

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA)
)
v.) No. 3:05-00185
) Judge Trauger
TIMOTHY RYAN RICHARDS)

RESPONSE TO NON-PARTY EICHENWALD’S OBJECTIONS

COMES NOW the Defendant, **Timothy Ryan Richards**, by and through his undersigned counsel, and hereby submits this Response to the Objections filed by Non-Party Kurt Eichenwald (Docket Entry 301)

Procedural History

On July 11, 2007, Non-Party Intervener, Kurt Eichenwald, filed a Motion to Quash and Request for Sanctions with numerous attachments. (Docket Entry 245). On July 23, 2007, Defendant Richards filed a Response in Opposition to the Motion, articulating the legitimate basis for the subpoena requests and their relevance to sentencing - among other things. (Docket Entry 251) On July 27, 2007, Doug Pierce, an attorney for the media, filed a Notice of Appearance “for the limited purpose of opposing any efforts to close the courtroom proceedings or judicial records in this case.” (Docket Entry 259) On July 30, 2007, Non-Party Eichenwald filed a Supplemental Motion (Docket Entry 260), a Supplemental Appendix (Docket Entry 261), and a Reply (Docket Entry 262) On July 31, 2007, the Court conducted a Hearing on the merits of Non-Party Eichenwald’s Motion to Quash and Request for Sanctions. (Docket Entry (267)

Immediately upon taking the Bench at the Hearing, this Court ruled that the proceedings and

the filings (subject to redaction of credit card numbers, social security numbers and the like) would be open to the public and unsealed. Additionally, upon considering the arguments of counsel in conjunction with the filings, the Court determined that the defense carried its burden under the three (3) pronged *Nixon* test (relevancy, admissibility and specificity) for the issuance and return of the subpoenas. However, the Court ordered that Magistrate Judge Brown would review the returns for their relevancy to sentencing and provide all unredacted information to counsel. The Court denied the Motion to Quash and Request for Sanctions and subsequently entered an Order to that effect.¹ (Docket Entry 268)

After considering the submissions by counsel for Non-Party Eichenwald² and Defendant Richards³ as well as the subpoena returns from PayPal,⁴ AOL,⁵ Yahoo,⁶ Bank of America,⁷ and

¹ The Court's subsequent Order expressly states as follows:

It is further ORDERED that counsel for Mr. Eichenwald shall file by 12:00 noon on Friday, August 3, 2007, a listing by docket entry and page number of all personal identifying information, credit cards numbers, etc., that appear in the various filings made by any party in connection with Mr. Eichenwald's motions to quash and for sanctions

(Docket Entry 268).

² See Docket Entries 271 & 278.

³ See Docket Entry 273.

⁴ See Docket Entry 264.

⁵ See Docket Entry 274.

⁶ See Docket Entry 282.

⁷ See Docket Entry 285.

CitiCorp,⁸ Magistrate Judge Brown entered three (3) Orders resolving the various redaction issues (Docket Entries 383, 289, 291). In the first Order, Magistrate Judge Brown redacted the subpoena returns from Yahoo, CitiCorp, AOL and PayPal in accordance with the dictates of the E-Government Act of 2002 and Administrative Order 167, § 5 10 (Administrative Practices and Procedures for Electronic Case Filing (ECF)). (Docket Entry 283). In the second Order, Magistrate Judge Brown redacted the late-filed subpoena return from Bank of America. (Docket Entry 289). In the third Order, the Magistrate Judge Brown redacted the filings by Non-Party Eichenwald and Defendant Richards relating to the litigation of the Motion to Quash. (Docket Entry 291)

On August 22, 2007, this Court entered an Order directing Non-Party Eichenwald to file any objections to Magistrate Judge Brown's three (3) Orders by August 29, 2007. (Docket Entry 300). On August 29, 2007, Non-Party Eichenwald filed Objections to only one (1) of the Orders. (Docket Entry 301) Pursuant to the directives of this Court, Defendant Richards submits this Response to Non-Party Eichenwald's Objections.

Response to Objections

Non-Party Eichenwald filed objections to only one (1) of Magistrate Judge Brown's Orders (Docket Entry 283). The first objection notes that the AOL subpoena return lists an account that was used by Eichenwald's son. This objection was never raised before the Magistrate Judge. However, in an effort to resolve this concern among the parties, undersigned counsel asked for additional information about the account. In response to undersigned counsel's inquiry, counsel for Eichenwald reported the following information:

1 Mr. Eichenwald's son, the email account user, is a minor

⁸ See Docket Entry 277

- child;
2. The email account has been terminated and is no longer in use; and,
3. Mr. Eichenwald's son was the sole and exclusive user of the account.

Although it is clear that this account would not serve as a viable contact for the minor child because it has been terminated, Defendant Richards does not oppose the redaction of the email account, _____ from the AOL subpoena return (Docket Entry 284-3, pp 2 & 6).

Non-Party Eichenwald's second objection requests the issuance of a "Protective Order prohibiting the fruits of the Subpoenas issued to CitiCorp, AOL, Yahoo, PayPal and Bank of America to be [sic] disseminated by any party, attorney or any other person in possession of same (recognizing that these items may be offered into evidence at the sentencing)." Defendant Richards opposes any such measure. The request appears to be yet another backdoor effort to relitigate the unsealing of this matter.⁹ This Court has already ruled that the July 31, 2007 Hearing, the filings and the subpoena returns are to be unsealed after redaction. Non-Party Eichenwald is clearly unwilling to accept this ruling.

Out of an abundance of caution, the Court referred the redaction process to Magistrate Judge Brown, who, in turn, has considered the input of the parties throughout the exhaustive process. Rather than objecting to specific redactions (or the lack thereof) as ordered, Non-Party Eichenwald is using this opportunity to seek new, unreasonable and burdensome relief - a Protective Order. There is simply no viable need or articulable justification for such an extreme measure. The

⁹ In the litigation before Magistrate Judge Brown, Non-Party Eichenwald made efforts to circumvent the Court's unsealing decision by attempting to gut the essence of the filings by redaction. Magistrate Judge Brown saw through the thinly veiled effort, determining "that defendant's counsel has the better argument in this matter." (Docket Entry 291, p.1)

redaction of information pursuant to the E-Government Act of 2002 and Administrative Order 167, § 5.10 is more than sufficient to protect any privacy interests that Non-Party Eichenwald may have.¹⁰ This is made abundantly clear by Non-Party Eichenwald's failure to articulate any complaints about Magistrate Judge Brown's redactions.

Secondly, it will be necessary to make use of the fruits of these Subpoena returns in the further and legitimate representation of Defendant Richards. It is obvious from the redacted subpoena returns that other subpoenas will need to be issued to unearth the full scope of the JustinsFriends relaunch. To that end, the request for a Protective Order is a flagrant effort to obstruct Defendant Richards' mitigation investigation. This obstructive purpose is improper, and for this and many other reasons, a Protective Order should not issue.

Finally, Non-Party Eichenwald does not make any real or legitimate challenges to the redactions by Magistrate Judge Brown. The redactions are entirely appropriate and supported by

¹⁰ In keeping with the E-Government Act of 2002, on April 18, 2005, the Judges of the Middle District of Tennessee executed Administrative Order 167, establishing the Administrative Practices and Procedures for Electronic Case Filing (ECF) in the United States District Court for the Middle District of Tennessee. Section 5.10 requires the redaction of the following "personal identifiers" in the following ways:

- (a) **Social Security numbers.** If an individual's social security number must be included in a document, only the last four digits of that number should be used.
- (b) **Names of minor children.** If the involvement of a minor child must be mentioned, only the initials of that child should be used.
- (c) **Dates of birth.** If an individual's date of birth must be included in a document, only the year should be used.
- (d) **Financial account numbers.** If financial account numbers are relevant, only the last four digits of these numbers should be used.
- (e) **Home Addresses.** If home addresses must be included in a document, only the city and state should be used.

Administrative Order 167, § 5.10.

relevant legal authority cited to the Court by defense counsel. Consequently, Defendant Richards requests that the Objections (Docket Entry 301) be denied with the exception of the agreed upon redaction of email account, _____, from the AOL subpoena return. (Docket Entry 284-3, pp. 2 & 6). Furthermore, Defendant Richards requests that the filings be unsealed as redacted in Magistrate Judge Brown's Orders (Docket Entries 283, 289, 291).

WHEREFORE, based on the foregoing, Defendant Richards respectfully requests that this Honorable Court enter an Order denying Non-Party Eichenwald's objections (with the agreed exception set forth above) and unseal the corresponding filings

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CERTIFICATE OF SERVICE

Because of the sealed nature of this filing, I hereby certify that a true and correct copy of the foregoing has been sent as an attachment via electronic mail, *and*, sent via U.S. Mail, postage prepaid, **ONLY** to:

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