

claimant, to determine whether the hazard of incrimination is justified. *United States v. Argomaniz*, 925 F.2d 1349, 1355 (11th Cir. 1991). "A court must make a particularized inquiry, deciding, in connection with each specific area that the questioning party wishes to explore, whether or not the privilege is well-founded." *Id.* Typically this is done in an *in camera* proceeding wherein the person asserting the privilege is given the opportunity "to substantiate his claims of the privilege and the district court is able to consider the questions asked and the documents requested by the summons." *Id.*

3. Here Epstein has made boilerplate invocation of the Fifth Amendment to each and every request propounded by L.M.. That hardly suffices to carry *his* burden providing that his assertion of the Fifth Amendment is appropriate.

4. As part of this particularized inquiry, Epstein should also be required to produce a privilege log of the items over which he is asserting privilege.

#### SPECIFIC REQUESTS FOR PRODUCTION

5. For the convenience of the court, L.M.'s two specific requests for production and Epstein's objections are reprinted, followed by analysis as to why his assertion of privilege is improper:

**Request No. 1.** The ENTIRE FILE (including all discovery) provided to you by the State Attorney's Office, and/or Palm Beach County Police Department and/or U.S. Attorney's Office and/or the Federal Bureau of Investigation relating to the Defendant, JEFFREY EPSTEIN.

**Response:** Defendant is asserting specific legal objections including but not limited to relying on certain U.S. constitutional privileges in declining at present to respond to this request for production based on advice from my

counsel that I cannot provide answers/responses to the question without waiving my Fifth Amendment Privilege and I must accept this advice or risk losing my Sixth Amendment right to effective representation. Accordingly, I assert my federal constitutional rights under the Fifth, Sixth, and Fourteenth Amendments as guaranteed by the United States Constitution. Drawing an adverse inference under these circumstances would unconstitutionally burden my exercise of my constitutional rights, would be unreasonable and would therefore violate the Constitution.

Responding to the above request would require Epstein to identify information regarding the offenses that were the prior subject of a federal investigation. The Fifth Amendment is a safe harbor for all citizens, including those who are innocent of any underlying offense, however responding to this and other relating inquiries have the potential to provide a link in a chain of information that would be protected. More specifically, the act of producing the above information may implicitly communicate statements of fact in that they would implicitly authenticate the requested information, require Epstein to admit that the request information exists and admit that same were in his possession, custody and control. The very act of production itself may therefore provide a link in the chain of evidence adverse to Epstein, see generally *United States v. Hubbell* 520 U.S. 27, 236 (2000).

In addition to and without waiving his constitutional privileges, Defendant also objects as the request for production as unreasonable, vague, overbroad, and may seek information that is protected by attorney-client and work-product privileges and is neither relevant to the subject matter of the pending action nor does it appear to be reasonably calculated to lead to the discovery of admissible evidence as worded. Moreover, Plaintiff's request seeks information available from other non party entities.

**Request No. 2.** All evidence, documents, statements, information, dvds, cds and ALL other information provided to Defendant Epstein, or his attorneys, in discovery by the Palm Beach State Attorney's Office, the Palm Beach Police Department, The FBI or the U.S. Attorney's Office.

**Response:** Defendant is asserting specific legal objections including but not limited to relying on certain U.S. constitutional privileges in declining at present to respond to this request for production based on advice from my counsel that I cannot provide answers/responses to the question without waiving my Fifth Amendment Privilege and I must accept this advice or risk losing my Sixth Amendment right to effective representation. Accordingly, I assert my federal constitutional rights under the Fifth, Sixth, and Fourteenth Amendments as guaranteed by the United States Constitution. Drawing an adverse inference under these circumstances would unconstitutionally burden my exercise of my constitutional rights, would be unreasonable and would therefore violate the Constitution.

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In addition to and without waiving his constitutional privileges, Defendant also objects as the request for production as unreasonable, vague, overbroad, and may seek information that is protected by attorney-client and work-product privileges and is neither relevant to the subject matter of the pending action nor does it appear to be reasonably calculated to lead to the discovery of admissible evidence as worded. Moreover, Plaintiff's request seeks information available from other non party entities.

#### ANALYSIS:

6. These two requests simply seek information that *the government* gave to Epstein in the course of its plea discussions with him. Remarkably, Epstein claims that these materials -- which started in the government's possession -- are now somehow transformed and given Fifth Amendment protection by his mere receipt of them. The Fifth Amendment does not work such alchemy.

7. It is true, of course, that the Fifth Amendment covers situations where the act of producing documents has "communicative aspects of its own, wholly aside from the contents of the papers produced." *Fisher v. United States*, 425 U.S. 391, 410 (1976). But this "act of production" doctrine has stringent limits. It does not extend, for example, to a claim by a taxpayer that he would