

THE FOURTH ACCOUNT: THE GRAND JURY INVESTIGATION INTO JEFFREY CLARK AND OTHERS

Last Friday, Beryl Howell unsealed two opinions regarding privilege team reviews in the grand jury investigation into attempts to overturn the 2020 election. The first order, dated June 27, 2022, pertains to 37 emails involving Scott Perry seized from two Gmail, one Microsoft, and John Eastman's Chapman U email accounts involving:

- A non-lawyer whose name remains redacted (probably 8 documents total)
- Jeffrey Clark (19 documents total)
- Ken Klukowski (7 documents total)
- John Eastman 3 documents total)

The second order, dated September 27, 2022, pertains to a filter review of an outline for an auto-biography Clark was writing on October 11 and 14, 2021, which was auto-saved 331 times in Google Notes. Because Clark attempts to invoke both work product and attorney-client privilege over a document he initially labeled as *not* privileged, Howell calls Clark's claims in that dispute "throwing spaghetti at the wall to see what sticks."

The orders reveal bare outlines of the investigation.

It shows, first of all, what I laid out here: That the FBI obtains warrants for materials

stored in the cloud that are accessible covertly before it gets warrants for things – like phones and homes – that it must seize overtly. In Clark’s case, the FBI first obtained his Outlook account and only later his Gmail account.

Investigative Subject	Metadata Orders	Initial Cloud Warrant	Additional Cloud Warrants	Initial Phone Seizure	Delay	Arrest or Plea
Michael Cohen	6/21/2017	7/18/17	8/7/17	4/9/18	Filter then Special Master	8/21/18
			11/13/17			
			2/28/18			
			4/7/18			
			9/11/17			
Roger Stone	5/12/17	8/7/17	10/17/17	1/25/19	Witness interviews	1/25/19
			3/14/18			
			7/27/18			
			8/2/18			
			8/3/18			
			8/8/18			
			8/28/18			
Rudy Giuliani		11/4/19		4/28/21	Filter then Special Master	
Project Veritas	11/24/20	1/14/21	1/26/21	11/4/21	Filter then Special Master	
			3/6/21			
James O’Keefe			4/9/21	11/6/21		
Stewart Rhodes				-5/10/21	Volume	1/12/22
Enrique Tarrio				1/4/21	Jurisdictional, password, then filter	3/7/22

By May 26, the FBI had warrants for the cloud accounts of four people. But it took just a month to get a warrant for Jeffrey Clark and John Eastman’s phone. Amazingly, it seems that the FBI used Scott Perry’s involvement in the investigation as a way to initially isolate information that should not be privileged. Most of the emails in the first order sound investigatively uninteresting, including things like nine copies of Clark sending Perry two versions of his resume or requests from Perry to give him a call; that provides a glimpse of the difficulties of an investigation, like this one, in which most of the suspected co-conspirators are lawyers.

The material covered by the second order sounds more interesting, as it gives Clark’s version of the January 3 confrontation where most of DOJ’s top officials and Trump’s top White House Counsel threatened to quit.

The second order explains that after an overt search takes place on a subject, then their own attorneys are brought into the filter process (as Clark’s attorney was in the second order).

The filter protocol was later amended with respect to Clark and others to provide for detailed procedures for disclosing certain material to any potential privilege holder after separate search warrant on Clark and others, and Clark’s residence were

executed, alerting these persons to the government's investigation.

This detail suggests there likely was an overt warrant served on Klukowski (otherwise the existence of the cloud warrant targeting him would not be unsealed). It suggests the fourth person, a non-lawyer, has not yet been formally alerted into the investigation into him or her.

It also likely provides background to what happened with Scott Perry. DOJ was *already* accessing his Scott@PatriotsforPerry.com email, at least those seized from the lawyers. He likely learned the full extent of prior warrants served on him in August, after DOJ seized his phone. And a more recent dispute over text messages reported by CNN may operate under a similar protocol, with his lawyer contesting access directly.

Timeline

May 26, 2022: Three separate hearings on filter protocol; Howell approves filter protocol for four email accounts

June 17, 2022: Filter team begins reviewing 130,000 documents

June 23, 2022: Jeffrey Clark home searched and phone seized; John Eastman phone seized

June 24, 2022: Warrant approved for Clark Gmail account

June 27, 2022: Howell authorizes sharing of Scott Perry emails; Warrant executed for Clark Gmail

July 12, 2022: Filter protocol covering devices seized from Clark's residence

July 21, 2022: Howell approves filter protocol for Clark Gmail account

August 9, 2022: Scott Perry phone seized

August 17, 2022: Filter team notifies Clark of auto-biography dispute

August 25, 2022: Clark attorney Charles Burnham objects to sharing of auto-biography, claiming attorney work product

August 29, 2022: Filter team provides more substantive reply; Burnham responds, "We object"

September 8, 2022: Filter team moves to share a copy of motion with Clark's lawyer and a memoir with investigative team

September 21, 2022: Supplemental response to Beryl Howell query

September 27, 2022: Howell approves sharing of memoir

September 28, 2022: Clark provided September 27 order

November 16: Howell issues minute order about unsealing opinions

December 15: Howell unseals two redacted orders