

From: [REDACTED]

To: [REDACTED]

Subject: FW: Rule 6(e) Material??

Date: Wed, 13 Apr 2011 16:24:11 +0000

Importance: Normal

From: [REDACTED]

Sent: Wednesday, April 13, 2011 12:21 PM

To: [REDACTED]

Cc: [REDACTED]

Subject: FW: Rule 6(e) Material??

[REDACTED]

When is [REDACTED] due back from her vacation? What do you think of Cassell's comments on the government's response?
Thanks.

[REDACTED]

From: Paul Cassell [mailto:[REDACTED]]

Sent: Wednesday, April 13, 2011 10:24 AM

To: [REDACTED] (USAFLS); [REDACTED] (USAFLS); Brad Edwards

Subject: RE: Rule 6(e) Material??

Dear [REDACTED],

Thanks very much for not opposing our extra time and pages request. We appreciate your help on those.

Brad and I are also digesting your various pleadings. As you know, while we strenuously disagree with some of the arguments you have advanced, we have always admired the diligence with which you have represented the United States.

Having reviewed your pleadings, however, we are writing to ask you to consider withdrawing the argument contained at pages 2-5 of your response to our motion to use correspondence to prove violations of the CVRA -- the arguments dealing with grand jury secrecy under Rule 6(e) of the Federal Rules of Criminal Procedure. In our view, the argument is ill-conceived and simply inaccurate. We would ask you to consider the following points.

1. Your motion does not explain which parts of our summary judgment motion -- and which parts of Exhibit A to our motion -- are protected grand jury matters. A Word search of our summary judgment motion produces only one instance of the term "grand jury" -- in paragraph 12 of our statement of facts. The paragraph reads:

In September 2007, the U.S. Attorney's Office, in an effort to avoid prosecuting Epstein for his numerous sexual offenses against children, proposed to Epstein's attorneys that rather than plead to any charges relating to him molesting children, Epstein should instead plead to a single assault charge involving a telephone call made by Epstein while he was on his private jet. During this telephone call, Epstein warned his personal assistant, [REDACTED], against turning over documents and electronic evidence responsive to a subpoena issued by a federal grand jury in the Southern District of Florida investigating Epstein's sex offenses. U.S. Attorney's Correspondence at 49, 58.

EFTA00212808

We accordingly presume that this is at least an example what you are referring to when you say that our statement of facts bears on protected grand jury matters under Rule 6(e).

2. The fact that Epstein warned his assistant against turning over materials in response to a grand jury subpoena is simply not a "grand jury matter" to which Rule 6(e) applies. The subpoena had been issued and its existence was known to Jeffrey Epstein -- what actions he himself took in response to the issuance of the subpoena obviously were not matters occurring before the grand jury; instead, they were matters occurring before Epstein and [REDACTED] that had nothing to do with the inner workings of the grand jury. There is abundant caselaw to that effect. See, e.g., *Miller v. Mehlretter*, 478 F. Supp. 2d 415 (W.D. N.Y. 2007) (Grand jury secrecy rule did not prohibit FBI special agent from testifying, in contempt proceedings against police chief for violating order sealing record of police officer's dismissed theft charges, as to circumstances leading to issuance of grand jury subpoena of local police records, since testimony concerned events occurring prior to grand jury investigation and subpoena, not what occurred before grand jury, and scope of investigation and contents of subpoena were no longer secret).

3. The fact that Epstein's actions are not protected grand jury matters is further proven by the fact that you have already made "disclosure" of these very same facts yourself. The U.S. Attorney's correspondence found in Exhibit A to our pleading involves, obviously enough, communications that your Office made to persons who are not entitled to receive protected grand jury materials -- namely, criminal defense attorneys representing Epstein. If it violates grand jury secrecy for Jane Doe #1 and Jane Doe #2 to make reference to these matters in their briefs because these matters were protected "grand jury matters" within the meaning of Rule 6(e), then it likewise violated grand jury secrecy for your attorneys to make such disclosures to (for example) Jay Lefkowitz. Disclosures of confidential grand jury matters can only be made upon court order. See Fed. R. Crim. P. 6(e)(3)(E). To our knowledge, there is no such court order authorizing disclosures. (If we are wrong on that point, please advise us promptly.) Put another way, everything we are disclosing in our pleadings has already been disclosed by attorneys in your office to persons not authorized to receive confidential grand jury matters (namely defense attorneys).

4. If you continue in the view that these disclosures are barred by Rule 6(e), then your Office would have numerous violations of Rule 6(e) that it would appear to be obligated to self-report to the Court supervising the grand jury investigation and to the Department's Office of Professional Responsibility. To be clear, we think your view is wrong -- which is why we are writing to call the ramifications of your position to your attention now.

5. We therefore would ask you to file a pleading with the Court withdrawing the Rule 6(e) argument found at pages 2-5 of your response to our motion to use the U.S. Attorney's correspondence. We would also ask that in connection with that filing that you advise the Court that the representations made in the motion of defense attorneys Jay Lefkowitz et al. to intervene in this case that there is protected Rule 6(e) material in the correspondence is not accurate.

Thank you for considering this request, which is made in the interest of narrowing our points of disagreement and preventing allegations being leveled against attorneys in your office that they have not followed grand jury secrecy requirements.

Sincerely,

Paul Cassell
Co-Counsel for Jane Doe

Paul G. Cassell
Ronald N. Boyce Presidential Professor of Criminal Law

[REDACTED]
Salt Lake City, UT 84112-0730

[REDACTED]

<http://www.law.utah.edu/profiles/default.asp?PersonID=57&name=Cassell,Paul>

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From: [REDACTED] (USAFLS) [mailto:[REDACTED]]
Sent: Wednesday, April 13, 2011 5:51 AM
To: Paul Cassell; [REDACTED]. (USAFLS); Brad Edwards
Subject: RE: Position on Extension of Time - extra pages too?

Paul,

We have no objection.

[REDACTED]

From: Paul Cassell [mailto:[REDACTED]]
Sent: Tuesday, April 12, 2011 9:46 AM
To: [REDACTED] (USAFLS); [REDACTED]. (USAFLS); Brad Edwards
Subject: RE: Position on Extension of Time - extra pages too?

Hey [REDACTED]

Thanks for your prompt reply on the extra time. What about extra pages? We anticipate that we will need 27 pages to reply to your 53 page response to our "summary judgment" motion – thanks for letting us know your position. Paul

Paul G. Cassell
Ronald N. Boyce Presidential Professor of Criminal Law

[REDACTED]
Salt Lake City, UT 84112-0730

[REDACTED]

<http://www.law.utah.edu/profiles/default.asp?PersonID=57&name=Cassell,Paul>

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From: [REDACTED] (USAFLS) [mailto:[REDACTED]]
Sent: Monday, April 11, 2011 5:49 PM
To: Paul Cassell; [REDACTED]. (USAFLS); Brad Edwards
Subject: RE: Position on Extension of Time

Paul,

We have no objection to your request for additional time to respond to the government's responses.

[REDACTED]

From: Paul Cassell [mailto: [REDACTED]]
Sent: Monday, April 11, 2011 5:22 PM
To: [REDACTED]. (USAFLS); Brad Edwards
Cc: [REDACTED] (USAFLS)
Subject: RE: Position on Extension of Time

Hi [REDACTED] and [REDACTED],

Brad and I need a bit more time to respond to all of your pleadings. We'd like an extra two weeks to Monday, May 2. I've got final exams intervening, and there's a lot for both of us to work through.

Please advise as to your position. Thanks! Paul

Paul G. Cassell
Ronald N. Boyce Presidential Professor of Criminal Law

[REDACTED]
Salt Lake City, UT 84112-0730

[REDACTED]
<http://www.law.utah.edu/profiles/default.asp?PersonID=57&name=Cassell,Paul>

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