

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

IN RE GRAND JURY SUBPOENAS FGJ 07-103(WPB)  
DUCES TECUM NUMBERS  
OLY-63 and OLY-64

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UNDER SEAL

UNITED STATES' RESPONSE TO MOTION OF JEFFREY EPSTEIN TO  
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). <sup>F1</sup> 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 appearance time. The United States did not excuse the witnesses' appearances and an assertion of the attorney-client privilege does not excuse a witness' appearance from a judicial proceeding, it only excuses the witness from having to answer questions that call for answers 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.

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 act-of-production 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, 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, the United States first 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 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. [F2](#) 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 way the Palm Beach County State Attorney's Office was handling the matter. 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 conduct [F3](#) in exchange for money.

PBPD's investigation was presented to the State Attorney's Office for further investigation and prosecution. Soon thereafter, Epstein's team of attorneys began approaching the State Attorney's Office, applying pressure against prosecuting the case. The team of attorneys included Mr. Black and his firm, Jack Goldberger, Gerald Lefcourt, and Professor Alan Dershowitz. [F4](#) At some time after the possibility of obtaining a search warrant was discussed, Epstein hired the husband of the Assistant State Attorney overseeing the case, forcing the A.S.A. to be recused. A.S.A. was recused, a search warrant was prepared with another Assistant State Attorney, and it was executed on October \_\_\_, 2005. The search warrant called for the seizure of: [INSERT LATER] At the time of the execution, several items were conspicuously missing, including three computers. [F5](#)

One of the officers who executed the search warrant had previously visited Epstein's 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 [REDACTED] office. [F6](#)

Through the FBI's investigation, it was determined that at some point before the execution of the search warrant [REDACTED] [F7](#) and Paul Lavery, a private investigator, traveled to Epstein's house and collected the computers, which were later turned over to William Riley, the subpoenaed party.

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.

### **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)). 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. [F8](#)

#### **II. EPSTEIN HAS NO "ACT-OF-PRODUCTION PRIVILEGE" IN THE SUBPOENAED ITEMS.**

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 act-of-production 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 the act of production privilege applies to William Riley's or Riley Kiraly's production of the computers removed from Epstein's home. The act of production privilege derives from the

Fifth Amendment, which “protects a person . . . again being incriminated by his own compelled testimonial communication.” *Fisher* ■ *United States* , 425 U.S. 391, 409 (1976). Thus, to receive Fifth Amendment protection, the person’s statement or act must be: (1) compelled; (2) testimonial; and (3) incriminate *that person* in a criminal proceeding. The production of the computer equipment and the requested testimony would not incriminate either William Riley or Riley Kiraly, as evidenced by the fact that neither has moved to quash. In *Couch* ■ *United States* , 409 U.S. 22 (1973), the IRS issued a summons to the defendant’s accountant for the defendant’s receipts and other tax materials. After receiving the summons, the accountant, at the defendant’s request, delivered the documents to defense counsel. The defendant then asserted her Fifth Amendment privilege against self-incrimination to prevent production of the documents. The Supreme Court held that the documents were in the custody of the accountant at the time of issuance of the subpoena and, therefore, the issue was whether the accountant could be compelled to produce the documents. *Id.* at 329 n.9. 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* ■ *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, e.g., SEC* ■ *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.) Furthermore, Riley Kiraly is an artificial entity, not a natural person, and therefore has no Fifth Amendment privilege at all. *See, e.g., Doe* ■ *United States* , 487 U.S. 201, 206 (1988); *Bellis* ■ *United States* , 417 U.S. 85, 90 (1974).

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* ■ *Wade* , 388 U.S. 218, 223 (1967) (quoting *Schmerber* ■ *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.

<sup>F9</sup> See, e.g., *United States* █ *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* █ *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* █ *Acevedo* , 169 F.3d 1155, 1168 (8th Cir. 1999) (defendant’s journal not protected because voluntarily written); *United States* █ *Wuykowski* , 929 F.2d 981, 983 (4th Cir. 1991) (Fifth Amendment does not protect the contents of voluntarily prepared documents, whether business or personal); *United States* █ *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).

**XX. THE ITEMS SOUGHT IN REQUEST NUMBER THREE <sup>F10</sup> ARE NOT COVERED BY THE ATTORNEY-CLIENT PRIVILEGE OR THE WORK PRODUCT DOCTRINE.**

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 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 “last link” doctrine does not apply.

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.

Procedurally, the person asserting the privilege bears the burden of establishing its applicability. See, e.g., *United States* █ *Schaltenbrand* , 930 F.2d 1554 (11th Cir. 1991); *United States* █ *Muñoz* , 233 F.3d 1117 (9th Cir. 2000); *Hawkins* █ *Stables* , 148 F.3d 379 (4th Cir. 1998); *Motley* █ *Marathon Oil Co.* , 71 F.3d 1547 (10th Cir. 1995); *Christman* █ *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* █ *Excel Corp.* , 197 F.3d 200 (5th Cir. 1999); *Clarke* █ *American Commerce Nat. Bank* , 974 F.2d 127 (9th Cir. 1992); *United States* █ *White* , 950 F.2d 426, 430 (7th Cir. 1991).

**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,  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July \_\_\_\_, 2007, I served the foregoing document via Federal Express on the counsel listed on the attached list. This document was not filed using CM/ECF because it is being filed under seal.

\_\_\_\_\_  
Assistant U.S. Attorney

**SERVICE LIST**

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

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**Attorney for Intervenor Jeffrey Epstein**

<sup>F1</sup>Riley Kiraly is the firm that employs William Riley. Riley Kiraly and William Riley are represented by William Richey, Esq. Mr. Richey has not filed any motions on behalf of his clients.

<sup>F2</sup>Due to the rules governing Grand Jury secrecy, the full details of the Grand Jury's investigation cannot be disclosed except *in camera* at the request of the Court. 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.

<sup>F3</sup>Epstein's counsel disingenuously refers to these as "massages." The conduct involved asking girls to partially or fully disrobe and to "massage" Epstein, including 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 also 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.

<sup>F4</sup>Since the start of the federal investigation the team has grown to include former U.S. Attorney Guy Lewis and former Assistant U.S. Attorneys Lilly Ann Sanchez and Michael Teen.

<sup>F5</sup>The wires and peripheral devices were present but the central processing units ("CPUs") were gone.

<sup>F6</sup>██████████ is one of Epstein's personal assistants.

<sup>F7</sup>██████████ is one of Epstein's former personal assistants.

<sup>F8</sup>As 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.

<sup>F9</sup>It 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 ██████████, not Epstein.

<sup>F10</sup>Request Number Three requests documents and information related to the retention of William Riley and Riley Kiraly's services, including retainer agreements, billing records, fee arrangements, etc. For purposes of this discussion, the requested documents will be jointly referred to as "billing records."