

**THE SUBPOENA FOR THE CONTENTS OF EPSTEIN'S COMPUTERS, EVEN IF CONSIDERED "PURELY PRIVATE PAPERS," DOES NOT VIOLATE EPSTEIN'S FIFTH AMENDMENT PRIVILEGE.**

Lastly, Epstein argues that the subpoena seeks "purely private papers," and that a subpoena demanding those papers violates Epstein's Fifth Amendment rights, pursuant to *Boyd* ■ *United States* , 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.

First, as explained above, the Fifth Amendment is a *personal privilege* and only the subpoenaed person can assert his own Fifth Amendment privilege. [CITE] The computers and their contents are not the personal papers of William Riley or Riley Kiraly, so the *Boyd* analysis does not apply to this situation at all.

Second, *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* ■ *Maryland* , 427 U.S. 463, 472 (1976). In 1984, Justice O'Connor wrote a concurring opinion in *United States* ■ *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* ■ *United States* , . . . but our decision in *Fisher* ■ *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* ■ *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* ■ *United States* , 425 U.S. 391, 409-10 (1976); and citing *United States* ■ *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* ■ *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* ■ *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* ))).

Epstein’s Fourth Amendment claim also fails under the post- *Boyd* case law. *Andresen* ■ *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* ■ *United States* , 255 U.S. 298, 309 (1921)). [F1](#)

Third, 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 Recarey Affidavit, one of the computers was in an area that appears to be the office of Sarah Kellen and another was in the pool cabana. (Recarey Aff. at ¶ \_\_.) Video surveillance also showed Sarah Kellen working on that computer. (*Id.* at ¶ \_\_.)

---

[F1](#)It should be noted that a search warrant 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* Recarey Aff. at ¶ \_\_.)