (emphasis in original). The United States relies upon the arguments in its Response to Intervenor Epstein’s Motion to Quash and the information contained in the *Ex Parte* Affidavits to show the other methods of establishing the existence, authenticity, and Epstein’s possession of the computers.

computers *would* incriminate him, or he cannot assert the act of production privilege.

4. Lastly, Epstein has still failed to provide a privilege log, saying that he not done so because he hopes that the subpoenas will be quashed in their entirety and, if not, a privilege log will *then* be produced. (Epstein Reply at 10.) This effort to put the onus on the Court, (“The Court should not enforce the subpoenas without affording counsel an opportunity to exclude privileged materials from the production.” (*id.*)), turns the law of attorney-client privilege on its head and disregards binding precedent requiring a subpoenaed party to produce such a log at the time of filing its motion. The objections related to billing records are demonstrative of the untenability of this position. In civil cases, issues related to attorney’s fees are regularly litigated and billing records must be produced to the opposing party. If a party objects to that production, it must produced a redacted version of the documents with an accompanying privilege/work product log. *After* that, the issues are defined for the Court. Counsel complains that the United States has wrongly characterized their motion as a blanket assertion of privilege, but there is no other basis for a failure to produce *anything*. Epstein has *not* asserted that the production of the billing records is overly burdensome. Furthermore, [REDACTED] is the owner of those documents and is best suited to make such a claim, if warranted. [REDACTED] failure to do so before the time for production waives such a claim.

CONCLUSION

For the foregoing reasons, as well as the reasons set forth in the United States' Response to the Motion to Quash, the United States respectfully requests that the Court deny the Motion to Quash and order the prompt compliance with the subpoenas.

Respectfully submitted,

R. ALEXANDER ACOSTA  
UNITED STATES ATTORNEY

By:

[REDACTED]

Assistant United States Attorney

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 30, 2007, the foregoing document was served via Federal Express on Attorney Roy Black and Attorney William Richey. This document was not filed using CM/ECF because it is being filed under seal.

[REDACTED]

Assistant U.S. Attorney

**SERVICE LIST**

**In re Federal Grand Jury Subpoenas No. OLY-63 and OLY-64**  
**United States District Court, Southern District of Florida**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

IN RE: GRAND JURY SUBPOENAS  
DUCES TECUM NUMBERS

MOTION FOR LEAVE TO FILE SUPPLEMENTAL EX PARTE DECLARATION IN  
SUPPORT OF UNITED STATES' RESPONSE TO MOTION TO QUASH

UNDER SEAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

IN RE: GRAND JURY SUBPOENAS  
DUCES TECUM NUMBERS

  
UNDER SEAL

MOTION FOR LEAVE TO FILE SUPPLEMENTAL EX PARTE DECLARATION  
IN SUPPORT OF UNITED STATES' RESPONSE TO MOTION TO QUASH

The United States of America, by and through the undersigned Assistant United States Attorney, hereby asks for permission to file a Supplemental *ex parte* Declaration in support of its Response to Jeffrey Epstein's Motion to Intervene and to Quash Subpoenas and Cross-Motion to Compel.

In support thereof, the United States states the following:

1. The Declaration contains additional information relating to an ongoing grand jury investigation; thus, pursuant to Fed. R. Crim. P. 6(e)(6), all records and orders related to the grand-jury proceedings must be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of a matter occurring before the grand jury.
2. The Declaration is being filed *ex parte* because disclosing them to the target would jeopardize the criminal investigation, and undermine the function of the grand jury.
3. As the Supreme Court has held, "[r]equiring the Government to explain in too much detail the particular reasons underlying a subpoena threatens to compromise 'the indispensable secrecy of the grand jury proceedings.'" *United States v. R. Enterprises, Inc.*, 498 U.S. 292, 299 (1991) (quoting *United States v. Johnson*, 319 U.S. 503, 513 (1943)). "The need to preserve the secrecy of an ongoing grand jury investigation is of paramount

importance.” *In re Grand Jury Proceedings in Matter of Freeman*, 708 F.2d 1571, 1576 (11th Cir. 1983) (extensive citations omitted).

4. The issues raised by Intervenor Epstein’s Motion to Quash require the United States to provide information obtained through the Grand Jury’s investigation. Due to the pendency of the investigation, and the requirements of Grand Jury secrecy, the United States asks that the Court allow the United States to file a Supplemental *Ex Parte* declaration, which further addresses the factual issues raised by Intervenor Epstein, without being forced to disclose the status of the grand jury investigation and the matters occurring before the grand jury to Epstein.

Prior to its initial Motion to File Ex Parte Affidavits, Rules, the undersigned conferred with counsel for Intervenor Epstein, who advised that he opposes the granting of this motion.

WHEREFORE, the United States respectfully requests that it be allowed to file its Supplemental Declaration *Ex Parte* in support of its Response to the Motion to Quash.

Respectfully submitted,

R. ALEXANDER ACOSTA  
UNITED STATES ATTORNEY

By: \_\_\_\_\_

Assistant United States Attorney

500 South Australian Avenue, Suite 400

West Palm Beach, FL 33401

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 30, 2007, the foregoing document was served via Federal Express on Attorney William Richey and Attorney Roy Black. This document was not filed using CM/ECF because it is being filed under seal.

[REDACTED]

Assistant U.S. Attorney

**SERVICE LIST**

**In re Federal Grand Jury Subpoenas No. OLY-63 and OLY-64**  
**United States District Court, Southern District of Florida**

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Attorney for Intervenor Jeffrey Epstein

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

IN RE GRAND JURY SUBPOENAS  
DUCES TECUM NUMBERS

[REDACTED]

[REDACTED]  
UNDER SEAL

ORDER

THIS CAUSE came before the Court on the United States of America's Motion for Permission to File a supplemental *Ex Parte* Affidavit in support of its Response to the Motion to Quash.

Upon review of the motion, it is hereby ORDERED AND ADJUDGED that good cause has been shown and the United States of America's motion is GRANTED.

**DONE AND ORDERED** in chambers this \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
at West Palm Beach, Florida.

\_\_\_\_\_  
KENNETH A. MARRA  
UNITED STATES DISTRICT JUDGE

cc: AUSA [REDACTED] West Palm Beach  
Roy Black, Esq.  
William Richey, Esq.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

IN RE GRAND JURY SUBPOENAS  
DUCES TECUM NUMBERS



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MOTION TO FILE DOCUMENTS UNDER SEAL

FILED UNDER SEAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

IN RE: GRAND JURY SUBPOENAS  
DUCES TECUM NUMBERS

MOTION TO FILE DOCUMENTS UNDER SEAL

The United States of America, by and through the undersigned Assistant United States Attorney, hereby moves to seal this Motion, the United States' Surreply to the Replies of [REDACTED] and Intervenor Jeffrey Epstein on Motion to Quash Grand Jury Subpoenas, and Supplement to Ex Parte Declaration Number One in Support of United States' Response to Motion to Quash Subpoenas, for the following reasons:

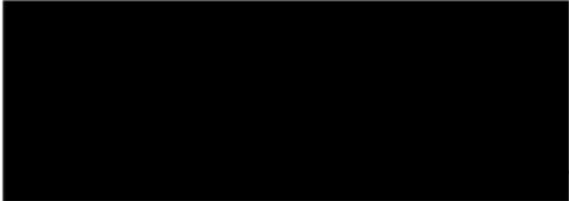
1. The attached documents contain information relating to an ongoing grand jury investigation; thus, pursuant to Fed. R. Crim. P. 6(e)(6), all records and orders related to the grand-jury proceedings must be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of a matter occurring before the grand jury.
2. Public disclosure of this matter would jeopardize the criminal investigation, notify potential subjects and/or targets and undermine the public interest and the function of the grand jury.

WHEREFORE, the United States respectfully requests that the aforementioned documents be sealed.

Respectfully submitted,

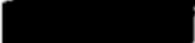
  
UNITED STATES ATTORNEY

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Assistant United States Attorney

  
500 South Australian Avenue, Suite 400  
West Palm Beach, FL 33401

Telephone: 

Facsimile: 

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 30, 2007, the foregoing document was served via Federal Express on Attorneys William Richey and Roy Black. This document was not filed using CM/ECF because it is being filed under seal.

  
Assistant U.S. Attorney

SERVICE LIST

In re Federal Grand Jury Subpoenas No. OLY-63 and OLY-64  
United States District Court, Southern District of Florida

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Attorney for Intervenor Jeffrey  
Epstein

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

IN RE: GRAND JURY SUBPOENAS  
DUCES TECUM NUMBERS

[REDACTED]

[REDACTED]

UNDER SEAL

ORDER GRANTING UNITED STATES' MOTION TO SEAL

This matter comes before the Court upon the United States' Motion to Seal the documents related to its Surreply regarding the pending Motion to Quash Grand Jury Subpoenas. The Court being fully apprised in the premises, orders that the motion is hereby GRANTED.

DONE AND ORDERED in chambers, in West Palm Beach, Florida, this \_\_\_\_ day of

\_\_\_\_\_, 2007.

\_\_\_\_\_  
KENNETH A. MARRA  
UNITED STATES DISTRICT JUDGE

cc: [REDACTED] AUSA  
Roy Black, Esq.  
William Richey, Esq.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

IN RE GRAND JURY SUBPOENAS  
DUCES TECUM NUMBERS



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SUPPLEMENT TO EX PARTE DECLARATION NUMBER ONE  
IN SUPPORT OF UNITED STATES' RESPONSE  
TO MOTION TO QUASH SUBPOENAS

FILED UNDER SEAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

IN RE GRAND JURY SUBPOENAS  
DUCES TECUM NUMBERS

[REDACTED]

[REDACTED]

UNDER SEAL

SUPPLEMENT TO EX PARTE DECLARATION NUMBER ONE  
IN SUPPORT OF UNITED STATES' RESPONSE  
TO MOTION TO QUASH SUBPOENAS

I, [REDACTED], state that the following is true and correct to the best of my information and belief:

1. I am currently employed as a Special Agent with the Federal Bureau of Investigation ("FBI") and have been so employed for the past ten years. I am assigned to the Miami Division, Palm Beach County Resident Agency, and for the past three years, I have been assigned to investigate mostly child exploitation cases. As explained in my earlier declaration, I am the case agent assigned to the investigation of Jeffrey Epstein's solicitation of minors to engage in prostitution and his lewd and lascivious conduct with minors.

2. After filing the Declaration in Support of the United States' Response to the Motion to Quash Subpoenas, I located and interviewed another girl, Jane Doe, who was recruited to engage in prostitution with Jeffrey Epstein.

3. In 2001, Jane Doe, age [REDACTED], was recruited by another female, [REDACTED] to provide

Epstein with a personal massage. The first time that [REDACTED] brought Jane Doe to Epstein's home at 358 El Brillo Way, Palm Beach, Florida, [REDACTED] and Epstein engaged in sexual intercourse in front of Jane Doe. [REDACTED] was [REDACTED] years old at the time. [REDACTED] first contact with Epstein, at the age of [REDACTED], was for the purpose of providing him with personal massages.

4. Jane Doe estimates that she returned to Epstein's home approximately 100 times between 2001 and 2003. Epstein masturbated in Jane Doe's presence during all but three of the massages she provided. During additional visits, Epstein tried to engage Jane Doe in more and more sexual behavior. On one occasion, Epstein introduced an unidentified female who performed [REDACTED] on Jane Doe while Epstein had sexual intercourse with the unidentified female. At the end of each massage, Jane Doe was paid \$200 to \$400 by Epstein.

5. On one occasion, when Jane Doe was approximately [REDACTED] years' old, Epstein's assistant, [REDACTED] telephoned Jane Doe and told her that Epstein wanted [REDACTED] to photograph her. Jane Doe traveled to Epstein's Palm Beach home where [REDACTED] took a series of nude photographs of Jane Doe posing at several locations on Epstein's property. Jane Doe was paid \$500 for posing nude for the photographs. Jane Doe reported that [REDACTED] used a digital camera to take the nude photographs.

6. This information further leads me to believe that the computers that are the

subject of the grand jury subpoena are likely to contain evidence of Jeffrey Epstein's solicitation of minors to engage in prostitution and may contain child pornography.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 28<sup>th</sup> day of August, 2007.



Federal Bureau of Investigation