

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FGJ 07-103 (WPB)

IN RE GRAND JURY SUBPOENAS
DUCES TECUM NUMBERS
OLY-63 & OLY-64

FILED UNDER SEAL

**REPLY OF WILLIAM RILEY AND RILEY KIRALY TO THE
GOVERNMENT'S RESPONSE TO THE MOTION TO INTERVENE AND TO
QUASH GRAND JURY SUBPOENAS AND CROSS MOTION TO COMPEL**

William Riley and Riley Kiraly ("Riley"), by and through undersigned counsel, file this Reply to the Response of the United States to the Motion of Jeffrey Epstein to Intervene and to Quash Grand Jury Subpoenas and Cross Motion to Compel to respond to the Government's assertions that Riley failed to appear before the grand jury.¹ The Government is mistaken.

Riley's appearance before the grand jury was originally scheduled for July 10, 2007. By the agreement of the parties, that appearance was rescheduled for July 17, 2007. The day before that scheduled appearance, *i.e.*, July 16, 2007, counsel for Jeffrey Epstein, who seeks to intervene in this matter, was informed by Deputy Chief [REDACTED] that Riley did not have to appear physically before the grand jury if a motion to quash the subpoena at issue was filed by Epstein before the end of the day on July 17, 2007. As the Government's Response states, Epstein's motion to quash was filed on July 17, 2007 before the close of business. *See Gov't Resp.* at 1. Riley was informed of these matters by Roy Black, Esquire, and did not appear in reliance on the Government's agreement with Roy Black.

¹ Undersigned counsel has been out of the country and just recently returned. Accordingly, this Reply has been prepared within days of his return.

William L. Richey, P.A.

201 South Biscayne Boulevard, 34th Floor, Miami Center, Miami, Florida 33131-4325 [REDACTED] - Facsimile

FGJ 07-103 (WPB)

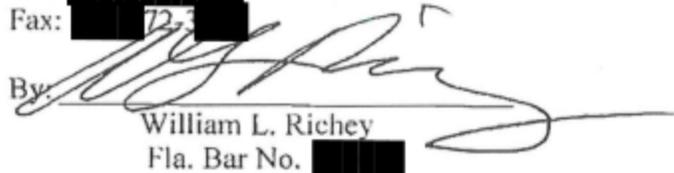
Therefore, contrary to the Government's claim, Riley did not flout the subpoena. Rather, Riley's non-appearance was known by the Government, and Riley met the condition of that excuse, that is, Epstein timely filed the motion to quash.

Respectfully submitted,

WILLIAM L. RICHEY, P.A.
201 South Biscayne Boulevard
34th Floor, Miami Center
Miami, Florida 33131

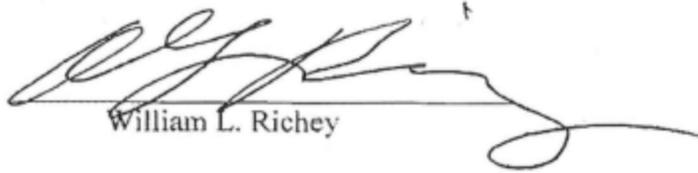
[REDACTED]

Tel: [REDACTED]
Fax: [REDACTED] 723 [REDACTED]

By: 
William L. Richey
Fla. Bar No. [REDACTED]

CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2007, the foregoing document will be served via facsimile and U.S. Mail on counsel, as listed on the attached service list. This document was not filed using CM/ECF because it is being filed under seal.


William L. Richey

FGJ 07-103 (WPB)

Service List

In re: Grand Jury Subpoenas
FGJ 07-103 (WPB)
United States District Court, Southern District of Florida

[REDACTED]
Assistant US Attorney
500 South Australian Avenue, Suite 400
West Palm Beach, Florida 33401
Fax: [REDACTED]

Roy Black, Esquire
Black Srebnick Kornspan & Stumpf
201 South Biscayne Boulevard, Suite 1300
Miami, Florida 33131
Fax: [REDACTED]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FGJ 07-103 (WPB)

IN RE GRAND JURY SUBPOENAS
DUCES TECUM NUMBERS
OLY-63 & OLY-64

FILED UNDER SEAL

MOTION OF [REDACTED] AND [REDACTED] FOR AN
EXTENSION OF TIME *NUNC PRO TUNC* TO FILE THEIR REPLY

[REDACTED] and [REDACTED] (" [REDACTED]"), by and through undersigned counsel, respectfully request for an enlargement of time, *nunc pro tunc*, to file their Reply to the Government's Response to the Motion to Intervene and to Quash Grand Jury Subpoenas and Cross Motion to Compel. In support thereof, [REDACTED] states as follows:

1. Undersigned counsel has been out of the country recently, only returning on August 11, 2007. By that time, the time to reply to the Government's Response to the Motion of Jeffrey Epstein to Intervene and to Quash Grand Jury Subpoenas and Cross Motion to Compel had already expired.

2. Undersigned counsel received a copy of the Reply filed by Jeffrey Epstein yesterday, August 16, 2007. Counsel has now reviewed that filing, along with the Government's response.

3. [REDACTED] reply is being filed concurrently with this request for an extension of time.

4. Counsel attempted to contact the AUSA in this case to determine whether she would consent to the relief requested herein, however, she is unavailable until next Thursday, August 23, 2007. Accordingly, to prevent further delay, this request is being filed at this time.

5. This request is not made for the purpose of delay.

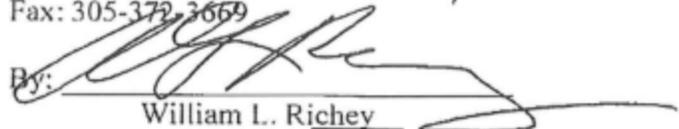
FGJ 07-103 (WPB)

WHEREFORE [REDACTED] and [REDACTED] respectfully request that the Court enter an order granting them an extension of time *nunc pro tunc* to file their Reply to the Government's Response to the Motion to Intervene and to Quash Grand Jury Subpoenas and Cross Motion to Compel.

Respectfully submitted,

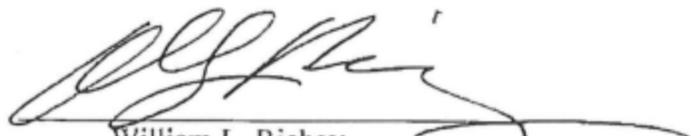
WILLIAM L. RICHEY, P.A.
201 South Biscayne Boulevard
34th Floor, Miami Center
Miami, Florida 33131

[REDACTED]
Tel: [REDACTED]
Fax: 305-372-3669

By: 
William L. Richey
Fla. Bar No. [REDACTED]

CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2007, the foregoing document will be served via facsimile and U.S. Mail on counsel, as listed on the attached service list. This document was not filed using CM/ECF because it is being filed under seal.


William L. Richey

FGJ 07-103 (WPB)

Service List

In re: Grand Jury Subpoenas
FGJ 07-103 (WPB)
United States District Court, Southern District of Florida

[REDACTED]
Assistant US Attorney
500 South Australian Avenue, Suite 400
West Palm Beach, Florida 33401
Fax: [REDACTED]

Roy Black, Esquire
Black Srebnick Kornspan & Stumpf
201 South Biscayne Boulevard, Suite 1300
Miami, Florida 33131
Fax: [REDACTED]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FGJ 07-103 (WPB)

IN RE GRAND JURY SUBPOENAS
DUCES TECUM NUMBERS
OLY-63 & OLY-64

FILED UNDER SEAL

ORDER GRANTING MOTION OF [REDACTED] AND [REDACTED]
FOR AN EXTENSION OF TIME *NUNC PRO TUNC* TO FILE THEIR REPLY

THIS CAUSE came before the Court on the Motion of [REDACTED] and [REDACTED] for an Extension of Time *Nunc Pro Tunc* to File Their Reply. Upon review of the Motion, it is hereby:

ORDERED AND ADJUDGED that the Motion is GRANTED. The Reply of [REDACTED] and [REDACTED] to the Government's Response to the Motion to Intervene and to Quash Grand Jury Subpoenas and Cross Motion to Compel is deemed timely filed.

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

KENNETH A. MARRA
UNITED STATES DISTRICT JUDGE

cc: William L. Richey, Esquire
[REDACTED]
Roy Black, Esquire

UNITED STATES DISTRICT COURT

Southern District of Florida

Case Number: FGJ 07-103 (WPB)

In re grand jury ~~Plaintiff~~
Subpoenas Duces Tecum

OLY-63 and ~~Defendant~~
OLY-64

SEALED DOCUMENT TRACKING FORM

Party Filing Matter Under Seal

Name: ROY BLACK, ESQ.

Address: 201 S. BISCAYNE BLVD #1300 MIAMI 33133
71-6421

On behalf of (se

Defendant

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Conclusion

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Unsealed and placed in the public portion of the court file

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Returned to the party or counsel for the party, as identified above

JEFFREY EPSTEIN

Attorney for:

For Roy Black, Black, Srebnick,
Kornspan and Stumpf, P.A.
on behalf of Intervenor Jeffrey Epstein

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

IN RE GRAND JURY SUBPOENAS)
DUCES TECUM NUMBERS)
OLY-63 and OLY-64)
_____)

CASE No. FGJ 07-103(WPB)

UNDER SEAL

UNDER SEAL

NOTICE OF UNAVAILABILITY OF COUNSEL FOR INTERVENOR

Jeffrey Epstein has moved to intervene in this matter and to quash grand jury subpoenas to investigator [REDACTED] and his firm, [REDACTED]. Mr. Epstein is represented by undersigned counsel Roy Black.

The issues raised by the motions to intervene and to quash have been briefed and the parties await a hearing date from the Court. Undersigned counsel would like to inform the Court that he is out of the jurisdiction on a family vacation until September 1, 2007. We respectfully request that any hearing the Court may schedule in this matter be scheduled after September 1, 2007, at the Court's discretion. Undersigned counsel spoke with the prosecutor, who indicated that the government objects.

Respectfully Submitted,

BLACK, SREBNICK, KORNSPAN & STUMPF, PA.

201 South Biscayne Boulevard

Suite 1300

Miami, Florida 33131

Ph: [REDACTED] - Fax: [REDACTED]

E-Mail: [REDACTED]

By:

ROYAL FOR
ROY BLACK, ESQ.

Florida Bar No. [REDACTED]

Counsel for Jeffrey Epstein

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on Aug. 14, 2007 a true and correct copy of the forging motion was furnished by email and by U.S. mail to: [REDACTED], [REDACTED], United States Attorney's Office, 500 South Australian Avenue, Suite 400, West Palm Beach, FL 33401.

This pleading was not filed using the CM/ECF system because it pertains to a grand jury investigation and therefore it has been filed under seal.

By: *ROY BLACK* FOR
ROY BLACK, ESQ.
Counsel for Jeffrey Epstein

Miami Office

August 7, 2007

[REDACTED]
Assistant US Attorney
500 South Australian Avenue, Suite 400
West Palm Beach, Florida 33401

Via Facsimile No. 1-[REDACTED]

RE: Grand Jury Subpoena
CASE NO. FGJ 07-103(WPB)/No. OLY-64

Dear Ms. [REDACTED]:

Please accept this letter as notice that [REDACTED] will be out of town from August 13, 2007 through August 15, 2007 and both Mr. [REDACTED] and I will be out of town from September 5, 2007 through September 16, 2007.

If you wish to schedule anything, please be so kind as to contact my assistant, Linda Vasserot and she will be glad to coordinate dates with you.

Sincerely,

William L. Richey
*Transcribed as Dictated;
Reviewed & Approved for Electronic
Transmission Absent Signature*

WLR/dct



U.S. Department of Justice

United States Attorney
Southern District of Florida

500 South Australian Ave., Suite 400
West Palm Beach, FL 33401

Facsimile: [REDACTED]

July 16, 2007

VIA FACSIMILE

Roy Black, Esq.
Black Srebnick Kornspan & Stumpf P.A.
201 S. Biscayne Blvd, Suite 1300
Miami, FL 33131

Re: Correspondence Dated July 13, 2007

Dear Mr. Black:

Thank you for your letter of July 13, 2007. You and your firm are neither a subpoenaed party nor counsel to a subpoenaed party. Accordingly, pursuant to the Federal Rules of Criminal Procedure, I am not at liberty to discuss this matter with you. Moreover, it is not the practice of this Office to discuss internal Department of Justice policies with non-Justice Department personnel. If Mr. [REDACTED] believes he has cause to move to quash the subpoena, or if Mr. Epstein does for that matter, counsel for the respective parties should so move. Otherwise, we expect compliance by tomorrow, which includes a one-week extension already requested by Ms. Sanchez prior to Mr. Richey's appearance as counsel for Mr. [REDACTED].

Sincerely,

R. Alexander Acosta
United States Attorney

By: [REDACTED]

Assistant United States Attorney

cc: [REDACTED], Esq.
William Richey, Esq.
Lilly Ann Sanchez, Esq.

EFTA00178979



U.S. Department of Justice

United States Attorney
Southern District of Florida

500 South Australian Ave., Suite 400
West Palm Beach, FL 33401

Facsimile: [REDACTED]

July 16, 2007

VIA FACSIMILE

William L. Richey, Esq.
William L. Richey, P.A.
201 S. Biscayne Blvd, 34th Floor
Miami, FL 33131

Re: Subpoena to [REDACTED]

Dear Mr. Richey:

I have not received a motion to quash the subpoena served upon Mr. [REDACTED], so I expect that your client will appear before the grand jury tomorrow. As of now, I believe that his appearance will be at 4:00 p.m., but please contact my assistant, [REDACTED], later this morning for confirmation of the start time. [REDACTED] can be reached at [REDACTED].

Sincerely,

R. Alexander Acosta
United States Attorney

By: [REDACTED]

Assistant United States Attorney

cc: [REDACTED], Esq.



U.S. Department of Justice

United States Attorney
Southern District of Florida

[REDACTED]
500 S. Australian Ave, 4th Floor
West Palm Beach, Florida 33401
[REDACTED]
Facsimile [REDACTED]

FACSIMILE COVER SHEET

TO: Roy Black, Esq.

DATE: July 16, 2007

FAX NO. [REDACTED]

OF PAGES: 2

PHONE NO. [REDACTED]

RE: _____

FROM: [REDACTED], Assistant U.S. Attorney

PHONE NO. [REDACTED]

COMMENTS:



U.S. Department of Justice

United States Attorney
Southern District of Florida

██████████
500 S. Australian Ave, 4th Floor
West Palm Beach, Florida 33401
██████████
Facsimile ██████████

FACSIMILE COVER SHEET

TO: Lilly Ann Sanchez

DATE: July 16, 2007

FAX NO. ██████████

OF PAGES: 2

PHONE NO. ██████████

RE: _____

FROM: ████████████████████, Assistant U.S. Attorney

PHONE NO. ██████████

COMMENTS:



U.S. Department of Justice

United States Attorney
Southern District of Florida

██████████
500 S. Australian Ave, 4th Floor
West Palm Beach, Florida 33401
██████████
Facsimile ██████████

FACSIMILE COVER SHEET

TO: William L. Richey, Esq.

DATE: July 16, 2007

FAX NO. ██████████

OF PAGES: 3

PHONE NO. ██████████

RE: ██████████

FROM: ██████████, Assistant U.S. Attorney

PHONE NO. ██████████

COMMENTS:

*** TX REPORT ***

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U.S. Department of Justice

United States Attorney
Southern District of Florida

[REDACTED]
500 S. Australian Ave, 4th Floor
West Palm Beach, Florida 33401
Facsimile [REDACTED]

FACSIMILE COVER SHEET

TO: William L. Richey, Esq.

DATE: July 16, 2007

FAX NO. [REDACTED]

OF PAGES: 3

PHONE NO. [REDACTED]

RE: [REDACTED]

FROM: [REDACTED], Assistant U.S. Attorney

PHONE NO. [REDACTED]

COMMENTS:

*** TX REPORT ***

TRANSMISSION OK

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CONNECTION ID
ST. TIME 07/16 09:30
USAGE T 01'00
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RESULT OK



U.S. Department of Justice

United States Attorney
Southern District of Florida

[REDACTED]
500 S. Australian Ave, 4th Floor
West Palm Beach, Florida 33401
[REDACTED]
Facsimile [REDACTED]

FACSIMILE COVER SHEET

TO: Roy Black, Esq.

DATE: July 16, 2007

FAX NO. [REDACTED]

OF PAGES: 2

PHONE NO. [REDACTED]

RE:

FROM: [REDACTED], Assistant U.S. Attorney

PHONE NO. [REDACTED]

COMMENTS:

*** TX REPORT ***

TRANSMISSION OK

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CONNECTION ID
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RESULT OK



U.S. Department of Justice

United States Attorney
Southern District of Florida

[REDACTED]
500 S. Australian Ave, 4th Floor
West Palm Beach, Florida 33401
(561) 820-8711
Facsimile [REDACTED]

FACSIMILE COVER SHEET

TO: Lilly Ann Sanchez

DATE: July 16, 2007

FAX NO. [REDACTED] # OF PAGES: 2

PHONE NO. [REDACTED] RE: _____

FROM: [REDACTED], Assistant U.S. Attorney

PHONE NO. [REDACTED]

COMMENTS:

ROY BLACK
HOWARD M. SREBNICK
SCOTT A. KORNSPAN
LARRY A. STUMPF
MARIA NEYRA
JACKIE PERCZEK
MARK A.J. SHAPIRO
JARED LOPEZ



CHRISTINE M. NG
JESSICA FONSECA-NADER
KATHLEEN P. PHILLIPS
AARON ANTHON
MARCOS BEATON, JR.
MATTHEW P. O'BRIEN

E-Mail: [REDACTED]

July 13, 2007

VIA FACSIMILE [REDACTED] AND U.S. MAIL

[REDACTED] Esq.
Assistant United States Attorney
Office of the United States Attorney
Southern District of Florida
500 South Australian Avenue, Suite 400
West Palm Beach, Florida 33401

Re: Grand Jury Subpoena - William Riley

Dear Ms. [REDACTED]:

I represent Jeffrey Epstein, the target of a pending Grand Jury investigation. Prior to the initiation of this federal investigation, I represented Mr. Epstein on a Palm Beach Florida State Attorney's Office investigation and subsequently an Information, the factual basis of which is identical to, and gave rise to, the federal investigation presently underway.

In connection with my earlier representation of Mr. Epstein, I hired Mr. William Riley as a private investigator to act under my direction in anticipation of defending Mr. Epstein against possible criminal charges and any litigation which may have followed. All his investigations were done as my agent and thus are covered by the work product privilege, and all communications to him are protected by the attorney client privilege.

Though we are not conceding the existence of any computers that would be responsive to the subpoena served upon Mr. Riley, to the extent there are any such computers, they would contain documents that are privileged attorney-client communications and attorney work-product. Your subpoena also asks for materials describing the scope of his investigation and thus they are our work product.

██████████, Esq.

July 13, 2007

Page 2

As you know, the United States Attorney's Office Manual, Guidelines for Issuing Grand Jury and Trial Subpoenas to Attorneys for Information Relating to the Representation of Clients, requires that the attorney client and work-product privileged information sought by the Grand Jury subpoena issued to Mr. Riley must first be authorized by the Assistant Attorney General for the Criminal Division before it may issue.

Therefore, please advise me as to whether the applicable sections of the United States Attorney's Office Manual was complied with prior to the issuance of the Grand Jury subpoena to Mr. Riley. Please also advise as to the preliminary steps taken in advance of the issuance of the subpoena, as required by the Manual. Finally, please provide me with the name of the Assistant Attorney General of the Criminal Division who undertook the evaluation of the request for the Grand Jury subpoena, as required by the same section of the Manual and, if an evaluation was made, the basis upon which the Assistant determined that the information sought in the subpoena was not protected by a valid claim of privilege.

Sincerely,


Roy Black

RB/wg

WILLIAM L. RICHEY, P.A.

201 South Biscayne Boulevard
34th Floor, Miami Center
Miami, Florida 33131-4325

Telephone: [REDACTED]
Facsimile: [REDACTED]
E-mail: [REDACTED]

5501 SW Sunshine Farms Way
Palm City, Florida 34990-5696
Telephone: [REDACTED]

Please Reply To:

Miami Office

July 9, 2007

[REDACTED]
Assistant US Attorney
500 South Australian Avenue, Suite 400
West Palm Beach, Florida 33401

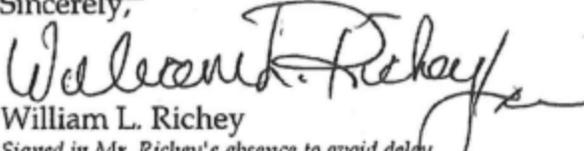
Via Facsimile No. 1- [REDACTED]

RE: Grand Jury Subpoena
CASE NO. FGJ 07-103(WPB)/No. OLY-64

Dear Ms. [REDACTED]

Please accept this letter that William Riley will be out of the country starting July 18, 2007 and returning on July 23, 2007. Also please remember that I am out of the country from July 21, 2007 through and including July 31, 2007.

If you wish to schedule anything, please be so kind as to contact my assistant, Linda Vasserot and she will be glad to coordinate dates with you.

Sincerely,

William L. Richey
Signed in Mr. Richey's absence to avoid delay

WLR/dct

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

GRAND JURY MATTER
FILED UNDER SEAL

IN RE GRAND JURY SUBPOENAS)
DUCES TECUM ISSUED TO)
WILLIAM RILEY AND)
RILEY KIRALY)
_____)

FGJ 07-103 (WPB)/No. OLY -64

**MOTION OF JEFFREY EPSTEIN TO INTERVENE AND TO QUASH
GRAND JURY SUBPOENAS AND INCORPORATED MEMORANDUM
OF LAW**

Now comes Jeffrey Epstein and respectfully moves this Honorable Court, pursuant to the Fourth and Fifth Amendments to the United States Constitution and to Fed. R. Crim. P. 17(c), for an Order:

A. permitting him to intervene in the matter of two grand jury subpoenas *duces tecum* issued to William Riley and Riley Kiraly, respectively, and to move to quash said subpoenas; and

B. quashing the above referenced subpoenas which require Mr. Riley to appear before the grand jury and to bring with him:

1. All computer equipment and electronic storage media removed from the residence located at 358 El Brillo Way, Palm Beach Florida, including but not limited to central processing units ("CPUs"), laptop computers, keyboards, printers, modems, routers, hard drives, flash drives, thumb drives, CD-Roms, DVDs, floppy diskettes, digital cameras, and memory cards.

2. All computer equipment and electronic storage media that currently belongs to, or has ever belonged to, Jeffrey Epstein, including but not limited to central processing units ("CPUs"), laptop computers, keyboards, printers, modems, routers, hard drives, flash drives, thumb drives, CD-Roms, DVDs, floppy diskettes, digital cameras, and memory cards.
3. All documents and information related to the nature of the relationship between Mr. William Riley and/or Riley Kiraly and Mr. Jeffrey Epstein, including, but not limited to, retainer agreements; employment agreements; billing statements (whether submitted directly to Mr. Epstein or to a third party for reimbursement); records of the dates when services were performed and the hours worked; telephone logs or records of dates of communications with Mr. Epstein (or with a third party on Mr. Epstein's behalf); appointment calendars/datebooks and the like (whether in hard copy or electronic form) for any period when work was performed on behalf of Mr. Epstein or when any communication was had with Mr. Epstein (or with a third party on Mr. Epstein's behalf); and records of fee arrangements and payments received for work performed on Mr. Epstein's behalf.

The bases for the requested relief are as follows:

A. the compelled production of these items, assuming they exist, would violate Mr. Epstein's rights under the Fifth Amendment to the United States Constitution;

B. such production of these items, assuming they exist, would further violate Mr. Epstein's Sixth Amendment right to effective assistance of counsel as well as his attorney-client and work-product privileges;

C. the subpoenas are unreasonable and oppressive and overbroad and unparticularized, in violation of the Fourth Amendment to the United States Constitution, the Due Process Clause of the Fifth Amendment, and Fed. R. Crim. Proc. 17(c); and

D. the subpoenas call for purely private papers in violation of the Fifth Amendment under *Boyd v. United States*, 116 U.S. 616 (1886).

As further reason therefore, Mr. Epstein refers the Court to the Memorandum of Law incorporated herein.

MEMORANDUM OF LAW

In or about March 2005, the Palm Beach Police Department initiated a criminal investigation of Jeffrey Epstein to determine whether he committed any criminal acts in connection with allegations that he paid women to provide massages to him in his home. According to information obtained by the local police, one or more of the women so engaged was under the age of 18 at the relevant time. Affidavit of Roy Black, Esq., sworn to July 17, 2007, annexed ("Black Aff.") ¶3. Following a 16 month investigation, on July 17, 2006, Mr. Epstein was charged under Florida law with one count of soliciting a prostitute, a third degree felony. That charge is still pending. Black Aff. ¶5.

In the fall of 2005, prior to being charged with any wrongdoing, Mr. Epstein retained Roy Black, Esq., to represent him in connection with the then ongoing state investigation. Black Aff. ¶3. Mr. Black in turn hired William Riley of Riley Kiraly, a private investigation firm, to assist him in his representation of Mr. Epstein. Black Aff. ¶4.

During the course of the state investigation, law enforcement authorities concluded that at some time, one or more computers had been removed from Mr. Epstein's home by a private investigator working at the instruction of Mr.

Epstein's counsel. It is those computers;¹ the testimony of the private investigator; and documents relating to the retention and to the work-product of the investigator that are sought by the subpoenas.

Both prior to the charge being brought and thereafter defense counsel were provided with open disclosure of the state's evidence. Black Aff. ¶6. As a result, all or virtually all of the evidence obtained by the state in its investigation has been reviewed by the defense. *Id.* Included in the materials reviewed are the audio and/or video taped sworn statements of 18 witnesses, transcripts of all 18 of those recorded sworn statements, the transcript of one additional sworn statement, and over 125 pages of documents prepared by the Palm Beach Police Department which detail *every* sworn statement obtained by detectives, *every* interview conducted by detectives, all their investigative efforts, and all the evidence gathered. *Id.* These documents include the entire police file, as well as the probable cause affidavits prepared by Palm Beach detectives and the application for a search warrant of Mr. Epstein's home. *Id.* Reviewing these materials has afforded the defense with a thorough understanding of the factual bases for any allegations that have been, or could have been, made against Mr. Epstein. Black Aff. ¶7.

¹ We do not concede the existence of any such computers. However, for purposes of this motion, we refer herein to "computers" as if one or more computers described in the subpoenas do exist.

In approximately January 2007, a grand jury in the Southern District of Florida initiated what was termed a “parallel” investigation to determine whether the conduct in which Mr. Epstein had allegedly engaged violated federal laws, including violations of 18 U.S.C. §2423 (travel for the purpose of engaging in unlawful sexual activity); and 18 U.S.C. §2422(b), use of the internet or other means of interstate communication to persuade, entice or coerce another to engage in unlawful sexual activity. Black Aff. ¶¶8, 11. We understood the conduct being scrutinized by the federal grand jury was the same as the subject of the state prosecution. Black Aff. ¶8. Indeed, during the course of the federal investigation, prosecutors asked for and were provided with copies of the 18 recorded sworn witness statements, and further asked for copies of the transcripts of those sworn statements. *Id.*

That the two investigations examine the same alleged conduct is also clear from Palm Beach Police Chief Michael S. Reiter’s letter expressing the Department’s displeasure with the actions of the state grand jury and State Attorney’s Office, and explaining he was referring the matter to federal authorities in order to initiate a federal investigation of the facts. Black Aff. ¶9, *see also* Black Aff. Exhibit “B”. At the same time, the Palm Beach Police Department both publicly released copies of its files, including the 87 page police report and

probable cause affidavits prepared by its detectives, and publicly announced its intentions to bring the investigation to federal authorities due to the Department's dissatisfaction with the State Attorney's handling of the matter. Black Aff. ¶9, *see also* Black Aff. Exhibit "C".

The discovery provided by state authorities in connection with the state prosecution disclosed no allegations or evidence of use of the internet, e-mail or computer based pornography or any other way in which a computer could be used to commit any of the crimes under investigation. Black Aff. ¶12. Nor, did the numerous discussions with federal prosecutors regarding the federal grand jury investigation reveal any such evidence. Black Aff. ¶¶10, 12, 13.

These subpoenas were not issued in a vacuum. They are simply the most recent of a series of highly intrusive and unusual attempts to acquire highly personal and/or privileged information concerning Mr. Epstein that can have no relevance whatever to the investigation, including Mr. Epstein's personal tax returns, medical records including treatment notes of Mr. Epstein's treatment by a chiropractor, and now, invasion of the defense camp by seeking records of the investigative work performed by Mr. Riley on behalf of Mr. Epstein's counsel in the very same investigation.

The attempt to compel the production of an investigator's "records of dates of communication with Mr. Epstein (or with a third party on Mr. Epstein's behalf)" and to compel the production of records of investigative work "performed on behalf of Mr. Epstein" is an extraordinary invasion of the defense team representing Mr. Epstein as both an indicted state criminal defendant and as a target of the current federal investigation.

While the propriety of those other subpoenas is not at issue here, the subpoenas to Mr. Riley and to his firm are. When it was pointed out to prosecutors that internal Department of Justice rules require, *inter-alia*, that issuance of the subpoenas be predicated on the pre-approval of the Assistant Attorney General of the Criminal Division under the United States Attorneys' Manual ("USAM"), §9-11.255, the question as to whether such approval had been obtained was simply ducked in an unilluminating exchange of correspondence. Though such guidelines create no third party rights, the fact that the required approval evidently was not obtained highlights the continuing overreaching of this investigation.

Moreover, quite apart from whether the required steps were taken internally to obtain approval before issuing the subpoenas, as a substantive matter, the government could not meet the internal guidelines necessary for issuing a subpoena seeking information relating to the representation of a client set forth in

USAM §9-13.410, including that “the information sought [be] reasonably needed for the successful completion of the investigation.”

The challenged subpoenas call for the production, without limitation, of the entire contents of these computers. *See* Black Aff. Exhibit “A”. Assuming the computers exist, they can be presumed to contain a vast array of data and documents, private and business related, none of which has been shown at any time to be of any relevance whatever to the investigation. They would also contain information and documents protected by the attorney-client and work-product privileges. Black Aff. ¶15. Compliance with the subpoenas would therefore necessarily require Mr. Epstein, through the agent of his attorney, to open all aspects of his life to government inspection and leave the government free to rummage at will through privileged, private, and business materials which are wholly irrelevant and unrelated to the subject matter of the government’s investigation.²

First, compliance with the subpoenas by Mr. Riley and/or his firm would violate Mr. Epstein’s Fifth Amendment rights because the act of production would,

² Even a single computer of the type in standard home usage can contain a volume of information many orders of magnitude greater than the paper storage capacity or a normal home. For example, hard drives sold in 2005 “generally have storage capacities of about eighty gigabytes, roughly the equivalent of *forty million pages of text* – about the information contained in the books on one floor of a typical academic library.” *United States v. Vilar*, 2007 WL 1075041 at *35 (S.D.N.Y. April 4, 2007) (emphasis added); accord *In re Search of Premises Known as 1406 N. 2nd Ave.*, 2006 WL 709036 at *3 (W.D. Mich. March 17, 2006) (home computer can easily hold 40,000 books); see also *In re Search of 3817 W. West End*, 321 F. Supp.2d 953, 959 (N.D. Ill. 2004).

under the teaching of *Fisher v. United States*, 425 U.S. 391, 398 (1976), result in compelling testimony from Mr. Epstein himself, in violation of his right against self incrimination. Further, it would also result in invasion of the defense camp, not only questioning actions taken by counsel to Mr. Epstein, but seeking the production of materials to which the government has no possible claim of right – materials protected by Mr. Epstein’s attorney-client and work product privileges. Black Aff. ¶15.

Moreover, it is simply beyond dispute that no court would uphold a subpoena that purports to require a person to produce every letter, every document, every bill, every record, every book, every photograph, every page from a magazine or newspaper he ever snipped, and every message he ever wrote, in other words, every piece of paper that is or has ever been in his home, without limitation or particularization. Yet, that is in effect what these subpoenas seek. For this reason alone, the subpoenas are *per se* unreasonable under the Fourth Amendment, the Due Process Clause of the Fifth Amendment, and Fed.R.Crim.P. Rule 17(c), and should be quashed in their entirety.

Indeed, the fact that there are so many ways in which the subpoenas violate Mr. Epstein’s fundamental rights may well be underscored by the fact that the government has failed to comply wither procedurally or substantively with the

directives of the Department of Justice regarding issuance of subpoenas calling for information relating to legal representation.

Even if the Court determines that the computers themselves must be produced pursuant to the grand jury subpoenas, compelled production does not overcome the need for the government both to particularize a subpoena and further to demonstrate probable cause to search any particular folder or file that is part of the contents of the computer. Until and unless there is a demonstration that probable cause exists to search for and seize particular documents, no search should be permitted.

I. MR. EPSTEIN IS ENTITLED TO INTERVENTION AS A MATTER OF RIGHT.

Fed. R. Civ. P. 24(a) grants intervention as a matter of right

. . .when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Mr. Epstein's interests in protecting materials encompassed within his attorney-client and work-product privileges; in preventing the use against him of compelled testimony in violation of his Fifth Amendment rights; and in protecting his

personal and business documents from wholesale invasion by the government amply satisfy this standard.

Intervention as of right under Fed.R.Civ.P. Rule 24(a)(2) must be granted if it is determined that

(1) the application to intervene is timely; (2) the applicant has an interest relating to the property or transaction which is the subject of the action; (3) the applicant is so situated that the disposition of the action, as a practical matter, may impede or impair his ability to protect that interest; and (4) the applicant's interest will not be represented adequately by the existing parties to the suit.

Sierra Club v. Leavitt, 2007 WL 1649987 at *3 (11th Cir. June 8, 2007), quoting *ManaSota-88, Inc. v. Tidwell*, 896 F.2d 1318, 1321 (11th Cir. 1990). As detailed below, all four requirements are amply met here.

First, the application is timely, as it is being filed prior to enforcement of the subpoenas. Second, Mr. Epstein plainly has a significant interest in protecting his attorney-client and work-product privileges, in asserting his Fifth Amendment privilege, and in preventing unwarranted government rummaging through the contents of his computers. Third, litigation concerning the enforceability of the subpoenas without Mr. Epstein's participation in the proceedings would leave him powerless to protect these vital interests. Fourth, these interests are personal to him and cannot be represented adequately by either the government or Mr. Riley.

Accordingly, Mr. Epstein should be afforded the right to intervene in this matter.

II. MR. EPSTEIN'S ACT-OF-PRODUCTION PRIVILEGE PRECLUDES THE GOVERNMENT FROM COMPELLING MR. RILEY TO PRODUCE THE ITEMS AT ISSUE.

Compelled production of the items demanded by the subpoenas would violate Mr. Epstein's right, guaranteed by the Fifth Amendment, not to be compelled to be a witness against himself. Because of the clear testimonial aspects that compliance with the subpoenas would require, the "act-of-production" privilege precludes the government from demanding that Mr. Riley appear and produce these items.

The Fifth Amendment "protects a person from being compelled to be a witness against himself". *Fisher v. United States*, 425 U.S. at 398. The privilege extends beyond oral testimony to embrace all compelled testimonial communications that are potentially incriminating. It specifically includes the act of producing documents where such production itself "communicates" information. *See Fisher*, 425 U.S. at 408. As the Supreme Court put it: "[a]lthough the contents of a document may not be privileged, the act of producing the document may be" because "[a] government subpoena compels the holder of the document to perform an act that may have testimonial aspects and an

incriminating effect”. *United States v. Doe*, 465 U.S. 605, 612 (1984); *see also Fisher*, 425 U.S. at 410 (“the act of producing evidence in response to a subpoena . . . has communicative aspects of its own, wholly aside from the contents of the papers produced”). This is so because

[c]ompliance with the subpoena tacitly concedes the existence of the papers demanded and their possession or control by the [subpoenaed party]. It would also indicate the [subpoenaed party’s] belief that the papers are those described in the subpoena.

Doe, 465 U.S. at 612, *quoting Fisher*, 425 U.S. at 410; *see also United States v. Hubbell*, 530 U.S. 27, 40 (2000) (compelled testimony “is not to be found in the documents produced in response to the subpoena” but is instead “the testimony inherent in the act of producing those documents”); *In re Grand Jury Subpoena*, 87 F.3d 1198, 1200 (11th Cir. 1996) (“[t]he production of documents conveys the fact that the documents exist, that they were in the possession of the witness, and that they were the documents subject to the subpoena. . . . Where these communicative acts of production have ‘testimonial’ value and incriminate the witness, the Fifth Amendment privilege may be invoked”); *accord United States v. Argomaniz*, 925 F.2d 1349, 1355-56 (11th Cir. 1991) (by producing the documents called for under the subpoena, the defendant “would be establishing the existence and authenticity of the documents listed in the summons, as well as verifying that these documents

were in his possession”); *In re Grand Jury Subpoena dated April 9, 1996*, 87 F.3d 1198, 1200 (11th Cir. 1996); *United States v. Gecas*, 50 F.3d 1549, 1566 (11th Cir. 1995); *In re Grand Jury Subpoena Duces Tecum*, 754 F.2d 918, 921 (11th Cir. 1985) (“the act of production alone can constitute self-incriminating testimony”); *In re Grand Jury 83-8*, 611 F. Supp. 16, 21 (S.D. Fla. 1985) (“the act of producing evidence in response to a subpoena . . . does have testimonial aspects of its own, wholly apart from the contents of the papers produced”); *In re Keller Financial Services of Florida, Inc.*; 258 B.R. 391, 403 (M.D. Fla. 2000); *Federal Savings & Loan Ins. Corp. v. Hardee*, 686 F. Supp 885, 887 (N.D. Fla. 1988).

Had the subpoenas been served directly on Mr. Epstein and demanded that he produce the items which had at some point allegedly been in his Palm Beach home or had ever belonged to him, Mr. Epstein would unquestionably be entitled to the protection of the act-of-production privilege. That is so because, as noted above, production thereof would inherently admit that the materials exist and that they had been in his home and/or belonged to him, which would, in turn, at a minimum, implicitly authenticate the contents of the materials. *See, e.g., United States v. Stewart*, 2003 WL 23024461 at *3 (S.D.N.Y. December 29, 2003) (act of production privileged where government’s claimed relevance for requiring the defendant to produce the subpoenaed documents “depends on the fact that the

documents were produced by [defendant] from his files; [c]learly such an act of production is testimonial, and may not be compelled”); *United States v. Bell*, 217 F.R.D. 335 (M.D. Pa. 2003) (where government lacks knowledge of specific documents, party’s production of the subpoenaed documents would testify to their existence and his possession of them).

Even if the government is correct in its belief that the items listed in ¶s 1 and 2 of the subpoenas are presently in the possession of Mr. Riley and/or his firm, Mr. Riley’s possession of the items would not lessen Mr. Epstein’s right to the protection of the act-of-production privilege. Mr. Riley is an investigator retained to assist counsel in representing Mr. Epstein in the very matter under investigation by the federal grand jury that issued the subpoenas. As such, Mr. Riley stands in the same relationship to Mr. Epstein as counsel himself. *See, e.g., Linde Thomson Langworthy Kohn & Van Dyke, P.C. v. Resolutions Trust Corp.*, 5 F.3d 1508, 1514 (D.C.Cir.1993); *In re Bieter Co.*, 16 F.3d 929, 936-38 (8th Cir. 1994); *Westinghouse Elec. Corp. v. Republic of Philippines*, 951 F.2d 1414, 1424 (3d Cir. 1991); *United States v. Cote*, 456 F.2d 142, 144 (8th Cir. 1972); *United States v. Judson*, 322 F.2d 460, 462 (9th Cir. 1963); *United States v. Kovel*, 299 F.2d 922 (2d Cir. 1961); *Burlington Indus. v. Rossville Yarn, Inc.*, No. CIV 0401-H, 1997 WL 404319, at 3 (N.D. Ga. June 3, 1997); *see also United States v. [REDACTED]*

Schwimmer, 892 F.2d 237, 243 (2d Cir. 1989). In short, the investigator in turn stands in the shoes of his client. *See Fisher*, 425 U.S. at 404.

Since production of the subpoenaed items by Mr. Epstein's legal team would, therefore, be the equivalent of production by Mr. Epstein, and the testimonial communication inherent in that production is the same as if it were Mr. Epstein himself appearing before the grand jury, the full protection of the act-of-production privilege applies here, and the subpoenas must be quashed in their entirety.

III. THE SUBPOENAS VIOLATE MR. EPSTEIN'S RIGHT TO COUNSEL UNDER THE SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AS WELL AS THE ATTORNEY-CLIENT AND WORK-PRODUCT PRIVILEGES.

As drafted, in addition to his Fourth Amendment rights, the subpoenas violate the work-product doctrine, as well as Mr. Epstein's Fifth Amendment right to due process and his Sixth Amendment right to counsel. In *Hickman v. Taylor*, 329 U.S. 495, 510-11 (1947), the Supreme Court recognized the modern work-product doctrine, holding that:

[i]n performing his various duties, however, it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel. Proper preparation of a client's case demands that he assemble information, sift what he considers to be the relevant from the irrelevant facts, prepare his legal

theories and plan his strategy without undue and needless interference.

The work-product doctrine grants attorneys "a zone of privacy within which to prepare the client's case and plan strategy, without undue interference". *In re San Juan Dupont Plaza Hotel Fire Litig.*, 859 F.2d 1007, 1014 (1st Cir. 1988). It applies in criminal as well as in civil cases. *United States v. Nobles*, 422 U.S. 225, 236-38 (1975) ("Although the work-product doctrine most frequently is asserted as a bar to discovery in civil litigation, its role in assuring the proper functioning of the criminal justice system is even more vital").

Equally important, the Supreme Court made it clear in *Nobles* that the work-product doctrine necessarily extends to work performed by an investigator for a defendant's attorney:

At its core, the work-product doctrine shelters the mental processes of the attorney, providing a privileged area within which he can analyze and prepare his client's case. But the doctrine is an intensely practical one, grounded in the realities of litigation in our adversary system. One of those realities is that attorneys often must rely on the assistance of investigators and other agents in the compilation of materials in preparation for trial. It is therefore necessary that the doctrine protect material prepared by agents for the attorney as well as those prepared by the attorney himself.

422 U.S. at 238-39; *see also See Cox v. Administrator U.S. Steel & Carnegie*, 17 F.3d 1386, 1422 (11th Cir.), *modified on other grounds*, 30 F.3d 1347 (11th Cir.

1994) (documents containing the mental impressions, conclusions, opinions, or other legal theories of an attorney or other representative of a party, concerning the litigation are, absolutely protected).

Clearly, the subpoenas served in this case improperly infringe upon the work-product doctrine. The subpoenas seek production of retainer agreements, employment agreements, records of dates when services were performed and the hours worked, telephone logs or records of dates of communications with Mr. Epstein, appointment calendars and diaries during any period in which work was performed for Mr. Epstein or any communication was had with Mr. Epstein (or with a third party on Mr. Epstein's behalf), and records of fee arrangements and payments received for work performed on Mr. Epstein's behalf. *See* Black Aff. Exhibit "A". These records, which contain evidence of work performed on behalf of Mr. Epstein and his attorneys, must be protected from disclosure by the work-product doctrine.

The government cannot invade the defense camp through the mechanism of a subpoena any more than it can by the surreptitious planting of an informant. *See, e.g., United States v. Henry*, 447 U.S. 264, 266 (1980) (rule in *Massiah v. United States*, 377 US. 201 (1964), violated when law enforcement agent instructed jailhouse informant "to be alert" for any incriminating statements). Nor can it do

so by keeping note of the documents selected by defense counsel for copying during the discovery process. *United States v. Horn*, 811 F.Supp.739 (D.N.H. 1992).³ In *Horn*, government counsel instructed an agent to make two copies of every document selected by defense counsel to be copied from amongst the materials made available for inspection by the government during the discovery process, and then used the documents to prepare a government witness, even after defense counsel objected to the copying and while a motion to seal the materials was pending. *Horn*, 811 F.Supp. at 748-749. Concluding that “there is every indication that the lead prosecutor wanted to . . . obtain an insight into defense counsel’s trial strategy, tactics, and thought processes without any concern for the rights of the defendants,” *Horn*, 811 F.Supp. at 749, the court found that the government had violated defendants’ work-product privilege, as well as their Fifth Amendment right to due process and their Sixth Amendment right to effective assistance of counsel. 811 F.Supp. at 752; *see also United States v. Horn*, 29 F.3d 754, 758 (1st Cir. 1994) (in government’s appeal of one of the district court’s remedies — ordering the government to pay defense legal fees to litigate the issue — the Court noted that the district court “ruled that this prosecutorial misconduct

³ As the court in *Horn* noted, several courts have held that defense counsel’s selection and compilation of documents in preparation for pretrial discovery fall within the highly-protected category of opinion work product. *Shelton v. American Motors Corp.*, 805 F.2d 1323, 1329 (8th Cir. 1986); *Sporck v. Peil*, 759 F.2d 312, 315-16 (3d Cir. 1985); *United States v. District Council of New York City and Vicinity of the United Bhd. of Carpenters and Joiners of Am.*, 1992 WL 208284 at *12 (S.D.N.Y. Aug. 18, 1992); *James Julian, Inc. v. Raytheon Co.*, 93 F.R.D. 138, 144 (D. Del. 1982).

not only violated the defendants' work-product privilege, but also abridged their Fifth Amendment right to due process and their Sixth Amendment right to effective assistance of counsel"); accord *United States v. Marshank*, 777 F.Supp. 1507, 1519 (N.D. Cal. 1991) (“[w]hen the government interferes in a defendant's relationship with his attorney to the degree that counsel's assistance is rendered ineffective, the government's misconduct may violate the defendant's Fifth Amendment right to due process as well as his Sixth Amendment right to counsel”).

The subpoenas-at issue here are akin to the conduct condemned in *Horn*. Here, through the issuance of a subpoena, the government seeks to track the investigation being conducted at the direction and under the supervision of his attorneys in an effort to obtain insight into defense counsel's strategy, tactics, and thought processes, without any concern for the rights of Mr. Epstein. Permitting the government to do so would violate the work-product privilege, Mr. Epstein's Fifth Amendment right to due process and his Sixth Amendment right to effective assistance of counsel.⁴

Indeed, many of the ways in which the subpoenas at issue trample on Mr. Epstein's rights are the very problems sought to be avoided by the internal

⁴ State proceedings were commenced against Mr. Epstein on July 17, 2006. Black Aff. ¶5. It is well established that an individual's Sixth Amendment right to counsel attaches once prosecution is commenced. See, e.g., *Texas v. Cobb*, 532 U.S. 162, 167 (2001) (Sixth Amendment right to counsel attaches once prosecution is commenced).

Department of Justice guidelines for the issuance of subpoenas seeking information relating to legal representation. As demonstrated above, a subpoena to a defense investigator under these circumstances is the same as a subpoena to defense counsel. And USAM Guideline §9-11.255 requires prior Department of Justice approval for the issuance of a subpoena to a lawyer. That requirement evidently was not met. *See* Black Aff. ¶15. Second, “because of the potential effects upon an attorney-client relationship that may result from the issuance of a subpoena for information relating to the attorney’s representation of a client”, the DOJ imposes strict requirements on such issuance. Among the requirements that must be met is that “there must be reasonable grounds to believe that . . . the information sought is reasonably needed for the successful completion of the investigation or prosecution. The subpoena must not be used to obtain peripheral or speculative information”. USAM §9-13.410. Though these guidelines create no enforceable rights, the prosecutors’ failure here to comply with the internal requirements provide further evidence that these subpoenas are an inappropriate and unwarranted attempt to invade Mr. Epstein’s defense camp.

IV. THE SUBPOENAS ARE UNREASONABLE IN THAT IT SEEKS PRODUCTION OF THINGS UNCONNECTED TO ANY CRIME UNDER INVESTIGATION.

This Court has authority to review a grand jury subpoena for reasonableness. *See, e.g., United States v. R. Enterprises, Inc.*, 498 U.S. 292, 300-01 (1991). While the Supreme Court has held that grand jury subpoenas are presumed reasonable, that presumption may be overcome and a subpoena quashed where, as here, “there is no reasonable possibility that the category of materials the [g]overnment seeks will produce information relevant to the general subject of the grand jury’s investigation”. *R. Enterprises, Inc.*, 498 U.S. at 301. Normally, as the Supreme Court noted in *R. Enterprises, Inc.*, recipients of a grand jury subpoena have little or no knowledge of the crime the grand jury is investigating and will therefore be unable to challenge the issuance of the subpoena on reasonableness grounds. *Id.* at 301-02. Here, that is not the case. Mr. Epstein is aware not only of the subject matter, but the exact charges the grand jury is investigating. *See* Black Aff. ¶11. From that, it is clear that the evidence the government is attempting to obtain is wholly irrelevant to the grand jury’s investigation. *See Id.* ¶¶12, 13.

The requirement that a grand jury subpoena be reasonable and particularized is beyond dispute. Not only is that explicitly stated in the Fourth Amendment, but

the requirement is included in Fed. R. Crim. P. Rule 17(c). See, e.g., *R. Enterprises*, 498 U.S. at 299 (Rule 17(c) requires that grand jury subpoenas be reasonable); *United States v. Dionisio*, 410 U.S. 1, 11 (1973) (“[t]he Fourth Amendment provides protection against a grand jury subpoena *duces tecum* too sweeping in its terms to be regarded as reasonable”); *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186, 208-09 (1946) (holding that subpoenas although not searches and seizures under the Fourth Amendment, must be reasonable). Subpoenas, such as the ones here, which are overbroad and lack particularity such that they sweep within their scope a multitude of irrelevant documents is quintessentially unreasonable, whether assessed under the Fourth Amendment, the Due Process Clause, or Rule 17(c).

Grand juries “are not licensed to engage in arbitrary fishing expeditions”. *R. Enterprises, Inc.*, 498 U.S. at 299. Yet that is precisely what enforcement of these subpoenas would permit – unbridled rummaging by the government through an individual’s “papers and effects” – namely, the contents of computers with no restriction or aim other than to “find something” of which the government has no evidence whatever exists. That renders these subpoenas the equivalent of a general search – the very evil that the Fourth Amendment was crafted to prohibit.

In its Requests at ¶1's and 2, rather than making any effort to limit the subpoenas to matters relevant to its investigation (which we submit could not here be done), the government instead improperly seeks the entire contents of the computers, despite no evidence they contain any documents of any conceivable relevance to the government's investigation. See Black Aff. Exhibit "A". Such a subpoena is unreasonable and overbroad in violation of the Fourth Amendment, the Due Process Clause, and Rule 17(c).

Similarly, the materials listed in ¶3 are fundamentally irrelevant to the government's investigation of Mr. Epstein, which is focused on allegations of sexual activity with underage girls. Neither Mr. Epstein's communications with his retained investigator, Mr. Riley (or his firm), nor any services Riley and his firm may have performed on behalf of Mr. Epstein, has any possible bearing on the government's investigation. Moreover, as demonstrated in Point III, *supra*, enforcement of the subpoenas as to ¶3 poses a grave threat to Mr. Epstein's Sixth Amendment right to counsel and to his attorney-client and work-product privileges.

For instance, certain of the materials requested in ¶3, such as the Requests for "information related to the nature of the relationship between Mr. William Riley and/or Riley Kiraly and Mr. Jeffrey Epstein" (Black Aff. Exhibit "A"), on

their face clearly implicate the work-product privilege; other Requests, such as those seeking billing records and records of services provided to Mr. Epstein, (*id.*), would require the redaction of work-product if the government were to be permitted access to them at all, given their irrelevance to the investigation. Since there is no issue as to Mr. Epstein's wealth or the source of the funds used to pay for the services, that irrelevance also extends to the requested documents showing the fees Mr. Epstein may have paid to Riley Kiraly for its services, as well.

V. EVEN IF THE GOVERNMENT IS PERMITTED TO SEIZE THE COMPUTERS ON THE BASIS OF A GRAND JURY SUBPOENA, THE SUBPOENAS MUST BE QUASHED AS UNREASONABLE AND OPPRESSIVE, OVERBROAD AND UNPARTICULARIZED.

Paragraphs 1 and 2 of the subpoenas suggest no limitation on the ability of the government to search the computers. Instead, the government purports to be in possession every bit of data stored therein, with no time frame. Quite clearly, the subpoenas are "go fishing" in the computers. In fact, the government has a belief that any information contained within the computers would be relevant to its investigation. *See Black Aff.* ¶12. Thus, Request ¶'s 1 and 2 cannot, consistent with the requirements of the Fourth Amendment and the protections against unreasonable subpoenas afforded by Rule 17(c), be enforced. Instead, the intervention of the Court is required to

prevent the government from using a grand jury subpoena to conduct an unfettered general search of the contents of the computers. See *United States v. Comprehensive Drug Testing, Inc.*, 473 F.3d 915, 938-39 (9th Cir. 2006) (“[i]t is not reasonable to allow the government to seize an indeterminately bounded array of computer data only later to set its own standards for review and retention thereof”).

Further, where that which the government seeks is not the computers themselves but rather the *content* of the computers, it is that content which must be particularly described in the subpoena to comply with the reasonableness requirement. See *In re Grand Jury Subpoena Duces Tecum Dated November 15, 1993*, 846 F.2d 11, 13 (S.D.N.Y. 1994). The subpoenas at issue fail utterly to do so. Rather, they are overbroad and unparticularized, and as such, cannot pass muster under either the Fourth Amendment or Rule 17(c).

The “reasonableness” requirement is understood to contemplate a requirement that the subpoena identify with particularity the documents to be produced. *Fisher*, 425 U.S. at 401 (Fourth Amendment protects against subpoenas which suffer from “too much indefiniteness or breadth in the things required to be particularly described”); *Oklahoma Press*, 327 U.S. at 209 (“the requirement is reasonableness, including particularity in describing the place to be searched and

the persons or things to be seized”). Here, though the subpoenas describe with particularity “the computers”, the subpoenas are wholly silent as to the real target – the *contents* of the computers. As courts have recognized in the context of search warrants authorizing searches of computers, the particularity requirement cannot be deemed satisfied absent specification of the documents or other materials which are the object of the search/subpoena.

Courts are increasingly recognizing that careful attention to the Fourth Amendment’s particularity requirement and overbreadth prohibition are critical in the context of computer searches. *See, e.g., United States v. Adjani*, 452 F.3d 1140, 1149 (9th Cir. 2006) (“[w]e understand the heightened specificity concerns in the computer context, given the vast amounts of data they can store”); *In re Search of 3817 W. West End*, 321 F.Supp.2d at 958-59 (marshalling the reasons why “a request for the search and seizure of computers merits a close look at the particularity requirement”); *see also* U.S. Dep’t of Justice, *Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations* (July 2002) (“DOJ Computer Search Manual”) (“[a]gents must take special care when describing the computer files or hardware to be seized”).

Courts have held that “when the government seeks to seize the information stored on a computer, as opposed to the computer itself, that underlying

information must be identified with particularity and its seizure independently supported by probable cause”. *United States v. Vilar*, 2007 WL 1075041 at *36; *United States v. Riccardi*, 405 F.3d 852, 862 (10th Cir. 2005) (“warrants for computer searches must affirmatively limit the search to evidence of specific federal crimes or specific types of material”); *United States v. Barbuto*, 2001 WL 670930 at *5 (D.Utah April 12, 2001) (agents “should have known that the warrant needed to specify what types of files were sought in the searching of the two computers so that personal files would not be searched); *see also* DOJ Computer Search Manual at 42 (instructing that “[i]f the probable cause relates only to the information . . . the warrant should describe the information, rather than the physical storage devices which happen to contain it”). Thus, “[t]o withstand an overbreadth challenge, the search warrant itself, or materials incorporated by reference must have specified the purpose for which the computers were seized and delineated the limits of their subsequent search”. *United States v. Hunter*, 13 F.Supp.2d 574, 584 (D.Vt. 1998)

Given these principles, the Requests contained in ¶’s 1 and 2 of the subpoenas are clearly unreasonable, since they purport to allow the government to search the entire contents of the computers with no requirement of showing reasonableness or relevance to the matters under investigation. That is not

permissible. See, e.g., *Riccardi*, 405 F.3d at 862-63 (warrant authorizing seizure of computer, all electronic and magnetic media stored therein, and a host of external storage devices without limitation unconstitutional as authorizing general search); *United States v. Joe*, 2007 WL 108465 at *7 (N.D.Cal. January 10, 2007) (holding “computers and related or similar devices, and information on hard or floppy drives, which may contain any documents and records” overbroad and ordering suppression); *United States v. Slaey*, 433 F.Supp.2d 499, 500 (E.D. Pa. 2006) (“[a]ny records, documents, materials and files maintained on a computer” overbroad because it authorized agents to seize everything, even if unrelated to the offense under investigation and even if wholly personal); *West End*, 321 F.Supp.2d at 962 (refusing to approve unguided search, which the government indicated could require review of all the seized data, because “what the government seeks is a license to roam through everything in the computer without limitation and without standards”); *United States v. Clough*, 246 F.Supp.2d 84, 87-88 (D. Me. 2003) (warrant to search computers which contained no limitations on the search and no references to statutes, crimes, or -illegality was unconstitutionally overbroad); *Hunter*, 13 F.Supp.2d at 584 (warrant authorizing seizure of all computers, all computer storage devices, and all computer software systems unconstitutionally overbroad).

Where, as here, computers or their contents or external storage media and devices are sought to be hauled away by the government for later off-site search, courts have an obligation to ensure that the subsequent search remains within the bounds of the Fourth Amendment reasonableness requirement. “[R]esponsible officials, *including judicial officers*, must take care to assure that [searches] are conducted in a manner that minimizes unwarranted intrusions upon privacy”. *West End*, 321 F.Supp.2d at 960, *quoting Andresen v. Maryland*, 427 U.S. 463, 482 n.11 (1976).

Most recently, in *Warshak v. United States*, 2007 WL 1730094 (6th Cir. June 18, 2007), the Sixth Circuit, in the context of upholding a Fourth Amendment challenge to the provisions of the Stored Communications Act which authorize the government to obtain an individual’s emails from his Internet Service Provider pursuant to court order or subpoena on a showing of less than probable cause and without advance notice to the subscriber, expressly addressed the particularity requirement where subpoenas as well as searches of computers are concerned:

Because our opinion speaks to the appropriate remedy in this case, we note one other important principle that applies both to e-mail seizures pursuant to a warrant supported by probable cause, and to compelled disclosure through a process akin to that involved with subpoenas. In neither instance is the government necessarily entitled to every e-mail stored with the ISP, many of which are likely to be entirely unrelated to its specific investigation . . . where a subpoena . . . compels the disclosure of e-

mails, the demand must be reasonable in scope and relevance.

Id. at 15 n.8 (citations omitted).

Similarly, the court in *In re Grand Jury Subpoena Duces Tecum Dated November 15, 1993*, *supra*, 846 F.2d 11, was called upon to review a grand jury subpoena that sought all computer hard drives of computers supplied to a number of officers and employees or a corporate entity, as well as all computer-accessible data, including all floppy disks, created by or on behalf of the specified officers or employees. The Court held that, because there were ways in which the government could have narrowed the subpoena to relevant documents, such as documents containing certain key words, the subpoena at issue unnecessarily demanded documents irrelevant to the grand jury inquiry and was, therefore, unreasonably broad under Rule 17. Likewise, in *In re Amato*, 2005 WL 1429743 at *11-*12 (D. Me. June 17, 2005), the Court, relying on a number of cases dealing with searches of computers pursuant to warrants, granted a motion to quash with respect to the paragraph of the subpoena requesting the production of all computers and computer related equipment: "Inasmuch as Category 10 of the Subpoenas in essence requests the turnover of all computers (and related objects) of both corporations with no express safeguard against a subsequent rummaging through,

and seizure of, irrelevant as well as relevant data, it cannot withstand Fourth Amendment reasonableness scrutiny”.

Courts are now recognizing that the seizure of a computer for later off-site search of its contents requires fresh thinking, and cannot simply be permitted by reference to the law that permits seizure of a file cabinet or other container of physical documents. *See, e.g., United States v. Hill*, 459 F.3d 966, 968 (9th Cir. 2006) (“computer-related searches can raise difficult Fourth Amendment issues different from those encountered when searching paper files”); *United States v. Walser*, 275 F.3d 981, 986 (10th Cir. 2001) (“[b]ecause computers can hold so much information touching on many different areas of a person’s life, there is a greater potential for the “intermingling” of documents and a consequent invasion of privacy when police execute a search for evidence on a computer”); *United States v. Campos*, 221 F.3d 1143, 1148 (10th Cir. 2000) (storage capacity of computers may require law enforcement officers to take a special approach because of intermingled documents); *West End*, 321 F.Supp.2d at 959 (“[t]he capacity of the computer to store these large quantities of information increases the risk that many of the intermingled documents will have nothing to do with the alleged criminal activity that creates probable cause for the seizure”); *Hunter*, 13 F.Supp.2d at 583 (“[c]omputer searches present the same problem as document

searches – the intermingling of relevant and irrelevant material – but to a heightened degree”).

Recently, the Ninth Circuit expressly applied the principles of in *United States v. Tamura*, 694 F.2d 591 (9th Cir. 1982), a leading case on the Fourth Amendment issues presented by intermingled documents in the traditional paper document search context,⁵ in the computer context, noting that because “the computer era adds new complexity to the test of reasonableness under the Fourth Amendment”, it viewed *Tamura* “as especially important in the computer context”. *United States v. Comprehensive Drug Testing, Inc.*, 473 F.3d 915, 939 (9th Cir. 2006). The review procedure outlined in *Tamura* was, the Court concluded, “necessary to ensure that the seizure of intermingled computer records remains reasonable”. *Id.* at 938. Therefore,

. . . in the case of a lawful and reasonable seizure of intermingled computer records for off-site review . . . our precedents and the general reasonableness mandate of the Fourth Amendment require the supervision of a magistrate. *It is not reasonable to allow the government to seize an*

⁵ In *Tamura*, the Court suggested that where documents are so intermingled that they cannot be feasibly sorted on site, agents “generally can avoid violating Fourth Amendment rights by sealing and holding the documents pending approval by a magistrate of a further search, in accordance with the procedures set forth in the American Law Institute’s Model Code of Pre-Arrest Procedure”. 694 F.2d at 595-96. In fact, the Court continued, if the officers are aware prior to the search that there will be a need to transport documents to another location for search, they should apply to the magistrate for specific approval of large-scale removal of material, which should be granted by the magistrate “only where on-site sorting is infeasible and no other practical alternative exists”. *Id.* at 596. The “essential safeguard” required, the Court stated, is “that *wholesale removal must be monitored by the judgment of a neutral, detached magistrate*”. *Id.* (emphasis added)

indeterminately bounded array of computer data only later to set its own standards for review and retention thereof.

Id. (emphasis added).

There is no question that Mr. Epstein has an important expectation of privacy in the contents of the subpoenaed materials. Amongst other safeguards, the Fourth Amendment protects Mr. Epstein's privacy absent probable cause that any particularized file or document contains evidence of a federal crime. The issuance of a subpoena does not eliminate the necessity of probable cause when the objects of the compulsion are documents in which a citizen has an expectation of privacy. In cases where the objects of a subpoena are business records, such as bank records in which a citizen has no expectation of privacy (*see, e.g., United States v. Miller*, 425 U.S. 435 (1976)), or telephone toll records (*Smith v. Maryland*, 442 U.S. 735, 740 n. 5 (1979)), a subpoena is sufficient. In cases, however, where an expectation of privacy exists, a subpoena lacking probable cause does not accord with Fourth Amendment rights. *See, generally, Katz v. United States*, 389 U.S. 347 (1967).

For these reasons, to the extent the subpoenas purport to permit the grand jury not only to seize, but to search the computers, they are unreasonable. Before the government may be permitted to search the computers, it must particularize the

items to be seized after a demonstration of probable cause to believe that the computers contain such items.

VI. THE COURT MUST ENSURE THAT THE GOVERNMENT IS NOT PERMITTED ACCESS TO MATERIALS PROTECTED BY THE ATTORNEY-CLIENT OR WORK-PRODUCT PRIVILEGES.

Though we believe the subpoenas should be quashed in their entirety, in the event the Court determines to enforce the subpoenas, the Court should be particularly careful to assure that safeguards are put in place to prevent the disclosure of attorney-client communications and attorney work-product. The subpoenaed materials contain information and documents protected by the attorney-client and work-product privileges, including attorney-client communications between Mr. Epstein and attorneys regarding various legal matters with respect to which he sought and obtained the assistance of counsel. Black Aff. ¶13. Prior to any production of the subpoenaed computers, counsel must be permitted to review an image of their contents for the purpose of identifying all privileged materials contained in the computers, segregating the privileged materials from the remaining content of the computers to ensure that privileged materials do not fall into the hands of government investigators.

The Sixth Circuit recently adopted a similar procedure in the context of traditional subpoenaed documents. The Court in *In re Grand Jury Subpoena*, 454 F.3d 511 (6th Cir. 2006), was called upon to “determine who has the right to

conduct a review for privilege of documents subject to a grand jury subpoena directed to a third party who possesses the documents but has not yet produced them to the government: the targets of the investigation whose rights of privilege are potentially implicated, or the federal government, operating a 'taint team' behind a 'Chinese wall' or protective screen". *Id.* at 512. The district court had rejected the proposal by the targets of the investigation that their counsel review the responsive documents and prepare a privilege log, with disputes to be resolved by the court in favor of first-instance review by a government "taint team". The Court, noting that "grand juries are not empowered to override private rights in all cases", and, in particular, "may not use their investigatory authority to violate a valid privilege" (*id.* at 519), reversed the district court, concluding that the risks to the attorney-client privilege inherent in the government's review of privileged materials were such that the targets should be permitted the opportunity to conduct their own privilege review prior to production. *See id.* at 521-23. Interestingly, in that case, the government conceded that "the leaking of privileged materials to investigators would raise the specter of *Kastigar*-like evidentiary hearings". *Id.* at 517. This case presents the same specter should Mr. Epstein be indicted.

The recognized importance of the attorney-client privilege is such that this Court should permit Mr. Epstein's counsel to review the contents of the computers to identify all privileged information, segregate it from the remaining contents of

the computers, and create a privilege log. Any disputes regarding privilege should be resolved by the Court prior to access by the government.

VII. SUBPOENAING PURELY PRIVATE PAPERS VIOLATES THE FIFTH AMENDMENT UNDER *BOYD*.

In *Boyd v. United States*, 116 U.S. 616 (1886), the Supreme Court condemned the seizure of an individual's private personal papers and their use as evidence against him as violative of the Fifth Amendment. While admittedly *Boyd* has been deeply eroded, and language in *Hubbell*, 530 U.S. at 35-36, would appear to be at odds with this portion of *Boyd*, the relevant portion of *Boyd* pertaining to an individual's private papers has not been directly overruled. Indeed, the Eleventh Circuit, in a case decided pre-*Hubbell*, left open the question of the continued vitality of *Boyd* with respect to personal documents. *In re Grand Jury Investigation*, 921 F.2d 1184, 1187 n.6 (11th Cir. 1991). *And see Barrett v. Acevedo*, 169 F.3d 1155, 1167 (8th Cir. 1999) ("whether *Doe*'s rationale extends to purely personal papers in a defendant's possession is still open to some debate"). Permitting the government to compel an individual to turn over to the government the entire contents of his computers for the government to do with it as it will, including reading all of his most private thoughts and communications, and then using those private writings to try him for a crime, "would break the heart of our

sense of privacy". *In re Steinberg*, 837 F.2d 527, 530 (1st Cir. 1988). It should not be permitted under the Fifth Amendment.

CONCLUSION

For all these reasons Mr. Epstein's must be permitted to intervene and to move to quash the subpoena duces tecum issued to William Riley, and the motion to quash the subpoenas should be granted in its entirety.

Respectfully submitted,

BLACK, SREBNICK, KORNSPAN & STUMPF, PA.
201 South Biscayne Boulevard, Suite 1300
Miami, Florida 33131

By: _____

ROY BLACK, ESQ.

Florida Bar No. _____

Counsel for Jeffrey Epstein

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 17, 2007, a true and correct copy of the forging motion was furnished by facsimile _____, and U.S. mail to:

Maria _____, Esq., U.S. Attorney's Office, 500 South Australian Avenue, Suite 400, West Palm Beach, FL 33401.

By: _____

ROY BLACK, ESQ.

Counsel for Jeffrey Epstein

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

GRAND JURY MATTER
FILED UNDER SEAL

IN RE GRAND JURY SUBPOENAS)
DUCES TECUM ISSUED TO)
WILLIAM RILEY AND)
RILEY KIRALY)
_____)

FGJ 07-103 (WPB)/No. OLY -64

AFFIDAVIT OF ROY BLACK, ESQ., IN SUPPORT OF
MOTION OF JEFFREY EPSTEIN
TO INTERVENE AND TO QUASH GRAND JURY SUBPOENAS

STATE OF FLORIDA)
) ss:
COUNTY OF DADE)

ROY BLACK, an attorney at law, duly sworn, deposes and says:

1. I am an attorney at law, duly admitted to practice before the State of Florida and the United States District Court for the Southern District of Florida.
2. As detailed further below, I am counsel to Jeffrey Epstein, the movant herein. It is my intention herein not to waive the attorney-client, attorney work-product or any other privileges, and I have no authority to do so. I make this affidavit solely to provide sufficient facts to support Mr. Epstein's motion to intervene and to quash the subpoenas duces tecum issued to William Riley and Riley Kiraly which make identical requests, copies of which are annexed hereto as Exhibit "A".
3. In or around September or October 2005, I was consulted and retained by Mr. Epstein to represent him in connection with an investigation being conducted by the State

Attorney in Palm Beach County. I understood that the State Attorney was investigating allegations that Mr. Epstein had paid women to provide him with massages in his home and that one or more of the women were alleged to have been under the age of 18 at the time of the massage. It was further alleged that during the course of one or more of the massages, sexual activity may have occurred.

4. In connection with my representation of Mr. Epstein, in or about September or October 2005 I retained the firm of Riley Kiraly, private investigators, to assist me in my representation of Mr. Epstein. I began thereafter to work in particular with licensed investigator William Riley. Without disclosing any work done by Mr. Riley or his firm on Mr. Epstein's behalf and at my direction, any actions thereafter taken by him or the firm were taken in connection with the legal representation of Mr. Epstein.

5. On July 17, 2006, Mr. Epstein was charged by a grand jury sitting in Palm Beach County with one count of solicitation of a prostitute, a third degree felony. That charge is pending.

6. Both prior to the charge being brought and thereafter I and other attorneys representing Mr. Epstein were provided with open disclosure of the State's evidence. As a result, I have had the opportunity to review all or virtually all of the evidence obtained by the State in its investigation. Included in the material I have reviewed are the audio and/or video taped sworn statements of 18 witnesses, transcripts of all 18 of those recorded sworn statements, the transcript of one additional sworn statement, and over 125 pages of documents prepared by the Palm Beach Police Department which detail *every* sworn statement obtained by detectives, *every* interview conducted by detectives, all their investigative efforts and all the evidence gathered. These documents include the entire police file, as well as the probable cause affidavits

prepared by Palm Beach detectives and the application for a search warrant of Mr. Epstein's home.

7. Reviewing these materials has afforded me a thorough understanding of the factual bases for any allegations that have been, or could have been, made against Mr. Epstein.

8. In or around January 2007, a federal grand jury in this District began a parallel investigation of Mr. Epstein to determine whether any federal laws were broken by Mr. Epstein's alleged conduct. We understood the conduct being scrutinized by the federal grand jury was the same as the subject of the State prosecution. Indeed, during the course of the federal investigation, prosecutors asked for and were provided with copies of the 18 recorded sworn witness statements, and further asked for copies of the transcripts of those sworn statements.

9. That the two investigations examine the same alleged conduct is also clear from the attached letter of the Chief of the Palm Beach Police Department expressing the Department's displeasure with the actions of the state grand jury and State Attorney's Office, and explaining he was referring the matter to federal authorities in order to initiate a federal investigation of the facts. *See* Letter of Michael S. Reiter, Chief of Police, dated July 24, 2006, annexed as Exhibit "B". At the same time, the Palm Beach Police Department both publicly released copies of its files, including the 87 page police report and probable cause affidavits prepared by its detectives, and publicly announces its intentions to bring the investigation to federal authorities due to the Department's dissatisfaction with the State Attorney's handling of the matter. *See* News Articles, annexed as Exhibit "C".

10. As part of that subsequent parallel federal investigation, I and other attorneys representing Mr. Epstein have repeatedly met with and spoken to federal prosecutors directing

the investigation. Again, those discussions have afforded me and other counsel an opportunity to understand the factual bases for any charges that could purportedly be brought.

11. I understand from my conversations with federal prosecutors that the federal statutes being considered are potential violations of 18 U.S.C. §2423 (travel for the purpose of engaging in unlawful sexual activity) and 18 U.S.C. §2422(b), use of the internet or other means of interstate communication to persuade, entice or coerce another to engage in unlawful sexual activity.

12. I can state without any hesitation, based on my knowledge of the evidence being reviewed, there have been no claims, nor is there any factual support for the making of any claims, that Mr. Epstein ever, directly or indirectly, used a computer to locate, to entice, to solicit, to coerce, or to persuade any woman to engage in any unlawful sexual activity. Nor is there any claim or reference to the use or display of any web based or computer based pornography. Further, there are no references whatever to the use of computers in connection with the alleged conduct at issue here.

13. In short, I have had a rare opportunity to view at least the whole of the State's evidence, which was turned over to federal authorities as part of their grand jury investigation, and to discuss any additional federal evidence gathered during the federal grand jury investigation. At no time has any potential claimant or any prosecutor ever mentioned the use of a computer by Mr. Epstein to engage in any wrongdoing.

14. These subpoenas were not issued in a vacuum. They are simply the most recent in a series of highly intrusive and unusual attempts to acquire highly personal and/or privileged information concerning Mr. Epstein that can have no relevance whatever to the investigation, including Mr. Epstein's personal tax returns (*see* Letter of [REDACTED], Assistant United

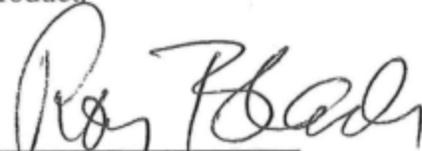
States Attorney, dated November 16, 2006, annexed as Exhibit "D"), medical records including treatment notes of Mr. Epstein's treatment by a chiropractor (*see* Grand Jury Subpoena *Duces Tecum*, dated March 13, 2007, to Dr. Thomas Rofrano annexed as Exhibit "E"), and now, invasion of the defense camp by seeking records of the investigative work performed by Mr. Riley on behalf of your affiant engaged as Mr. Epstein's counsel in the very same investigation.

15. While the propriety of those other subpoenas is not at issue here, the subpoenas to Mr. Riley and to his firm are. When it was pointed out to prosecutors that internal Department of Justice rules require, *inter alia*, that issuance of the subpoenas be predicated on the pre-approval of the Assistant Attorney General of the Criminal Division under the United States Attorneys' Manual ("USAM"), §9-11.255, the question as to whether such approval had been obtained was simply ducked in an exchange of correspondence. *See* Letter of Roy Black, Esq., to ██████████ ██████████, Assistant United States Attorney, dated July 13, 2007, and the letter from Ms. ██████████ in response, annexed as Exhibits "F" and "G", respectively. Though such guidelines create no third party rights, the fact that the required approval evidently was not obtained highlights the continuing overreaching of this investigation.

16. Moreover, quite apart from whether the required steps were taken internally to obtain approval before issuing the subpoenas, I also challenge whether, as a substantive matter, the government could meet the internal guidelines necessary for issuing a subpoena seeking information relating to the representation of a client, as set forth in USAM §9-13.410.

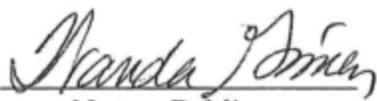
17. I also want to address the matter of attorney-client communications and attorney work-product. While, for purposes of this motion, we are not conceding the existence of any computers that would be responsive to the subpoena, to the extent there are any such computers, they would contain documents that are clearly attorney-client communications and attorney

work-product. Though for the reasons set forth in the motion the subpoenas should be quashed in their entirety, to the extent the Court allows the government to review the contents of the computer, I respectfully submit that a procedure must be instituted to allow for the protection of Mr. Epstein's attorney-client communications and attorney work-product.



ROY BLACK

Sworn to before me this
17th day of July 2007.



Notary Public



WANDA GOMEZ
MY COMMISSION # DD 248892
EXPIRES: November 22, 2007
Bonded Thru Budget Notary Services

STAMP/SEAL

Personally known OR Produced identification _____

Type of Identification Produced: _____

EXHIBIT A

United States District Court
SOUTHERN DISTRICT OF FLORIDA

TO: Custodian of Records
Riley Kiraly
Commercial Center of Miami
6135 NW 167th Street E-26
Miami, FL 33015

SUBPOENA TO TESTIFY
BEFORE GRAND JURY
FGJ 07-103(WPB)/No. OLY-64

SUBPOENA FOR:

PERSON DOCUMENTS OR OBJECT[S]

YOU ARE HEREBY COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date and time specified below.

PLACE: United States District Courthouse 701 Clematis Street West Palm Beach, Florida 33401	ROOM: Grand Jury Room
	DATE AND TIME: July 10, 2007 1:00 pm*

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

THE DOCUMENTS AND OBJECTS LISTED ON ATTACHMENT A.

***Please coordinate your compliance with this subpoena and confirm the date, time, and location of your appearance with S/A [REDACTED], Federal Bureau of Investigation, Telephone: [REDACTED].**

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

CLERK (BY) DEPUTY CLERK		DATE: June 18, 2007
--------------------------------	--	-------------------------------

This subpoena is issued upon application [REDACTED]	Name, Address and Phone Number of Assistant U.S. Attorney [REDACTED] Assistant U.S. Attorney 500 So. Australian Avenue, Suite 400 West Palm Beach, FL 33401-6235 Tel: [REDACTED] Fax: [REDACTED]
--	--

*If not applicable, enter "none."

ATTACHMENT A
SUBPOENA TO PAUL A. LAVERY

1. All computer equipment and electronic storage media removed from the residence located at 358 El Brillo Way, Palm Beach, Florida, including but not limited to central processing units ("CPUs"), laptop computers, keyboards, printers, modems, routers, hard drives, flash drives, thumb drives, CD-Roms, DVDs, floppy diskettes, digital cameras, and memory cards.
2. All computer equipment and electronic storage media that currently belongs to, or has ever belonged to, Jeffrey Epstein, including but not limited to central processing units ("CPUs"), laptop computers, keyboards, printers, modems, routers, hard drives, flash drives, thumb drives, CD-Roms, DVDs, floppy diskettes, digital cameras, and memory cards.
3. All documents and information related to the nature of the relationship between Mr. William Riley and/or Riley Kiraly and Mr. Jeffrey Epstein, including, but not limited to, retainer agreements; employment agreements; billing statements (whether submitted directly to Mr. Epstein or to a third party for reimbursement); records of the dates when services were performed and the hours worked; telephone logs or records of dates of communications with Mr. Epstein (or with a third party on Mr. Epstein's behalf); appointment calendars/datebooks and the like (whether in hard copy or electronic form) for any period when work was performed on behalf of Mr. Epstein or when any communication was had with Mr. Epstein (or with a third party on Mr. Epstein's behalf); and records of fee arrangements and payments received for work performed on Mr. Epstein's behalf.

United States District Court
SOUTHERN DISTRICT OF FLORIDA

TO: William Riley
Riley Kiraly
Commercial Center of Miami
6135 NW 167th Street E-26
Miami, FL 33015

**SUBPOENA TO TESTIFY
BEFORE GRAND JURY**
FGJ 07-103(WPB)/No. OLY-63

SUBPOENA FOR:

PERSON

DOCUMENTS OR OBJECT[S]

YOU ARE HEREBY COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date and time specified below.

PLACE: United States District Courthouse 701 Clematis Street West Palm Beach, Florida 33401	ROOM: Grand Jury Room
	DATE AND TIME: July 10, 2007 1:00 pm*

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

THE DOCUMENTS AND OBJECTS LISTED ON ATTACHMENT A.

*Please coordinate your compliance with this subpoena and confirm the date, time, and location of your appearance with S/A [REDACTED], Federal Bureau of Investigation, Telephone: [REDACTED]

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

CLERK		DATE:
(BY) DEPUTY CLERK		June 18, 2007

This subpoena is issued upon application of the United States of America
[REDACTED]

Name, Address and Phone Number of Assistant U.S. Attorney
[REDACTED] Assistant U.S. Attorney
500 So. Australian Avenue, Suite 400
West Palm Beach, FL 33401-6235
Tel: [REDACTED] x [REDACTED]
Fax: [REDACTED]

*If not applicable, enter "none."

To be used in lieu of AQ110

ATTACHMENT A
SUBPOENA TO PAUL A. LAVERY

1. All computer equipment and electronic storage media removed from the residence located at 358 El Brillo Way, Palm Beach, Florida, including but not limited to central processing units ("CPUs"), laptop computers, keyboards, printers, modems, routers, hard drives, flash drives, thumb drives, CD-Roms, DVDs, floppy diskettes, digital cameras, and memory cards.
2. All computer equipment and electronic storage media that currently belongs to, or has ever belonged to, Jeffrey Epstein, including but not limited to central processing units ("CPUs"), laptop computers, keyboards, printers, modems, routers, hard drives, flash drives, thumb drives, CD-Roms, DVDs, floppy diskettes, digital cameras, and memory cards.
3. All documents and information related to the nature of the relationship between Mr. William Riley and/or Riley Kiraly and Mr. Jeffrey Epstein, including, but not limited to, retainer agreements; employment agreements; billing statements (whether submitted directly to Mr. Epstein or to a third party for reimbursement); records of the dates when services were performed and the hours worked; telephone logs or records of dates of communications with Mr. Epstein (or with a third party on Mr. Epstein's behalf); appointment calendars/datebooks and the like (whether in hard copy or electronic form) for any period when work was performed on behalf of Mr. Epstein or when any communication was had with Mr. Epstein (or with a third party on Mr. Epstein's behalf); and records of fee arrangements and payments received for work performed on Mr. Epstein's behalf.

EXHIBIT B



TOWN OF PALM BEACH POLICE DEPARTMENT



A NATIONAL AND STATE ACCREDITED LAW ENFORCEMENT AGENCY

July 24, 2006

HAND DELIVERED

[REDACTED]

Dear Mr. [REDACTED]

Your daughter, [REDACTED] was the victim of a crime which has been investigated by the Palm Beach Police Department and subsequently referred for prosecution to the Palm Beach County State Attorney's Office. You may be aware that Jeffrey Epstein was indicted on charges of solicitation for prostitution by a State of Florida grand jury last week and turned himself in at the Palm Beach County jail on July 23; 2006. While I do not speak for them, it is my understanding that is the full context in which the Palm Beach County State Attorney's Office intends to address the charges that involved the crime in which your daughter was victim.

Please know that it is the role and responsibility of law enforcement to investigate crime and to refer appropriate charges to the prosecutor for consideration. I believe that the Palm Beach Police Department has acted competently and responsibly in carrying out this role. Should you have any questions concerning the state prosecution of this matter, they are best addressed by the Palm Beach County State Attorney's Office.

I do not feel that justice has been sufficiently served by the indictment that has been issued. Therefore, please know that his matter has been referred to the Federal Bureau of Investigation to determine if violations of federal law have occurred. In the event that the FBI should choose to pursue this matter, the Palm Beach Police Department will assist them in their investigation of potential violations of federal law.

Please feel free to contact me at [REDACTED] should you have any questions.

Sincerely,

Michael S. Reiter
Chief of Police

MSR:nt

EXHIBIT C

PB POST

After long probe, Palm Beach billionaire faces solicitation charge By
Larry Keller

Palm Beach Post Staff Writer

Wednesday, July 26, 2006

Palm Beach billionaire Jeffrey Epstein paid to have underage girls and young women brought to his home, where he received massages and sometimes sex, according to an investigation by the Palm Beach Police Department.

Palm Beach police spent months sifting through Epstein's trash and watching his waterfront home and Palm Beach International Airport to keep tabs on his private jet. An indictment charging Epstein, 53, was unsealed Monday, charging him with one count of felony solicitation of prostitution.

Palm Beach police thought there was probable cause to charge Epstein with unlawful sex acts with a minor and lewd and lascivious molestation.

Police Chief Michael Reiter was so angry with State Attorney Barry Krischer's handling of the case that he wrote a memo suggesting the county's top prosecutor disqualify himself.

"I must urge you to examine the unusual course that your office's handling of this matter has taken and consider if good and sufficient reason exists to require your disqualification from the prosecution of these cases," Reiter wrote in a May 1 memo to Krischer.

While not commenting specifically on the Epstein case, Mike Edmondson, spokesman for the state attorney, said his office presents cases other than murders to a grand jury when there are questions about witnesses' credibility and their ability to testify.

By the nature of their jobs, police officers look at evidence from a "one-sided perspective," Edmondson said. "A prosecutor has to look at it in a much broader fashion," weighing the veracity of witnesses and how they may fare under defense attorneys' questioning, he said.

Epstein's attorney, Jack Goldberger, said his client committed no crimes.

"The reports and statements in question refer to false accusations that were not charged because the Palm Beach County state attorney questioned the credibility of the witnesses," Goldberger said. A county grand jury "found the allegations wholly unsubstantiated and not credible," and that's why his client was not charged with sexual activity with minors, he said.

Goldberger said Epstein passed a lie detector test administered by a reputable polygraph examiner in which he said he did not know the girls were minors. Also, a search warrant served on Epstein's home found no evidence to corroborate the girls' allegations, Goldberger said.

According to police documents:

* A Palm Beach Community College student said she gave Epstein a massage in the nude, then brought him six girls, ages 14 to 16, for massage and sex-tinged sessions at his home.

* A 27-year-old woman who worked as Epstein's personal assistant also facilitated the liaisons, phoning the PBCC student to arrange for girls when Epstein was coming to town. And she escorted the girls upstairs when they arrived, putting fresh sheets on a massage table and placing massage oils nearby.

* Police took sworn statements from five alleged victims and 17 witnesses. They contend that on three occasions, Epstein had sex with the girls.

A money manager for the ultra-rich, Epstein was named one of New York's most eligible bachelors in 2003 by The New York Post. He reportedly hobnobs with the likes of former President Clinton, former Harvard University President Lawrence Summers and Donald Trump, and has lavish homes in Manhattan, New Mexico and the Virgin Islands.

He has contributed tens of thousands of dollars to Democratic Party candidates and organizations, including Sen. John Kerry's presidential bid, and the Senate campaigns of Joe Lieberman, Hillary Clinton, Christopher Dodd and Charles Schumer.

Goldberger is one of five attorneys Epstein has retained since he became the subject of an investigation, Edmondson said. Among the others: Alan Dershowitz, the well-known Harvard law professor and author, who is a friend of Epstein. Dershowitz could not be reached for comment.

Police said the woman who enlisted young girls for Epstein was [REDACTED], 20, of Royal Palm Beach. [REDACTED] has worked at an Olive Garden restaurant in Wellington and said she was a journalism major at Palm Beach Community College when she was questioned by police last October. She has an unlisted phone number and could not be reached for comment.

[REDACTED] said she met Epstein when, at age 17, a friend asked her if she would like to make money giving him a massage. She said she was driven to his five-bedroom, 7 1/2 -bath home on the Intracoastal Waterway, then escorted upstairs to a bedroom with a massage table and oils. Epstein and [REDACTED] were both naked during the massage, she said, but when he grabbed her buttocks, she said she didn't want to be touched.

Epstein said he'd pay her to bring him more girls * the younger the better, [REDACTED] told police. When she tried once to bring a 23-year-old woman to him, Epstein said she was too old, [REDACTED] said.

[REDACTED], who has not been charged in the case, said she eventually brought six girls to Epstein who were paid \$200 each time, [REDACTED] said. "I'm like a Heidi Fleiss," police quoted her as saying. The girls knew what to expect when they were taken to Epstein's home, [REDACTED] said. Give a massage * maybe naked * and allow some touching.

One 14-year-old girl [REDACTED] took to meet Epstein led police to start the investigation of him in March 2005. A relative of the girl called to say she thought the child had recently engaged in sex with a Palm Beach man. The girl then got into a fight with a classmate who accused her of being a prostitute, and she couldn't explain why she had \$300 in her purse.

The girl gave police this account of her meeting with Epstein:

She accompanied [REDACTED] and a second girl to Epstein's house on a Sunday in February 2005. Once there, a woman she thought was Epstein's assistant told the girl to follow her upstairs to a room featuring a mural of a naked woman, several photographs of naked women on a shelf, a hot pink and green sofa and a massage table.

She stripped to her bra and panties and gave him a massage.

Epstein gave the 14-year-old \$300 and she and the other girls left, she said. She said [REDACTED] told her that Epstein paid her \$200 that day.

Other girls told similar stories. In most accounts, Epstein's personal assistant at the time, [REDACTED], now 27, escorted the girls to Epstein's bedroom.

[REDACTED], whose most recent known address is in North Carolina, has not been charged in the case.

Palm Beach police often conducted surveillance of Epstein's home, and at Palm Beach International Airport to see if his private jet was there, so they would know when he was in town. Police also arranged repeatedly to receive his trash from Palm Beach sanitation workers, collecting papers with names and phone numbers, sex toys and female hygiene products.

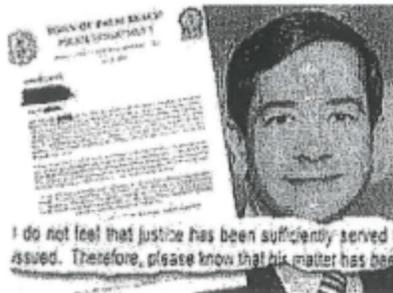
One note stated that a female could not come over at 7 p.m. because of soccer. Another said a girl had to work Sunday * "Monday after school?" And still another note contained the work hours of a girl, saying she leaves school at 11:30 a.m. and would come over the next day at 10:30 a.m.

Only three months before the police department probe began, Epstein donated \$90,000 to the department for the purchase of a firearms simulator, said Jane Struder, town finance director. The purchase was never made. The money was returned to Epstein on Monday, she said.

I. Palm Beach Police Chief Says Justice Wasn't Served in Teen Sex Scandal

July 26, 2006 6:47 PM

Maddy Sauer Reports:



"I do not feel that justice has been sufficiently served," wrote Palm Beach Police Chief Michael Reiter in a letter he sent to the parents of young girls that he believes are victims of sex crimes committed by New York financier Jeffrey Epstein.

The police chief is angry that despite his department's lengthy probe of Epstein's alleged illegal sexual activity with underage girls, Epstein was indicted on a much lesser charge of soliciting a prostitute. The probable cause affidavit for Epstein's arrest alleges much more serious acts. Epstein is alleged to have repeatedly paid young, and some underage girls, to come to his house, massage him and on a few occasions have sex with him, according to the affidavit.

Meanwhile, the Palm Beach police have referred the matter to the FBI.

Today, Epstein's attorney called the allegations untrue and said that the witnesses' credibility had been called into question.

"The reports and statements in question refer to false accusations that were not charged because the Palm Beach County State Attorney's office questioned the credibility of the witnesses, and a Palm Beach County grand jury decided not to believe the allegations," said Jack Goldberger. "Consequently, the grand jury chose not to accuse Mr. Epstein of anything beyond the solicitation of a prostitute."

Calls seeking comment from the Palm Beach County State Attorney Barry Krischer were not returned today.

Chief Reiter has not been happy with Krischer's handling of the matter for some time. He wrote an angry letter to him in May urging him to consider disqualifying himself from the prosecution of the case saying: **"I must renew my prior observation to you that I continue to find your office's treatment of these cases highly unusual,"** wrote Reiter. He urged Krischer to **"consider if good and sufficient reason exists to require your disqualification from the prosecution of these cases."** The police believed they had probable cause to arrest Epstein on four counts of unlawful sex acts with minors and one count of lewd and lascivious molestation.

While Epstein was indicted on charges of soliciting a prostitute, the allegations in the police affidavit are more serious. Among them:

- A girl who began massaging Epstein when she was 16 years old told police she became his "number one girl" and had visited his house hundreds of times. According to police, she said that when she told Epstein she was 16 years old, he advised her not to tell anyone that. This same girl said she and Epstein had an understanding that no vaginal penetration would occur. Yet on one occasion, she told police, Epstein forced himself on her. "She said her head was being held against the table forcibly, as he continued to pump inside her. She screamed 'No!' and Epstein stopped," according to the affidavit. Epstein allegedly paid the girl \$1,000 for that visit.

- A 14-year-old girl and her family reported that Epstein had touched the girl's vaginal area with a vibrator when she was at his house.

- One woman who would bring young girls to Epstein's house to massage him told police she brought six girls to see him, and that they were all ages 14 to 16.

- Many of the girls told police that Epstein would try and convince them to take off more clothing or to go further sexually than they were comfortable doing. "Jeff would try to get away with more and more on each massage," said one girl who began massaging Epstein when she was 16 years old.

» [Click here for Brian \[REDACTED\] & Investigative Team's Homepage](#)

July 26, 2006 | [Permalink](#) | [User Comments \(15\)](#)

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EXHIBIT D



U.S. Department of Justice

United States Attorney
Southern District of Florida

500 South Australian Ave., Suite 400
West Palm Beach, FL 33401

Facsimile: [REDACTED]

November 16, 2006

VIA FACSIMILE

Lilly Ann Sanchez, Esq.
Fowler White Burnett
1395 Brickell Ave Fl 14
Miami Florida 33131-3300

Re: Jeffrey Epstein

Dear Ms. Sanchez:

Thank you for your letter and voicemail. I will plan to direct all correspondence to you unless you provide other instructions. In turn, please direct all future communications with the Office to my attention.

As I mentioned in my voicemail, Mr. Lewis stated that Mr. Epstein is willing to provide documents and information that we deem necessary to the investigation. I would appreciate if you would forward the documents and information listed below to my attention or, if you prefer, to Special Agent [REDACTED], Federal Bureau of Investigation, 500 South Flagler Drive, Suite 500, West Palm Beach, FL 33404. If you require a grand jury subpoena for any of the items, please let me know.

1. Documentation related to the ownership of the property located at 358 El Brillo Way, Palm Beach, Florida, including the purchase agreement and any mortgages, liens, or other encumbrances.
2. Documentation related to the ownership of Gulfstream Aircraft N909JE, Model G1159B, and Boeing Aircraft N908JE, Model 727-31, including purchase information, lease agreements, liens or other encumbrances, and payments for maintenance and storage.
3. All documents and information provided to the Palm Beach County State Attorney's Office in connection with its investigation of Mr. Epstein.
4. Bank information, account numbers, bank statements and billing statements for any bank accounts and/or credit cards used by Mr. Epstein (or any of his employees) to pay for Mr. Epstein's personal expenses, from January 1, 2004 to the present.

LILLY ANN SANCHEZ, ESQ.
NOVEMBER 16, 2006
PAGE 2 OF 3

5. Information and billing statements for any "land lines," cellular telephones, Blackberry units, e-mail addresses, webpages, or the like for Mr. Epstein and all of his personal assistants (including but not limited to [REDACTED] and [REDACTED]) from January 1, 2004 to the present.
6. The computers, hard drives, CPUs, and any other computer media (including CD-ROMs, DVDs, floppy disks, flash drives, etc.) removed from 358 El Brillo Way, Palm Beach, Florida prior to the execution of the search warrant at that premises in October 2005.
7. All calendars, diaries, and address books kept by Mr. Epstein and all of his personal assistants from January 1, 2004 to the present, including electronic calendars and address books, whether stored on computer, PDA, or cellular telephone.
8. For persons in his employ at any time from January 1, 2004 to the present, employment and/or separation agreements between Mr. Epstein (or his company) and his personal assistants, airplane pilots, personal chefs, and for anyone who worked at 358 El Brillo Way, Palm Beach, Florida.
9. The names and contact information of all persons who performed "massage services" for Mr. Epstein at 358 El Brillo Way, Palm Beach, Florida or at his residences in New Albany, Ohio, Little St. James, U.S.V.I., and New York, NY; and documentation of payments made to or gifts given to any such persons.
10. Wage and earnings statements and other tax documents for all individuals referenced in items (8) and (9), *supra*.
11. Mr. Epstein's tax returns for 2004 and 2005.
12. From January 1, 2004, to the present, flight manifests and passenger lists for travel via Gulfstream Aircraft N909JE, Model G1159B and Boeing Aircraft N908JE, Model 727-31 (to the extent not already provided).
13. Documentation regarding any other interstate or international travel undertaken by Mr. Epstein from January 1, 2004, to the present, including but not limited to airplane tickets, car rental records, and hotel receipts.

After I have a chance to review the documents, I will contact you to set up a time to interview Mr. Epstein.

LILLY ANN SANCHEZ, ESQ.
NOVEMBER 16, 2006
PAGE 3 OF 3

Thank you for your assistance with this matter, and I look forward to working with you and Mr. Lefcourt.

Sincerely,

R. Alexander Acosta
United States Attorney

By:

Assistant United States Attorney

EXHIBIT E

United States District Court

SOUTHERN DISTRICT OF FLORIDA

Thomas Rofrano

SUBPOENA TO TESTIFY BEFORE GRAND JURY

FGJ 07-103(WPB)-Tues./No. OLY-33

SUBPOENA FOR:

PERSON

DOCUMENTS OR OBJECT[S]

YOU ARE HEREBY COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date and time specified below.

Place: United States District Courthouse 701 Clematis Street West Palm Beach, Florida 33401	ROOM: Grand Jury Room DATE AND TIME: March 13, 2007 1:00 pm*
--	--

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

All documents referring or relating to Jeffrey Epstein, including but not limited to billing statements, record of payments, appointment books, treatment notes, and correspondence.

*Please coordinate your compliance with this subpoena and confirm the date and time, and location of your appearance with Special Agent [REDACTED], Federal Bureau of Investigation, Telephone: [REDACTED].

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

CLERK OF COURT 	DATE: March 2, 2007
---	------------------------

This subpoena is issued upon application of [REDACTED], United States of America.	Name, Address and Phone Number of Assistant U.S. Attorney [REDACTED] Assistant U.S. Attorney 500 So. Australian Avenue, Suite 400 West Palm Beach, FL 33401-6235 [REDACTED]
---	---

To be used in lieu of AO110

FORM ORD-227
JAN.86



U.S. Department of Justice

United States Attorney
Southern District of Florida

500 S. Australian Ave., Suite 400
West Palm Beach, FL 33401-6235

APPEARANCE NOTICE

The attached subpoena requires the production of the records specified to a Federal Grand Jury/Trial in the Southern District of Florida.

A new provision of the Federal Rules of Evidence provides that routine business records may be admitted at trial through the declaration of a custodian, if they are provided sufficiently in advance of trial to allow an opportunity for any challenges to their authenticity. Therefore, you may be able to avoid appearing personally at the grand jury/trial at the time and place specified by completely filling out the attached Certification and Inventory and immediately returning it with the records to Special Agent [REDACTED], FBI at the following address:

Federal Bureau of Investigation
505 South Flagler Drive, Ste. 500
West Palm Beach, Florida 33401-5923

EARLY VOLUNTARY TURNOVER

Please note that we are requesting an early voluntary turnover of the materials subpoenaed. The early voluntary turnover date is prior to March 13, 2007.

Sincerely,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

BY:

[REDACTED]

ASSISTANT UNITED STATES ATTORNEY

CERTIFICATION OF BUSINESS RECORDS

I, the undersigned, Dr. Thomas A. Rofrano, declare that I am:
employed by/associated with Natural Medical Center Inc in the
position of President and by reason of my
position am authorized and qualified to make this declaration.

In my employment with the above-named bank/company I am familiar with the
business records it maintains. The above-named bank/company maintains records of its
business which are:

1. made at or near the time of the occurrence of the matters set forth therein, by,
or from information transmitted by, a person with knowledge of those matters;
2. kept in the course of regularly conducted business activity; and
3. made by the regularly conducted activity as a regular practice.

Among the records so maintained are the attached records itemized in Appendix A,
Inventory of Documents.

I declare under penalty of perjury that the foregoing is true and correct.

Date of execution: 3-11-07

Place of execution: Palm Beach Gardens, FL

Signature: TAR

APPENDIX A

DOCUMENT INVENTORY

The documents submitted are as follows:

MEDICAL RECORDS

BILLING STATEMENTS

COPIES OF CHECKS

INSURANCE EXPL. OF BEN.

Signature of Records Custodian:

T. MAR

EXHIBIT F

ROY BLACK
 HOWARD M. SREBNICK
 SCOTT A. KORNSPAN
 LARRY A. STUMPF
 MARIA NEYRA
 JACKIE PERCZEK
 MARK A. J. SHAPIRO
 JARED LOPEZ

BLACK
 SREBNICK
 KORNSPAN
 & STUMPF
 — PA. —

CHRISTINE M. NO
 JESSICA FONSECA-NADER
 KATHLEEN P. PHILLIPS
 AARON ANTHON
 MARCOS BEATON, JR.
 MATTHEW P. O'BRIEN

E-Mail: [REDACTED]@R [REDACTED]

July 13, 2007

VIA FACSIMILE ([REDACTED]) AND U.S. MAIL

[REDACTED] Esq.
 Assistant United States Attorney
 Office of the United States Attorney
 Southern District of Florida
 500 South Australian Avenue, Suite 400
 West Palm Beach, Florida 33401

Re: Grand Jury Subpoena - William Riley

Dear Ms. Villifaña:

I represent Jeffrey Epstein, the target of a pending Grand Jury investigation. Prior to the initiation of this federal investigation, I represented Mr. Epstein on a Palm Beach Florida State Attorney's Office investigation and subsequently an information, the factual basis of which is identical to, and gave rise to, the federal investigation presently underway.

In connection with my earlier representation of Mr. Epstein, I hired Mr. William [REDACTED] as a private investigator to act under my direction in anticipation of defending Mr. Epstein against possible criminal charges and any litigation which may have followed. All his investigations were done as my agent and thus are covered by the work product privilege, and all communications to him are protected by the attorney client privilege.

Though we are not conceding the existence of any computers that would be responsive to the subpoena served upon Mr. [REDACTED], to the extent there are any such computers, they would contain documents that are privileged attorney-client communications and attorney work-product. Your subpoena also asks for materials describing the scope of his investigation and thus they are our work product.

[REDACTED], Esq.

July 13, 2007

Page 2

As you know, the United States Attorney's Office Manual, Guidelines for Issuing Grand Jury and Trial Subpoenas to Attorneys for Information Relating to the Representation of Clients, requires that the attorney client and work-product privileged information sought by the Grand Jury subpoena issued to Mr. Riley must first be authorized by the Assistant Attorney General for the Criminal Division before it may issue.

Therefore, please advise me as to whether the applicable sections of the United States Attorney's Office Manual was complied with prior to the issuance of the Grand Jury subpoena to Mr. Riley. Please also advise as to the preliminary steps taken in advance of the issuance of the subpoena, as required by the Manual. Finally, please provide me with the name of the Assistant Attorney General of the Criminal Division who undertook the evaluation of the request for the Grand Jury subpoena, as required by the same section of the Manual and, if an evaluation was made, the basis upon which the Assistant determined that the information sought in the subpoena was not protected by a valid claim of privilege.

Sincerely,



Roy Black

RB/wg

Black, Srebnick, Kornspan & Stumpf, P.A.

EFTA00179059

EXHIBIT G



U.S. Department of Justice

United States Attorney
Southern District of Florida

500 South Australian Ave., Suite 400
West Palm Beach, FL 33401

Facsimile: [REDACTED]

July 16, 2007

VIA FACSIMILE

Roy Black, Esq.
Black Srebnick Kornspan & Stumpf P.A.
201 S. Biscayne Blvd, Suite 1300
Miami, FL 33131

Re: Correspondence Dated July 13, 2007

Dear Mr. Black:

Thank you for your letter of July 13, 2007. You and your firm are neither a subpoenaed party nor counsel to a subpoenaed party. Accordingly, pursuant to the Federal Rules of Criminal Procedure, I am not at liberty to discuss this matter with you. Moreover, it is not the practice of this Office to discuss internal Department of Justice policies with non-Justice Department personnel. If Mr. Riley believes he has cause to move to quash the subpoena, or if Mr. Epstein does for that matter, counsel for the respective parties should so move. Otherwise, we expect compliance by tomorrow, which includes a one-week extension already requested by Ms. Sanchez prior to Mr. Richey's appearance as counsel for Mr. Riley.

Sincerely,

R. Alexander Acosta
United States Attorney

By: [REDACTED]

Assistant United States Attorney

cc: [REDACTED], Esq.
William Richey, Esq.
Lilly Ann Sanchez, Esq.

William L. Richey, P.A.

201 South Biscayne Boulevard
34th Floor, Miami Center
Miami, Florida 33131-4325
Phone: [REDACTED]
Fax: [REDACTED]

Facsimile transmittal

To:	[REDACTED] Esq.	From:	Danise Townsend
Fax:	[REDACTED]	Date:	7/6/2007 9:55:27 AM
Re:	Grand Jury Subpoena	Pages:	3

Attached is a Notice of Appearance for [REDACTED] and [REDACTED].

This transmittal is intended only for the use of the addressee and may contain information that is privileged, confidential and exempt from disclosure by law. If the reader of this transmittal is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original transmittal to us by mail. Thank you for your cooperation.

If you have not received a clear and legible transmission or if there are any problems with this transmission, please telephone us immediately at [REDACTED].

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. FGJ 07-103(WPB)/No. OLY-64

IN RE:

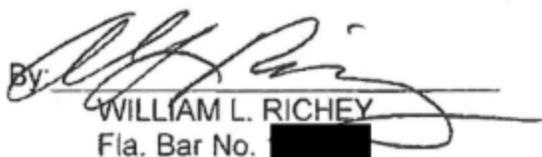
Grand Jury Subpoena.

NOTICE OF APPEARANCE

William L. Richey, P.A., hereby enters its appearance on behalf of William Riley and Riley Kiraly, in the above-captioned matter and requests that it be notified of all hearing dates herein and that any and all motions, petitions, applications, requests, demands, memoranda, briefs, notices, orders, opinions, and all such similar papers of any nature or description, made or filed by anyone pertaining to any party herein or pertaining in any way to the case, be served upon it at the address set forth below.

Respectfully submitted,

WILLIAM L. RICHEY, P.A.
201 South Biscayne Boulevard
34th Floor, Miami Center
Miami, Florida 33131
Telephone: [REDACTED]
Facsimile: [REDACTED]
E-Mail: [REDACTED]

By: 
WILLIAM L. RICHEY
Fla. Bar No. [REDACTED]

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by U.S. mail and facsimile this 5th day of July, 2007 to [REDACTED], Assistant US Attorney, 500 South Australian Avenue, Suite 400, West Palm Beach, Florida 33401.

By: 
William L. Richey

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. FGJ 07-103(WPB)/No. OLY-64

IN RE:

Grand Jury Subpoena.
_____ /

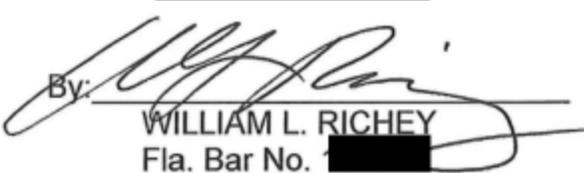
NOTICE OF UNAVAILABILITY

William L. Richey, counsel for WILLIAM RILEY and RILEY KIRALY, hereby gives notice to this Honorable Court that he has scheduled a business trip out of the country to Lagos, Nigeria from July 20, 2007 through and including July 31, 2007. This trip has been coordinated with several other parties to the matter and involves meetings with local law enforcement, other lawyers and accountants. Additionally, substantial security has been arranged for the parties.

Undersigned counsel respectfully requests that no pleadings, discovery, hearings, notices, etc., be filed/scheduled in this matter during such time.

Respectfully submitted,

WILLIAM L. RICHEY, P.A.
201 South Biscayne Boulevard
34th Floor, Miami Center
Miami, Florida 33131
Telephone: [REDACTED]
Facsimile: [REDACTED]
E-Mail: [REDACTED]

By: 

WILLIAM L. RICHEY
Fla. Bar No. [REDACTED]

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by U.S. mail and facsimile this 5th day of July, 2007 to [REDACTED], Assistant US Attorney, 500 South Australian Avenue, Suite 400, West Palm Beach, Florida 33401.

By: 
William L. Richey

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. FGJ 07-103(WPB)/No. OLY-64

IN RE:

Grand Jury Subpoena.
_____ /

NOTICE OF APPEARANCE

William L. Richey, P.A., hereby enters its appearance on behalf of William Riley and Riley Kiraly, in the above-captioned matter and requests that it be notified of all hearing dates herein and that any and all motions, petitions, applications, requests, demands, memoranda, briefs, notices, orders, opinions, and all such similar papers of any nature or description, made or filed by anyone pertaining to any party herein or pertaining in any way to the case, be served upon it at the address set forth below.

Respectfully submitted,

WILLIAM L. RICHEY, P.A.
201 South Biscayne Boulevard
34th Floor, Miami Center
Miami, Florida 33131
Telephone: [REDACTED]
Facsimile: [REDACTED]
E-Mail: [REDACTED]

By: 
WILLIAM L. RICHEY
Fla. Bar No. [REDACTED]

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by U.S. mail and facsimile this 5th day of July, 2007 to [REDACTED] Assistant US Attorney, 500 South Australian Avenue, Suite 400, West Palm Beach, Florida 33401.

By: 
William L. Richey

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FILED UNDER SEAL – GRAND JURY

IN RE GRAND JURY SUBPOENA)
) FGJ 07-103 (WPB)/No. OLY -64
DUCES TECUM ISSUED TO)
)
WILLIAM RILEY AND RILEY)
)
KIRALY)
_____)

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that ROY BLACK of the law firm of BLACK, SREBNICK, KORNSPAN & STUMPF, P.A., hereby appears as counsel for Jeffrey Epstein in the above-entitled cause.

DATED at Miami, Florida, this 17 day of July, 2007.

Respectfully submitted,

**BLACK, SREBNICK, KORNSPAN
& STUMPF, P.A.**

201 South Biscayne Boulevard, Suite 1300
Miami, Florida 33131

Ph. (305) 371-0421 - Fax [REDACTED]

E-mail [REDACTED]

By: [Signature]

ROY BLACK

Florida Bar No. [REDACTED]

Counsel for Jeffrey Epstein

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 17, 2007, a true and correct copy of the foregoing was furnished by facsimile ([REDACTED]) and U.S. mail to: [REDACTED] [REDACTED] Esq., Assistant U.S. Attorney, 500 South Australian Avenue, Suite 400, West Palm Beach, Florida 33401.

By:



ROY BLACK, ESQ.
Counsel for Jeffrey Epstein

UNITED STATES DISTRICT COURT
Southern District of Florida

Case Number: FGJ 07-103 (WPB) OLY-63 & OLY-64

IN RE GRAND JURY
SUBPOENA DUCES TECUM
ISSUED TO WILLIAM RILEY

Plaintiff

v.

Defendant

SEALED DOCUMENT TRACKING FORM

Party Filing Matter Under Seal

Name: ROY BLACK, ESQ.

Address: 201 S BISCAYNE BLVD, STE 1300, MIAMI, FL 33131

Telephone: [REDACTED]

On behalf of (select one): Jeffrey Epstein Plaintiff Defendant

Date sealed document filed: 8/7/2007

If sealed pursuant to statute, cite statute: GRAND JURY PROCEEDING

If sealed pursuant to previously entered protective order, date of order and docket entry number: _____

The matter should remain sealed until:

- Conclusion of Trial
- Case Closing
- Other: GRAND JURY MATTER IS CONCLUDED
- Arrest of First Defendant
- Conclusion of Direct Appeal

Permanently. Specify the authorizing law, rule, court order: _____

The moving party requests that when the sealing period expires, the filed matter should be (select one):

- Unsealed and placed in the public portion of the court file
- Returned to the party or counsel for the party, as identified above
- Destroyed

roy black
Attorney for: Jeffrey Epstein

Black, Srebnick, Kornspan & Stumpf

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

IN RE GRAND JURY SUBPOENA)
)
DUCES TECUM ISSUED TO)
)
WILLIAM RILEY)
_____)

FILED UNDER SEAL

FGJ 07-103 (WPB)
OLY-63 & OLY-64

M.B.D. No. _____

**REPLY OF JEFFREY EPSTEIN TO UNITED STATES' RESPONSE TO HIS MOTION
TO INTERVENE AND TO QUASH GRAND JURY SUBPOENAS AND CROSS-
MOTION TO COMPEL**

A substantial portion of the government's response consists of rambling generalizations about various areas of the law which have little or nothing to do with the issues actually raised by Epstein, and those sections of the response require no reply. In other portions, however, the government has ignored critical facts, mischaracterized or misunderstood the arguments advanced by Epstein, and relied upon case law so markedly distinguishable from the circumstances of this case as to be wholly inapplicable. It is to these portions of the response to which this reply is directed.

I.

The first area which requires reply is the government's assertions that Riley simply failed, without notice and without excuse, to appear at the time scheduled for his grand jury appearance. See Response at 1, 5, 6 n.6. This is simply untrue. Riley's appearance date had previously been continued from July 10, 2007, until July 17, 2007, by agreement of the parties. On July 16, 2007, counsel for Epstein were informed by Deputy Chief [REDACTED] that Riley did not have to appear physically before the grand jury if a motion to quash the subpoena was filed by Epstein before the end of the day on July 17, 2007, and the motion was so filed. Based

upon this understanding, Riley did not appear. Thus, Riley did not flout the subpoena, as the government wishes the Court to believe. In agreeing to excuse Riley's appearance, the government knew that Epstein, and not Riley, was the real party in interest and that the important legal issues at stake were those surrounding Epstein's privacy rights in the contents of the computers. *See* Sections II, III, *infra*.

II.

Next, it is important to point out an erroneous focus which appears throughout the government's response. The government refers again and again to the subpoena's command for the production of *computers*, as if all it wanted was possession of the physical items themselves. For example, the government wishes the Court to proceed on the manifestly erroneous assumption that the subpoenas are "narrowly tailored" to seek only the "physical computers removed from Epstein's residence." Response at 5. *See also* Response at 38 (government contends that the subpoenas are sufficiently particularized because they specifically describe the three computers). They are not. Those assertions may reflect the literal wording of the subpoenas, but simple possession of the physical containers is not the government's real object here. What the government actually wants is unfettered access to the entire *contents* of Epstein's computers – every personal and business document, every email, every item of correspondence, in sum, every item on the hard drives, regardless of their relevance to the matters under investigation, a request little different than had it commanded that Epstein produce every document in his house, regardless of subject matter. Critically, nowhere in the government's response does it disavow this intention (or argue that the subpoenas contain any limitation on its ability to rummage through the contents of the computers at will).

In his motion, Epstein argued at length, supported by considerable contemporary case law (and by the discussion in the United States Attorneys Manual regarding the need to particularize computer files to be seized), that the government cannot, consistently with the Fourth Amendment, whether by subpoena or warrant, be permitted to search at will and without limitation through the contents of the computers. *See* Motion at 19-26. The government has not responded to Epstein's Fourth Amendment particularity contentions. It has neither sought to provide legal justification for its obvious intention, if the subpoenas are enforced as written, to conduct a fishing expedition through the contents of the computers nor has it proposed suitable limitations on the scope of its search – such as targeted search terms – to ensure that the search of the contents of the computers does not extend beyond items relevant to the grand jury's investigation.¹ Rather than respond to the unassailable merit of Epstein's arguments, the government has chosen to take refuge in an utterly unsupported – and erroneous – argument that an intervenor may not challenge a subpoena as unreasonable and oppressive. *See* Section III, *infra*.

III.

Contrary to the government's argument, challenges to grand jury subpoenas are not limited to claims of privilege. *See* Response at 6, 36-37. "It is well-established that a litigant may have sufficiently important, legally-cognizable interests in the materials or testimony sought by a grand jury subpoena issued to another person to give the litigant standing to challenge the validity of that subpoena." *In re Grand Jury*, 111 F.3d 1066, 1073 (3d Cir. 1997)(collecting

¹ On page 38 of its Response, the government finally admits what it is looking for: evidence of sexual exploitation of minors, including surveillance camera footage, "computer printouts showing electronic messages for 'appointments' with the minors; and printouts showing payments made to girls." This description readily illustrates the ease with which the subpoenas could have been appropriately particularized. The subpoenas, however, make not the slightest nod to limiting the government's search of the computers to such materials. Nor for that matter, has the government presented the slightest evidence that what it seeks is to be found on these computers at all.

cases). In that case, the Court concluded that intervenors had standing to challenge a subpoena issued to an individual who had privately wiretapped conversations with the intervenors in violation of Title III to prevent her from turning over the tapes of the conversations to the grand jury. Importantly, the Court reasoned that “[b]ecause it is Doe 1 and Doe 2 whose privacy has been violated *and would again be violated by compliance with the subpoena*, and since Doe 3 is the perpetrator of the unlawful recordings, it is the intervenors and not the witness herself who are best suited to assert the Title III claims.” *Id.* at 1072 (emphasis added). See also *United States v. Comprehensive Drug Testing, Inc.*, 473 F.3d 915, 954 (9th Cir. 2006) (Thomas, J., concurring in part and dissenting in part) (noting that district court permitted major league baseball players’ association to intervene to challenge grand jury subpoena directed to laboratories based on its interest in protecting the privacy rights of its members whose samples and test results were sought); *In re Grand Jury*, 286 F.3d 153, 157 (3d Cir. 2002) (considering merits of intervenor’s claim that grand jury subpoena to his counsel in a civil case was unreasonable or oppressive under Fed. R. Crim. P. 17(c) because the subpoenaed documents were subject to a protective order in the civil case); cf. *Warshak v. United States*, 2007 WL 1730094 (6th Cir. June 18, 2007) (plaintiff had standing to raise Fourth Amendment challenges to 18 U.S.C. §2703 orders issued to third-party internet service providers).

Here, in addition to the attorney-client/work product and Fifth Amendment privileges asserted by Epstein, which the government concedes that he has standing to raise, Epstein also asserts important Fourth Amendment and privacy rights in opposition to enforcement of the subpoena.² These are rights personal to *Epstein*, and the government would no doubt be the first

² *Langford v. Chrysler Motors Corp.*, 513 F.3d 1121 (2d Cir. 1975), on which the government relies, Response at 37, concerned a motion to quash a trial subpoena *duces tecum* issued by the defendant for records of the plaintiff’s expert witness. At issue in *United States v. Wells*, 2006 WL 3203905 (E.D. Mich. November 3, 2006).

to argue that Riley and Riley Kiraly could not raise these issues because they assert Epstein's rights, not their own.³ The fact of the matter is that Riley/Riley Kiraly are nothing more than bailees of the computers,⁴ and the real party in interest is Epstein. It is *his* Fourth Amendment and privacy rights which will be irrevocably trampled by the government's obtaining unfettered access to the contents of his computers, an object which the government does not even now deny.

IV.

Leaving aside for the moment Epstein's argument based on *Boyd v. United States*, 116 U.S. 616 (1886), *see* Motion at 28, the Fifth Amendment right asserted by Epstein relates not to the content of the materials contained in the computers but to the testimonial communications inherent in the act of *producing* the computers and, concomitantly and inseparably, their contents. *See* Motion at 9-16. Thus, the government's discussion at pages 13-15 is wholly beside the point.⁵

was a narrowly targeted subpoena to a bank for records pertaining to a single mortgage application, sought by the United States as an aid in collecting a default judgment. In neither of these cases did the movants assert interests remotely comparable to the important Fourth Amendment and privacy interests asserted by Epstein.

³ If the Court were to sustain the government's standing objection as to Epstein, Riley and Riley Kiraly would file a motion to quash the subpoenas

⁴ As stated in his original motion, at 3 n.1, Epstein does not concede the existence of any such computers – and cannot without waiving his Fifth Amendment act of production privilege – but, for purposes of this Reply, refers herein to “computers” as if one or more of the computers referenced in the subpoenas do exist.

⁵ *United States v. Davis*, 636 F.2d 1028, 1039 (5th Cir. 1981), on which the government relies, Response at 14, presented the opposite scenario to this case – attorneys seeking to assert the Fifth Amendment rights of their client. In *Couch v. United States*, 409 U.S. 322 (1973), also relied on by the government, the taxpayer asserted a Fifth Amendment privilege as to the subpoenaed materials themselves; there was no act-of-production privilege claimed. The same was true in *SEC v. Jerry T. O'Brien, Inc.*, 467 U.S. 735 (1984). In *United States v. Ghidoni*, 732 F.2d 814, 818-19 (11th Cir. 1984), quite unlike this case, the authorization which the target was required to sign did not admit the existence of the bank accounts or that he controlled them, nor did it in any way serve to authenticate any bank records which might be produced.

Epstein does not contend that the computers or their contents (leaving aside his *Boyd* argument) are themselves protected from compelled disclosure by the Fifth Amendment.⁶ Instead, as addressed in his Motion at 9-12, the Fifth Amendment protection which Epstein asserts is the *act of production* privilege, as production of the computers in response to the subpoena would be both testimonial and potentially incriminating. The government's assertion that the act of authenticating documents is incriminating only if the documents themselves are incriminating, Response at 28, is incorrect. What the act of production privilege protects against is the government's ability to use against the individual the compelled testimonial communication that the item produced is the item called for in the subpoena which is inherent in the act of production of the item in response to subpoena. There is no requirement that the person asserting the privilege demonstrate that the documents sought are incriminating, and the government has cited no authority for such a requirement. The government's assertion that Epstein has failed to show that the contents of the computers are incriminating, Response at 28, is more than a little curious, as the government would have no basis for subpoenaing the computers (or seizing them pursuant to a search warrant) if it did not think that it had reason to believe that the computers contained evidence of the alleged offenses under investigation).⁷

⁶ As a review of his motion will quickly demonstrate, Epstein has not asserted a blanket Fifth Amendment privilege as to every document on every computer and all of the records requested from Riley/Riley Kiraly. See Response at 12. With respect to the Riley Kiraly records, Epstein has not asserted a Fifth Amendment privilege at all.

⁷ The government also argues that the *computers* are not testimonial for purposes of the Fifth Amendment, see Response at 22-24, but Epstein has never suggested that they are. But, as previously stressed, it is not the *computers* in which the government is interested – it wants access to the contents of the hard drive. This argument is but another iteration of the government's repeated references to "computers" as if the physical equipment were all it was concerned with and all that was at issue here. See, e.g., Response at 5, 7, 14, 16, 18, 20, 22, 23, 26, 27, 38. The government's insistent focus on "the computers" rather than their contents serves only to obfuscate the real issues before the Court.

The government argues that the act of production privilege is inapplicable because the existence and location of the computers are a "foregone conclusion," Response at 27, but that is plainly not the case – if the government knows, as it contends it does, that Riley has the computers, why then did it issue a subpoena to a prior investigator for the production of the computers? Nothing in [REDACTED] affidavits which were filed with the response establishes that the computers exist, that they are in Riley's custody or control, or that there is an independent basis to authenticate them. This information is precisely what the act of production would communicate: that three computers were once in Epstein's house and that the three computers produced in response to the subpoena were those specific computers – facts that are not, in the absence of the testimonial communications inherent in the act of production, "foregone conclusions." These are the testimonial communications inherent in the act of production, and it is to these communications which Epstein's Fifth Amendment privilege claim is directed.

Moreover, once again, the government's argument is directed only to the computers themselves. The act of production privilege applies not just to the computers themselves, but also to the documents contained within the computers, which would be identified as having been in Epstein's home and implicitly authenticated by the act of production. These are also protected testimonial communications. The government certainly has not shown that particular documents or other items are *known* to exist within the specific computers at issue or that there is an independent basis for the authentication of the documents within the computers.

Finally, it bears repeating that for purposes of invoking the act of production privilege (and for purposes of the attorney-client privilege), Riley stands in the same relationship to Epstein as counsel himself and, in turn, stands in the shoes of his client. Epstein, therefore,

retains the same right to assert the act of production privilege he would have if the subpoenas had been served on him. *See* Motion at 11-12, and cases cited therein.

V.

The government's argument at pages 18-22 of its Response completely confuses Epstein's arguments. Epstein did not and does not contend that the removal of the computers from Epstein's house constituted the "selection and compilation of documents" that would disclose counsel's "thought processes." Response at 20. Instead, the work product argument to which the government appears to be responding was made with respect to paragraph 3 of the subpoenas, which demands production of an array of information that impermissibly intrudes into the defense function by seeking information which would reveal the defense investigation, strategy, and tactics. *See* Motion at 13-16.

In an effort to undercut this argument that Epstein has *not* made, the government relies on cases in which an attorney or an investigator knowingly removed inculpatory evidence from its original location. *See* Response at 21-22 & n.14. Such cases could not be more divorced from the circumstances of this case. Unlike a murder weapon or bank robbery proceeds, the computers are not themselves evidence of a crime.⁸ The cases on which the government relies are wholly inapposite. At issue in *In re Grand Jury Subpoena*, 204 F.3d 516 (4th Cir. 2000), *see* Response at 21-22, was simply a claim of privilege with respect to the client's identity. *United States v. Hunter*, 1995 WL 12513 (N.D.Ill. January 6, 1995), does not, as the government would have it, "contain[] facts similar to the ones at bar." Response at 21 n.14. In *Hunter*, attorneys removed

⁸ The government relies on an affidavit from Det. [REDACTED] and on [REDACTED] affidavit in support of an application for a warrant to search Epstein's house, but neither of those documents demonstrates reason to believe that evidence of the alleged offenses would be found on the computers at issue. [REDACTED] affidavit indicates only that *two years* before the search of Epstein's house the security cameras automatically downloaded images on to a personal computer identified only as being in [REDACTED]'s office. [REDACTED] search warrant affidavit does not so much as mention computers outside the list of items to be seized.

bank robbery proceeds from the defendant's home and later told the government about them during the defendant's proffer session. Defendant argued that the government was precluded by the attorney-client privilege from introducing at trial either the money or evidence regarding its removal from his residence. *Hunter* stands for no more than the proposition that "[w]hen defense counsel or a member of the defense team removes incriminating evidence, the government may introduce testimony establishing the original location and condition of the evidence." *Id.* at *3. The theory underlying *Hunter* and the cases on which it relied⁹ was, in essence, that the attorney-client privilege will not be applied to deprive the government of *trial* evidence regarding an incriminating physical item and its original location, where counsel acted wrongfully in removing obviously incriminating evidence from its original location. Nothing in *Hunter* speaks to the issues actually raised by Epstein or supports the enforcement of the government's subpoenas, either the paragraphs demanding the production of the computers or the paragraph seeking Riley Kiraly documents relating to Epstein.

Contrary to the government's repeated assertions, Epstein has *not* contended that the computers themselves are protected by the attorney-client privilege or that the attorney-client privilege precludes production of the computers in response to the subpoenas, but only that they contain information and materials protected by the attorney-client privilege. Motion at 26-28.

Therefore, even were the computers "incriminating evidence" – *which they manifestly are not* –

Hunter in no way undermines Epstein's challenges to the subpoena. Nor has Epstein contended

⁹ *Hunter* relied on *Cluchette v. Rushen*, 770 F.2d 1469 (9th Cir. 1985), and *People v. Meredith*, 631 P.2d 46 (Cal. 1981), on which the government also relies. In *Cluchette*, the investigator – the defendant's wife – obtained and carried away highly inculpatory receipts from an automobile upholstery shop which showed that defendant had had his car reupholstered in close proximity to a murder which an eyewitness said had been committed in the car. Like the defendant in *Hunter*, the defendant argued that the attorney-client privilege precluded admission of the receipts against him at trial. Similarly, in *Meredith*, the defense investigator found the murder victim's wallet based on information obtained from the defendant and turned it over to defendant's attorney, who in turn, gave it to the police.

that any removal of computers from his home was protected by the work product privilege; he has not, therefore, made arguments "identical" to those raised in *Hunter*. Response at 22 n.14. The government's *Hunter*-based arguments are, therefore, a complete non sequitur.

VI.

The government critiques Epstein's failure to supply a privilege log. Response at 8-9.¹⁰ Epstein's overarching contention is that the subpoenas should be quashed in their entirety. He has, however, through his counsel, offered to supply a privilege log if the Court determines that the subpoenas should be enforced to prevent privileged documents from falling into the hands of the government, and he stands by that offer. The Court should not enforce the subpoenas without affording counsel an opportunity to exclude privileged materials from the production.

With respect to the Riley Kiraly records, the government has not responded to Epstein's contention that paragraph 3 of the subpoenas directly requests information regarding the work which Riley was performing for Attorney Black on behalf of Epstein's defense. The government's response goes on at length regarding types of items which case law has held not to be privileged, Response at 29-34, but completely ignores the fact that its subpoena is *not* so limited. Quite the contrary: it broadly demands "[a]ll documents and information related to the nature of the relationship between Mr. William Riley and/or Riley/Kiraly and Mr. Jeffrey Epstein, including but not limited to" (emphasis added) a list of documents, many of which themselves contain information protected by the attorney-client or work product privileges, such as billing statements which describe activities undertaken on behalf of Epstein's defense and telephone logs and appointment calendars which would reveal the identities of persons contacted as part of the defense investigation. The government has made no effort to particularize the

¹⁰ Contrary to the government's assertions; Response at 7-8, Epstein has not made a blanket assertion of the attorney-client and work product privileges as to the entirety of the computers' contents. See Motion at 26-28.

subpoena so as to avoid calling for the production of plainly privileged information, and, if paragraph 3 of the subpoena is to be enforced at all, it must be narrowed to eliminate any and all information encompassed within the attorney-client or work product privileges.

Respectfully submitted,

BLACK, SREBNICK, KORNSPAN & STUMPF, PA.
201 South Biscayne Boulevard, Suite 1300
Miami, Florida 33131
Ph.: [REDACTED] -- Fax: [REDACTED]
E-Mail: [REDACTED]

By: [Signature]
ROY BLACK, ESQ.
Florida Bar No.: [REDACTED]
Counsel for Jeffrey Epstein

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 7, 2007, a true and correct copy of the forging motion was furnished by facsimile [REDACTED] and U.S. mail to: [REDACTED] Esq., U.S. Attorney's Office, 500 South Australian Avenue, Suite 400, West-Palm Beach, FL 33401.

By: [Signature]
ROY BLACK, ESQ.
Counsel for Jeffrey Epstein



U.S. Department of Justice

United States Attorney
Southern District of Florida

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

99 N.E. 4 Street
Miami, FL 33132
- Telephone
- Facsimile

August 3, 2007

VIA FACSIMILE

Lilly Ann Sanchez, Esq.
Fowler White Burnett
1395 Brickell Ave Fl 14
Miami Florida 33131-3300

Re: Jeffrey Epstein

Dear Lilly:

Thank you for your letter of August 2nd regarding your proposal on how to resolve the Epstein matter.

As we explained at our meeting on July 31, 2007, the Office believes that the federal interest will not be vindicated in the absence of a two-year term of state imprisonment for Mr. Epstein. That offer was not meant as a starting point for negotiations, it is the minimum term of imprisonment that will obviate the need for federal prosecution. The Office has never agreed that a state prison sentence is not appropriate for Mr. Epstein. Rather we simply stated that if Mr. Epstein preferred to serve his sentence in a federal penitentiary, we would be willing to explore a federal conviction that may allow that in lieu of any state resolution. Further, as I made clear in our follow up telephone conversation after the meeting, a plea to two federal misdemeanors was never extended or meant as an offer.

We also would reiterate that the agreement to Section 2255 liability applies to all of the minor girls identified during the federal investigation, not just the 12 that form the basis of an initial planned charging instrument.

As you know, the ability to engage in flexible plea negotiations is dramatically changed upon the return of an indictment. Once an indictment is returned, the Office does not intend to file a Superseding Information containing a lesser charge or to dismiss the case in favor of state prosecution.

EFTA00179083

LILLY ANN SANCHEZ, ESQ.
AUGUST 3, 2007
PAGE 2

Please let us know your client's decision by no later than August 17. I have conferred with U.S. Attorney Acosta who has asked me to communicate that the two-year term of incarceration is a non-negotiable minimum to vindicate a federal interest, and, at this time, he is not inclined to meet with counsel for Mr. Epstein.

Sincerely,

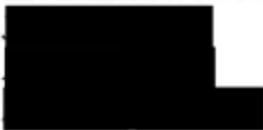
R. Alexander Acosta
United States Attorney

By:



Chief, Criminal Division

cc: Roy Black
Gerald B. Lefcourt
R. Alexander Acosta



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

IN RE GRAND JURY SUBPOENAS
DUCES TECUM NUMBERS
OLY-63 and OLY-64

FGJ 07-103(WPB)

**UNITED STATES' SURREPLY TO REPLIES FILED BY WITNESS WILLIAM
RILEY 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
OLY-63 and OLY-64

FGJ 07-103(WPB)

UNDER SEAL

UNITED STATES' SURREPLY TO REPLIES FILED BY WITNESS WILLIAM
RILEY 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 William Riley and Intervenor Jeffrey Epstein,¹ and notes the following:

1. Both the witness and the intervenor assert that Mr. Riley was excused from appearing before the grand jury and that Mr. Riley did not flout the subpoena by failing to appear. AUSA ██████████ agreed with Attorney Mr. Black that Mr. Riley 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 Mr. Riley's testimony. Thus, the United States does not contend that Mr. Riley 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 Mr. Riley's counsel, and it has been agreed that Mr. Riley will appear before the grand jury on September 18, 2007. However,

¹Witness William Riley 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 Mr. Riley.

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, Riley and Riley Kiraly 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.² Instead, a target must address the act of production privilege on a document by document basis explaining how the production of that

²Following 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 (6th 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*,³ 217 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

³*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, Riley Kiraly is the owner of those documents and is best suited to make such a claim, if warranted. Riley Kiraly’s failure to do so before the time for production waives such a claim.

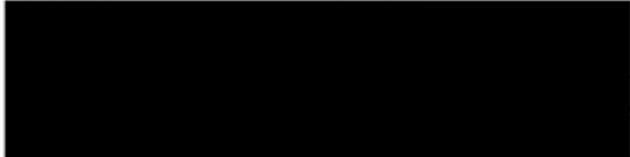
CONCLUSION

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:



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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.



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 Subpoenaed Parties Riley
Kiraly and William Riley**
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Attorney for Intervenor Jeffrey Epstein
Service via U.S. Mail

UNITED STATES DISTRICT COURT
Southern District of Florida

Number: FGJ 07-103 (WPB)

In Re
Grand Jury Subpoenas Duces Tecum
Numbers OLY-63 and OLY-64

UNITED STATES' MOTION TO FILE SUPPLEMENTAL EX PARTE AFFIDAVIT IN SUPPORT OF RESPONSE TO MOTION TO QUASH

SEALED DOCUMENT TRACKING FORM

Party Filing Matter Under Seal

Name: [REDACTED], U.S. Attorney's Office

Address: 500 S. Australian Ave, Suite 400, West Palm Beach, FL 33401

Telephone: [REDACTED]

On behalf of (select one):

Plaintiff

Defendant

Date sealed document filed: 8/31/2007

If sealed pursuant to statute, cite statute: Fed. R. Crim. P. 6(e) (Grand Jury Material)

If sealed pursuant to previously entered protective order, date of order and docket entry number: _____

The matter should remain sealed until:

Conclusion of Trial

Arrest of First Defendant

Case Closing

Conclusion of Direct Appeal

Other: _____

Permanently. Specify the authorizing law, rule, court order: _____

The moving party requests that when the sealing period expires, the filed matter should be (select one):

Unsealed and placed in the public portion of the court file

Destroyed

Returned to the party or counsel for the party, as identified above

[REDACTED SIGNATURE]

Attorney for: United States of America

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

IN RE: GRAND JURY SUBPOENAS
DUCES TECUM NUMBERS
OLY-64 AND OLY-64

FGJ 07-103 (WPB)

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
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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.

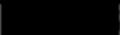
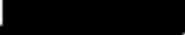
WHEREFORE, the United States respectfully requests that it be allowed to file its Supplemental Declaration *Ex Parte* in support of its Response to the Motion to Quash.

Respectfully submitted,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By:


Assistant United States Attorney

Florida Bar No. 
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]
[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
OLY-63 and OLY-64

FGJ 07-103(WPB)

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

Number: FGJ 07-103 (WPB)

In Re
Grand Jury Subpoenas Duces Tecum
Numbers OLY-63 and OLY-64

FILED BY _____ D.C.
2007 JUL 31 AM 11:54
CLARENCE MALLOY
CLERK U.S. DIST. CT.
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UNITED STATES' RESPONSE TO MOTION TO QUASH

SEALED DOCUMENT TRACKING FORM

Party Filing Matter Under Seal

Name: [Redacted], U.S. Attorney's Office

Address: 500 S. Australian Ave, Suite 400, West Palm Beach, FL 33401

Telephone: [Redacted]

On behalf of (select one):

Plaintiff

Defendant

Date sealed document filed: 7/31/2007

If sealed pursuant to statute, cite statute: Fed. R. Crim. P. 6(e) (Grand Jury Material)

If sealed pursuant to previously entered protective order, date of order and docket entry number: _____

The matter should remain sealed until:

Conclusion of Trial

Arrest of First Defendant

Case Closing

Conclusion of Direct Appeal

Other: _____

Permanently. Specify the authorizing law, rule, court order: _____

The moving party requests that when the sealing period expires, the filed matter should be (select one):

Unsealed and placed in the public portion of the court file

Destroyed

Returned to the party or counsel for the party, as identified above

[Redacted Signature]

Attorney for: Movant United States of America

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

IN RE GRAND JURY SUBPOENAS
DUCES TECUM NUMBERS
OLY-63 and OLY-64

FGJ 07-103(WPB)

**UNITED STATES' RESPONSE TO MOTION OF JEFFREY EPSTEIN
TO INTERVENE AND TO QUASH GRAND JURY SUBPOENAS
AND CROSS-MOTION TO COMPEL**

UNDER SEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

IN RE GRAND JURY SUBPOENAS
DUCES TECUM NUMBERS
OLY-63 and OLY-64

FGJ 07-103(WPB)

FILED BY _____
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UNDER SEAL

UNITED STATES' RESPONSE TO MOTION OF JEFFREY EPSTEIN
TO INTERVENE AND TO QUASH GRAND JURY SUBPOENAS
AND CROSS-MOTION TO COMPEL

The United States of America, by and through the undersigned Assistant United States Attorney, hereby files its response to Jeffrey Epstein's motion to intervene and to quash two grand jury subpoenas issued to William Riley (Subpoena No. OLY-63) and to the Custodian of Records for Riley Kiraly (Subpoena No. OLY-64).¹ The subpoenas originally called for the witnesses to appear on July 10, 2007, but pursuant to an agreement between the parties, the appearance was moved to July 17, 2007. Neither Mr. Riley nor the records custodian appeared, and counsel for Jeffrey Epstein filed the instant motion on July 17, 2007, shortly before the 4:00 p.m. appearance time. The United States did not excuse the witnesses' appearances and an assertion of the attorney-client or Fifth Amendment privilege does not excuse a witness' appearance from a judicial proceeding, it only excuses the witness from having to answer questions that call for responses covered by the privilege. *See Roe v. Slotnick*, 781 F.2d 238 (2d Cir. 1986); *McKay v. C.I.R.*, 886 F.2d 1237 (9th Cir. 1989). Accordingly, the United States asks the Court to compel the witnesses to appear before the grand jury on the next available date.

¹Riley Kiraly is the firm that employs William Riley. For purposes of this Response, they will be referred to jointly as "Riley." Riley Kiraly and William Riley are represented by William Richey, Esq. Mr. Richey has not filed any motions on behalf of his clients.

Epstein's counsel argues first that his client should be allowed to intervene as a matter of right pursuant to Fed. R. Civ. P. 24(a)(2). Assuming that the Court grants that request, Epstein raises six arguments against the enforceability of the two grand jury subpoenas: first, that *Epstein's* Fifth Amendment privilege bars the subpoenas to Riley and Riley Kiraly; second, that the subpoenas violate Epstein's Fourth, Fifth, and Sixth Amendment rights; third, that the subpoenas are unreasonable because they seek items "unconnected to any crime under investigation," fourth, that the subpoenas are unreasonable because they are "oppressive, overbroad, and unparticularized;" fifth, that the subpoenaed items contain information and documents protected by the attorney-client and work product privileges; and sixth, that the subpoena of "purely private papers violates the Fifth Amendment under *Boyd*."

In response, as an initial matter, the United States does not object to the motion to intervene to allow Epstein to assert his claim that enforcement of the subpoenas would violate the attorney-client and/or work product privileges. However, Epstein does not have standing to assert the remaining challenges to the subpoenas. As to the motion to quash, Epstein has no Fifth Amendment privilege to keep Riley from responding to the subpoenas and he has failed to carry his burden to establish that the subpoenas seek information covered by the attorney-client or work product privileges. Even if Epstein had standing to assert these challenges, the subpoenas are not unreasonable and do not violate any act of production privilege. For these reasons, the United States asks the Court to deny the Motion to Quash and to order the prompt production of the requested items and the witnesses' appearances before the Grand Jury.

BACKGROUND

Contrary to the assertions of Epstein's counsel, he is not fully apprised of the scope of the federal grand jury investigation, which is broader than the state investigation. The federal investigation, as conducted by the Federal Bureau of Investigation ("FBI"), is broader both in terms of the crimes being investigated and the number of victims identified.² Epstein's counsel is correct, however, in asserting that Epstein's criminal conduct first came to the attention of the FBI when the City of Palm Beach Police Department became concerned about the manner in which the Palm Beach County State Attorney's Office was handling the state prosecution. The investigation of the Palm Beach Police Department ("PBPD") revealed multiple instances of minor females traveling to Epstein's home to engage in lewd and lascivious conduct³ in exchange for money.

PBPD's investigation was presented to the State Attorney's Office for further investigation. Soon thereafter, Epstein's team of attorneys began approaching the State Attorney's Office, applying

²Due to the rules governing Grand Jury secrecy, the full details of the Grand Jury's investigation cannot be disclosed except *in camera*. The facts contained herein relate to public information regarding the State's investigation and information disclosed as part of that investigation or information related to the FBI's investigation. A motion to file *ex parte* affidavits that contain information regarding the Grand Jury investigation is filed simultaneously with this motion.

³Epstein's counsel refers to these as "massages." The conduct involved asking girls to partially or fully disrobe and to "massage" Epstein, including straddling him and pinching his nipples, while he masturbated. Epstein would fondle the girls, becoming more sexually aggressive with each visit, graduating to digital penetration of the girls' vaginas, using a massager/vibrator on the outside of their vaginas, having the girl engage in a sexual performance with Epstein's adult girlfriend, and engaging in vaginal intercourse. With the possible exception of one girl, none of the minors had any training in massage therapy, and, as shown by Attachment E to the Black Affidavit, Epstein was receiving professional chiropractic services from a licensed chiropractor, Dr. Thomas Rofrano.

Epstein's counsel misstates the state charges pending against his client. The state grand jury returned a three-count indictment. Each count charges solicitation of a prostitute. Under Florida law, the first two counts are classified as misdemeanors. A third solicitation offense is a felony.

pressure against prosecuting the case. The team of attorneys included Mr. Black and his firm, Jack Goldberger, Gerald Lefcourt, and Professor Alan Dershowitz.⁴

As explained in the Declaration of [REDACTED] Epstein knew of the state investigation by the first week of October, 2005. On October 18, 2005, a search warrant was applied for and executed. The search warrant called for the seizure of:

(1) Computers, including any electronic magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions; data storage facilities such as magnetic tape, hard disk, floppy disk or drum, or cd rom; communications facilities directly relating to or operating in conjunction with such device; devices for printing records of data; and such records or data produced in various forms; manuals, documents, or instructional material relating to such devices.

(2) Computer, personal computers, computer peripherals, modems, computer printers, floppy disk drives, hard disk drives, diskettes, tapes, computer printouts, software, computer programs and applications, computer manuals, system documentation.

At the time of the execution, several items were conspicuously missing, including three computers.⁵ One of the officers who executed the search warrant had previously visited Epstein's

⁴Since the start of the federal investigation the team has grown to include former Southern District of Florida U.S. Attorney Guy Lewis and former Southern District of Florida Assistant U.S. Attorneys Lilly Ann Sanchez and Michael Tien.

⁵The wires and peripheral devices were present but the central processing units ("CPUs") were gone.

home (at Epstein's invitation) and had observed the three computers, one in the pool cabana, one in an area he refers to as Epstein's office, and one in an area he refers to as S [REDACTED] office.⁶

The removed computers are believed to be in the custody of William Riley and/or Riley Kiraly, the subpoenaed parties.

The United States has sought the whereabouts of those computers since the start of the investigation. When Guy Lewis stated that Mr. Epstein was willing to assist in the federal investigation and to turn over any requested items, the United States prepared the letter that appears as Exhibit D to Mr. Black's affidavit. To date, none of the items mentioned in requests 1, 2, 4, 5, 6 (the computer equipment), 7, 8, 9, 10, 11, or 13 have been provided. The items in request 12 were provided in response to subpoenas directed to the corporations that own the aircrafts.

Since Epstein was not, in fact, willing to cooperate with the federal investigation, grand jury subpoenas have been issued to obtain the necessary information. The subpoenas at issue here are narrowly tailored and seek only two things: first, the physical computers removed from Epstein's residence in advance of the execution of the search warrant; second, the unprivileged material related to Epstein's hiring of William Riley's firm. Neither William Riley nor his firm has filed any motions to quash or modify, but the witnesses also have failed to appear as commanded. Accordingly, the United States hereby opposes Epstein's motion and moves for an order to compel the appearance of witnesses and production of the requested items.

⁶Sarah [REDACTED] is one of Epstein's personal assistants.

ARGUMENT

I. THE UNITED STATES DOES NOT OPPOSE THE MOTION TO INTERVENE, IN PART.

The Eleventh Circuit has ruled that a target of a grand jury investigation should be allowed to intervene once the claim of attorney-client privilege between the subpoenaed witness and target surfaces. *In re Grand Jury Proceedings in Matter of Freeman*, 708 F.2d 1571, 1574-75 (11th Cir. 1983) (citing *In re Grand Jury Proceedings (Jeffrey Fine)*, 641 F.2d 199, 201-03 (5th Cir. 1981)). See also *In re Grand Jury Subpoena*, 274 F.3d 563, 570 (1st Cir. 2001) (“Colorable claims of attorney-client and work product privilege qualify as sufficient interests to ground intervention as of right.”) (citation omitted). As explained below, Mr. Riley is not an attorney; Riley Kiraly is not a law firm; and the information sought does not fall within the attorney-client privilege. However, the United States recognizes that Epstein has asserted claims that he has an attorney-client privilege in the subpoenaed items, and that is the issue presented for the Court’s determination. Accordingly, the United States does not oppose the motion to intervene in so far as Epstein wishes to assert the attorney-client and work product privileges. However, Epstein has not cited any authority and the United States has found none that allows a non-subpoenaed party to assert challenges to the reasonableness or oppressiveness of a subpoena. Accordingly, the United States opposes Epstein’s motion to intervene to assert those claims.⁷

⁷As stated above, neither of the subpoenaed parties has raised any objection to the subpoenas and the time for production has passed. Thus, these objections have been waived.

II. BLANKET ASSERTIONS OF THE FIFTH AMENDMENT, ATTORNEY-CLIENT, AND WORK PRODUCT PRIVILEGES ARE UNENFORCEABLE; THE COURT MUST BE ALLOWED TO JUDGE EACH ASSERTION ON ITS FACTS.

Although Epstein's motion is painted in broad strokes, most of his arguments relate only to the demand for the production of the computer equipment removed from his home prior to the execution of the search warrant. Accordingly, the United States first discusses the claims of privilege regarding the computers, and then addresses the demand for general billing records.

As to both categories, however, Epstein's motion should be denied for failure to provide detailed and specific assertions as to which privilege he claims applies to which documents.

In his motion, Epstein asserts that *all* of the items called for by the subpoenas will violate his Fifth Amendment privilege, the attorney-client privilege, and the work product doctrine. He also implicitly asserts that *every* question addressed to the witnesses would violate these privileges and, therefore, the witnesses cannot be compelled to appear before the grand jury.⁸ These blanket assertions are not authorized and undermine the Court's ability to make an independent evaluation of the applicability of the privileges.

With respect to the Fifth Amendment privilege against self-incrimination, the protection does not cover every instance where the target of an investigation is called to testify or produce documents. Instead, the protection of the Fifth Amendment is confined to instances where the witness "has reasonable cause to apprehend danger" of criminal prosecution. *Hoffman v. United States*, 341 U.S. 479, 486 (1951). "The central standard for the . . . application of the Fifth

⁸The government uses the word "implicitly" because Epstein's motion to quash does not mention witness testimony and the witnesses themselves have not filed a motion to quash; they simply failed to appear before the grand jury.

Amendment is whether the claimant is confronted by substantial and 'real,' not merely trifling or imaginary, hazards of incrimination." *Marchetti v. United States*, 390 U.S. 39, 53 (1968).

Furthermore, a witness is not exonerated from answering questions merely because he declares that in so doing he would incriminate himself – his say-so does not itself establish the hazard of incrimination. It is the role of the court, not the witness, to evaluate the witness's claim of incrimination and determine whether it is reasonable.

In evaluating the validity of a witness's invocation of Fifth Amendment privilege against self-incrimination, the court must make a particularized inquiry, in connection with each specific area that the questioning party wishes to explore, whether or not the privilege is well-founded. Thus, the court must review the witness's assertion of the privilege on a question-by-question basis and decide whether a witness's silence is justified.

United States v. Koubriti, 297 F. Supp. 2d 955, 962 (E.D. Mich. 2004) (citing *Hoffman*, 341 U.S. at 53; *United States v. Melchor Moreno*, 536 F.2d 1042, 1049 (5th Cir. 1976); *United States v. Rue*, 819 F.2d 1488 (8th Cir. 1987); *In re Morganroth*, 718 F.2d 161, 167 (6th Cir. 1983)). See also *United States v. Argomaniz*, 925 F.2d 1349, 1355 (11th Cir. 1991) (court must review assertions of Fifth Amendment privilege on question-by-question basis to provide presiding judge specific information needed to determine applicability of privilege).

Similarly, blanket assertions of the attorney-client privilege are unacceptable. Instead, claims of privilege must be made on a document-by-document basis. *United States v. Davis*, 636 F.2d 1028, 1038 (5th Cir. 1981);⁹ *In re Grand Jury Subpoena*, 831 F.2d 225, 227 (11th Cir. 1987). A blanket assertion cannot be used to avoid testifying; instead, a witness' claims of attorney-client privilege are tested by refusing to answer specific questions. *Davis*, 636 F.2d at 1039. See also *Nguyen v. Excel Corp.*, 197 F.3d 200 (5th Cir. 1999); *Clarke v. American Commerce Nat. Bank*, 974

⁹In *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (*en banc*), the Eleventh Circuit adopted as precedent all decisions of the prior Fifth Circuit court of Appeals decided prior to October 1, 1981.

F.2d 127 (9th Cir. 1992); *United States v. White*, 950 F.2d 426, 430 (7th Cir. 1991).

In his motion, Epstein has proceeded like the litigants in the case of *In re Grand Jury Subpoena*, 274 F.3d 563 (1st Cir. 2001), generally asserting a blanket attorney-client and work product privilege to all documents called for by a subpoena without providing a privilege log or any other specific information. Judge Selya strenuously criticized this practice, commenting:

they do not identify any particular documents as privileged, nor do they specify the reasons why certain communications should be considered privileged. Thus, like soothsayers scrutinizing the entrails of a goat, we are left to scour the record for indications of what these documents might be and what they might contain.

Id. at 569. The First Circuit affirmed the district court's denial of the litigants' motion to quash because of their failure "to present sufficient information with respect to the items to which their claim of privilege attaches." *Id.* at 575.

A party that fails to submit a privilege log is deemed to waive the underlying privilege claim. . . . Although most of the reported cases arise in the context of a claim of attorney-client privilege, the "specify or waive" rule applies equally in the context of claims of work product privilege. . . . Despite this knowledge, the intervenors made no effort to prepare a privilege log. *That omission is fatal.*

Id. at 576 (internal citations omitted; emphasis added). *See also United States v. Construction Prods. Research, Inc.*, 73 F.3d 464, 473 (2d Cir. 1996) ("if the party invoking the privilege does not provide sufficient detail to demonstrate fulfillment of the legal requirements for application of the privilege, his claim will be rejected") (citations omitted); *Dorf & Stanton Communications, Inc. v. Molson Breweries*, 100 F.3d 919 (Fed. Cir. 1996) (a party who fails to submit a privilege log is deemed to have waived the underlying privilege claim).

Epstein's failure to provide a privilege log dooms his motion to quash, as well. As shown by his motion, Epstein is represented by extremely competent counsel. In addition to Mr. Black and his partners, Epstein has retained at least six other attorneys with extensive experience in federal

court. Epstein and his counsel have had access to the subpoenaed computers since at least October 2005, when they were removed from Epstein's home, and they have known about the United States' attempts to locate those computers for at least two months, when a subpoena for the same items was served upon Paul Lavery, another private investigator who worked with Riley. This is not a situation where failure to abide by the Court's rules should be tolerated.

III. IN LIGHT OF THE GRAND JURY'S INVESTIGATORY ROLE, THE FIFTH AMENDMENT AND ATTORNEY-CLIENT PRIVILEGES MUST BE NARROWLY CONSTRUED.

Assuming that the Court finds that Epstein has adequately asserted his Fifth Amendment, attorney-client, and work product privileges, the Court must construe the privileges narrowly in deciding their applicability in light of the important role of the Grand Jury in the investigation of these crimes involving the sexual exploitation of minors.

The Supreme Court has routinely recognized the grand jury's unique role in the United States' criminal justice system. The grand jury "belongs to no branch of the institutional Government, serving as a kind of buffer or referee between the Government and the people." *United States v. Williams*, 504 U.S. 36, 47 (1992). Thus, the Court's authority over the grand jury's subpoena and indictment power is limited. *See, e.g., Williams*, 504 U.S. at 54-55 (Court cannot require prosecutors to present exculpatory evidence to the grand jury); *Costello v. United States*, 350 U.S. 359, 363-64 (1956) (Court cannot create rule permitting defendants to challenge grand jury indictments because of inadequate or incompetent evidence). Instead, to fulfill its investigatory role, the grand jury may "compel the production of evidence or the testimony of witnesses as it considers appropriate, and its operation generally is unrestrained by the technical procedural and evidentiary rules governing the conduct of criminal trials." *United States v. Calandra*, 414 U.S. 338, 343

(1974). Courts are “mindful of the policy that ‘nowhere is the public’s claim to each person’s evidence stronger than in the context of a valid grand jury subpoena.’” *In re Grand Jury Proceedings*, 219 F.3d 175, 186 (2d Cir. 2000) (quoting *In re Sealed Case*, 676 F.2d 793, 806 (D.C. Cir. 1982)). See also *In re Grand Jury Subpoena*, 223 F.3d 213, 218 (3d Cir. 2000) (“One of the most significant, if not the most significant, differences stemming from the investigative role of the grand jury is the importance of secrecy, particularly when an investigation is on-going.”) (citations omitted).

The grand jury is “a grand inquest, a body with powers of investigation and inquisition, the scope of whose inquiries is not to be limited narrowly by questions or propriety or forecasts of the probable result of the investigation . . .” *Blair v. United States*, 250 U.S. 273, 282 (1919). A grand jury may “inquire into all information that might possibly bear on its investigation until it has identified an offense or has satisfied itself that none has occurred. *United States v. R. Enterprises, Inc.*, 498 U.S. 292, 297 (1991). “As a necessary consequence of its investigatory function, the grand jury paints with a broad brush.” *Id.* Accordingly, it is a well-recognized principle that courts should not intervene in the grand jury process absent compelling reason. *United States v. Dionisio*, 410 U.S. 1, 16-18 (1973).

A district court also should be mindful of a target’s attempts to “saddle a grand jury with mini-trials and preliminary showings [that] would assuredly impede its investigation and frustrate the public’s interest in the fair and expeditious administration of the criminal laws.” *Id.* at 17. The Court must be wary of a motion made by a target that seeks to gather information about the scope of the investigation. 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.” *R. Enterprises*, 498 U.S. at 299 (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).

A. The Fifth Amendment Privilege

Thus, in *Hale v. Henkel*, 201 U.S. 43 (1906), the Supreme Court refused a grand jury witness’ demand that he be advised of the charges that the grand jury was investigating prior to giving testimony.¹⁰ The Court also limited the assertion of the Fifth Amendment privilege in response to questions before the grand jury: the Amendment does “not declare[] that [the witness] may not be compelled to testify to facts which may impair his reputation for probity, or even tend to disgrace him; but the line is drawn at testimony that may expose him to prosecution.” *Id.* at 66-67. As explained above, Epstein has attempted to assert a blanket Fifth Amendment privilege covering *every* document contained on the three computers removed from his home and *all* of the billing records requested from Riley. The Supreme Court has rejected this attempt to restrict the grand jury’s access to information relevant to its investigation.

B. The Attorney-Client Privilege

In the context of the grand jury, courts have acknowledged that the attorney-client privilege “impedes the full and free discovery of the truth.” *In re Grand Jury Proceedings*, 727 F.2d 1352,

¹⁰The Supreme Court called this “a novelty in criminal procedure with which we are wholly unacquainted, and one which might involve a betrayal of the secrets of the grand jury room.” *Id.* at 59. Epstein counsel’s assertion that he is well acquainted with the subject of the grand jury investigation and that, therefore, he purports to inform the Court of the relevance (or irrelevance) of the subpoenaed items treads upon the grand jury’s investigatory powers as described in *Hale*. *See id.* at 59-64.

1355 (4th Cir. 1984) (citation omitted). Thus, the attorney-client privilege should be narrowly construed, *id.*, and should be recognized “only to the very limited extent that . . . excluding relevant evidence has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth.” *Trammel v. United States*, 445 U.S. 40, 50 (1980) (internal quotation omitted). See also *In re Grand Jury Subpoena*, 274 F.3d 563, 571 (1st Cir. 2001) (“Because [the attorney-client privilege] stands in the way of a grand jury’s right to every man’s evidence, the privilege applies only to the extent necessary to achieve its underlying goal of ensuring effective representation through open communication between lawyer and client.”) (citation omitted).

In the context of a grand jury subpoena, the Eleventh Circuit explains:

the [attorney-client] privilege is not all-inclusive and is, as a matter of law, construed narrowly so as not to exceed the means necessary to support the policy which it promotes. Thus, the argument that *any* communication between an attorney and client is protected by the privilege is overbroad. Merely because a matter which a lawyer is asked to reveal might incriminate a client does not make that matter privileged. The privilege is not designed to protect revelation of incriminating matters, only confidential communications between the attorney and client regarding the matter of representation.

In re Grand Jury Matter No. 91-01386, 969 F.2d 995, 997 (11th Cir. 1992) (citation omitted).

Mindful of this case law, Epstein’s attempt to completely bar the grand jury’s access to pre-existing, voluntarily-created documents cannot stand.

IV. THE COMPUTERS AND THEIR CONTENTS WERE PROPERLY SUBPOENAED AND MUST BE PRODUCED.

A. Epstein Has No Fifth Amendment Privilege in the Computers.

While denying the existence of the subpoenaed computer equipment, Epstein spends several pages telling the Court that requiring William Riley and Riley Kiraly to produce items in their custody implicates and violates *Epstein’s* Fifth Amendment privilege. Epstein’s motion incorrectly

conflates several concepts involving different privileges that, when dissected, do not apply to the subpoenaed items.

The first issue is whether *Epstein's* Fifth Amendment privilege applies to Riley's production of the computers removed from Epstein's home. The Fifth Amendment privilege "protects a person . . . against being incriminated by his own compelled testimonial communication." *Fisher v. United States*, 425 U.S. 391, 409 (1976). Thus, to receive Fifth Amendment protection, a person's statement or act must be: (1) compelled; (2) testimonial; and (3) incriminate *that person* in a criminal proceeding.

The Fifth Amendment privilege is a personal one which may not be asserted vicariously. *United States v. Davis*, 636 F.2d 1028, 1034 (5th Cir. 1981). Thus, "compelled production of documents from an attorney does not implicate whatever Fifth Amendment privilege the taxpayer might have enjoyed from being compelled to produce them himself." *Fisher v. United States*, 425 U.S. 391, 397 (1976).

The right of a person under the 5th Amendment to refuse to incriminate himself is purely a personal privilege of the witness. It was never intended to permit him to plead the fact that some third person might be incriminated by his testimony, even though he were the agent of such person.

Hale v. Henkel, 201 U.S. 43, 69-70 (1906).

In *Couch v. United States*, 409 U.S. 322 (1973), the Supreme Court rejected a taxpayer's assertion of her Fifth Amendment privilege to keep her attorney from turning over documents that had been in the custody of her accountant.¹¹ "In the case before us the ingredient of personal compulsion against an accused is lacking. The summons and the order of the District Court

¹¹The summons had been directed to the accountant but, at the direction of the taxpayer, the accountant had turned the documents over to the attorney.

enforcing it are directed against the accountant. He, not the taxpayer, is the only one compelled to do anything. And the accountant makes no claim that he may tend to be incriminated by the production.” *Id.* at 329. The Court then explained:

the Fifth Amendment privilege is a *personal* privilege; it adheres basically to the person, not to information that may incriminate him. As Mr. Justice Holmes put it: “A party is privileged from producing the evidence, but not from its production.” The Constitution explicitly prohibits compelling an accused to bear witness “against himself;” it necessarily does not proscribe incriminating statements elicited from another. . . . It is extortion of information from the accused himself that offends our sense of justice.

Id. at 328 (quoting *Johnson v. United States*, 228 U.S. 457, 458 (1913)) (emphasis in original). Thus, the Court found that the accountant did not have a Fifth Amendment privilege and could be compelled to produce the documents. *See also SEC v. Jerry T. O'Brien, Inc.*, 467 U.S. 735, 742 (1984) (There is no Fifth Amendment violation against the target of an investigation when a subpoena is issued to third party because the target was not compelled to produce materials.) The Eleventh Circuit has even authorized the government to demand that a target sign a written authorization allowing unidentified third-party banks to produce records within the banks’ custody that relate to the target. *United States v. Ghidoni*, 732 F.2d 814 (11th Cir. 1984).

In this case, the subpoenas are addressed to William Riley and to the Custodian of Records of Riley Kiraly. Neither Riley nor his firm has asserted a legitimate fear of incrimination (and of course they have none), only Epstein has done so. As such, the Fifth Amendment claim must fail. Furthermore, Riley Kiraly is an artificial entity, not a natural person, and therefore has no Fifth Amendment privilege at all. *See, e.g., Doe v. United States*, 487 U.S. 201, 206 (1988); *Bellis v. United States*, 417 U.S. 85, 90 (1974).

B. The Attorney-Client Privilege and the Work Product Doctrine Also Do Not Bar the Production of the Computers.

Despite the fact that Epstein cannot assert his own Fifth Amendment privilege to bar the production of documents by Riley, in certain circumstances, an attorney (or his agent) can use the attorney-client privilege to assert an act of production immunity on behalf of his client. *See, e.g., Fisher*, 425 U.S. at 402-04. Those circumstances do not apply here.

In *Fisher*, the Supreme Court determined that a defendant does *not* suffer a Fifth Amendment violation when his attorney is compelled to produce documents he had received from the defendant because the *defendant* was not compelled to testify against himself. However, the Supreme Court went on to decide that the protections of the attorney-client privilege would be eroded if documents that a defendant could not be forced to produce due to the defendant's Fifth Amendment privilege lost their protection if given to the attorney as part of a confidential communication. The Court thus concluded that where a defendant confidentially communicates preexisting documents to an attorney for purposes of obtaining legal advice, the attorney-client privilege prevents the government from compelling the attorney to produce those items *unless* the government could have compelled the defendant to produce them himself. *Id.* at 404-05.

Thus, to succeed in using the attorney-client privilege to vicariously assert the Fifth Amendment privilege, Epstein must show that the removal of the computers from his home constituted a "confidential communication" where legal advice was sought – *i.e.*, that the attorney-client privilege applied; and, second, that the government could not have obtained the computers directly from Epstein if they had remained in his custody.¹² Epstein has failed to show either.

¹²The Fifth Circuit described *Fisher*'s holding as follows: "preexisting documents transferred to an attorney are protected by the attorney-client privilege only if two conditions are

1. Epstein has not shown that the transfer of the computers to Riley was done in confidence.

“The burden of proving that a communication falls under the attorney-client privilege rests on the proponent of the privilege.” *Hawkins v. Stables*, 148 F.3d 379, 383 (4th Cir. 1998) (citation omitted).

The party invoking the attorney-client privilege has the burden of proving that an attorney-client relationship existed and that the particular communications were confidential. In order to show that communications made to an attorney are within the privilege, it must be shown that “the communication was made to him confidentially, in his professional capacity, for the purpose of securing legal advice or assistance.

United States v. Schaltenbrand, 930 F.2d 1554, 1562 (11th Cir. 1991) (citations omitted). *See also XYZ Corp. v. United States*, 348 F.3d 16, 22 (1st Cir. 2003) (“The privilege protects only those communications that are confidential and are made for the purpose of seeking or receiving legal advice.”) (citations omitted).

The attorney-client privilege protects only communications between attorney¹³ and client for the purpose of seeking legal advice. The “mere fact that an attorney [or in this case, his alleged agent] is present at a meeting or is copied on a document does not in and of itself afford privilege protection to such a meeting or document. [And,] the mere fact that one is an attorney does not render everything he does for or with the client privileged.” *Gutter v. E.I. DuPont de Nemours and*

met. First, the usual common-law prerequisites for the privilege must be satisfied: the information in the documents must be confidential and the transfer must have been made to obtain legal advice. Second, the documents must have been privileged from production in the client’s hands, either at common law or under the fifth amendment.” *Davis*, 636 F.2d at 1040.

¹³For purposes of this discussion, the United States assumes that Riley, a private investigator, and his firm were working as agents of Attorney Black. The billing documents subpoenaed by the United States would assist the United States in evaluating that claim, but Epstein has objected to the production of those documents.

Co., 1998 WL 2017926, *1 (S.D. Fl. May 18, 1998) (citations omitted). If an attorney (or his agent) was doing something other than rendering legal advice, neither the attorney-client nor work product privilege applies. *Id.*

In this case, Epstein has not carried his burden of proving the application of the privilege to the computers. In particular, Epstein has not showed that the “communication” was confidential. Even if Riley could stand in the shoes of Attorney Black, Epstein has not shown that the removal of the computers from Epstein’s home was done in confidence. If others wer present, there was an implied waiver of the privilege. *See, e.g., XYZ Corp.*, 348 F.3d at 23 (“The privilege evaporates the moment that confidentiality ceases to exist. With isthmian exceptions not pertinent here, the presence of third parties is sufficient to undermine the needed confidentiality.”) (citation omitted); *Liggett Group Inc., v. Brown & Williamson Tobacco Corp.*, 116 F.R.D. 205, 210 (M.D.N.C. 1986) (citations omitted) (“For communications between an attorney and client . . . to be privileged, they must be confidential. Ordinarily, the presence of a third party destroys the element of confidentiality and, therefore, any claim of privilege.”).

2. Epstein has failed to establish that the pre-existing documents were a privileged “communication” for purposes of seeking legal advice.

In asserting that the contents of the computers are covered by the attorney-client privilege or the work product doctrine, Epstein attempts to stretch the privileges beyond their limits. There has been no assertion that the computers themselves were communications or that the computers contain attorney-client communications, nor were the computers or their contents produced in anticipation of litigation.

In *Upjohn v. United States*, 449 U.S. 383 (1981), the Supreme Court made clear that an

attorney cannot create a “zone of silence” over factual matters. The Court wrote: the attorney-client “privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts by those who communicated with the attorney.” *Id.* at 395.

The client cannot be compelled to answer the question, “What did you say or write to the attorney?” but may not refuse to disclose any relevant fact within his knowledge merely because he incorporated a statement of such fact into his communication to his attorney. . . . [T]he courts have noted that a party cannot conceal a fact merely by revealing it to his lawyer.

Id. at 396 (internal citations and quotations omitted).

Likewise, despite a claim of attorney work product, “[w]here relevant and nonprivileged facts remain hidden in an attorney’s file and where production of those facts is essential to that preparation of one’s case, discovery may properly be had.” *Hickman v. Taylor*, 329 U.S. 495, 511 (1947). Furthermore, the “work product rule protects work done by an attorney in anticipation of, or during, litigation,” *In re Grand Jury Subpoena*, 274 F.3d at 574, not physical objects, like the computers, or the pre-existing records contained therein, which were created by Epstein or third parties, not attorneys. *Cf. In re Grand Jury Matter No. 91-01386*, 969 F.2d 995 (11th Cir. 1992) (holding that the attorney-client privilege did not bar the disclosure of the names of clients who paid their attorneys with counterfeit bills because “[d]isclosure of the clients’ identities will link them with only the payment of a counterfeit one hundred dollar bill, which is not a communication at all. . . . To apply the privilege under these facts would be an affront to that very system, as it would effectively insulate discoverable acts merely because they were enacted in the presence of an attorney.”) (emphasis added).

Just a month ago, the Second Circuit addressed this issue when a defendant tried to disqualify prosecutors who had seen four documents that the defense alleged were privileged.

United States v. Walker, 2007 WL 1743273 (2d Cir. Jun. 18, 2007). The court wrote:

Even assuming the documents (or the handful of corrections and clarifications handwritten thereon) were work product or were privileged, they contain solely factual information about [a] business, and shed no light on [defendant's] confidential communications with counsel or defense strategy. Moreover, we agree with the district court that these documents were neither work product nor attorney-client communications. The attorney-client privilege protects from disclosure the contents of confidential attorney-client communications, but does not prevent disclosure from the client's records the underlying factual information included in attorney-client communications. See *Upjohn Co. v. United States*, 449 U.S. 383, 395 (1981). For this reason, putting otherwise non-privileged business records . . . in the hands of an attorney—or printing out such records for an attorney to review—does not render the documents privileged or work product. See *Ratliff v. Davis Polk & Wardwell*, 354 F.3d 165, 170-71 (2d Cir. 2003) (“Documents obtain no special protection because they are housed in a law firm; any other rule would permit a person to prevent disclosure of any of his papers by the simple expedient of keeping them in the possession of his attorney.”) *In re Grand Jury Subpoenas*, 318 F.3d 379, 384 (2d Cir. 2003) (stating that the work product doctrine generally does not shield from discovery materials in an attorney's possession that were prepared neither by the attorney nor his agents). Moreover, the “selection and compilation of . . . documents by counsel transforms that material into attorney work product” only if there is “a real, rather than speculative, concern that counsel's thought processes in relation to pending or anticipated litigation will be exposed through disclosure of the compiled documents.” *In re Grand Jury Subpoenas*, 318 F.3d at 386.

Id. at *2 (some internal citations and quotations omitted).

Here, like in *Walker*, Epstein's counsel contends that the computers—which contain only pre-existing documents—are privileged and that counsel's decision to have his investigator remove those computers from Epstein's home is the “selection and compilation of documents” that would disclose his “thought processes.” These arguments fail for the same reasons. First, the computers and their contents are not “communications,” they are pre-existing documents and, as in *Ratliff*, putting them into the hands of an attorney (or his investigator) does not convert them into “privileged” communications. Second, the removal of the three computers from Epstein's home is not the “selection and compilation of documents by counsel.” As Epstein himself argues, each computer

can hold literally thousands of documents. Removing *all* of the file cabinets in an entire home is not the strategic “selection and compilation” of documents, it is simply the wholesale removal of potentially incriminating evidence. Taking Epstein’s argument to its logical conclusion, sending an investigator to a client’s home to remove a murder weapon would make that physical item privileged or “work product” because its removal shows the attorney’s “thought process” that the murder weapon would incriminate his client.¹⁴ Cf. *In re Grand Jury Subpoena*, 204 F.3d 516, 523 (4th Cir.

¹⁴Although unpublished, the case of *United States v. Hunter*, 1995 WL 12513 (N.D. Ill. Jan. 6, 1995), contains facts similar to the ones at bar and gives a detailed analysis of the applicability of the attorney-client privilege to physical items. In *Hunter*, a defendant, subsequent to his arrest, informed his attorney of the existence of currency and ammunition in his home. The attorney went to his client’s home; opened two boxes that contained \$30,000 to \$50,000; and removed them from the home. The boxes were thereafter kept in the attorney’s custody or control. The attorney later revealed the existence of and whereabouts of the boxes and a search warrant was obtained and executed. The defendant moved to bar the introduction of the boxes of cash against him at trial, asserting the attorney-client and work product privileges.

The district court began its analysis by noting that “the boxes themselves do not fall within the protection of the attorney-client privilege, since their existence is a fact and not a ‘communication.’” *Id.* at *2 (citing *Upjohn*, 449 U.S. at 391). The District Court noted that if the boxes had never been removed from the home and the government had learned of their existence only through the use of a protected communication, then the defendant *may* have had an argument against their admission. *Id.* However, “these are not the facts of this case. Here, defendants’ attorneys removed the evidence from [the defendant’s] house, thereby preventing police from recovering the boxes at a later date. At this point, [the attorneys] may have violated their ethical obligation not to ‘unlawfully obstruct another party’s access to evidence.’ Indeed, it is this alteration of criminal evidence that forecloses [the defendant’s] attorney-client privilege argument . . .” *Id.* The district court addressed the cases of *Clutchette v. Rushen*, 770 F.2d 1469 (9th Cir. 1985), and *People v. Meredith*, 631 P.2d 46 (Cal. 1981). In *Clutchette*, the defendant’s attorney had sent an investigator to collect incriminating evidence from a shopkeeper, and the trial court had allowed that evidence to be admitted at trial over the defendant’s assertion of the attorney-client privilege. The Ninth Circuit wrote that once the attorney made the strategic choice to take possession of the evidence—a step which was not necessary to evaluate the significance of the [evidence] for the defendant’s case—he was legally and ethically obligated to turn it over to the prosecution. Therefore, introduction of the evidence did not implicate the privilege. *Hunter* at *2 (citing *Clutchette* at 1472).

In *Meredith*, a murder suspect informed his attorney that the murder victim’s wallet was in the garbage can behind the suspect’s house and the attorney sent a private investigator to retrieve

2000) (“The attorney-client privilege is not intended to permit an attorney to conduct his client’s business affairs in secret. . . . A client may not ‘buy’ a privilege by retaining an attorney to do something that a non-lawyer could do just as well.”) (internal quotations omitted)).

3. Even if the transfer fo the computers was a privileged communication, Epstein cannot show that the computers were privileged in his hands.

Even if the Court finds that the transfer of the computers to Riley was covered by the attorney-client privilege, “documents created outside the attorney-client relationship should not be held privileged in the hands of the attorney unless otherwise privileged in the hands of the client,

it. After reviewing the wallet, the attorney gave it to law enforcement. The prosecution then introduced the wallet at trial, as well as testimony from the investigator that he recovered the wallet from behind the defendant’s home over the defendant’s assertion of the attorney-client privilege. The California Supreme Court held that the introduction of the wallet and the investigator’s testimony was proper because “whenever defense counsel removes or alters evidence, the [attorney-client] privilege does not bar revelation of the original location or conduction of the evidence in question.” *Hunter* at *3 (quoting *Meredith* at 54). While the investigator could not testify about the substance of any communications with the attorney, he had to tell the jury where the wallet was found. The California Supreme Court stated that, to hold otherwise, “permits the defense in effect to ‘destroy’ critical information; it is as if . . . the wallet in this case bore a tag bearing the words ‘located in the trash can by [defendant’s] residence,’ and the defense, by taking the wallet, destroyed this tag.” *Hunter* at n.5 (quoting *Meredith* at 53).

It should be noted that removal of the computers was not necessary to the ability of Epstein’s counsel to evaluate their significance; copies of the hard drives could have been made. Of course, unlike counsel in *Clutchette* and *Meredith*, Epstein’s counsel *never* provided the evidence to law enforcement and, instead, tries to aver that the items may not exist. If that is so, then not only did the investigator working for Epstein’s counsel remove the evidence, he also destroyed it.

Lastly, the defendant asserted that defense counsel’s search of the defendant’s home “was part of the preparation of the defense case, and therefore ‘the basis for conducting such an investigation is attorney-work product because it reflects the thought processes and strategies, if not actual privileged communications.’” *Hunter* at *4. The district court rejected this argument: “[t]aking possession of the boxes did not somehow transform them into ‘materials prepared in anticipation of litigation,’ which would subsequently be undiscoverable.” *Id.* Epstein makes the identical arguments and those arguments should be rejected for the same reasons.

lest the client immunize incriminating evidence merely by depositing it with his attorney.” *Davis*, 636 F.2d at 1041. Thus, the Court must determine whether Epstein has shown that he would have had a Fifth Amendment privilege against producing the computers if they had remained in his custody. The computers are not testimonial communications, so Epstein would not.

The computers themselves are not protected by the Fifth Amendment because they are physical evidence—they are not testimonial. “[T]he distinction to be drawn under the Fifth Amendment privilege against self-incrimination is one between an accused’s ‘communications,’ in whatever form, vocal or physical, [which violates the privilege], and ‘compulsion which makes a suspect or accused the source of ‘real or physical evidence’ [which does not].” *United States v. Wade*, 388 U.S. 218, 223 (1967) (quoting *Schmerber v. State of California*, 384 U.S. 757, 764 (1966)). And the contents of the computers are not protected because the creation of the contents was not compelled, instead, the contents were voluntarily created by the persons who used them.¹⁵ See, e.g., *United States v. Doe*, 465 U.S. 605, 612 (1984); *In re Grand Jury Proceedings*, 393 F.3d 905, 909 (9th Cir. 2004); *In re Foster*, 188 F.3d 1259, 1269 (10th Cir. 1999). This reasoning applies even when the documents or information are classified as “personal papers” rather than business documents. See *United States v. Feldman*, 83 F.3d 9, 14 (1st Cir. 1996) (defendant’s letters of apology not protected because voluntarily prepared); *In re Grand Jury Subpoena Duces Tecum*, 1 F.3d 87, 90 (2d Cir. 1993) (defendant’s personal calendar not protected because voluntarily prepared); *Barrett v. Acevedo*, 169 F.3d 1155, 1168 (8th Cir. 1999) (defendant’s journal not protected because voluntarily written); *United States v. Wuykowski*, 929 F.2d 981, 983 (4th Cir.

¹⁵It should be noted that Epstein has failed to allege that *he* is the person who prepared the contents of the computers. As stated above, one of the computers was removed from an area used by [REDACTED], not Epstein.

1991) (Fifth Amendment does not protect the contents of voluntarily prepared documents, whether business or personal); *United States v. Hubbell*, 167 F.3d 552, 567 (D.C. Cir. 1999) (same), *aff'd on other grounds*, 530 U.S. 27 (2000); *In re Grand Jury Proceedings*, 759 F.2d 1418, 1419 (9th Cir. 1985) (same).

At the very end of his motion, Epstein urges the Court to resurrect *United States v. Boyd*, arguing that the subpoena seeks “purely private papers,” and that a subpoena demanding those papers violates Epstein’s Fifth Amendment rights, pursuant to *Boyd*, 116 U.S. 616 (1886). Epstein’s counsel correctly notes that *Boyd*’s analysis has been severely limited, but asserts that the “purely private paper” doctrine is still alive and applies to the contents of Epstein’s computers.

Boyd’s statement that “purely private papers” cannot be obtained through compulsory process from a target/defendant has been eroded to the point where it no longer has any force or effect. The Supreme Court has written, as early as 1976, that “the continued validity of the broad statements contained in some of the Court’s earlier cases [referring to *Boyd*], have been discredited by later opinions.” *Andresen v. Maryland*, 427 U.S. 463, 472 (1976). In 1984, Justice O’Connor wrote a concurring opinion in *United States v. Doe*, 465 U.S. 605 (1984),

just to make explicit what is implicit in the analysis of that opinion; that the Fifth Amendment provides absolutely no protection for the contents of private papers of any kind. The notion that the Fifth Amendment protects the privacy of papers originated in *Boyd v. United States*, . . . but our decision in *Fisher v. United States*, . . . sounded the death knell for *Boyd*. Several of *Boyd*’s express or implicit declarations [had] not stood the test of time, . . . and its privacy of papers concept had long been a rule searching for a rationale . . . Today’s decision puts a long overdue end to that fruitless search.

Id. at 618 (internal citations and quotations omitted). The full Court wrote that it is well-settled that “if the party asserting the Fifth Amendment privilege has voluntarily compiled [a] document, no compulsion in present and the contents of the document are not privileged.” *Id.* at 612 n.10. See

also *United States v. Hubbell*, 530 U.S. 27, 35-36 (2000) (It is a “settled proposition that a person may be required to produce specific documents even though they contain incriminating assertions of fact or belief because the creation of those documents was not ‘compelled’ within the meaning of the privilege. . . [Where] papers had been voluntarily prepared prior to the issuance of the summonses, they could not be ‘said to contain compelled testimonial evidence, either of the [target] or of anyone else.’ Accordingly, the [target] could not ‘avoid compliance with the subpoena merely by asserting that the item of evidence which he is required to produce contains incriminating writing, whether his own or that of someone else. It is clear, therefore, that respondent Hubbell could not avoid compliance with the subpoena served on him merely because the demanded documents contained incriminating evidence, whether written by others or voluntarily prepared by himself.”) (quoting *Fisher v. United States*, 425 U.S. 391, 409-10 (1976); and citing *United States v. Doe*, 465 U.S. 605 (1984)); *In re Grand Jury Subpoena Duces Tecum*, 1 F.3d 87, 90 (2d Cir. 1993) (“While we have previously left undecided the question of whether the Fifth Amendment protects the contents of private papers that are not business documents, we now rule that it does not.” (internal citation and quotations omitted)); *United States v. Wujkowski*, 929 F.2d 981 (4th Cir. 1991); *In re Sealed Case*, 877 F.2d 83, 84 (D.C. Cir. 1989) (Fifth Amendment privilege “does not cover the contents of any voluntarily prepared records, including personal ones”); *In re Grand Jury Proceedings*, 759 F.2d 1418, 1419 (9th Cir. 1985); *United States v. Bedell & Co.*, 2006 WL 3813792, *1 (E.D.N.Y Oct. 30, 2006) (“It is well settled that the Fifth Amendment ‘does not protect the contents of voluntarily prepared documents, whether business or personal.’” (quoting *In re Hyde*,

235 B.R. 539, 543 (S.D.N.Y. 1999) (emphasis in *Bedell*).¹⁶

Even if the *Boyd* analysis was still good law, it would only apply to *Epstein's* private papers. There has been no showing by Epstein that all of the documents contained on the three computers were his private papers. As set forth in the [REDACTED] Declaration, one of the computers was in an area that appears to be the office of [REDACTED] and another was in the pool cabana.

4. The act of production doctrine would not have protected Epstein from producing the computers if they had remained in his custody.

Even if Epstein could successfully show that the transfer of the computers to Riley were covered by the attorney-client privilege, such that Riley could assert the act of production privilege on behalf of Epstein, the production of the computers would not tend to incriminate Epstein.

Under the act of production doctrine, even if documents responsive to a subpoena are not themselves covered by the Fifth Amendment, "the act of production itself may implicitly communicate statements of fact. By producing documents in compliance with a subpoena, the witness would admit that the papers existed, were in his possession or control, and were authentic." *United States v. Hubbell*, 530 U.S. 27, 36 (2000) (internal quotations and extensive citations

¹⁶Epstein's Fourth Amendment claim also fails under the post-*Boyd* case law. *Andresen v. Maryland*, *supra*, addressed a claim of a Fourth Amendment violation when a search warrant authorized the seizure of papers that the defendant asserted were "personal." The *Andresen* Court rejected the claim, announcing the "general rule: 'There is no special sanctity in papers, as distinguished from other forms of property, to render them immune from search and seizure, if only they fall within the scope of the principles of the cases in which other property may be seized, and if they be adequately described in the affidavit and warrant.'" *Andresen*, 427 U.S. at 474 (quoting *Gouled v. United States*, 255 U.S. 298, 309 (1921)).

It should be noted that a search warrant for Epstein's house was obtained, which included the authority to seize the computers that are the subject of this motion, but Epstein had already removed the computers from the home. (See [REDACTED] Declaration.)

omitted).

However, the act of production privilege applies only if the production would be “testimonial” and “incriminating.” *Butcher v. Bailey*, 753 F.2d 465, 469 (6th Cir 1985) (citing *United States v. Doe*, 465 U.S. 605, 612-13 (1984)).

Production of documents may be testimonial in any of three ways: by acknowledging that the documents exist; by acknowledging that they are in control of the person producing them; or by acknowledging that the person producing them believes they are the documents requested and thereby authenticating them for purposes of Fed. R. Evid. 901. . . . Production of documents is not considered testimonial if each of these consideration is a “foregone conclusion.”

Id. (citing *Doe*, 465 U.S. at 613, n.11, n.13). Accordingly, where the government already knows about the existence of the documents, their whereabouts, and has an independent basis for authentication, a party can be compelled to produce the documents. *See, e.g., Hubbell* at 44-45; *see also In re Grand Jury Subpoena Duces Tecum*, 1 F.3d 87, 93 (2d Cir. 1993) (“Production may not be refused if the government can demonstrate with reasonable particularity that it knows of the existence and location of subpoenaed documents.”) (citation omitted). In this case, as set forth in the [REDACTED] Affidavit and the two *Ex Parte* Affidavits, the government already knows that: (1) the computers exist; (2) they are in the custody or control of Riley; and (3) there is an independent basis to authenticate them. Thus, Riley’s “compliance with the subpoena would require mere ‘surrender’ of the [computers],” not a “testimonial communication” for purposes of *Doe*, and, thus, the subpoenas are enforceable (regardless of the computers’ contents). *Id.* at 93-94 (citation omitted).¹⁷

¹⁷As explained in the *Ex Parte* Affidavits, the United States has established that it can authenticate the computers without Riley’s testimony. Even if it could not, however, that is not a basis for refusing to produce the items. In *United States v. Koubriti*, 297 F. Supp. 2d 955, 969-70 (E.D. Mich. 2004), the court ordered the production of the defendant’s handwritten notes that were in the possession of defense counsel where the United States knew of the existence and location of the notes.

Even if the act of production were testimonial for purposes of *Doe*, production can be refused *only* if the act of production also is *incriminating*. *Butcher*, 753 F.2d at 469-70. In other words, the act of authentication is incriminating only if the documents are incriminating. As explained above, Epstein has failed to make the slightest showing that the computers' contents are incriminating. Where a party fails to provide "sufficient facts to state with reasonable certainty that the privilege applies, the burden is not met." *United States v. Blackburn*, 538 F. Supp. 1376, 1382 (M.D. Fl. 1982) (citing *Federal Trade Commission v. TRW, Inc.*, 628 F.2d 207, 213 (D.C. Cir. 1980); *In re Katz*, 623 F.2d 122, 125 (2d Cir. 1980); *United States v. Landof*, 591 F.2d 36, 38 (9th Cir. 1978); *In re Grand Jury Proceedings*, 73 F.R.D. 647, 651 (M.D. Fl. 1977)).

In *Blackburn*, the Middle District of Florida applied the act of production privilege under the premise that *Boyd* was still binding precedent. Even applying *Boyd*, the court found that the vicarious assertion of act of production immunity via the attorney-client privilege required a showing that the subpoenaed documents were transferred by the target for purposes of obtaining legal advice *and* that the documents were exclusively prepared by the target or under the target's immediate supervision *and* that they were confidential. When the target failed to provide adequate evidence of any *one* of these elements, the court held that the documents were not privileged. Epstein has made *none* of these showings.

Thus, because Riley's compliance with the subpoenas' demand for the production of the computers would not be testimonial and neither Riley nor Epstein has shown that the computers' contents incriminate either of them, the Court should enforce the subpoenas.

V. THE ITEMS SOUGHT IN REQUEST NUMBER THREE ARE NOT COVERED BY THE ATTORNEY-CLIENT PRIVILEGE OR THE WORK PRODUCT DOCTRINE.

The third request contained in the subpoenas to Riley and Riley Kiraly seeks:

3. All documents and information related to the nature of the relationship between Mr. William Riley and/or Riley Kiraly and Mr. Jeffrey Epstein, including, but not limited to, retainer agreements; employment agreements; billing statements (whether submitted directly to Mr. Epstein or to a third party for reimbursement); records of the dates when services were performed and the hours worked; telephone logs or records of dates of communications with Mr. Epstein (or with a third party on Mr. Epstein's behalf); appointment calendars/datebooks and the like (whether in hard copy or electronic form) for any period when work was performed on behalf of Mr. Epstein or when any communication was had with Mr. Epstein (or with a third party on Mr. Epstein's behalf); and records of fee arrangements and payments received for work performed on Mr. Epstein's behalf.¹⁸

Although not clear from Epstein's motion, he does not appear to assert the act-of-production privilege as to the billing records, nor could he, since: (1) he did not create or possess the documents and, therefore, could not authenticate them; and (2) since the Affidavit filed by Epstein's counsel admits that William Riley and Riley Kiraly were hired to assist Epstein's defense, the existence of the documents is not contested.

Instead, Epstein makes a blanket assertion that *all* of the billing records are either work product or attorney-client communications that need not be produced. This assertion fails both procedurally and legally.

A. Epstein's Claim of Privilege Is Waived by His Failure to Carry His Burden of Proving Its Applicability.

Procedurally, the person asserting the privilege bears the burden of establishing its applicability. *See, e.g., United States v. Schaltenbrand*, 930 F.2d 1554 (11th Cir. 1991); *United*

¹⁸For purposes of this discussion, the requested documents will be jointly referred to as "billing records."

States v. Muñoz, 233 F.3d 1117 (9th Cir. 2000); *Hawkins v. Stables*, 148 F.3d 379 (4th Cir. 1998); *Motley v. Marathon Oil Co.*, 71 F.3d 1547 (10th Cir. 1995); *Christman v. Brauvin Realty Advisors, Inc.*, 185 F.R.D. 251 (N.D. Ill. 1999). In making that showing, blanket assertions of the privilege are not proper—the assertion must be made on a question-by-question and document-by-document basis. See, e.g., *Nguyen v. Excel Corp.*, 197 F.3d 200 (5th Cir. 1999); *Clarke v. American Commerce Nat. Bank*, 974 F.2d 127 (9th Cir. 1992); *United States v. White*, 950 F.2d 426, 430 (7th Cir. 1991).

As explained above, a party's failure to provide a privilege log or to otherwise substantiate its claims of privilege can act as a waiver of the privilege. That standard should apply here and all of the items in Request Number Three should be ordered produced.

B. The Categories of Documents Sought All Fall Outside the Privilege.

Legally, each of the categories of documents contained in the third request has been discussed by courts and determined to be outside the privilege. The Eleventh Circuit holds that the “identity of a client and the receipt of attorney’s fees normally are not privileged matters.” *In re Grand Jury Matter No. 91-01386*, 969 F.2d 995, 997 (11th Cir. 1992) (citation omitted). In *United States v. Legal Servs. for New York City*, 249 F.3d 1077 (D.C. Cir. 2001), the D.C. Circuit stated that “[c]ourts have consistently held that the general subject matters of clients’ representations are not privileged. Nor does the general purpose of a client’s representation necessarily divulge a confidential professional communication, and therefore that data is not generally privileged.” *Id.* at 1081 (citation omitted). See also *Nguyen v. Excel Corp.*, 197 F.3d 200, 206 (5th Cir. 1999) (“the general nature of [an attorney’s] services is not protected by the privilege.”); *In re Horn*, 976 F.2d 1314, 1317 (9th Cir. 1992) (“the attorney-client privilege ordinarily protects neither a client’s

identity nor information regarding the fee arrangements reached with that client,” including the amount paid for legal services and the form of payment) (citation omitted); *Clarke v. American Commerce Nat’l Bank*, 974 F.2d 127, 129 (9th Cir. 1992) (“the identity of the client, the amount of the fee, the identification of payment by case file name, and the general purpose of the work performed are usually not protected from disclosure by the attorney-client privilege”) (citations omitted); *In re Grand Jury Proceedings in Matter of Fine*, 641 F.2d 199, 204 (5th Cir. 1981) (same); *O’Neal v. United States*, 258 F.3d 1265 (11th Cir. 2001) (information regarding the receipt of attorney’s fees is not protected).

In *Matter of Grand Jury Proceeding*, 68 F.3d 193 (7th Cir. 1995), the Seventh Circuit discussed specific questions asked of an attorney during his testimony before the grand jury. There, unlike here, the attorney properly appeared to testify and then asserted a claim of privilege in response to particular questions. The Seventh Circuit found that the following questions did *not* call for privileged communications:

- (1) Whom did you direct [in the search of documents responsive to the subpoena]?
- (2) From whom did you get [the documents you produced in response to the subpoena]?
- (3) Did [the person who supplied the documents to you] understand they were given in response to a subpoena? (Brackets in original.)
- (4) Did that person understand you were to forward them to the Grand Jury in response to a subpoena?
- (5) Did you tell your client . . . you were going to convey them to the government pursuant to Grand Jury subpoena?

Id. at 194-95, 196.

In reaching its decision, the Seventh Circuit relied on *In re Feldberg*, 862 F.2d 622 (7th Cir. 1988). In *Feldberg*, an attorney was subpoenaed to appear before the grand jury after the grand jury suspected obstruction of justice based upon the delayed disclosure of certain documents. The attorney appeared but asserted the attorney-client privilege in response to several questions. The *Feldberg* court determined that the following questions did not call for privileged information:

(1) Did you direct someone else to [conduct a search of the files for purposes of gathering the information responsive to this subpoena]?

(4) Did you have a conversation with anyone affiliated with World Sports Entertainment in which you told them that you were going to [contact the U.S. Attorney's Office and say you represented World Sports and would handle compliance with the subpoena]?

(6) Did you tell [the president of World Sports and an associate] that you were going to convey these contracts to the Government, with the representation that they were all contracts called for by the subpoena?

(7) [D]id you direct anyone to produce such a list [of contracts] for disclosure to the Government?

(8) Did you have a conversation in which you asked someone to give those [51 contracts] to you for disclosure to the Government?

Fine, 68 F.3d at 196 (quoting *Feldberg*, 862 F.2d at 624) (brackets in original). In both instances, the Seventh Circuit held that questions that "deal with whether the attorney 'directed someone to search the files; if so, who and how'" were not privileged. *Fine* at 196 (quoting *Feldman* at 628).

Questions that “involve whether the client or the person collecting the documents knew they were acting pursuant to a subpoena” likewise did not violate the privilege. *Id.* While these cases address testimonial questions, the information that they seek to elicit is similar to the information contained in some of the documents subpoenaed from Riley, including, for example, billing statements, records of dates of services performed and dates of communications with Epstein.

Other cases have held that the scope or objective of an attorney’s employment is not protected, *In re Grand Jury Proceedings-Gordon*, 722 F.2d 303 (6th Cir. 1983), nor are telephone records and appointment calendars of the attorney. *McArthur v. Robinson*, 98 F.R.D. 672 (E.D. Ark. 1983). Thus, the dates on which the client first contacted his attorney, the dates on which services were rendered, and the dates that the client communicated with his attorney are not privileged. *Condon v. Petaque*, 90 F.R.D. 53 (N.D. Ill. 1981). *See also Matter of Walsh*, 623 F.2d 489 (7th Cir. 1980) (ledgers, bills, time records, and retainer agreements in the possession of the attorney not privileged); *Coalition to Save Our Children v. State Bd. of Educ.*, 143 F.R.D. 61 (D. Del. 1992) (time sheets and billing records not privileged).

One of Epstein’s other attorneys, Gerald Lefcourt, is certainly aware that a client’s identity, his payment of fees, and the method and amount of payment are not privileged, even when the information would incriminate the client “in the very case in which the Firm was engaged to provide criminal defense representation.” *Gerald B. Lefcourt, P.C. v. United States*, 125 F.3d 79, 87 (2d Cir. 1997). In that case, Attorney Lefcourt refused to identify in an IRS reporting form a client who paid him more than \$10,000 cash, and Lefcourt was fined \$25,000. Lefcourt sought to avoid the fine, claiming that he had an objectively reasonable belief that the information was privileged. The Second Circuit determined that he did not, noting its series of cases holding that the attorney-client

privilege did not bar the disclosure of fee information, even where that information could incriminate the client. *Id.* Epstein's attempt to assert similar arguments here should also fail.

VI. EPSTEIN DOES NOT HAVE ANY SIXTH AMENDMENT RIGHTS IN CONNECTION WITH THE GRAND JURY'S INVESTIGATION.

Epstein spends several pages arguing that the grand jury subpoenas violate his Sixth Amendment right to counsel and to the effective assistance of counsel. Yet Epstein has no rights under the Sixth Amendment in connection with this investigation. The right to effective assistance of counsel does not attach until adversary judicial proceedings have been initiated against a defendant. *Kirby v. Illinois*, 406 U.S. 682 (1972). For this reason, the Sixth Amendment does not apply to a grand jury investigation, and a demand for information related to the attorney-client relationship prior to that time does not violate the client's right to counsel or interfere with his future right to counsel. *In re Special September 1978 Grand Jury (II)*, 640 F.2d 49, 64 (7th Cir. 1980); *Tornay v. United States*, 840 F.2d 1424 (9th Cir. 1988).

Adversary judicial proceedings have yet to begin in the federal system and also had not begun in the state system at the time the computers were removed; thus, the Sixth Amendment is not implicated. Epstein tries to avoid this conclusion by dropping a footnote asserting that, pursuant to *Texas v. Cobb*, 532 U.S. 162 (2001), his Sixth Amendment rights attached at the time he was charged in the state system. This misstates *Cobb* and its progeny which hold that a defendant's Sixth Amendment right to counsel is *charge-specific*, and that Sixth Amendment rights in connection with prosecution by one sovereign do not carry over to prosecution by another sovereign.

In *Cobb*, the Supreme Court clarified its holding in *McNeil v. Wisconsin*, 501 U.S. 171 (1991) that the "Sixth Amendment right to counsel is offense specific. It cannot be invoked once for all future prosecutions." *Id.* at 167 (quoting *McNeil* at 175). The *Cobb* Court noted that some

other courts:

have read into *McNeil*'s offense-specific definition an exception for crimes that are 'factually related' to a charged offense. Several of these courts have interpreted *Brewer v. Williams*, 430 U.S. 387 (1977) and *Maine v. Moulton*, 474 U.S. 159 – both of which were decided well before *McNeil* – to support this view, which respondent now invites us to approve. *We decline to do so.*

Cobb at 168 (emphasis added).

Instead, the *Cobb* Court made clear that the Sixth Amendment right is truly *offense-specific*, meaning limited to the same offense for purposes of the Double Jeopardy Clause. *Id.* at 172-173 (“We see no constitutional difference between the meaning of the term ‘offense’ in the contexts of double jeopardy and of the right to counsel. Accordingly, we hold that when the Sixth Amendment right to counsel attaches, it does encompass offenses that, even if not formally charged, would be considered the same offense under the *Blockburger* test.”) The Supreme Court also noted that “offense-specific” is synonymous with “prosecution specific.” *Id.* at n.3.¹⁹

The Supreme Court chose to clearly delineate the scope of those interrogations subject to suppression because:

it is critical to recognize that the Constitution does not negate society's interest in the ability of police to talk to witnesses and suspects, even those who have been charged with other offenses. “Since the ready ability to obtain uncoerced confessions is not an evil but an unmitigated good, society would be the loser. Admissions of guilt resulting from valid *Miranda* waivers are more than merely desirable” they are essential to society's compelling interest in finding, convicting, and punishing those who violate the law.

Id. at 172-73 (quoting *McNeil*, 501 U.S. at 181).

Two Courts of Appeals have addressed *Cobb* in the context of persons charged by state

¹⁹In *Cobb*, the Court went on to decide that Texas police officers did not violate Cobb's Sixth Amendment rights when they questioned him regarding murders that occurred during a burglary even though the defendant was already represented in connection with the pending burglary charge.

prosecutors who are later interrogated by federal agents. In those cases, the courts have found that, so long as the state charge and the federal charge contain different elements under the *Blockburger* test, there is no Sixth Amendment violation, even if the charges arise from the same act. See *United States v. Avants*, 278 F.3d 510, 512-13 (5th Cir. 2002) (“[T]he federal and state murder prosecutions in this case, *although identical in their respective elements*, are separate offenses for purposes of the Sixth Amendment because they were violations of the laws of two separate sovereigns – specifically the State of Mississippi and the United States. Therefore, because the Sixth Amendment is offense-specific, Avants’s statements during the 1967 interview, when he was represented by counsel only in the state proceeding, are not barred in this federal proceeding.”); *United States v. Coker*, 433 F.3d 39 (1st Cir. 2005) (same). See also *United States v. Lall*, ___ F. Supp. 2d ___, 2007 WL 1521487, *7 (M.D. Fl. May 23, 2007) (“Lall’s state and her federal charges, although pertaining to the same criminal episode, are separate offenses for Sixth Amendment purposes. The reason is that each prosecution involves separate sovereigns.”); *United States v. McCloud*, ___ F. Supp. 2d ___, 2007 WL 1706353 (S.D. Ga. June 11, 2007) (same).

Even if Epstein could assert a Sixth Amendment violation based upon the issuance of the subpoenas, his assertion that the subpoenas should be quashed because “his entire attorney-client relationship would be endangered [fails,] for it is confidential communications that are protected, not the relationship as a whole. *McKay v. C.I.R.*, 886 F.2d 1237 (9th Cir. 1989).

VII. THE SUBPOENAS ARE NOT OPPRESSIVE, OVERBROAD, AND UNPARTICULARIZED.

Epstein also asserts that the subpoenas seeking the computer equipment are unreasonable because they are oppressive, overbroad, and unparticularized. Epstein has failed to cite any legal authority that allows him to intervene to assert these challenges. “In the absence of a claim of

privilege, a party usually does not have standing to a subpoena directed to a non-party witness.” *Langford v. Chrysler Motors Corp.*, 513 F.2d 1121, 1126 (2d Cir. 1975). For example, in *United States v. Wells*, 2006 WL 3203905 (E.D. Mich. Nov. 3, 2006), a party sought to quash a subpoena issued to his bank, objecting that he was “unsure of what information the United States [sought] to gain from [the bank’s] records.” *Id.* at *2. The district court denied the motion, noting the party’s lack of standing in the absence of the assertion of a privilege. As set forth above, the United States does not object to Epstein’s intervention to assert his Fifth Amendment, attorney-client, and work product privileges, but there is no basis for him to intervene to assert that the subpoenas are burdensome when he is not the person who will bear that burden, and the subpoenaed parties have not raised a complaint.

If the Court finds that Epstein has standing to assert these challenges, he also bears the burden of establishing his allegation that the subpoenas are oppressive or overbroad. A “grand jury subpoena is presumed reasonable unless its recipient demonstrates otherwise. Fed. R. Crim. P. 17(c) permits judicial oversight only when ‘compliance would be unreasonable or oppressive.’ Thus the Court held trial courts can not place an initial burden on the government to prove a grand jury subpoena is necessary and relevant.” *In re Impounded*, 241 F.3d 308, 314 (3d Cir. 2001) (quoting *R. Enter.*, *supra*, 498 U.S. at 298-99). See also *Blair v. United States*, 250 U.S. 273, 282 (1919) (a grand jury witness cannot refuse to respond to a subpoena on the grounds that the information sought by the grand jury is not relevant to its investigation). The burden of showing unreasonableness rests with the person seeking to avoid compliance. *R. Enterprises*, 498 U.S. at 301.

The Supreme Court has noted the grand jury’s broad powers to issue subpoenas: “the grand

jury's authority to subpoena witnesses is not only historic . . . but essential to its task. . . . The "longstanding principle that 'the public . . . has a right to every man's evidence,' except for those persons protected by a constitutional, common-law or statutory privilege, . . . is particularly applicable to grand jury proceedings." *Branzburg v. Hayes*, 408 U.S. 665, 688 (1972) (citations omitted). In *R. Enterprises*, the Supreme Court held that subpoenas cannot be quashed on the basis of irrelevance if there is a reasonable possibility that the materials sought by the government will produce information relevant to the grand jury investigation. *R. Enter.*, 498 U.S. at 300.

Despite these broad powers, Epstein objects to the subpoenas that specifically call for and describe three computers, arguing that they are "unparticularized" and "oppressive." A grand jury subpoena must be reasonable, and, in making that determination, "what is reasonable depends on the context." *New Jersey v. T.L.O.*, 469 U.S. 325, 337 (1985). Likewise, whether a subpoena is oppressive depends on the context. *In re August, 1993 Regular Grand Jury*, 854 F. Supp. 1392, 1401 (S.D. Ind. 1993). The context here is the wholesale removal of these computers just days before a court authorized a warrant for their seizure. The context of this investigation is Epstein's sexual exploitation of numerous girls from local high schools; the known existence of surveillance video equipment in the home; computer printouts showing electronic messages for "appointments" with the minors; and printouts showing payments made to girls.

In determining the reasonableness of a subpoena, the most important facts are whether the subpoena commands the production of items relevant to the grand jury's investigation, the particularity with which the items sought are described, and the burden involved in compliance. *See R. Enterprises*, 498 U.S. at 300. Since the investigation's subject is secret, Epstein must persuade the Court that the subpoena could serve no legitimate purpose that the grand jury could possibly

investigate. *Id.* Epstein has failed to do so.

A claim of oppressiveness requires a showing that compliance is excessively difficult. *See In re Grand Jury Proceedings*, 115 F.3d 1240, 1244 (5th Cir. 1997). Oppression is difficult to establish, even if the cost of compliance is "crippling." *In re August, 1993 Regular Grand Jury*, 854 F. Supp. at 1402. With respect to the particularity and oppressiveness, the Riley subpoenas specifically describe the items to be produced, and, as written, impose a minimal burden, they simply call for Riley to return the equipment that was removed.²⁰

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court deny the Motion to Quash filed by Jeffrey Epstein and order the subpoenaed parties, William Riley and Riley Kiraly, to appear and provide testimony and evidence in accordance with the issued subpoenas at the next meeting of the Grand Jury.

Respectfully submitted,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By:

[REDACTED]
Assistant United States Attorney

Florida Bar No. [REDACTED]
500 South Australian Avenue, Suite 400
West Palm Beach, FL 33401

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²⁰It would be more burdensome to attempt to craft a list of computer files for Riley to produce, which would require Riley to conduct a manual search of the computer equipment himself.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 31, 2007, the foregoing document and the Declaration of [REDACTED] will be served via hand delivery on Attorney Roy Black, counsel for Jeffrey Epstein. The same documents will be served on William Richey, counsel for William Riley and Riley Kiraly, via Federal Express. This document was not filed using CM/ECF because it is being filed under seal.

[REDACTED]
[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
Service via Hand Delivery

UNITED STATES DISTRICT COURT
Southern District of Florida

Number: FGJ 07-103 (WPB)

In Re
Grand Jury Subpoenas Duces Tecum
Numbers OLY-63 and OLY-64

UNITED STATES' MOTION TO FILE OVERSIZED RESPONSE TO MOTION TO QUASH

FILED BY _____ D.C.
2007 JUL 31 AM 11:54
CLARENCE H. WOOD
CLERK U.S. DIST. CT.
S.D. OF FLA. - WPB

SEALED DOCUMENT TRACKING FORM

Party Filing Matter Under Seal

Name: [Redacted] U.S. Attorney's Office

Address: 500 S. Australian Ave, Suite 400, West Palm Beach, FL 33401

Telephone: [Redacted]

On behalf of (select one):

- Plaintiff Defendant

Date sealed document filed: 7/31/2007

If sealed pursuant to statute, cite statute: Fed. R. Crim. P. 6(e) (Grand Jury Material)

If sealed pursuant to previously entered protective order, date of order and docket entry number: _____

The matter should remain sealed until:

- Conclusion of Trial Arrest of First Defendant
 Case Closing Conclusion of Direct Appeal
 Other: _____
 Permanently. Specify the authorizing law, rule, court order: _____

The moving party requests that when the sealing period expires, the filed matter should be (select one):

- Unsealed and placed in the public portion of the court file Destroyed
 Returned to the party or counsel for the party, as identified above

[Redacted Signature]

Attorney for: Movant United States of America

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

IN RE GRAND JURY SUBPOENAS
DUCES TECUM NUMBERS
OLY-63 and OLY-64

FGJ 07-103(WPB)

**UNITED STATES' UNOPPOSED MOTION FOR PERMISSION TO FILE
OVERSIZED RESPONSE TO MOTION OF JEFFREY EPSTEIN
TO INTERVENE AND TO QUASH GRAND JURY SUBPOENAS
AND CROSS-MOTION TO COMPEL**

UNDER SEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

IN RE GRAND JURY SUBPOENAS
DUCES TECUM NUMBERS
OLY-63 and OLY-64

FGJ 07-103(WPB)

UNDER SEAL

FILED BY _____ D.C.
2007 JUL 31 AM 11:54
CLARENCE M. HANCOCK
CLERK, U.S. DISTRICT
COURT
S.D. OF FLA.

UNITED STATES' UNOPPOSED MOTION FOR PERMISSION TO FILE
OVERSIZED RESPONSE TO MOTION OF JEFFREY EPSTEIN
TO INTERVENE AND TO QUASH GRAND JURY SUBPOENAS
AND CROSS-MOTION TO COMPEL

The United States, by and through the undersigned Assistant United States Attorney, hereby files this Motion for Permission to File an Oversized Response, and, in support thereof, states:

1. Movant Jeffrey Epstein, by and through counsel, filed a Motion to Intervene and to Quash two grand jury subpoenas duces tecum on July 17, 2007.
2. The Motion is thirty-nine (39) pages long and raises significant legal issues related to the enforceability of two grand jury subpoenas.
3. The Response to the Motion is forty (40) pages long, which exceeds the page limit set forth in Local Rule 7.1(C)(2).
4. For the foregoing reasons, the United States respectfully requests that the Court grant permission for the United States to file an oversized Response.
5. **Certification:** Pursuant to Local Rule 88.9, the United States has conferred with

counsel for Movant, who states that he has no objection to the granting of this motion.

Respectfully submitted,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By:

[REDACTED]
Assistant United States Attorney
Florida Bar No. [REDACTED]
500 South Australian Avenue, Suite 400
West Palm Beach, FL 33401
Telephone: [REDACTED]
Facsimile: [REDACTED]
E-mail: [REDACTED]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 31, 2007, the foregoing document will be served via hand delivery on Attorney Roy Black, counsel for Jeffrey Epstein. The same document will be served on William Richey, counsel for William Riley and Riley Kiraly, via Federal Express. 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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Assistant U.S. Attorney

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**Attorney for Subpoenaed Parties Riley
Kiraly and William Riley**
Service via Federal Express

Roy Black, Esq.

[REDACTED]
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Telephone: [REDACTED]
Facsimile: [REDACTED]
Attorney for Intervenor Jeffrey Epstein
Service via Hand Delivery

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

IN RE GRAND JURY SUBPOENAS
DUCES TECUM NUMBERS
OLY-63 and OLY-64
_____ /

FGJ 07-103(WPB)

UNDER SEAL

ORDER

THIS CAUSE came before the Court on the United States of America's Motion for Permission to File Oversized Response.

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
OLY-63 and OLY-64
_____ /

FGJ 07-103(WPB)

UNDER SEAL

ORDER

THIS CAUSE came before the Court on the United States of America's Motion for Permission to File *Ex Parte* Affidavits 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

Number: FGJ 07-103 (WPB)

FILED BY _____ D.C.
2007 JUL 31 AM 11:14
CLARENCE F. ...
CLERK U.S. DIST. CT.
S.D. OF FLA. - WPB

In Re
Grand Jury Subpoenas Duces Tecum
Numbers OLY-63 and OLY-64

UNITED STATES' MOTION TO FILE EX PARTE AFFIDAVITS IN SUPPORT OF RESPONSE TO MOTION TO QUASH

SEALED DOCUMENT TRACKING FORM

Party Filing Matter Under Seal

Name: [REDACTED] U.S. Attorney's Office

Address: 500 S. Australian Ave, Suite 400, West Palm Beach, FL 33401

Telephone: [REDACTED]

On behalf of (select one):

Plaintiff

Defendant

Date sealed document filed: 7/31/2007

If sealed pursuant to statute, cite statute: Fed. R. Crim. P. 6(e) (Grand Jury Material)

If sealed pursuant to previously entered protective order, date of order and docket entry number: _____

The matter should remain sealed until:

Conclusion of Trial

Arrest of First Defendant

Case Closing

Conclusion of Direct Appeal

Other: _____

Permanently. Specify the authorizing law, rule, court order: _____

The moving party requests that when the sealing period expires, the filed matter should be (select one):

Unsealed and placed in the public portion of the court file

Destroyed

Returned to the party or counsel for the party, as identified above

[REDACTED SIGNATURE]

Attorney for: Movant United States of America

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

IN RE: GRAND JURY SUBPOENAS
DUCES TECUM NUMBERS
OLY-64 AND OLY-64

FGJ 07-103 (WPB)

FILED BY _____ D.C.
2007 JUL 31 AM 11:54
CLERK U.S. DIST. CT.
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**MOTION FOR LEAVE TO FILE EX PARTE DECLARATIONS 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
OLY-64 AND OLY-64

FGJ 07-103 (WPB)

UNDER SEAL

**MOTION FOR LEAVE TO FILE EX PARTE DECLARATIONS 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 two *ex parte* Declarations 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 Declarations 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. The Declarations are 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 two *Ex Parte* declarations, which address 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.

Pursuant to the Local Rules, the undersigned has conferred with counsel for Intervenor Epstein, who has advised that he opposes the granting of this motion.

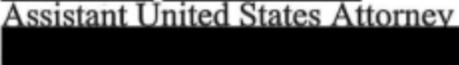
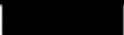
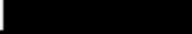
WHEREFORE, the United States respectfully requests that it be allowed to file two Declarations *Ex Parte* in support of its Response to the Motion to Quash.

Respectfully submitted,

R. ALEXANDER ACOSTA

By:


Assistant United States Attorney


Florida Bar No. 
500 South Australian Avenue, Suite 400
West Palm Beach, FL 33401
Telephone: 
Facsimile: 

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 31, 2007, the foregoing document will be served via Federal Express on Attorney William Richey and will be served by hand delivery on Attorney Roy Black. This document was not filed using CM/ECF because it is being filed under seal.

[Redacted Signature]

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

[Redacted]
Assistant U.S. Attorney
[Redacted]
U.S. Attorney's Office
500 S. Australian Ave, Suite 400
West Palm Beach, FL 33401
Telephone: [Redacted]
Facsimile: [Redacted]
Attorney for United States

William L. Richey, Esq.
[Redacted]
William L. Richey P.A.
201 S. Biscayne Boulevard, 34th Floor
Miami, Florida 33131
Telephone: [Redacted]
Facsimile: [Redacted]
Attorney for Subpoenaed Parties Riley
Kiraly and William Riley

Roy Black, Esq.
[Redacted]
Black, Srebnick, Kornspan & Stumpf,
P.A.
201 S. Biscayne Boulevard, Suite 1300
Miami, FL 33131
Telephone: [Redacted]
Facsimile: [Redacted]
Attorney for Intervenor Jeffrey
Epstein

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

IN RE: GRAND JURY SUBPOENAS
DUCES TECUM NUMBERS
OLY-64 AND OLY-64

FGJ 07-103 (WPB)

UNDER SEAL

ORDER GRANTING UNITED STATES' MOTION TO FILE EX PARTE DECLARATIONS

This matter comes before the Court upon the United States' Motion to File two Ex Parte Declarations in support of its Response to the pending Motion to Quash. 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
July, 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
OLY-63 and OLY-64

FGJ 07-103(WPB)

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
OLY-64 AND OLY-64

FGJ 07-103 (WPB)

FILED BY _____ D.C.
2007 JUL 31 AM 11:54
CLARENCE HANCOCK
CLERK U.S. DIST. CT.
S.D. OF FLA. - WPB

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' Motion of Jeffrey Epstein to Intervene and to Quash Grand Jury Subpoenas and Cross-Motion to Compel, the United States' Motion for Permission to File *Ex Parte* Affidavits, the Order on the United States' Motion for Permission to File *Ex Parte* Affidavits, the United States' Unopposed Motion for Permission to File Oversized Response to Motion of Jeffrey Epstein to Intervene and to Quash Grand Jury Subpoenas and Cross-Motion to Compel, Ex Parte Declaration Number One in Support of United States' Response to Motion to Quash Subpoenas, the Declaration of [REDACTED], and the Ex Parte Declaration Number Two 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,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By:

A. MARIE VILLAFANA
Assistant United States Attorney

Florida Bar No. [REDACTED]
500 South Australian Avenue, Suite 400
West Palm Beach, FL 33401
Telephone: [REDACTED]
Facsimile: [REDACTED]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 31, 2007, the foregoing document will be served via Federal Express on Attorney William Richey and will be served by hand delivery on Attorney Roy Black. This document was not filed using CM/ECF because it is being filed under seal.


A. Marie Villafana
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

[REDACTED]
Assistant U.S. Attorney
[REDACTED]
U.S. Attorney's Office
500 S. Australian Ave, Suite 400
West Palm Beach, FL 33401
Telephone: [REDACTED]
Facsimile: [REDACTED]
Attorney for United States

William L. Richey, Esq.
[REDACTED]
William L. Richey P.A.
201 S. Biscayne Boulevard, 34th Floor
Miami, Florida 33131
Telephone: [REDACTED]
Facsimile: [REDACTED]
Attorney for Subpoenaed Parties Riley
Kiryaly and William Riley

Roy Black, Esq.
[REDACTED]
Black, Srebnick, Kornspan & Stumpf, P.A.
201 S. Biscayne Boulevard, Suite 1300
Miami, FL 33131
Telephone: [REDACTED]
Facsimile: [REDACTED]
Attorney for Intervenor Jeffrey Epstein

UNITED STATES DISTRICT COURT
Southern District of Florida

Number: FGJ 07-103 (WPB)

In Re
Grand Jury Subpoenas Duces Tecum
Numbers OLY-63 and OLY-64

UNITED STATES' MOTION TO FILE DOCUMENTS UNDER SEAL

SEALED DOCUMENT TRACKING FORM

Party Filing Matter Under Seal

Name: [REDACTED] U.S. Attorney's Office

Address: 500 S. Australian Ave, Suite 400, West Palm Beach, FL 33401

Telephone: [REDACTED]

On behalf of (select one):

Plaintiff

Defendant

Date sealed document filed: 8/31/2007

If sealed pursuant to statute, cite statute: Fed. R. Crim. P. 6(e) (Grand Jury Material)

If sealed pursuant to previously entered protective order, date of order and docket entry number: _____

The matter should remain sealed until:

Conclusion of Trial

Arrest of First Defendant

Case Closing

Conclusion of Direct Appeal

Other: _____

Permanently. Specify the authorizing law, rule, court order: _____

The moving party requests that when the sealing period expires, the filed matter should be (select one):

Unsealed and placed in the public portion of the court file

Destroyed

Returned to the party or counsel for the party, as identified above



Attorney for: United States of America

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

IN RE GRAND JURY SUBPOENAS
DUCES TECUM NUMBERS
OLY-63 and OLY-64

FGJ 07-103(WPB)

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
OLY-63 AND OLY-64

FGJ 07-103 (WPB)

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 William Riley 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.

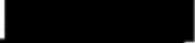
Respectfully submitted,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By:



Assistant United States Attorney


Florida Bar No. 
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

[REDACTED]
Assistant U.S. Attorney

[REDACTED]
U.S. Attorney's Office
500 S. Australian Ave, Suite 400
West Palm Beach, FL 33401
Telephone: [REDACTED]
Facsimile: [REDACTED]
Attorney for United States

William L. Richey, Esq.

[REDACTED]
William L. Richey P.A.
201 S. Biscayne Boulevard, 34th Floor
Miami, Florida 33131
Telephone: [REDACTED]
Facsimile: [REDACTED]
**Attorney for Subpoenaed Parties Riley
Kiraly and William Riley**

Roy Black, Esq.

[REDACTED]
Black, Srebnick, Kornspan & Stumpf,
P.A.
201 S. Biscayne Boulevard, Suite 1300
Miami, FL 33131
Telephone: [REDACTED]
Facsimile: [REDACTED]
**Attorney for Intervenor Jeffrey
Epstein**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

IN RE: GRAND JURY SUBPOENAS
DUCES TECUM NUMBERS
OLY-64 AND OLY-64

FGJ 07-103 (WPB)

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

UNITED STATES DISTRICT COURT
Southern District of Florida

Number: FGJ 07-103 (WPB)

In Re
Grand Jury Subpoenas Duces Tecum
Numbers OLY-63 and OLY-64

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

SEALED DOCUMENT TRACKING FORM

Party Filing Matter Under Seal

Name: [REDACTED], U.S. Attorney's Office

Address: 500 S. Australian Ave, Suite 400, West Palm Beach, FL 33401

Telephone: [REDACTED]

On behalf of (select one):

- Plaintiff Defendant

Date sealed document filed: 8/31/2007

If sealed pursuant to statute, cite statute: Fed. R. Crim. P. 6(e) (Grand Jury Material)

If sealed pursuant to previously entered protective order, date of order and docket entry number: _____

The matter should remain sealed until:

- Conclusion of Trial Arrest of First Defendant
 Case Closing Conclusion of Direct Appeal
 Other: _____
 Permanently. Specify the authorizing law, rule, court order: _____

The moving party requests that when the sealing period expires, the filed matter should be (select one):

- Unsealed and placed in the public portion of the court file Destroyed
 Returned to the party or counsel for the party, as identified above

[REDACTED SIGNATURE]

Attorney for: United States of America

William L. Richey, P.A.

201 South Biscayne Boulevard
34th Floor, Miami Center
Miami, Florida 33131-4325
Phone: ([REDACTED])
Fax: ([REDACTED])

Facsimile transmittal

To: [REDACTED] Esq. From: Danise Townsend
Fax: 1-[REDACTED] Date: 8/17/2007 3:38:50 PM
Re: Grand Jury Subpoena - Jeffrey Pages: 7

Attached is a Sealed Document Tracking Form, Motion to File Documents Under Seal and an Order Granting Same.

This transmittal is intended only for the use of the addressee and may contain information that is privileged, confidential and exempt from disclosure by law. If the reader of this transmittal is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original transmittal to us by mail. Thank you for your cooperation.

If you have not received a clear and legible transmission or if there are any problems with this transmission, please telephone us immediately at [REDACTED].

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FGJ 07-103 (WPB)

IN RE GRAND JURY SUBPOENAS
DUCES TECUM NUMBERS
OLY-63 & OLY-64

SEALED DOCUMENT TRACKING FORM

Party Filing Matter Under Seal Name: William L. Richey
Address: 201 South Biscayne Boulevard, 34th Floor
Miami, Florida 33131
Telephone: [REDACTED]

On behalf of (select one): Plaintiff Defendant Subpoenaed Parties

Date sealed document filed: August 17, 2007

If sealed pursuant to statute, cite statute:

The matter should remain sealed until:

- Conclusion of Trial Arrest of First Defendant
- Case Closing Conclusion of Direct Appeal
- Other: Until further Order of the Court

Permanently. Specify the authorizing law, rule, court order:

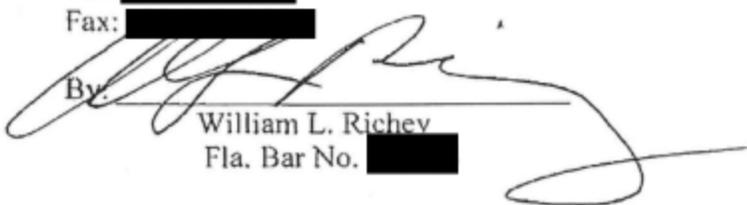
The moving party requests that when the sealing period expires, the filed matter should be (select one):

- Unsealed and placed in the public portion of the court file Destroyed
- Returned to the party or counsel for the party, as identified above

Respectfully submitted,

WILLIAM L. RICHEY, P.A.
201 South Biscayne Boulevard, 34th Floor
Miami, Florida 33131

Tel: [REDACTED]
Fax: [REDACTED]

By: 
William L. Richey
Fla. Bar No. [REDACTED]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FGJ 07-103 (WPB)

IN RE GRAND JURY SUBPOENAS
DUCES TECUM NUMBERS
OLY-63 & OLY-64

**MOTION OF WILLIAM RILEY AND RILEY KIRALY
TO FILE DOCUMENTS UNDER SEAL**

FILED UNDER SEAL

FGJ 07-103 (WPB)

William Riley and Riley Kiraly ("Riley"), by and through undersigned counsel, hereby move to seal the following filings: (1) this Motion; (2) the order granting this Motion; (3) the Motion of William Riley and Riley Kiraly for an Extension of Time *Nunc Pro Tunc* to File Their Reply; (4) the Order Granting the Motion of William Riley and Riley Kiraly for an Extension of Time *Nunc Pro Tunc* to File Their Reply (provided that the Court enters that Order); and (5) the Reply of William Riley and Riley Kiraly to the Government's Response to the Motion to Intervene and to Quash Grand Jury Subpoenas and Cross Motion to Compel. In support thereof, Riley states as follows:

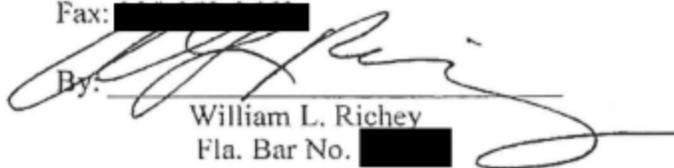
The above-listed documents contain information relating to an ongoing grand jury investigation: thus, pursuant to Fed. R. Crim. P. 6(c)(6), all records and orders related to the grand jury proceedings must be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of a matter occurring before the grand jury.

WHEREFORE, William Riley and Riley Kiraly respectfully request that the aforementioned documents be sealed until further Order of this Court.

Respectfully submitted,

WILLIAM L. RICHEY, P.A.
201 South Biscayne Boulevard
34th Floor, Miami Center
Miami, Florida 33131

[REDACTED]
Tel: [REDACTED]
Fax: [REDACTED]

By: 
William L. Richey
Fla. Bar No. [REDACTED]

FGJ 07-103 (WPB)

CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2007, the foregoing document will be served via facsimile and U.S. Mail on counsel, as listed on the attached service list. This document was not filed using CM/ECF because it is being filed under seal.


William L. Richey

FGJ 07-103 (WPB)

Service List

In re: Grand Jury Subpoenas
FGJ 07-103 (WPB)
United States District Court, Southern District of Florida

[REDACTED]
Assistant US Attorney
500 South Australian Avenue, Suite 400
West Palm Beach, Florida 33401
Fax: [REDACTED]

Roy Black, Esquire
Black Srebnick Kornspan & Stumpf
201 South Biscayne Boulevard, Suite 1300
Miami, Florida 33131
Fax: [REDACTED]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FGJ 07-103 (WPB)

IN RE GRAND JURY SUBPOENAS
DUCES TECUM NUMBERS
OLY-63 & OLY-64

FILED UNDER SEAL

ORDER GRANTING MOTION OF WILLIAM RILEY AND RILEY KIRALY
TO FILE DOCUMENTS UNDER SEAL

THIS CAUSE came before the Court on the Motion of William Riley and Riley Kiraly to File Documents Under Seal.

Upon review of the Motion, it is hereby ORDERED AND ADJUDGED that good cause has been shown and the Motion is GRANTED. The following documents **SHALL BE FILED UNDER SEAL**, until further Order of the Court:

1. Motion of William Riley and Riley Kiraly to File Documents Under Seal;
2. This Order;
3. The Motion of William Riley and Riley Kiraly for an Extension of Time *Nunc Pro Tunc* to File Their Reply;
4. The Order Granting the Motion of William Riley and Riley Kiraly for an Extension of Time *Nunc Pro Tunc* to File Their Reply (if subsequently entered); and
5. The Reply of William Riley and Riley Kiraly to the Government's Response to the Motion to Intervene and to Quash Grand Jury Subpoenas and Cross Motion to Compel.

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

KENNETH A. MARRA
UNITED STATES DISTRICT JUDGE

cc: William L. Richey, Esquire
[REDACTED]
Roy Black, Esquire

UNITED STATES DISTRICT COURT

Southern District of Florida

Case Number: FGJ 07-103 (WPB)

In re grand jury ~~Plaintiff~~
Subpoenas Duces Tecum
OLY-63 and ~~Defendant~~
OLY-64

SEALED DOCUMENT TRACKING FORM

Party Filing Matter Under Seal

Name: Roy BLACK, ESQ.

Address: 201 S. Biscayne BLVD #1300 Miami 3313

Telephone: 305-371-6421

On behalf of (select one): Intervenor ~~Plaintiff~~ ~~Defendant~~
Jeffrey Epstein

Date sealed document filed: 8-14-07

If sealed pursuant to statute, cite statute: _____

If sealed pursuant to previously entered protective order, date of order and docket entry number: _____

The matter should remain sealed until:

- Conclusion of Trial
- Case Closing
- Other: Conclusion of grand jury proceedings. If no indictment is returned, pleadings to remain sealed permanently please.
- Permanently. Specify the authorizing law, rule, court order:
- Arrest of First Defendant
- Conclusion of Direct Appeal

The moving party requests that when the sealing period expires, the filed matter should be (select one):

- Unsealed and placed in the public portion of the court file
- Returned to the party or counsel for the party, as identified above
- Destroyed



Attorney for:
For Roy Black, Black, Srebnick,
Kornspan and Stumpf, P.A.
on behalf of Intervenor Jeffrey Epstein

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

IN RE GRAND JURY SUBPOENAS)
DUCES TECUM NUMBERS)
OLY-63 and OLY-64)
_____)

CASE No. FGJ 07-103(WPB)

UNDER SEAL

UNDER SEAL

NOTICE OF UNAVAILABILITY OF COUNSEL FOR INTERVENOR

Jeffrey Epstein has moved to intervene in this matter and to quash grand jury subpoenas to investigator William Riley and his firm, Riley Kiraly. Mr. Epstein is represented by undersigned counsel Roy Black.

The issues raised by the motions to intervene and to quash have been briefed and the parties await a hearing date from the Court. Undersigned counsel would like to inform the Court that he is out of the jurisdiction on a family vacation until September 1, 2007. We respectfully request that any hearing the Court may schedule in this matter be scheduled after September 1, 2007, at the Court's discretion. Undersigned counsel spoke with the prosecutor, who indicated that the government objects.

Respectfully Submitted,

BLACK, SREBNICK, KORNSPAN & STUMPF, PA.

201 South Biscayne Boulevard

Suite 1300

Miami, Florida 33131

Ph: [REDACTED] – Fax: [REDACTED]

E-Mail: [REDACTED]

By: *Roy Black* FOR

ROY BLACK, ESQ.

Florida Bar No. [REDACTED]

Counsel for Jeffrey Epstein

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on Aug. 14, 2007 a true and correct copy of the forging motion was furnished by email and by U.S. mail to: [REDACTED], [REDACTED], United States Attorney's Office, 500 South Australian Avenue, Suite 400, West Palm Beach, FL 33401.

This pleading was not filed using the CM/ECF system because it pertains to a grand jury investigation and therefore it has been filed under seal.

By: ROY BLACK FOR
ROY BLACK, ESQ.
Counsel for Jeffrey Epstein

UNITED STATES DISTRICT COURT

Southern District of Florida

Case Number: FGJ07-103 (WPB) OLY-63 & OLY-64

IN RE GRAND JURY
SUBPOENA DUCES TECUM
ISSUED TO WILLIAM RILEY

Plaintiff

v.

Defendant

SEALED DOCUMENT TRACKING FORM

Party Filing Matter Under Seal

Name: JEFFREY EPSTEIN, INTERVENOR

Address: ROY BLACK, 201 S BISCAYNE BLVD, STE 1300, MIAMI, FL 33131

Telephone:

On behalf of (select one):

Plaintiff

Defendant

Date sealed document filed: 9/12/2007

If sealed pursuant to statute, cite statute: GRAND JURY PROCEEDING

If sealed pursuant to previously entered protective order, date of order and docket entry number:

The matter should remain sealed until:

Conclusion of Trial

Arrest of First Defendant

Case Closing

Conclusion of Direct Appeal

Other: GRAND JURY MATTER IS CONCLUDED

Permanently. Specify the authorizing law, rule, court order:

The moving party requests that when the sealing period expires, the filed matter should be (select one):

Unsealed and placed in the public portion of the court file

Destroyed

Returned to the party or counsel for the party, as identified above

Attorney for: Jeffrey Epstein

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FILED UNDER SEAL

IN RE GRAND JURY SUBPOENA)
)
DUCES TECUM ISSUED TO)
)
WILLIAM RILEY)
)
_____)

FGJ 07-103 (WPB)
OLY-63 & OLY-64

M.B.D. No. _____

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

I.

In its Surreply, the government, for the first time, after the parties have filed numerous pleadings directed to the enforceability of the challenged subpoena, announced that it was in fact seeking only physical possession of the computers at issue and that it thereafter intended to obtain a search warrant to search the contents of the computers. This Court should not permit the government to substitute a secret *ex parte* process for the adversarial litigation process between the parties which has been ongoing. Instead of leaving the government free to rummage at will through the contents of the computers based upon the *ex parte* issuance of a search warrant, the Court should require the government to particularize the subpoena to identify the documents which it is seeking. The government's doing so would enable movants to provide it with the documents falling within the particularized categories so identified, in the same manner as one responding to a particularized document subpoena would do. The process should be no different because the documents are contained within a computer than it is with respect to hard copy documents in the hands of the subpoenaed party.

Black, Srebnick, Kornspan & Stumpf

201 S. Biscayne Boulevard, Suite 1300 • Miami, Florida 33131 • Phone: [REDACTED] • Fax: [REDACTED] • www.RoyBlack.com

EFTA00179176

Contrary to the suggestion of the government, *see* United States' Surreply at 2, the overbreadth and particularity protections embodied in the Fourth Amendment reasonableness command with respect to subpoenas do not recognize an exception which permits the government to utilize an unlimited, overbroad, and unparticularized grand jury subpoena to obtain custody of a container which it wishes thereafter to search pursuant to a warrant. The particularity and overbreadth arguments which have been advanced by Epstein cannot be mooted by the government's now contending that the purpose of the subpoena is only the seizure of the computers and not their search. The commands of the Fourth Amendment and Rule 17 remain the same: the subpoenaed items must be relevant to the grand jury's investigation, and the items sought must be particularized in the subpoena. Just as the government could not simply serve a subpoena on a business directing that it produce all its file cabinets to the grand jury, neither can it use a grand jury subpoena to compel a citizen to turn over the entire contents of his computers to the grand jury. As has been stressed in prior pleadings directed to this issue, computers contain vast realms of personal documents, information, and data which are simply none of the government's business and should not be exposed to its inspection absent a particularized description of the categories of documents and other information which the government believes relevant to the grand jury's investigation.¹

The court in *In re Grand Jury Subpoena Duces Tecum Dated November 15, 1993*, 846 F.Supp. 11 (S.D.N.Y. 1994), was confronted with a similar issue in the context of a grand jury subpoena for the production of all hard drives of computers supplied by X Corporation to certain officers and employees, as well as all computer-accessible data, including all floppy disks, created by the specified officers or employees or their assistants. The Court, drawing upon the

¹See Motion of Jeffrey Epstein to Intervene and to Quash Grand Jury Subpoenas and Incorporated Memorandum of Law at 19-26.

Second Circuit's narrowing of a subpoena demanding the production of the entire contents of three file cabinets to exclude categories of documents with no conceivable relevance to any legitimate object of investigation in *In re Horowitz*, 482 F.2d 72, 79-80 (2d Cir. 1973),² concluded that the subpoena should be interpreted as seeking *categories of documents*, not *categories of computers*, and that it was the former category – the documents sought by the government – which was required to be particularly described. 846 F.Supp. at 13. The Court held that, because there were ways in which the government could have narrowed the subpoena to relevant documents, such as documents containing certain key words, the subpoena at issue unnecessarily demanded documents irrelevant to the grand jury inquiry and was, therefore, unreasonably broad under Rule 17. Because the government opposed modification of the subpoena, the Court quashed the subpoena in its entirety, without prejudice to the grand jury's ability to issue a properly narrowed subpoena. *Id.* at 13-14. *See also In re Amato*, 2005 WL 1429743 at *11-*12 (D.Me. June 17, 2005)(granting motion to quash with respect to paragraph of subpoena requesting production of all computers and computer related equipment: "Inasmuch as Category 10 . . . in essence requests the turnover of all computers (and related objects) of both corporations with no express safeguard against a subsequent rummaging through, and seizure of,

² In *Horowitz*, the government initially served a grand jury subpoena on the target's accountant, requiring the production of seven categories of documents. Learning from the accountant's grand jury testimony that the target had had three file cabinets of documents removed from his corporate offices and stored at another location, the government issued another grand jury subpoena to the accountant requiring the production of the three file cabinets. The accountant turned the file cabinets over to the United States Attorney's office subject to the agreement that the cabinets would remain unopened until the litigation of a motion to quash. The accountant inventoried the contents of the file cabinets and then moved to quash the subpoena, as later did the targets. *Id.* at 74-75. On appeal, the Second Circuit noted that the alleged fraud began in 1966, but the file cabinets contained documents dating back to 1951, and therefore limited the enforcement of the subpoena to documents beginning in 1966, with the proviso that earlier-dated documents would be producible if the government made a showing of relevance. The Court also left it open to the targets to demonstrate that a particular category of documents could have no conceivable relevance to any legitimate investigative object. *Id.* at 79-80.

irrelevant as well as relevant data, it cannot withstand Fourth Amendment reasonableness scrutiny”).

In the context of the seizure for off-site review of intermingled computerized evidence pursuant to a search warrant, the Ninth Circuit recently stated:

In the case of a lawful and reasonable seizure of intermingled computer records for off-site review, . . . our precedents and the general reasonableness mandate of the Fourth Amendment require the supervision of a magistrate. *It is not reasonable to allow the government to seize an indeterminately bounded array of computer data only later to set its own standards for review and retention thereof.*

United States v. Comprehensive Drug Testing, Inc., 473 F.3d 915, 938 (9th Cir. 2006)(emphasis added). Thus, even in the *Comprehensive Drug Testing* case, in which the government gained possession of the computer data through seizure pursuant to a warrant rather than through a grand jury subpoena, the Court did not hesitate to condemn a governmental fishing expedition through the acquired computer data. Here, where the process was initiated by subpoena, it is only appropriate and proper that the party whose privacy interests are at stake should be able to respond to a determinate, particularized subpoena rather than to an open-ended, limitless subpoena such as the one presently at issue in this case. Movants should not be required to turn over the entire computers to the government for its unfettered rummaging but instead only the particularized relevant documents called for in a properly tailored subpoena.

Another peril of the warrant alternative would be the myriad new issues requiring resolution: at issue would be not simply whether there was probable cause for the search of the computers, *see* United States’ Surreply at 2, but also the Fourth Amendment’s particularity and overbreadth protections. It does not suffice that, should Epstein be indicted, he would have the opportunity to challenge the probable cause for the search on a motion to suppress. No motion to suppress can ever

cure an unwarranted intrusion on personal privacy which lays bare before the government a citizen's private life for its unguided scrutiny and permits government agents to read private materials to which they never should have had access in the first place. The Court must act *now* to prevent such wholesale intrusion from taking place.

The government's overbroad and unparticularized subpoena should be quashed. The government should not be permitted to substitute secret proceedings for participatory ones or review of the computers' contents by F.B.I. agents for the more orderly process triggered by a valid subpoena.

II.

The government's act-of-production privilege argument, United States' Surreply at 2-3, is facially inconsistent with its contention that it intends, once it has the computers in its custody, to seek a warrant to search their contents. Obtaining such a warrant would require the government to demonstrate probable cause to believe that evidence of the alleged offenses under investigation would be found on the computers, evidence which the government seeks for the purpose of using it against Mr. Epstein if it exists.³ Production of the computers would constitute a testimonial communication that they were in fact the computers which were removed from Mr. Epstein's home, a necessary step in the authentication of any contents found therein which the government might seek to use against Mr. Epstein. It is not the subpoenaed item itself which must be potentially incriminating, but the *act of producing* that item. *See United States v. Ponds*, 454 F.3d 313 (D.C.Cir. 2006); *see also* Reply of Jeffrey Epstein to United States' Response to His Motion to Intervene and to Quash Grand Jury Subpoenas and Cross-Motion to Compel ("Epstein Reply") at 5-8.

³ The government's effort at *reductio ad absurdum* is not well-taken. *See* United States' Surreply at 2 n.2. If the subpoenaed party's *act of producing* his mother's coffee cake recipe were potentially incriminating, then the act of production would constitute a compelled testimonial communication as to which the subpoenaed party would have the right to assert a Fifth Amendment act-of-production privilege.

Epstein should not be required to make unprotected assertions that anything in the computers is incriminating as a precondition to asserting the act-of-production privilege. *See Ohio v. Reiner*, 532 U.S. 17, 21 (2001)("[W]e have emphasized that one of the Fifth Amendment's basic functions . . . is to protect *innocent* men . . . who otherwise might be ensnared by ambiguous circumstances" (emphasis in original)); *Hoffman v. United States*, 341 U.S. 479, 486 (1951)("The privilege . . . not only extends to answers that would themselves support a conviction under a federal criminal statute but likewise embraces those which would furnish a link in the chain of evidence needed to prosecute the claimant for a federal crime").

III.

As to the Riley Kiraly billing records, *see* United States' Surreply at 4, if the subpoena is to be enforced, Riley Kiraly will produce them in redacted form, with material encompassed within the work product privilege deleted. *See* Epstein Reply at 10-11. The work product privilege belongs jointly to Epstein, and he has rightly asserted that privilege. There can, therefore, be no question of waiver here. Clearly, the government wants more from the billing records than simply the numbers; it has issued an all-encompassing demand, leading to Mr. Epstein's contention that the request is overbroad.

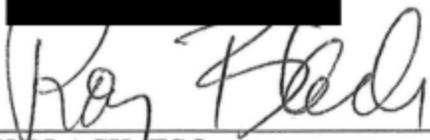
Lastly, the government complains that Mr. Riley did not appear to testify even though no motion to quash his testimony had been filed. *See* United States' Surreply at 1-2. Had such a motion been filed, the government would no doubt have argued that it should be denied as an impermissible blanket assertion of privilege. Mr. Riley will assert the attorney-client and/or work product privilege as necessary on a question-by-question basis during his grand jury appearance.

CONCLUSION

The government began this process as an adversarial one – one which afforded Mr. Epstein both notice and an opportunity to be heard. It should not now be permitted to unilaterally convert that process to a secret *ex parte* search warrant application process and to thereby completely extinguish Mr. Epstein’s ability to protect his legitimate his privacy interests. Mr. Epstein is entitled to be involved in this process *before* – not after – his interests are irreparably injured.

Respectfully submitted,

BLACK, SREBNICK, KORNSPAN & STUMPF, PA.
201 South Biscayne Boulevard, Suite 1300
Miami, Florida 33131
Ph.: [REDACTED] -- Fax: [REDACTED]
E-Mail: [REDACTED]

By: 

ROY BLACK, ESQ.
Florida Bar No.: [REDACTED]
Counsel for Jeffrey Epstein

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 12, 2007, a true and correct copy of the forging motion was furnished by facsimile [REDACTED], and U.S. mail to: [REDACTED], Esq., U.S. Attorney’s Office, 500 South Australian Avenue, Suite 400, West Palm Beach, FL 33401.

By: 

ROY BLACK, ESQ.
Counsel for Jeffrey Epstein

UNITED STATES DISTRICT COURT
Southern District of Florida

Number: FGJ 07-103 (WPB)

In Re
Grand Jury Subpoenas Duces Tecum
Numbers OLY-63 and OLY-64

EX PARTE DECLARATION #2 IN SUPPORT OF UNITED STATES' RESPONSE TO MOTION TO QUASH

FILED BY _____ D.C.
2007 JUL 31 AM 11:54
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CLERK U.S. DIST. CT.
S.D. OF FLA. - WPB

SEALED DOCUMENT TRACKING FORM

Party Filing Matter Under Seal

Name: [REDACTED] U.S. Attorney's Office

Address: 500 S. Australian Ave, Suite 400, West Palm Beach, FL 33401

Telephone: [REDACTED]

On behalf of (select one):

Plaintiff

Defendant

Date sealed document filed: 7/31/2007

If sealed pursuant to statute, cite statute: Fed. R. Crim. P. 6(e) (Grand Jury Material)

If sealed pursuant to previously entered protective order, date of order and docket entry number: _____

The matter should remain sealed until:

Conclusion of Trial

Arrest of First Defendant

Case Closing

Conclusion of Direct Appeal

Other: _____

Permanently. Specify the authorizing law, rule, court order: _____

The moving party requests that when the sealing period expires, the filed matter should be (select one):

Unsealed and placed in the public portion of the court file

Destroyed

Returned to the party or counsel for the party, as identified above

[REDACTED]

Attorney for: Movant United States of America

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

IN RE GRAND JURY SUBPOENAS
DUCES TECUM NUMBERS
OLY-63 and OLY-64

FGJ 07-103(WPB)

EX PARTE DECLARATION NUMBER TWO
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
OLY-63 and OLY-64

FGJ 07-103(WPB)

UNDER SEAL

FILED BY _____
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D.C.

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

I, Patrick Paige, state that the following is true and correct to the best of my information and belief:

1. I am a duly appointed Deputy Sheriff for Palm Beach County, and have all the powers and duties of a law enforcement officer in and for Palm Beach County, Florida. I have been a Law Enforcement Officer since 1986, after completing training in the Law Enforcement Academy. From 1986 to 1989, I served with the Delray Beach Police Department as a Patrol Officer. From 1989 to present, I have been serving with the Palm Beach County Sheriff's Office. Since 2000, I have been working in the Computer Crimes Unit as a Detective, working as a computer forensic analyst and investigator. Most of my investigations involve child exploitation. I am an instructor for Guidance Software Inc., the creators of EnCase® computer forensic software, and am an EnCase® Certified Examiner (EnCE). I have instructed other law enforcement officers with the local, state and federal governments in the area of computer forensics as an instructor for Guidance Software.

2. I received a phone call from David Kleiman on the morning of July 25, 2007. Mr. Kleiman advised me that he was hired by attorney Roy Black to make three bit-stream copies and one EnCase® image for each of three computers. Mr. Kleiman asked me if he would be able to use one of the Sheriff's Office's hard drive duplication devices. It may be noted that Mr. Kleiman is former law enforcement and has assisted the Sheriff's Office in computer related examinations and seizures in the past. Mr. Kleiman further stated that he was told the job needed to be done as soon as possible. Mr. Kleiman was meeting with a private investigator who worked with Mr. Black on July 26, 2007 in the morning at Mr. Kleiman's place of employment in Boca Raton. Mr. Kleiman described the investigator as an "old-time New York cop-type." Mr. Kleiman was told the computers had not been used since 2005 so he was trying to determine the size of the hard drives that were in the computers. Mr. Kleiman told me he was going to purchase several 120GB hard drives to do the job. I told Mr. Kleiman that the Logicube machine he wanted to use was not reliable. Mr. Kleiman made the decision to purchase a hard drive duplication device online from a company named Digital Intelligence and have it shipped overnight to his place of employment in Boca Raton. Mr. Kleiman was told someone would be standing by while the process was being completed. Mr. Kleiman advised the private investigator it would take at least 10 hours or more to complete the process.

3. I have not been involved in the investigation of Jeffrey Epstein, but have worked on other cases with Special Agent [REDACTED]. Special Agent

██████████ 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 ██████████ 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 30th day of July, 2007.



Detective ██████████
Palm Beach County Sheriff's Office

UNITED STATES DISTRICT COURT
Southern District of Florida

Number: FGJ 07-103 (WPB)

In Re
Grand Jury Subpoenas Duces Tecum
Numbers OLY-63 and OLY-64

EX PARTE DECLARATION #1 IN SUPPORT OF UNITED STATES' RESPONSE TO MOTION TO QUASH

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Party Filing Matter Under Seal

Name: [REDACTED] U.S. Attorney's Office

Address: 500 S. Australian Ave, Suite 400, West Palm Beach, FL 33401

Telephone: [REDACTED]

On behalf of (select one):

Plaintiff

Defendant

Date sealed document filed: 7/31/2007

If sealed pursuant to statute, cite statute: Fed. R. Crim. P. 6(e) (Grand Jury Material)

If sealed pursuant to previously entered protective order, date of order and docket entry number: _____

The matter should remain sealed until:

Conclusion of Trial

Arrest of First Defendant

Case Closing

Conclusion of Direct Appeal

Other: _____

Permanently. Specify the authorizing law, rule, court order: _____

The moving party requests that when the sealing period expires, the filed matter should be (select one):

Unsealed and placed in the public portion of the court file

Destroyed

Returned to the party or counsel for the party, as identified above

[REDACTED SIGNATURE]

Attorney for: Movant United States of America

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

IN RE GRAND JURY SUBPOENAS
DUCES TECUM NUMBERS
OLY-63 and OLY-64

FGJ 07-103(WPB)

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
OLY-63 and OLY-64

FGJ 07-103(WPB)

UNDER SEAL

FILED BY _____ D.C.
2007 JUL 31 AM 11:54
CLARENCE M. ...
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S.D. OF FLA. - WPB

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.

2. In the Spring of 2006, Detective [REDACTED] with the Town of Palm Beach Police Department ("PBPD") contacted me about the investigation of Jeffrey Epstein's solicitation of minors to engage in prostitution and his lewd and lascivious conduct with minors. The FBI opened a case file in July 2006, and I am the case agent assigned to the investigation.

3. At around the same time that the FBI opened its investigation, the U.S. Attorney's Office began a grand jury investigation. I am one of the agents on the Federal

Rule of Criminal Procedure 6(e) list, that is, someone who is authorized to have access to the facts of the investigation and the materials related thereto.

4. As part of the grand jury investigation, a subpoena was issued for all of the physical evidence obtained by PBPD during the course of its investigation, including the evidence seized when PBPD executed the search warrant at Jeffrey Epstein's home in October 2005.

5. From my review of the photographs from the execution of the search warrant and my conversations with Detective [REDACTED], I believe that certain items were purposely removed from Mr. Epstein's home in anticipation of an execution of a search warrant. This includes the three computers which are the subject of grand jury subpoena numbers OLY-63 and OLY-64.

6. I believe that the computers will be helpful to the grand jury investigation in several ways. First, one of the possible crimes that Mr. Epstein has committed is the travel in interstate commerce for the purpose of engaging in illicit sexual conduct with a minor, in violation of Title 18, United States Code, Section 2423(b). Another possible offense is the use of a facility of interstate commerce to persuade, induce, or entice a minor to engage in prostitution or other illicit sexual conduct, in violation of Title 18, United States Code, Section 2422(b). A telephone is a facility of interstate commerce, so evidence of the use of the telephones to arrange appointments for sexual activity is evidence of a violation of Section 2422(b).

7. From items recovered during the PBPD investigation and the FBI's own investigation, I know that some member or members of Mr. Epstein's staff documented daily messages for Mr. Epstein, to include telephonic and electronic mail messages, utilizing the URL (Uniform Resource Locator) address, <http://domsrv01/foxhaven/wc.dll?Gmax~Msg-Display>. Computer printouts displaying this information were recovered by PBPD from the trash located at Mr. Epstein's residence, 358 El Brillo Way, Palm Beach, Florida. One of the electronic message logs on the computer printouts documented a message left for Mr. Epstein on April 11, 2005 at 4:29pm by [REDACTED], Mr. Epstein's assistant, regarding the availability of an identified underage female to "work". Review of cellular telephone records indicated telephonic contact between telephones utilized by [REDACTED] and the same identified underage female on April 11, 2005 at 4:24pm. The electronic message logs recovered also displayed other types of appointments and travel plans.

8. Therefore, a review of Mr. Epstein's computers may provide additional electronically stored message logs which could be further evidence of Mr. Epstein's intent to travel to engage in sexual activity with teenagers he recruited from five Palm Beach County high schools. Based upon the investigation, I believe that someone *other than* Mr. Epstein prepared the computerized calendar and telephone messages. Thus, Mr. Epstein would not be required to authenticate any such documents recovered from the computer.

9. The second way that the computers will assist the grand jury is the possibility that photographs of the crime victims and/or child pornography may appear. I know from

Detective [REDACTED] that, at one time, Mr. Epstein had a security system that automatically downloaded images from surveillance cameras onto a computer. Detective [REDACTED] learned about that in an unrelated theft investigation in October 2003. In October 2005, during the execution of the state search warrant at Mr. Epstein's residence, PBPD investigators observed pre-existing surveillance cameras in place but disconnected from recording equipment. The disconnected cables were located in an area where computer equipment appeared to have been removed. The FBI investigation has determined that Mr. Epstein was actively involved in lewd and lascivious conduct with minor females as early as March 2004. To the extent that Mr. Epstein tries to deny that any or all of the victims ever visited his home, video footage of them at the house would rebut such a claim.

10. During the interview of another identified crime victim, it was revealed that Mr. Epstein had taken a picture of her standing near a marble bathtub. She was naked and looking over her shoulder. Mr. Epstein took that photograph at his Palm Beach residence in what the identified crime victim described as a bathroom in Mr. Epstein's master suite.

11. Also, during the FBI's investigation, I interviewed a young woman, "M," who had known Mr. Epstein several years ago, when she was in her late teens/early twenties. The woman was a struggling artist in New York who was specializing in painting nude portraits. Prior to preparing a portrait, "M" would take several photographic studies. Mr. Epstein was very interested in her work and her photographs, and also expressed an interest in the artist's younger sister, "A," who was 16 years' old at the time.

12. Mr. Epstein and his associate, Ghislaine Maxwell, made arrangements and paid for "M" to fly home to Arizona for the primary purpose of taking artistic photographs of her family members in the nude. This included the artist's younger siblings, that is, two sisters ("A" and a younger sister, age 9 or 10), and her two brothers. Due to the sensitive nature of the photographs, "M" created a photo log to document each image and the order in which it was taken. Later, "M" learned that seven photographs, two of "A" and five of the 9- or 10-year-old, were missing. "M," who was very upset, contacted Mr. Epstein's office and asked for one of Mr. Epstein's assistants to look for the missing photographs. "M" also confronted Mr. Epstein and Ms. Maxwell about the missing photographs, which they claimed they did not possess. A few weeks later "M" received a telephone call from an unidentified caller who stated that the missing photographs were in Mr. Epstein's briefcase. The missing photographs have never been recovered and "M" believes that Mr. Epstein is in possession of them

13. Mr. Epstein and Ms. Maxwell also made arrangements and paid for "A," "M"'s younger sister, age 16, to travel to one of his homes, located in New Mexico. One morning during that visit, Mr. Epstein got into bed with "A." Mr. Epstein told "A" that he felt like "cuddling." "A" described Mr. Epstein's actions as "spooning" and constantly hugging her.

14. During the FBI interview with "A," she became visibly disturbed when recalling an incident with Mr. Epstein at his ranch in New Mexico. "A" stated that one evening Mr. Epstein had come into her bedroom and sat on the bed. Mr. Epstein stroked her

hair and told her she was beautiful. "A" was unable to recall the remainder of the events for that evening.

15. I have interviewed "M" and "A" about their experiences with Mr. Epstein. Both "M" and "A" are reluctant to divulge their experiences publicly. "M" has also expressed her concern about speaking publicly against Mr. Epstein for fear of reprisals against her or her family.

16. Further evidence of Mr. Epstein's potential interest in underage females and child pornography was the open display of three photographs in his Palm Beach residence which were seized during the execution of the state search warrant. Attached hereto as Exhibit A is a photograph which depicts a prepubescent female toddler exposing her genitalia. Attached hereto as Exhibit B is a photograph which depicts a prepubescent female pulling down her underwear exposing her left buttock. Attached hereto as Exhibit C is a photograph which depicts Mr. Epstein attempting to bite the clothed buttocks of a prepubescent female (the prepubescent female's skirt is raised exposing her underwear).

17. Based upon this information, I believe a review of Mr. Epstein's computers may reveal images depicting crime victims and/or child pornography. In light of "M"'s fear of testifying against Mr. Epstein, the computer's contents may be the only admissible evidence of Mr. Epstein's interest in child pornography at trial (assuming that such evidence is discovered).

18. The information related to the computers also would be helpful to the grand

jury in trying to determine if any evidence exists that may indicate Mr. Epstein's involvement in the obstruction of justice through the tampering with or destruction of evidence. Additionally, evidence related to the computers may indicate Mr. Epstein's knowledge of guilt. Case law states that attempts to flee or hide or destroy evidence can be considered as evidence of a guilty mind.

19. Other crimes that the grand jury is investigating, which were not the subject of the state investigation, are promotion money laundering, in violation of 18 U.S.C. §§ 1956 and 1957, and aiding and abetting unlawful money transmitting by a financial institution, in violation of 18 U.S.C. § 1960. Both of these offenses involve the transmission of funds between different banking accounts owned by Mr. Epstein in order to promote prostitution. Through the grand jury investigation, documents from bank accounts have been obtained that show transfers of large sums of money (as much as \$250,000 on a single day) from one personal Epstein account into an account purportedly owned by JEGE, Inc. (an entity created for the sole purpose of holding Epstein's personal Boeing 727 aircraft), and then to another personal Epstein account. It is believed that the computers may hold information related to those bank accounts and bank transactions.

20. With respect to the computers that are the subject of the pending grand jury subpoenas, through the grand jury investigation, I was asked to interview Janusz Banasiak, the property manager for Jeffrey Epstein's Palm Beach home. Banasiak worked in that position during the time of the execution of the search warrant. I asked Banasiak whether

he had removed the computers from the Epstein household. He stated that he had not, and that "[REDACTED]" and a private investigator, "Paul," had come to the house and taken the computers away. I know from the investigation that "[REDACTED]" is [REDACTED], also known as [REDACTED], who sometimes worked as a personal assistant to Jeffrey Epstein. Ms. [REDACTED] is considered a target of the investigation, but neither Ms. [REDACTED] nor Mr. Epstein is aware of that classification at this time. I know from the investigation that "Paul" is Paul Lavery, a private investigator who has had contact with several identified victims.

21. A grand jury subpoena was served on Mr. Lavery at his residence in Hialeah, Florida. Mr. Lavery hired an attorney and initially refused to respond to the subpoena. Eventually, based upon conversations between Assistant United States Attorney [REDACTED] and counsel for Mr. Lavery, a telephonic interview was conducted of Mr. Lavery. During that interview, Mr. Lavery stated that he had traveled to Jeffrey Epstein's home in the fall of 2005 and that a woman (whom he believed was [REDACTED]) had given him the computer equipment, already in boxes. Mr. Lavery stated that he had the computers for a few days, probably over a weekend, before he delivered the computers to William Riley. Mr. Lavery stated that he did not tamper with the computers while they were in his possession.

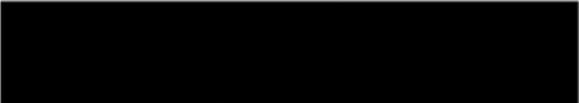
22. Based upon the interview of Paul Lavery, grand jury subpoenas were prepared for William Riley and the Custodian of Records of his firm, Riley Kiraly. Riley Kiraly is an independent private investigation firm, with its own offices in Miami, Florida. Attached hereto as Exhibit D are copies of printouts from the Riley Kiraly website, explaining the

services offered. Neither Mr. Riley nor Riley Kiraly works exclusively for Roy Black or any other lawyer or law firm.

23. The grand jury subpoenas were served via acceptance of fax by William Riley. He did not indicate whether he still had custody of the subpoenaed computers. Based upon the foregoing facts and the additional facts set forth in the Declaration of Detective Patrick L. Paige, Palm Beach County Sheriff's Office, I believe that Mr. Riley either currently has the computers in his possession or knows who has them. At the very least, Mr. Riley can relay to the grand jury his actions concerning the computers that were removed from Mr. Epstein's residence.

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 30th day of July, 2007.

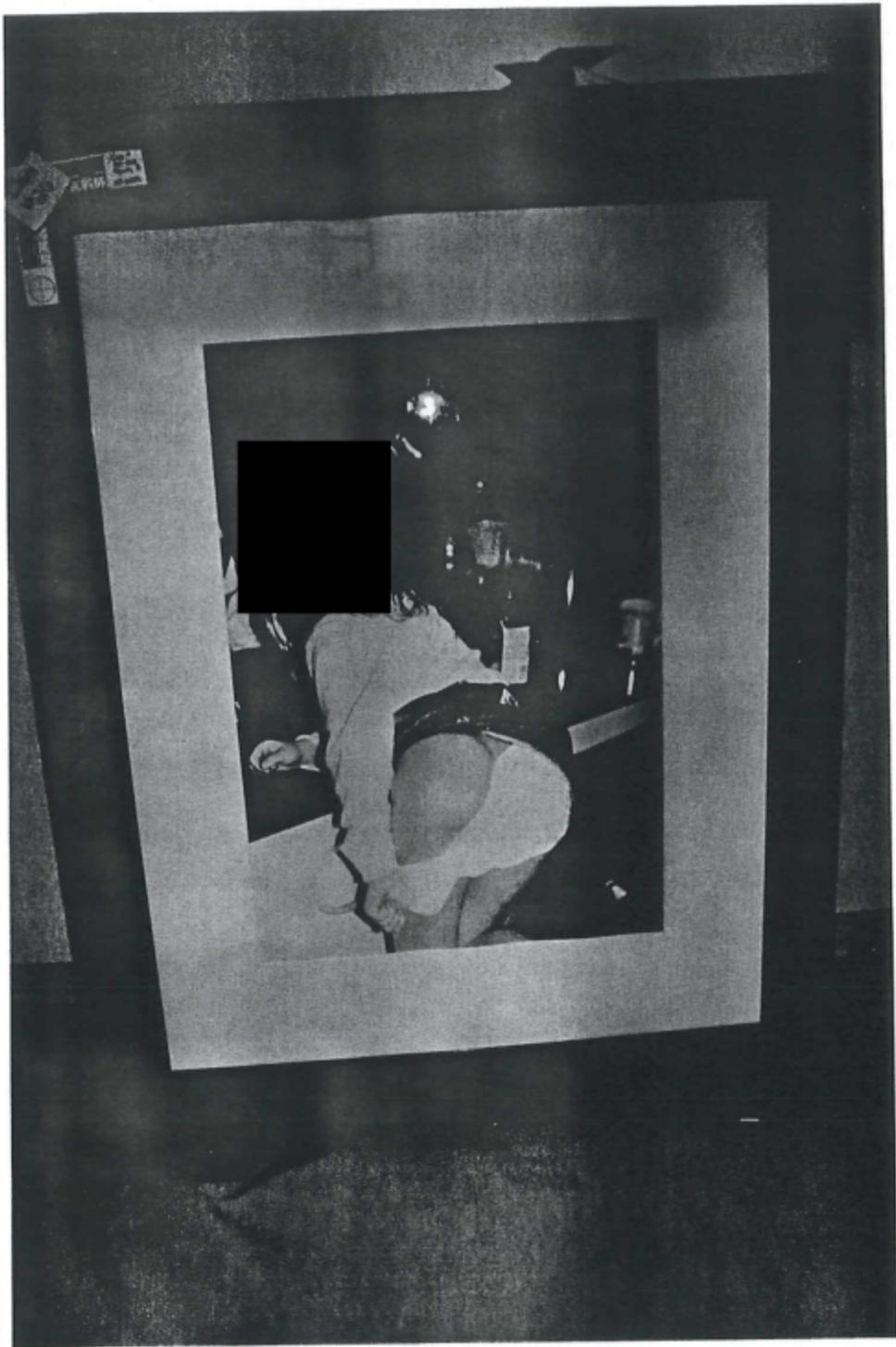

Special Agent 
Federal Bureau of Investigation



GOVERNMENT
EXHIBIT
A



GOVERNMENT
EXHIBIT
C



**GOVERNMENT
EXHIBIT
B**



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Contact us by e-mail, or phone 24 hours

E-Mail [Redacted]

Phone [Redacted]

Fax [Redacted]

Web Site www.rileykiraly.com

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6135 N.W. 167 Street E-26
Miami, FL 33015

News Box

Email of Principals

William Riley [Redacted]

Stephen Kiraly [Redacted]





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History

Since 1979, Riley Kiraly has provided investigative and case preparation assistance to attorneys and corporate management in the United States, Europe, and Central and South Americas.

The firm has an active local, national and international investigative practice, and serves clientele that includes multi-national banks, corporations, law firms and major insurance underwriters. A bilingual staff of fifteen (15) specialists bring many years of experience and expertise from various disciplines.

Riley Kiraly has earned a reputation for relentless attention to detail, and is recognized as one of the leading investigative firms in the United States. Riley, Kiraly's commitment to excellence is reflected in every aspect of the firm's operation, from its experienced and qualified support staff to its state-of-the-art communication and production equipment. All resources are utilized to deliver the utmost professional service.

The Principals

Riley Kiraly is owned by William H. Riley and Stephen N. Kiraly.

William H. Riley began his professional investigative experience in 1966 when he joined the City of Miami Police Department. He spent eight years working undercover investigating drug smuggling and money laundering cases throughout the United States, Central and South America. In 1968 he was named Officer of the Year and awarded a Gold Medal for Valor, the department's highest honor, for his undercover work as a Special Investigator for three Dade County Grand Juries, in Mexico and South America. In 1976 Mr. Riley became the Chief Investigator for the Organized Crime / Public Corruption Prosecution Unit of the Dade County State's Attorney's Office. Here he handled major white-collar crime, complex financial, organized medical fraud and corruption investigations resulting in numerous arrests and convictions.

In 1979, Mr. Riley left public service and entered the private sector and started his own investigative firm handling investigations dealing with internal theft, bankruptcy fraud, securities fraud and white-collar crimes. Mr. Riley also specializes in locating and evaluating assets and records on a worldwide basis, particularly in complex financial investigations. On Augusts 9, 1999, he was the featured front-page story in USA Today. [Email William Riley](#)

Stephen N. Kiraly has over thirty-four years of investigative experience in both the public and private sectors. Mr. Kiraly's background includes extensive experience assisting in complex civil and criminal investigations

around the world.

Mr. Kiraly works with numerous law firms and corporations within the United States and internationally on high profile, complicated litigation matters involving fraud, internal theft, asset location, and recovery as well as a broad spectrum of additional issues arising from criminal and civil matters.

Mr. Kiraly began his professional career in 1969 when he joined the Miami Police Department. He spent seven years working narcotic and drug smuggling cases and was assigned to the United States Department of Justice Task Force on Narcotics. He has extensive investigative experience as a Miami Police Department Homicide Detective.

Mr. Kiraly has been featured in print and electronic media including the August 9, 1999 front page story on investigators in *U.S. Today*, on CNN as an investigative expert with Gretta Van Sustern, as well as other national and local television coverage. [Email Stephen Kiraly](#)

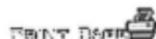


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We now have bomb and drug dogs available.



Services

Investigations

The central concentration of our investigative services is on very complex international crime and asset location, high impact litigation preparation, and specialized critical incident management for corporations.

Corporations, law firms and financial institutions look with confidence to Riley Kiraly for consultation and direction in the most sensitive matters affecting business risk. Security and systems design is offered to corporate clientele. Personal Protection and safety trail is provided to individuals.

Financial - We are capable of locating and seizing assets worldwide. We have expert experience with asset location and Mareva actions. We are often retained by financial institutions, governments and law firms to provide tactical investigative support in Antor Piller actions.

Surveillance Operations - We regularly monitor and video record the activities of those under investigation. Surveillance can be accomplished at any time in almost any state or country. Invaluable evidence and facts are gathered for litigation, asset location, custody issues, internal theft or any time you simply need to know.

Background Investigations - Detailed background investigations of witnesses, litigant parties in M&A matters, employees or prospective partners or employees.

Locates - Whether a person is a witness, defendant, debtor, suspect, or fugitive, we have the experience and expertise to locate them.

Labor Related Investigations - We routinely assist management in matters involving internal theft, allegations of misconduct, sexual harassment, workplace violence, misuse of company computer systems and critical incident handling.

Physical Security and Risk Analysis - Our detailed security surveys and penetration studies allow management to control risk, evaluate existing security procedures. We provide expert, unbiased reports on internal or contract security operations, budgeting & staffing.

Electronic Countermeasures Survey - This service is provided to corporations who suspect their phones or business has been illegally monitored in violation of law. Countermeasure services are also available to those in domestic litigation who feel the other party tapped their phones.

Personal and Executive Protection - Michael Soppelsa supervises other highly trained professionals in providing protection for our clients who require a secure environment at home or while traveling. We train our clients and their employees in personal security measures. Individual firearms training is also available.

Air Travel Security - We develop and implement airport and air travel security and drug interdiction programs for airlines and corporations flying to and from the United States & South and Central America.

UNITED STATES DISTRICT COURT
Southern District of Florida

Number: FGJ 07-103 (WPB)

In Re
Grand Jury Subpoenas Duces Tecum
Numbers OLY-63 and OLY-64

FILED BY _____
2007 JUL 31 AM 11:54
CLARENCE H. ...
CLERK U.S. DIST. CT.
S.D. OF FLA. - WPB

DECLARATION OF [REDACTED] IN SUPPORT OF UNITED STATES' RESPONSE TO MOTION TO QUASH

SEALED DOCUMENT TRACKING FORM

Party Filing Matter Under Seal

Name: [REDACTED], U.S. Attorney's Office

Address: 500 S. Australian Ave, Suite 400, West Palm Beach, FL 33401

Telephone: [REDACTED]

On behalf of (select one):

Plaintiff

Defendant

Date sealed document filed: 7/31/2007

If sealed pursuant to statute, cite statute: Fed. R. Crim. P. 6(e) (Grand Jury Material)

If sealed pursuant to previously entered protective order, date of order and docket entry number: _____

The matter should remain sealed until:

Conclusion of Trial

Arrest of First Defendant

Case Closing

Conclusion of Direct Appeal

Other: _____

Permanently. Specify the authorizing law, rule, court order: _____

The moving party requests that when the sealing period expires, the filed matter should be (select one):

Unsealed and placed in the public portion of the court file

Destroyed

Returned to the party or counsel for the party, as identified above

[REDACTED]

Attorney for: Movant United States of America

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

IN RE GRAND JURY SUBPOENAS
DUCES TECUM NUMBERS
OLY-63 and OLY-64

FGJ 07-103(WPB)

DECLARATION OF 

FILED UNDER SEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

IN RE GRAND JURY SUBPOENAS
DUCES TECUM NUMBERS
OLY-63 and OLY-64

FGJ 07-103(WPB)

UNDER SEAL

FILED BY _____ D.C.
2007 JUL 31 AM 11:54
CLARENCE H. HOOK
CLERK U.S. DIST. CT.
S.D. OF FLA. - WPB

DECLARATION OF [REDACTED]

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 detective with the Town of Palm Beach Police Department ("PBPD") and have been so employed for the past 16 years.

2. Beginning in September, 2005, I was the lead investigator in PBPD's investigation of Jeffrey Epstein's solicitation of minors to engage in prostitution and his lewd and lascivious conduct with minors.

3. Prior to my involvement in that investigation, as part of my employment with PBPD, I was asked to go to Jeffrey Epstein's home in October of 2003, to assist in an investigation of a possible theft. While present in Mr. Epstein's home, I was asked to assist in the installation of some temporary surveillance cameras. I also observed the pre-existing security system, which included the automatic downloading of the images from the pre-existing security cameras onto a personal computer. This personal computer was located in an area that appeared to be [REDACTED] office. I know from my investigation that Sarah

■■■■ works as a personal assistant to Mr. Epstein. After completing the theft investigation, the temporary surveillance cameras were removed, but I believe that the pre-existing security cameras remained.

4. While present in the house, I also observed two other computers – one in an area I refer to as “Jeffrey Epstein’s office,” and the other in the pool cabana.

5. In October 2005, as part of my investigation of Jeffrey Epstein, I approached the Palm Beach County State Attorney’s Office (“SAO”) about obtaining a search warrant. I know that, prior to that date, Mr. Epstein was aware of an ongoing criminal investigation conducted by the Palm Beach Police Department.

6. On October 18, 2005, with the help of the SAO, I prepared a Search Warrant Application and Affidavit and presented them to Judge Laura Johnson for her signature. The judge granted the warrant and it was executed on October 20, 2005. Attached hereto as Exhibit R-1 is a true and correct copy of the warrant application and the warrant signed by Judge Johnson. Among the items that I was authorized to search for and seize was:

- (1) Computers, including any electronic magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions; data storage facilities such as magnetic tape, hard disk, floppy disk or drum, or cd rom; communications facilities directly relating to or operating in conjunction with such device; devices for printing records of data; and such records or data

produced in various forms; manuals, documents, or instructional material relating to such devices.

- (2) Computer, personal computers, computer peripherals, modems, computer printers, floppy disk drives, hard disk drives, diskettes, tapes, computer printouts, software, computer programs and applications, computer manuals, system documentation.

7. When the search warrant was executed, several items were conspicuously absent. For example, there were several hanging file folders that had their contents removed, and the pre-existing security cameras that I had observed during my last visit to Mr. Epstein's residence were in place but were not connected to recording equipment. In addition, at each location where a computer had been present, computer monitors, printers, and other peripheral devices were present but the computers (CPU-Central processing unit) themselves were removed.

8. Attached hereto as Exhibit R-2 is a photograph taken at the time of the execution of the Search Warrant of the desk in the area that I believe was Jeffrey Epstein's office.

9. Attached hereto as Exhibit R-3 is a photograph taken at the time of the execution of the Search Warrant of the desk in the area that I believe was [REDACTED] office. Also located in that office were cables connected to surveillance recording equipment located throughout the home. The cables were not connected to any computer, but were near

the area from which the CPU was removed, leading me to believe that they had been connected to the removed CPU.

10. Attached hereto as Exhibit R-4 is a photograph taken at the time of the execution of the Search Warrant of the desk in the pool cabana.

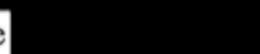
11. One older CPU was discovered during the search, which contained video segments showing the presence of various persons in the house, including possibly one or more victims from the security cameras. There also was a video segment showing Jeffrey Epstein working at his desk in his office.

12. In the Spring of 2006, I approached the Federal Bureau of Investigation ("FBI") about assisting in the investigation of possible federal charges against Mr. Epstein. The FBI began an independent investigation. I have been called upon to provide background information, but I have not been actively involved in the FBI's investigation. I am not aware of the present location of the computers removed from Mr. Epstein's home.

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 day of July, 2007.



Detective 
Town of Palm Beach Police Department

AFFIDAVIT AND APPLICATION FOR SEARCH WARRANT

 **COPY**

IN THE CIRCUIT COURT IN AND FOR
PALM BEACH COUNTY, FLORIDA

THE STATE OF FLORIDA,)
COUNTY OF PALM BEACH)

BEFORE ME: Honorable Judge Laura Johnson

in and for Palm Beach County, personally appeared this day:
Detective 

who being by me first duly sworn, deposes and says that he believes and has good reason to believe that a certain Premises located in Palm Beach Florida, described as follows, to-wit:

358 El Brillo Road
Palm Beach, Florida 33480

To reach the premise desired to be searched, begin at the middle span of the Royal Park Bridge and travel East on Royal Palm Way approximately .6 (six tenths) of a mile until you reach South County Road. At South County Road, make a right or southbound turn and travel approximately .8 (eight tenths) of a mile to El Brillo Way. At El Brillo Way, make a right or westbound turn and travel approximately .1 (one tenth) of a mile to the last house on the South side of El Brillo clearly marked with the number 358.

The premises desired to be searched is two story, single family residence made of CBS construction. The residence is pink in color with white trim and has a white concrete tile roof. The residence has two separate driveway entrances from El Brillo paved in large white tiles. The eastern most driveway is separated by a large white in color concrete wall with black in color numbers "358" clearly displayed from El Brillo and leads to the east side of the residence. On the east side of residence, there are three single car garage doors, which are white in color and an entry door also white in color to South. Each driveway entrance has a white in color call box, which is fixed on the east side of the driveways. The western most driveway leads to the North side of the residence, to a large white in color double door on the first floor. The second story of the North side of the residence shows a small walkway with a white in color metal railway, and leads to three glass jalousie style doors. On the South East corner of the residence is a single story structure, made of CBS construction and is white in color with a white concrete tile roof.

To enter and search the afore described place and premise together with the yard and curtilage thereof, and any and all outbuildings and vehicles thereon, and any persons residing therein, and any other person therein reasonably believed to be connected with said illegal activity. This is a complete description of the residence desired to be searched, including the curtilage attached thereof.

being the Premises occupied by or under the control of:

Jeffrey Epstein
W/M Date of Birth 



and there is now being kept on the above described Premises certain

1) Computers, including any electronic magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions; data storage facilities such as magnetic tape, hard disk, floppy disk or drum, or cd rom; communications facilities directly relating to or operating in conjunction with such device; devices for printing records of data; and such records or data produced in various forms; manuals, documents, or instructional material relating to such devices.

2) Computers, personal computers, computer peripherals, modems, computer printers, floppy disk drives, hard disk drives, diskettes, tapes, computer printouts, computer software, computer programs and applications, computer manuals, system documentation.

3) Cameras, photographs, negatives, motion pictures, videotapes, magazines, books, and all other depictions of minors in sexual activity .

4) Any device or equipment that can be used to transfer images to a computer readable format.

5) Any written documentation or item containing password or encryption codes.

6) Any notes, ledger, personal phone books, roladex, books and any form of recording data of records of payments, telephone numbers and names of girls that have frequented the house.

7) Any sexual devices to which was used on the witness/victims.

8) Any hair fiber, semen, or other bodily fluids.

which is being kept and used in violation of the laws of the State of Florida, to-wit: the laws prohibiting:

- | | | |
|--|-----------------|-------------------------------|
| 1. Sexual Activity with certain minors | FSS 794.05(1) | 2 st degree Felony |
| 2. Lewd and Lascivious Molestation | FSS 800.04(5c2) | 2 nd degree Felony |

That the facts establishing the grounds for this application and the probable cause for believing that such facts exist are as follows:

On 03/15/2005, Det [REDACTED] went to [REDACTED] where she met with a fourteen year old white female. The female will hereinafter referred to as "The Victim." Also present was Kathy Back, the victim's therapist. During an audio taped interview, [REDACTED] spoke with the victim who admitted to knowing that [REDACTED] worked for a wealthy man and possibly did sexual favors for him. She also admitted that [REDACTED] had offered her an opportunity to make money.

The victim identified [REDACTED] boss as a white male named "Jeff" who lived in Palm Beach (Later positively identified as Jeffrey Epstein). The victim explained that she was first approached by [REDACTED] to go with her to Jeff's house. The victim stated [REDACTED] told her that she would pick her up at the victims house on Sunday. The victim was not sure of the exact dates but knew it was a Sunday. According to the victim, [REDACTED] along with a Hispanic female, later identified as [REDACTED], picked her up at her father s house on [REDACTED]. The victim told her father that they were going shopping. It was later confirmed by the victim's father that [REDACTED] picked his daughter up on February 6, 2005. According to the victim's father, [REDACTED] drove

a pick up truck. [REDACTED] drove the victim to Palm Beach. Sometime on the way there, a conversation occurred between [REDACTED] and the victim whereas [REDACTED] reportedly told the victim that if Jeff asked her (the victim) age, she should say she was eighteen. The victim recalled that Jeff's house was on a dead end street. The victim described Epstein's house as a two story pink house with a Cadillac Escalade parked in the driveway. The girls walked up a driveway, past what appeared to be a small guard/security room. In fact, the victim recalled a male approaching them asking what they wanted. [REDACTED] stated they were there to see Jeff. The male allowed them to continue walking up to the house. The victim stated the man told them that Epstein was not there but was expected back. He allowed them to enter the house, via the kitchen. He offered them something to drink while they waited inside. Shortly after, Epstein and a woman, described as white with blond hair entered the kitchen. The victim believed the woman was Epstein's assistant. The victim added that the woman did not seem friendly and kept her responses short and direct. Epstein introduced himself to the victim as Jeff. The victim described Epstein as being approximately forty-five years old, a long face, and bushy eyebrows, with graying hair.

[REDACTED] and Epstein left the kitchen leaving the victim alone in the kitchen. They returned a short time later. They all spoke briefly in the kitchen. The victim stated the woman instructed her to follow her upstairs, which she did. The victim recalled walking up a flight of stairs, lined with photographs, to a room. Upon entering the room there was a large bathroom to the right. The victim recalled a hot pink and green sofa in the room. There was a door on each side of the sofa. The victim recalled there being a mural of a naked woman in the room, as well as several photographs of naked women on a shelf. According to the victim, the woman led her to a room that had a massage table in it. The woman started to fix up the room, putting the covers on the table and taking lotions out. She then told the victim that Epstein would be up in a second.

The woman left the room, and soon after, Epstein walked in wearing only a towel and told the victim to take off her clothes. The victim stated he was stern when he told her to take off her clothes. The victim said she did not know what to do as she was the only one there in the room. The victim took off her shirt leaving her bra on. Epstein, had removed his towel and told the victim to take off everything. The victim stated Epstein exposed himself when he took his towel off, placing it on the floor as he laid down on the table. The victim stated she removed her pants leaving her thong panties on. Epstein then instructed her to give him a massage pointing to a specific lotion for her to use. As the victim began to give Epstein the massage, he told her to get on his back. The victim stated she straddled herself on Epstein's back. The victim stated her exposed buttocks were touching Epstein's bare buttocks.

The victim said Epstein was specific in his instruction to her on how to massage, telling her to go clockwise, etc. Epstein then turned over and instructed the victim, to massage his boobs. The victim resumed massaging his chest area. The victim was now standing on the ground. Epstein turned to his side, started to rub his penis in an up and down motion. The victim stated Epstein held on to the small of her back as she massaged his chest and shoulder area. Epstein pulled out a purple vibrator and began to massage her vaginal area. The victim stated there was no penetration as the vibrator was on top of her underwear. The victim recalled Epstein ejaculating because he had to use the towel to wipe himself as he got off the table.

Epstein then left the room and the victim got dressed. She went back downstairs where she met with [REDACTED]. The victim admitted to getting paid three hundred dollars in cash from Epstein. Before they left, Epstein asked the victim to leave her phone number. As they were leaving the house, [REDACTED] stated she received only two hundred dollars that day for bringing her.

On October 3, 2005, Sgt. [REDACTED] and I responded to the address of [REDACTED] and viewed her vehicle parked in the driveway. Sgt. [REDACTED] and I knocked on the door and met with [REDACTED]. [REDACTED] was told that we were investigating a claim involving Jeffrey Epstein of El Brillo in Palm Beach. [REDACTED] was asked if she wanted to accompany us back to the police station for further questioning. She was also told that at the conclusion of the interview she would be returned home.

Upon [REDACTED] entry in the unmarked Detective vehicle, I placed a tape recorder within the vehicle to record any conversations within the vehicle. During the ride back to the police station, [REDACTED] advised she is attending [REDACTED] in the [REDACTED] and is majoring in journalism.

Upon our arrival at the police station, [REDACTED] was brought to the interview room in the Detective Bureau. I explained to [REDACTED] that I appreciated her willingness to assist us and informed her that should she desire to leave at any time she may do so. I further explained the interview room door is only closed for privacy. [REDACTED] stated she understood. During the taped sworn interview [REDACTED] was asked how she became in contact with Epstein. [REDACTED] stated back when she turned 17 years of age she was approached by a friend [REDACTED] in the Canopy Beach Resort in Rivera Beach. [REDACTED] was asked if she wanted to make money.

She was told she would have to provide a massage and should make \$200.00. [REDACTED] thought about the offer and agreed to meet with Jeffrey. [REDACTED] (Unknown last name) and [REDACTED] (Unknown last name) picked her up and she was taken to Epstein's house. Upon her arrival to the house she was introduced to Epstein in the kitchen of the house. She was also introduced to a white female known to her as [REDACTED]. She was led upstairs to the main bedroom known to her as Jeff Epstein's bedroom. [REDACTED] arranged the massage table and covered the table with a sheet. She brought out the massage oils and laid them next to the massage bed. [REDACTED] then left the room and informed her Jeff would be in, in a minute. Jeff entered the bedroom wearing only a towel. He laid on the table onto his stomach and picked a massage oil for [REDACTED] to rub on him. During the massage, [REDACTED] stated "He tried to touch me and I stopped him." I asked how did he tried to touch her. He grabbed her buttocks and she felt uncomfortable. [REDACTED] also stated Epstein has a vibrator which is large and white in color. [REDACTED] told Epstein, I'll massage you but I don't want to be touched.

[REDACTED] stated she performed the massage naked. At the conclusion of the massage, Epstein paid [REDACTED] \$200.00 for the massage. He explained, I know you're not comfortable, but I'll pay you if you bring some girls. He told her the younger the better. [REDACTED] stated she once tried to bring a 23 year old female and Epstein stated that the female was too old. [REDACTED] was asked how many girls did she bring in total to Epstein. [REDACTED] stated six that she can remember. [REDACTED] stated she brought [REDACTED], [REDACTED], [REDACTED] (16 female), [REDACTED] (16 female), [REDACTED] and at the time they were brought to Epstein's house, all the girls were 14 through 16 years of age.

I asked [REDACTED] which one was the youngest. [REDACTED] advised the victim was the youngest as she was fourteen when the massage occurred. [REDACTED] stated every girl she brought knew what to expect when they arrived. They were told they would provide a massage, possibly naked, and some touching. I asked her if the victim was aware. She stated every girl she brought knew what to expect. She explained she knew the victim wanted to make money. She approached the victim and explained about going to work for Jeff. The victim agreed and arrangements were made to bring the victim to Epstein's house on a weekend. [REDACTED] stated that she and [REDACTED] (Later identified as [REDACTED] Figueroa) picked up the victim at the victim's house. They traveled to Epstein's House and entered through the kitchen door. They met with the house chef and Epstein's assistant [REDACTED]. The victim was introduced to Epstein while they were in the kitchen area. [REDACTED] led the victim upstairs and Epstein went upstairs. When the massage was over, the victim returned to the kitchen area.

██████████ stated she was paid \$200.00 for bringing the victim to Epstein's house. ██████████ stated the victim told her she was paid \$300.00 for the massage. Back in the vehicle, ██████████ asked the victim what happened. The victim told her about the massage and they went shopping. ██████████ stated the victim was the last person she brought to Epstein. She further stated that she had changed her cellular number to avoid being contacted by ██████████. She continued that when Epstein announces to his assistant that he is traveling to Palm Beach, ██████████ would contact ██████████ to arrange girls for Epstein.

██████████ stated that once her parents discovered that she was visiting Epstein, they disapproved of the encounters with him and she stopped. ██████████ further stated that ██████████ still tries to call the house and leaves messages. With the assistance of ██████████ we were able to identify ██████████, DOB ██████████ ██████████ DOB ██████████, DOB ██████████ and ██████████ DOB ██████████

Sgt ██████████ entered the room and explained that based on her own statements, she had implicated herself by bringing underage girls to Epstein's house. ██████████ was aware of what she had stated and wished to assist further in hopes to receive a lesser charge. ██████████ provided cellular telephone numbers for the girls she had mentioned previously. Additionally, she also provided possible addresses and areas in which they lived. As ██████████ was being taken home in the vehicle, a tape recorder was placed within the vehicle to record any conversations within the vehicle. During the drive back to her home, ██████████ made the comment "I'm like a Heidi Fliess". (Hollywood Madam who sent girls to clients for sexual favors in California). ██████████ was dropped off at her house without incident.

Sgt ██████████ and I went to speak with ██████████. We met with ██████████ (██████████ Mother) at the front door. We explained the ongoing investigation and felt that ██████████ may have additional information as we had information that she had "worked" for Jeff. ██████████ introduced us to her husband and allowed us entry into the home. We sat in the dining room and met with ██████████. Date of Birth ██████████. As she was under the age of eighteen, ██████████ was advised we would be speaking with her. She expressed if her daughter had information, she wanted to assist. As we interviewed ██████████ she denied having any inappropriate encounters with Jeff (Epstein).

She stated she had gone to Jeff's House with ██████████ approximately eight months ago, and sat in the kitchen with the house chef, but nothing happened. As the parents were present during the interview, we felt that ██████████ was withholding information from us. She made several comments as to she has put the entire incident behind her. I left my direct telephone number and advised should she wish to speak with me again to telephone me. Sgt ██████████ and I thanked ██████████ for her time and left the area. She stated she would ask her again after we left as to what happened at Epstein's house. I informed her that ██████████ had my telephone number and hopefully she would call.

On October 4, 2005, Det ██████████ and I drove to the ██████████ home and met with Connie ██████████ and ██████████. During a sworn taped statement, ██████████ stated she was taken to house by ██████████. She was told she could make money working for Jeff. She was told she would have to provide a massage to Jeff. ██████████ stated upon her arrival to the house she was brought to the kitchen area by ██████████. They met with the house chef who was already in the kitchen area. ██████████ stated ██████████ would wait for her in the kitchen. She was introduced to ██████████, Jeff's assistant, and was brought upstairs to the master bedroom. ██████████ prepared the room and massage table for a massage. Epstein entered the room wearing only a towel and she provided a massage. ██████████ stated she kept her clothes on during the massage.

She advised sometime during the massage, Epstein grabbed her buttocks and pulled her close to him. ██████████ said she was uncomfortable by the incident involving Jeff. At the conclusion of the massage, she was paid \$200.00 for the massage. I asked ██████████ if she has any formal training in massages to which she replied no. I asked her if ██████████ received any monies for taking her to perform the massage.

█████ stated █████ also received money for taking her there but was unsure in the amount of monies received for bringing her to Epstein. █████ stated she returned to Epstein's house on another occasion with █████ and another girl, █████ stated she waited in the kitchen with █████, while █████ was taken upstairs by █████. █████ stated she only did the massage once as she was uncomfortable with the whole experience. At the conclusion of the interview, the tape was stopped. I was informed that █████ had attempted to reach █████ via cell phone. A voice mail message on October 4, 2005 at 10:59 am, revealed a female voice who identified herself as █████ who requested █████ to call her back reference the police questioning. This voice mail message was recorded onto a micro cassette.

█████ provided the incoming telephone number as █████. █████ stated she inadvertently told █████ about the police investigation because █████ had called her to tell her about how she just received a rental car from Jeff Epstein. █████ had called her to tell her that she was given a rental car, a 2005 Silver Nissan Sentra, to utilize to visit family and visit Jeff. █████ asked her what was going on at the house that the police would be asking questions. █████ stated █████ then called Jeff and █████ and asked what was going on reference the ongoing police investigation. According to █████, █████ has since then been trying to contact her to ask about the police questions. I instructed █████ not to contact █████ and do not provide any more information to █████ as she would notify Jeff Epstein and █████ what was transpiring.

On October 4, 2005, I made telephone contact with █████ who had left several messages on voice mail. During the message, she advised she was not completely truthful when we met in person but would like to speak with me to advise what had happened. She further advised she did not want to speak of this incident in front of her mother. At approximately 15:48 pm I made telephone contact with █████. During a taped recorded statement, █████ stated the following: Approximately a year ago, when she was sixteen years of age, █████ took her to Jeff's house twice. The first time she went, █████ drove to the house. They entered through the kitchen area where she was introduced to █████ and Jeff. She was taken upstairs to a bedroom by █████ and set the room up with a massage bed and brought out the oils to use. Jeff then entered the room wearing a towel. He laid on the table and picked out a lotion for █████ to rub on him. At one point during the massage, he tried to remove her shirt at which point she became very upset and discontinued the massage. Both █████ and Jeffrey had a verbal disagreement at which time she left without being paid.

She got with █████ who was sitting in the kitchen and told her "let's go." █████ advised she received no money for that day. █████ also said that █████ had told her if she was uncomfortable with what was going on, to let him know and he'll stop. She knew that the more you do the more you get paid.

█████ advised that several weeks later, she agreed to be taken a second time by █████. Once they arrived at the residence, █████ sat in the kitchen, and █████ took her upstairs to the master bedroom again. █████ set the room up with a massage bed and brought out the oils to use. Jeff then entered the room wearing a towel. He laid on the table and picked out a lotion for █████ to rub on him. At one point during the massage, he tried to touch her buttocks.

As █████ was wearing tight jeans and had a tight belt on Jeff was unable to touch her buttocks. Jeff then rolled onto his back during the massage, he attempted to touch her breasts. █████ then became upset again and told she didn't want to be touched. █████ discontinued the massage and was paid \$200.00. █████ then went downstairs where █████ was waiting for her. She told █████ she wanted to leave. █████ said she never returned to the house. █████ stated she is aware that her friend, █████ was also at the house and had a problem with Jeff. She provided a telephone number for █████. The interview was concluded and the micro cassettes were turned in as evidence.

I later researched [REDACTED] and discovered she resides in Royal Palm Beach. Det [REDACTED] and I drove to Royal Palm Beach and met with [REDACTED] at her residence [REDACTED] in Royal Palm Beach.

[REDACTED] agreed to speak with us in the kitchen area. During a sworn taped statement, [REDACTED] stated the following: On or about November 2004, She was approached by [REDACTED] and asked if she wanted to make money. She agreed and was told she would provide a massage to wealthy man in Palm Beach. [REDACTED] picked her up and drove her to a house in Palm Beach. She was brought into the kitchen area of the house. She further stated that [REDACTED] and [REDACTED] came with them. They were brought into the kitchen where she was introduced to Jeff and other females. [REDACTED] stated she was introduced to a female helper of Jeff, the female was described as white female (unknown name), with blond hair. She stated that the assistant was familiar with [REDACTED]. The assistant brought her upstairs into a master bedroom area. The assistant set up the massage table and put out lotions to be used. She told [REDACTED], Jeff would be available in a minute. Jeff entered the room wearing only a towel. Jeff removed his towel, exposing himself, laid on the massage table and picked a lotion to rub on his thighs and back. [REDACTED] further stated during the massage, Jeff asked her to remove her clothes. She complied and removed her pants and blouse. [REDACTED] didn't remember if she had removed her bra but feels that she did. [REDACTED] was certain that she stayed in her thong underwear. [REDACTED] continued the massage and at one point she straddled him to massage his back, which touched his buttocks with hers. [REDACTED] was instructed to return to the ground at which Jeff turned to have his chest rubbed. [REDACTED] advised she was unsure if he was masturbating. [REDACTED] did not want to look at his penis area because she was uncomfortable. Jeff removed a large white vibrator which was next to the bed and turned it on. [REDACTED] stated he began rubbing the vibrator over her thong underwear on her vagina area. Shortly thereafter, Jeff ejaculated and removed himself from the table. He walked over to where the shower was and opened the glass door. She waited as he was taking a shower in her direct view. When I asked [REDACTED] how old she was when this occurred, she stated she had just turned seventeen. At the conclusion of the shower, [REDACTED] was paid either \$350.00 or \$400.00. She stated she wasn't sure, but knows it was close to \$400.00. At the conclusion of the interview, [REDACTED] stated she never returned to provide a massage for Jeff. She advised she was ashamed and uncomfortable with the situation.

At approximately 2:10 pm, Det [REDACTED] and I met with [REDACTED] at her residence. As [REDACTED] was only seventeen years of age, I had notified her mother [REDACTED], that she would be interviewed reference an ongoing investigation in Palm Beach. I assured her that her daughter was not a suspect. I explained the possibility of her being either a witness or victim. [REDACTED] advised she wanted [REDACTED] to cooperate and consented to the interview. During a sworn taped statement, [REDACTED] stated the following: at the age of sixteen, during the month of September 2004, she was approached by [REDACTED] for a chance to make money. [REDACTED] was friends with the friends of [REDACTED] and knew the same people. [REDACTED] had been previously told by her friends what [REDACTED] did for Jeff. [REDACTED] called a person known to [REDACTED] as [REDACTED] and scheduled the appointment. [REDACTED] picked [REDACTED] up and drove her to Palm beach to a street called Brillo Way. They drove to the end of the street and entered a large driveway. They entered the kitchen area of the house and met with Jeff. [REDACTED] was introduced to Jeff.

[REDACTED] stated she observed numerous photographs of naked young girls throughout the house. [REDACTED] led [REDACTED] upstairs to the main bedroom area and set up the room with a massage table and set out the oils. [REDACTED] dimmed the lights and turned on soft music. [REDACTED] exited the room and Jeff entered the room wearing only a towel. Jeff picked a oils and instructed her to rub his legs, under his buttocks, back and chest area. Jeff asked her to get comfortable. [REDACTED] advised she did not remove her clothes. She was wearing tight jeans and a cropped tank top exposing her belly area.

During the massage, Jeff removed his towel and laid on the massage table naked. As [redacted] rubbed his chest area, Jeff attempted to reach down her pants through the buttocks area however was unable to due to the tightness of the jeans and a tight belt. [redacted] advised Jeff began to masturbate as she rubbed his chest. Jeff moaned as she rubbed his chest. She observed he was continuing to masturbate and attempted to reach up her tank top and touch her breasts. [redacted] pulled back and Jeff stopped. However, he kept masturbating until he climaxed. He cleaned himself with the towel he was previously wearing. I asked [redacted] if she knew the difference about circumcised and not circumcised meant. She explained she knew and advised Jeff was circumcised. [redacted] was paid \$200.00 for the massage. And left the area. She met with [redacted] who was waiting in the kitchen area and left the house.

[redacted] then explained she never provided another massage for Jeff. She did however, go to the house with [redacted] and [redacted] as they took another friend of Robsons. [redacted] advised she was present when [redacted] went to work for Jeff. She advised she rode over and sat in the kitchen area with [redacted] to wait for [redacted]. [redacted] advised while they waited for [redacted], the house chef prepared lunch for them as it was almost lunchtime when they went. As [redacted] was finished with the massage, they left the area. I asked [redacted] if [redacted] ever told her what would be expected when she provided a massage. [redacted] stated yes, [redacted] told her that a massage would be expected possibly naked and possibly some touching involved. [redacted] has no formal training in providing massages.

[redacted] spoke about a third and last time she went to Jeff's house. [redacted] drove another girl, [redacted], who is [redacted] friend, to Jeff's house. [redacted] stated [redacted] knew that [redacted] had made money, massaging Jeff and wanted to make money herself. [redacted] took them in the kitchen area of the house and introduced [redacted] to [redacted] and [redacted] took [redacted] upstairs to the main bedroom. [redacted] advised she doesn't know what happened as [redacted] did not speak about what happened in the room. [redacted] received \$100.00 from [redacted] for going with her to Jeff's house and recommending [redacted]. [redacted] was unable to remember [redacted] telephone number. The interview was concluded and we left the area.

On October 6, 2005, at 11:45 am, I met with [redacted] at [redacted] and explained to her why we there to interview her. She advised she was aware of the ongoing investigation. [redacted] stated she had previously spoken with [redacted] who told her she was interviewed by detectives. During a sworn taped statement, [redacted] stated she knew that [redacted] worked for Jeff in Palm Beach. [redacted] advised she has been there a lot of times for massages. I asked her if she had formal training in providing massages, which [redacted] stated she had not. [redacted] advised she was told what was expected of her by providing massages and would have to remove clothing but if she felt uncomfortable just to say so and Jeff would stop pushing the issue. [redacted] began providing massages and advised she kept her clothes on. She considered Jeff a pervert and he kept pushing to go further and further. [redacted] explained she would keep telling him she had a boyfriend and would not be right to her boyfriend. It wasn't until recently, [redacted] admitted to removing her clothes and staying in her thong underwear to provide a massage. [redacted] explained he wanted to be rubbed on his back and recently he began turning over and have her rub his chest as he masturbated. He would try to touch her breasts as she rubbed his chest.

[redacted] stated "Jeff would try to get away with more and more on each massage". Originally, [redacted] drove her to the house for the original massage. [redacted] left [redacted] her cell phone number and every time Jeff would come into town, [redacted] would call her for an appointment. Each time she went, [redacted] would meet her at the kitchen door area. She would bring her upstairs and prepare the massage table. [redacted] advised Jeff would ask her questions about her. He knew she was a soccer player and would be attending [redacted]. I asked [redacted] if he knew her real age, [redacted] stated Jeff didn't care. The most recent massage she provided was on October 1, 2005.

During the massage, she asked Jeff if she could borrow one of his vehicles to visit her family and boyfriend in Orlando. Jeff had told her she could borrow one of his vehicles but later stated he would rent her a car. She continued with the massage as Jeff grabbed her buttocks and caressed the buttocks cheeks. I asked [REDACTED] if she was wearing undergarments to which she replied her thong underwear. Once he tried to touch her breasts, she would pull away from him and he would stop. [REDACTED] was asked if he ever used a vibrator on her. [REDACTED] was aware of the vibrator but advised she never would allow him to use the vibrator on her. She described the vibrator as the large white vibrator with a huge head on the tip of the vibrator. She stated he kept the vibrator in a closet near the massage table. [REDACTED] advised she had been doing the massage for approximately two years which meant she would have started doing massages for Jeff at the age of sixteen.

[REDACTED] stated she was contacted by [REDACTED] on October 3, 2005. [REDACTED] had informed her that Jeff had rented her a new Nissan Sentra and she should come by the house to pick it up. [REDACTED] informed [REDACTED] she would have the car for a month. [REDACTED] stated Jeff knew her car was not working properly and had missed appointments in the past because of her car being inoperable. [REDACTED] explained the car is currently parked next to the Gym field. I asked her if she ever took any one to the house. [REDACTED] explained she took [REDACTED] a friend of hers who has returned to Orlando to attend college. I asked if she ever allowed another female in the room. [REDACTED] advised no one was brought into the room with her. At the conclusion of the interview, Det [REDACTED] and I went to the Gym area of [REDACTED] and located the Silver Nissan Sentra bearing Florida tag [REDACTED]. The vehicle is registered to Dollar rent a car out of the Palm Beach International Airport.

On October, 11, 2005, Det [REDACTED] and I had traveled to Jacksonville, Florida and met with [REDACTED] date of birth, [REDACTED]. [REDACTED] explained she had gone to Epstein's house since she was sixteen. She explained she was brought to the house to perform a massage by [REDACTED]. Once she began explaining that the massage immediately escalated to other things, she further explained she had gone to the house hundreds of times. [REDACTED] stated she became his "number one girl." She would enter the house and get naked in the bedroom. She would then start with a back massage. Epstein would roll on to his back and allow her to massage his chest area. [REDACTED] stated Epstein would then begin to masturbate himself and at the same time would insert his fingers in her vagina and masturbate her with his fingers. [REDACTED] explained Epstein would continue this process until he ejaculated. He would then utilize a vibrator/massager on her vagina until [REDACTED] ejaculated. [REDACTED] advised that during her frequent visits, Epstein asked for her real age, [REDACTED] stated she was sixteen. Epstein advised her not to tell anyone her real age. [REDACTED] advised that things escalated within the home as Epstein would pay [REDACTED] to have intercourse with his assistant, [REDACTED]. Epstein would watch and masturbate as he was watching. Occasionally, Epstein would then join in during the intercourse and provide oral sex to both [REDACTED] and [REDACTED]. This occurred during the time [REDACTED] was sixteen years of age.

[REDACTED] advised this continued to escalate and occurred during two years. The routine became familiar to [REDACTED]. Epstein's assistant [REDACTED] would telephone her every time Epstein was in the Town of Palm Beach and would place appointments for her to visit and work for Epstein. [REDACTED] stated Epstein would photograph them naked and having sex and proudly display the photographs within the home.

[REDACTED] continued to come to the house and was paid approximately \$400.00 to \$600.00 every time she went. [REDACTED] stated during a massage involving [REDACTED], Epstein turned [REDACTED] on to her stomach on the massage bed and inserted his penis into her vagina. [REDACTED] stated Epstein began to pump his penis in her vagina. [REDACTED] became upset over this.

She said her head was being held against the bed forcibly, as he continued to pump inside her. She screamed no and Epstein stopped. She told him that she did not want to have his penis inside of her. Epstein apologized for his actions and subsequently paid her a thousand dollars for that visit. [REDACTED] stated she knows he still displays her photographs through out the house.

Your affiant recalled working a previous case within Epstein's residence on October 5, 2003, when Epstein reported a theft from within his house. A former, disgruntled houseman was suspected in stealing monies from the house. At that time, I observed several covert cameras which, would capture and record images of anyone within the residence. Epstein had purchased covert cameras which were built in wall clocks and table clocks. These images were then downloaded onto a proprietary spy ware software for later viewing.

WHEREOF, affiant make this affidavit and pray the issuance of a search warrant in due form of law for the search of the above described premises for the said property, heretofore described, and for the seizure and safe keeping of the property, subject to the order of this Honorable Court or such other Court having jurisdiction over the offense, by the duly constituted officers of the law.

[REDACTED]

AFFIANT

Sworn to and subscribed before me this 18th day of October, 2005 .



JUDGE in and for Palm Beach County, Florida

SEARCH WARRANT

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

THE STATE OF FLORIDA)

COUNTY OF PALM BEACH)

IN THE NAME OF THE STATE OF FLORIDA, TO ALL AND SINGULAR:

The Sheriff of Palm Beach County, Florida, and his lawful Deputies, All Police Officers in Palm Beach County, Florida, The Commissioner of the Florida Bureau of Law Enforcement or any of his Duly

Constituted Agents to-wit: **Detective** [REDACTED]

WHEREAS, complaint on oath and in writing, supported by affidavit of a credible witness, or witnesses, to wit: **Detective** [REDACTED] which is attached hereto and made a part hereof, has this day been made before the undersigned:

Judge Laura Johnson
(Circuit)(County) Court Judge in and for Palm Beach County, Florida, and

WHEREAS, said facts made known to me and considered by me have caused me to certify and find that the facts set forth in said affidavit show and constitute probable cause for the issuance of this warrant and the Court being satisfied of the existence of said grounds set forth in the affidavit and that the laws of the State of Florida have been violated on or in a Premises known and described as follows, to-wit:

358 El Brillo Road
Palm Beach, Florida 33480

To reach the premise desired to be searched, begin at the middle span of the Royal Park Bridge and travel East on Royal Palm Way approximately .6 (six tenths) of a mile until you reach South County Road. At South County Road, make a right or southbound turn and travel approximately .8 (eight tenths) of a mile to El Brillo Way. At El Brillo Way, make a right or westbound turn and travel approximately .1 (one tenth) of a mile to the last house on the South side of El Brillo clearly marked with the number 358.

The premises desired to be searched is two story, single family residence made of CBS construction. The residence is pink in color with white trim and has a white concrete tile roof. The residence has two separate driveway entrances from El Brillo paved in large white tiles. The eastern most driveway is separated by a large white in color concrete wall with black in color numbers "358" clearly displayed from El Brillo and leads to the east side of the residence.

On the east side of residence, there are three single car garage doors, which are white in color and an entry door also white in color to South. Each driveway entrance has a white in color call box, which is fixed on the east side of the driveways. The western most driveway leads to the North side of the residence, to a large white in color double door on the first floor. The second story of the North side of the residence shows a small walkway with a white in color metal railway, and leads to three glass jalousie style doors. On the South East corner of the residence is a single story structure, made of CBS construction and is white in color with a white concrete tile roof.

To enter and search the afore described place and premise together with the yard and curtilage thereof, and any and all outbuildings and vehicles thereon, and any persons residing therein, and any other person therein reasonably believed to be connected with said illegal activity. This is a complete description of the residence desired to be searched, including the curtilage attached thereof.

being the premises occupied or under the control of:

Jeffrey Epstein

W/M Date of Birth [REDACTED]

and there is now being kept in the above described (vehicle)(premises) certain:

- 1) Computers, including any electronic magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions; data storage facilities such as magnetic tape, hard disk, floppy disk or drum, or cd rom; communications facilities directly relating to or operating in conjunction with such device; devices for printing records of data; and such records or data produced in various forms; manuals, documents, or instructional material relating to such devices.
- 2) Computers, personal computers, computer peripherals, modems, computer printers, floppy disk drives, hard disk drives, diskettes, tapes, computer printouts, computer software, computer programs and applications, computer manuals, system documentation.
- 3) Cameras, photographs, negatives, motion pictures, videotapes, magazines, books, and all other depictions of minors in sexual activity .
- 4) Any device or equipment that can be used to transfer images to a computer readable format.
- 5) Any written documentation or item containing password or encryption codes.
- 6) Any notes, ledger, personal phone books, roladex, books and any form of recording data of records of payments, telephone numbers and names of girls that have frequented the house.
- 7) Any sexual devices to which was used on the witness/victims.
- 8) Any hair fiber, semen, or other bodily fluids.

which is being kept and used in violation of the laws of the State of Florida, to-wit the laws prohibiting:

- | | | |
|--|-----------------|-------------------------------|
| 1. Sexual Activity with certain minors | FSS 794.05(1) | 2 st degree Felony |
| 2. Lewd and Lascivious Molestation | FSS 800.04(5c2) | 2 nd degree Felony |

NOW THEREFORE, you, or either of you are hereby commanded with proper and necessary assistance, in the name of the State of Florida, in the daytime or in the nighttime, or on Sunday, to forthwith search the said premises hereinbefore specified, for the property specified, and if the same, or any part thereof shall be found in said premises then you are authorized and commanded to seize the same and to bring the property and any person arrested in connection therewith before the Magistrate or any other Court having jurisdiction of the offense, to be dealt with according to law, and to forthwith make return of your doings upon executing this warrant, which you are hereby commanded to execute as the law directs within ten (10) days from the date thereof.

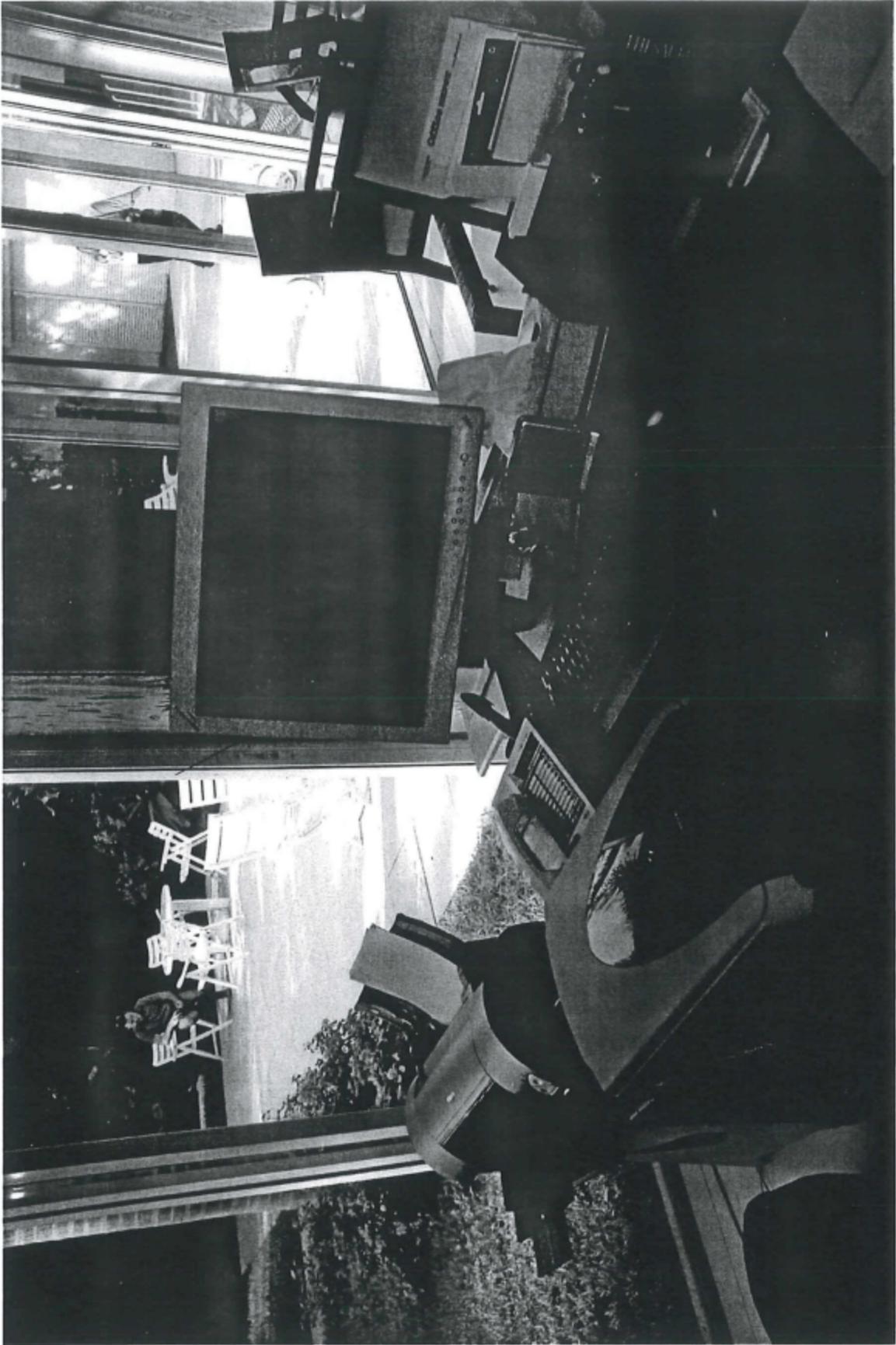
You are further commanded, in the event that you seize any of the said property hereinbefore described, to make up, at the time and place of seizure, a full, true and itemized list and inventory of all things seized and taken, in duplicate, signed by you, and to then and there give and deliver the said duplicate copy thereof to the person from whom possession shall be taken, if taken from the possession of anyone, together with a duplicate of this warrant, and if not taken from the possession of anyone, then to any person in charge of said premises, and in the absence of any such person, to leave the same on or in the premises. The original of this warrant, together with the original inventory, shall be returned and filed with the Clerk of the Court as stated above within ten (10) days of the issuance of this warrant.

Further any property seized or taken shall be impounded for use as evidence at any trial of any criminal or penal cause growing out of the having or possession of said property.

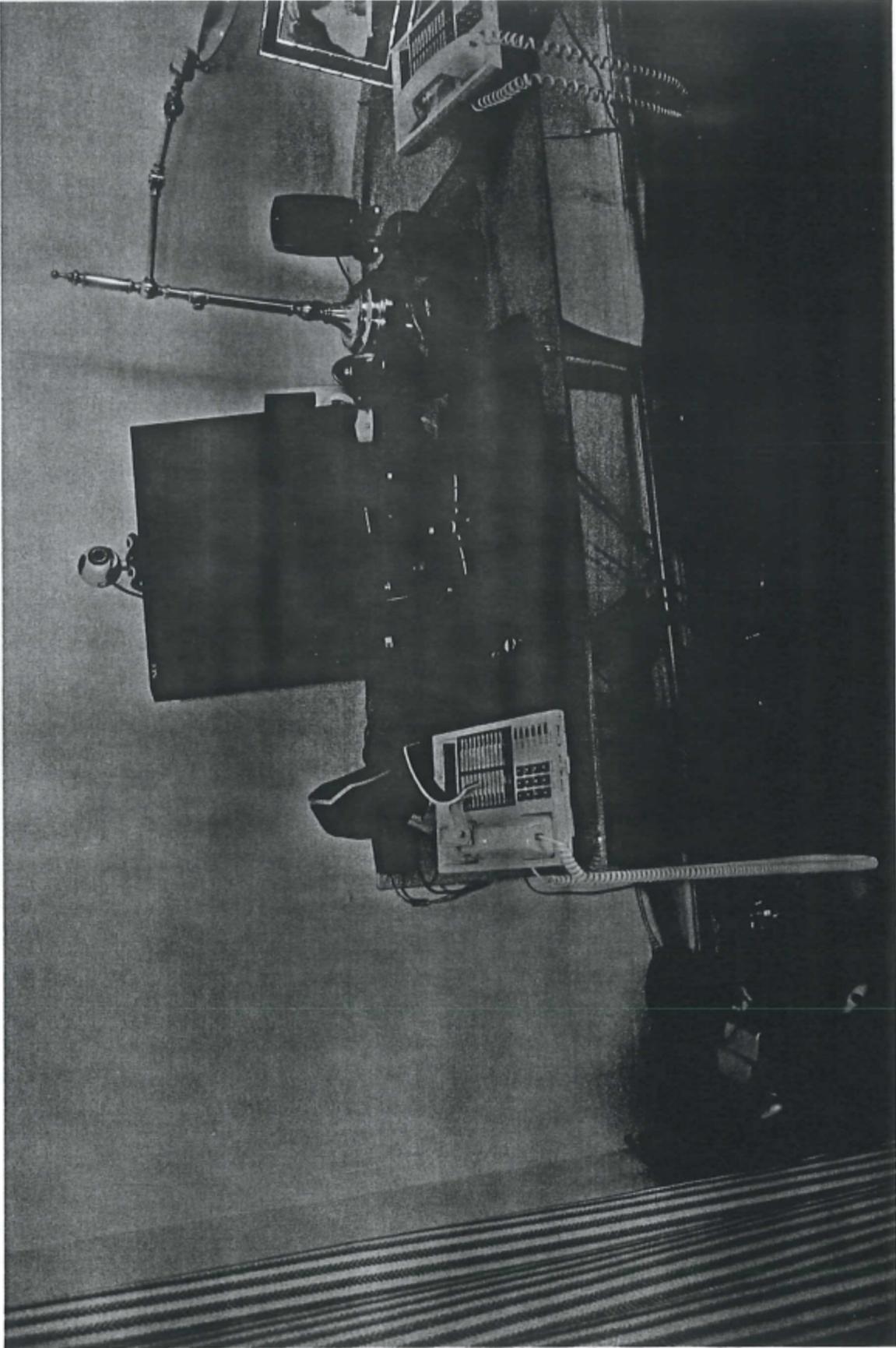
WITNESS my hand and seal this 18th day of October, A.D., 2005.



JUDGE of the Circuit Court of the
Fifteen Judicial Circuit in and for Palm
Beach County, Florida.



GOVERNMENT
EXHIBIT
R-2



GOVERNMENT
EXHIBIT
R-4



GOVERNMENT
EXHIBIT
R-3

UNITED STATES DISTRICT COURT
Southern District of Florida

Number: FGJ 07-103 (WPB)

In Re
Grand Jury Subpoenas Duces Tecum
Numbers OLY-63 and OLY-64

SUPPLEMENT TO EX PARTE DECLARATION #1 IN SUPPORT OF UNITED STATES' RESPONSE TO MOTION TO QUASH

SEALED DOCUMENT TRACKING FORM

Party Filing Matter Under Seal

Name: [REDACTED] U.S. Attorney's Office

Address: 500 S. Australian Ave, Suite 400, West Palm Beach, FL 33401

Telephone: [REDACTED]

On behalf of (select one):

Plaintiff

Defendant

Date sealed document filed: 8/31/2007

If sealed pursuant to statute, cite statute: Fed. R. Crim. P. 6(e) (Grand Jury Material)

If sealed pursuant to previously entered protective order, date of order and docket entry number: _____

The matter should remain sealed until:

Conclusion of Trial

Arrest of First Defendant

Case Closing

Conclusion of Direct Appeal

Other: _____

Permanently. Specify the authorizing law, rule, court order: _____

The moving party requests that when the sealing period expires, the filed matter should be (select one):

Unsealed and placed in the public portion of the court file

Destroyed

Returned to the party or counsel for the party, as identified above

[REDACTED]

Attorney for: United States of America

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

IN RE GRAND JURY SUBPOENAS
DUCES TECUM NUMBERS
OLY-63 and OLY-64

FGJ 07-103(WPB)

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
OLY-63 and OLY-64

FGJ 07-103(WPB)

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 14, was recruited by another female, "V", to provide

Epstein with a personal massage. The first time that "V" brought Jane Doe to Epstein's home at 358 El Brillo Way, Palm Beach, Florida, "V" and Epstein engaged in sexual intercourse in front of Jane Doe. "V" was seventeen years old at the time. "V's" first contact with Epstein, at the age of 15, 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 oral sex 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.

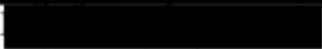
5. On one occasion, when Jane Doe was approximately 16 years' old, Epstein's assistant, [REDACTED], telephoned Jane Doe and told her that Epstein wanted [REDACTED] to photograph her. Jane Doe traveled to Epstein's Palm Beach home where [REDACTED] took a series of nude photographs of Jane Doe posing at 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 28th day of August, 2007.


Special Agent 
Federal Bureau of Investigation