

1.3. On June 7, 2007, a Subpoena (the "CitiBank Subpoena") was issued to CitiBank South Dakota, N.A. ("CitiBank"), commanding production of Eichenwald's account information/documents with CitiBank on or before August 17, 2007. See Appendix, NP1. Eichenwald and his attorney received notice from CitiBank on June 27, 2007 informing them that the Citibank Subpoena was issued requiring the production of records and/or information from Eichenwald's credit card accounts issued by CitiBank. See Appendix, NP2.

1.4. On June 20, 2007, a Subpoena (the "AOL Subpoena") was issued to AOL ("AOL"), commanding production of records relating to Eichenwald's email account, including the registration date and time, source IP, name and other identifiers for registrant, billing and payment information, and other AOL email address registered by the individual/entity. See Appendix, NP3. Eichenwald received notice from AOL on July 6, 2007 informing him that the AOL Subpoena was issued requiring the production of the aforementioned records and/or information. See Appendix, NP4.

II

Summary

2.1. The requested documents serve no legitimate purpose in the Defendant's criminal case. Defendant has been convicted of the charges brought against him and is now awaiting sentencing. Any information derived from the CitiBank Subpoena and/or the AOL Subpoena is irrelevant to these proceedings.

2.2. Moreover, the CitiBank Subpoena and the AOL Subpoena have been issued in bad faith, as is demonstrated below by the wanton abuse of the court systems by Defendant and his family.

III.

Factual Background

3.1. There can be no doubt that, rather than serving as part of Defendant's defense, the CitiBank Subpoena and the AOL Subpoena have been issued to perpetuate Defendant's ongoing efforts to create support for himself on the Internet, and to portray himself as the innocent victim of a fantastical conspiracy.

3.2. While Internet postings purportedly by the Defendant demonstrate that he has obsessed on the imagined role of Eichenwald in his prosecution and conviction, no such role exists. See e.g. www.freecasey.com

3.3. Eichenwald has never held any substantive discussions with any of the witnesses who testified in this case.

3.4. The sole tangential connection played by Eichenwald in this case was to recommend that another individual, Justin Berry ("Berry"), who was not proffered as a witness by either side, approach the government. Eichenwald did so after Berry informed Eichenwald of his belief that the Defendant was engaged in ongoing sexual abuse of a minor, and had previously abused another minor who testified in this case. Berry's allegations have been supported by both the testimony and in sworn government affidavits based on statements of other witnesses.

3.5. Eichenwald has no independent knowledge of the Defendant's guilt in any of the underlying charges in this case.

3.6. Based on statements attributed to Defendant on the Internet, Defendant has fantasized a conspiracy between Eichenwald and Berry to frame him on child pornography charges for the purpose of perpetuating a news story. Nothing about Defendant's case was covered by Eichenwald other than a cursory mention of his arrest.

3.7. Defendant's counsel Peter Striense has assisted Defendant in this endeavor by providing a document obtained via a subpoena in this case to a director of a group organized to assist convicted child molesters. That same document then was used by defense counsel in an internet child pornography case in Michigan involving Ken Gourlay ("Gourlay"), a now-convicted child molester and child pornographer. Gourlay was tried and convicted in Michigan in the first week of March, 2007, at Washtenaw County Trial Court, before Judge Archie Brown, in Cause No. CR-W-060000877 FH.

3.8. Rather than return the numerous calls to their office, counsel for Defendant apparently has had time to contact his client in prison and place a reference to the CitiBank Subpoena on the Defendant's web site. See Appendix, NP17-18. Such conduct is further evidence of bad faith on the part of the Defendant and his attorneys and others acting in concert therewith.

IV.

Arguments and Authorities

4.1. A person commanded to produce and permit inspection, copying, testing, or sampling may serve a written objection on the party or attorney designated in the subpoena. FRCP 45(c)(2)(B).

4.2. Eichenwald has standing to challenge the CitiBank Subpoena and the AOL Subpoena because the Subpoenas affect a personal right or privilege of Eichenwald's with respect to the materials requested. Brown v. Braddick, 595 F.2d 961, 967 (5th Cir. 1979); Stevenson v. Stanley Bostitch, Inc., 201 F.R.D. 551, 555 n.3 (N.D. Ga. 2001). Specifically, information responsive to the Subpoenas is likely to contain personal and financial information which could be used to engage in other nefarious conduct toward Eichenwald and his family.

4.3. The Court should quash the CitiBank Subpoena and the AOL Subpoena because the Subpoenas require disclosure of privileged or protected material, and no exemption or waiver applies. FRCP 45(c)(3)(A)(iii).

4.4. Additionally, as outlined above, the Court should further quash the CitiBank Subpoena and the AOL Subpoena because the information requested is not relevant to the issues in the above-referenced case. A party may discover the financial information of an individual or business organization only if relevant to the lawsuit. Yancy v. Hooten, 180 F.R.D. 203, 215 (D. Conn. 1998); see also FRCP 26(b)(1).

4.5. Finally, Eichenwald would request that the Court stay compliance with the CitiBank Subpoena and the AOL Subpoena (or any other defense subpoena seeking personal information of Eichenwald) until such time as the Court has ruled on this Motion to Quash Subpoenas.

V.

Sanctions

5.1. Pursuant to Rule 3.1 of the Tennessee Code of Professional Conduct: "A lawyer shall not bring or defend or continue with the prosecution or defense of a proceeding, or assert or controvert or continue to assert or controvert an issue therein, unless after reasonable inquiry the lawyer has a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established." Additionally, in representing a client, pursuant to Rule 4.4 of the Tennessee Code of Professional Conduct, a lawyer shall not: (a) use means that have no substantial purpose other than to embarrass, delay, or burden a third person or knowingly use methods of obtaining evidence that violate the legal rights of such a person. Finally, pursuant to Rule 5.1 of the Tennessee Code of Professional Conduct, a supervisory lawyer must abide by the following rules:

(a) A partner in a law firm and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer:

(i) is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, has direct supervisory authority over the other lawyer, is serving as co-counsel with the other lawyer in the matter, or is sharing fees from the matter with the other lawyer; and

(ii) knows of the conduct at a time when its consequences can be avoided or mitigated, but fails to take reasonable remedial action.

5.2. As outlined above, counsel for Defendant is in violation of those Rules mandated by the Tennessee Code of Professional Conduct.

5.3. As such, Eichenwald requests sanctions against Defendant and his lawyers:

a. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. Fed. R. Civ. P. 45(c)(1).

b. The Court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction. Fed. R. Civ. P. 45(c)(1).

c. The sanction may include, but is not limited to, lost earnings and a reasonable attorney's fee. Fed. R. Civ. P. 45(c)(1).

d. For all of the reasons outlined above, Eichenwald requests the Court impose the following sanctions on Defendant and his attorney:

- (1) An Order to quash the CitiBank Subpoena and the AOL Subpoena;
- (2) A penalty to be paid into the Court; and
- (3) Reasonable attorney's fees to Eichenwald.

WHEREFORE, PREMISES CONSIDERED, Eichenwald respectfully requests this Court enter an Order quashing the CitiBank Subpoena and the AOL Subpoena and order the appropriate sanctions based on the conduct of Defendant and his attorney. Eichenwald prays for such other and further relief, both general and special, at law or in equity, to which he may be justly entitled.

Respectfully submitted,

Underwood, Perkins & Ralston, P.C.

Timothy S. Perkins
Pro Hac Vice Application Pending
Texas State Bar No. 15790900
Two Lincoln Centre
5420 LBJ Freeway, Suite 1900
Dallas, Texas 75240
Telephone: (972) 661-5114
Facsimile: (972) 661-5691

Attorneys for Kurt Eichenwald

Certificate of Conference

I hereby certify that the following contacts were made in relation to this Motion:

- (a) Peter J. Strianse, attorney for Defendant, was called twice;
- (b) Mr. Strianse was emailed three times;
- (c) Kimberly S. Hodde, attorney for Defendant, was called once;
- (d) The Managing Partner of Mr. Strianse's firm, Thomas V. White, was called once;
- (e) Mr. White was carbon copied on all emails;
- (f) The Prosecutor, S. Carran Daugherty, was called and emailed;
- (g) Ms. Daugherty was carbon copied on all emails.

See Appendix, NP7-16. The undersigned never received a return call from any of the above-referenced individuals. Agreement could not be reached. Therefore, this Motion is being presented to the Court for consideration.



Timothy S. Perkins

Certificate of Service

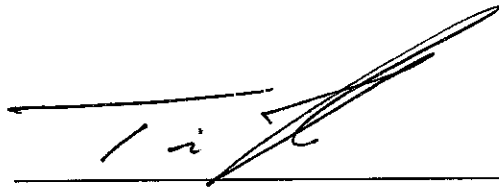
I hereby certify that a true and correct copy of the above and foregoing instrument will be served upon all counsel of record, as listed below, via certified mail, return receipt requested, once the Order on the Motion for Leave to File Under Seal has been signed.

Kayla Bakshi
United States Department of Justice
Child Exploitation and Obscenity Section
1400 New York Avenue, Suite 6000
Washington, D.C. 20530
Attorney for Plaintiff

S. Carran Daughtrey
Office of the United States Attorney
110 Ninth Avenue South, Suite A961
Nashville, Tennessee 37203-3870
carrie.daughtrey@usdoj.gov
Attorney for Plaintiff

Kimberly S. Hodde
Hodde & Associates
40 Music Square East
Nashville, Tennessee 37203
kim.hodde@hoddelaw.com
Attorney for Defendant

Peter J. Strianse
Tune, Entekin & White, P.C.
1700 AmSouth Center
315 Deaderick Street
Nashville, Tennessee 37238
pstsrianse@tewlawfirm.com
Attorney for Defendant



Timothy S. Perkins