

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

IN RE EX PARTE SUBPOENA DUCES  
TECUM.

IN THE MAGISTRATE COURT

MEMORANDUM IN SUPPORT OF  
DEFENDANT'S REQUEST FOR  
SUBPOENA DUCES TECUM

### FACTS

On October 7, 2007, Counsel presented 3 subpoenas to the Spartanburg County Magistrate Court. The subpoenas compelled the witnesses to produce documents and evidence that are material to a defense in the case. The Court initially declined to issue the subpoena *duces tecum* on the opinion that the Magistrate is only empowered to issue subpoenas *ad testificandum*. Counsel argued that the United States Constitution's Sixth Amendment right to compulsory process requires every court with criminal jurisdiction to issue subpoenas *duces tecum*. The Court allowed Counsel to prepare a memorandum briefing the issue.

### ISSUE

**Does the United States Constitution require Magistrates to issue a subpoena *duces tecum* in a criminal case despite state rules to the contrary?**

### ARGUMENT

The Sixth Amendment of the United States Constitution requires the issuance of subpoenas *duces tecum* in all criminal cases. The Sixth Amendment's Compulsory Process Clause provides that "in all criminal prosecutions, the accused shall enjoy the right . . . to have compulsory process for obtaining

witnesses in his favor." Soon after the adoption of the Bill of Rights, Chief Justice Marshall had occasion to interpret the Compulsory Process Clause while presiding over the treason trial of Aaron Burr. United States v. Burr, 25 F. Cas. 30 (No. 14,692d) (CCD Va. 1807). Burr moved for the issuance of a subpoena *duces tecum* to obtain from President Jefferson a letter that was said to incriminate Burr. The Government objected, arguing that compulsory process under the Sixth Amendment permits a defendant to secure a subpoena *ad testificandum*, but not a subpoena *duces tecum*. Id. at 34. The Chief Justice dismissed the argument, holding that the right to compulsory process includes the right to **secure papers -- in addition to testimony** -- material to the defense. Id. at 34-35. The United States Supreme Court has subsequently expressed agreement with this view of the Sixth Amendment. See United States v. Nixon, 418 U.S. 683, 711, 41 L. Ed. 2d 1039, 94 S. Ct. 3090 (1974).

This view of the confrontation clause is applicable to the states through the Fourteenth Amendment. "Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants "a meaningful opportunity to present a complete defense."" Holmes v. South Carolina, 547 U.S. 319, 324, 126 S. Ct. 1727, 164 L. Ed. 2d 503 (2006)) (quoting Crane v. Kentucky, 476 U.S. 683, 690, 106 S. Ct. 2142, 90 L. Ed. 2d 636 (1986), in turn quoting California v. Trombetta, 467 U.S. 479, 485, 104 S. Ct. 2528, 81 L. Ed. 2d 413 (1984)).

South Carolina's statutes and rules that govern the Magistrate Court are unconstitutional if applied in a manner that infringes on a criminal defendant's right to present a defense. The United States Supreme Court has held that even the Rules of Evidence must conform to these requirements "This right is abridged by evidence rules that 'infringe upon a weighty interest of the accused' and are

"arbitrary" or "disproportionate to the purposes they are designed to serve. ""  
Holmes, supra, at 324, 126 S. Ct. 1727, 164 L. Ed. 2d 503 (quoting Scheffer,  
supra, at 308, 118 S. Ct. 1261, 140 L. Ed. 2d 413, in turn citing and quoting Rock  
v. Arkansas, 483 U.S. 44, 58, 56, 107 S. Ct. 2704, 97 L. Ed. 2d 37 (1987)). The  
statutes and rules that govern the Magistrate Courts are organizational in nature and  
do not enjoy the longstanding protection traditionally afforded to the Rules of  
Evidence. Essentially, if the Rules of Evidence must conform to these  
requirements, then certainly the Magistrate Court statutes and rules must conform  
as well. Therefore, Magistrate judges in South Carolina have inherent power and  
obligation to issue a subpoena *duces tecum* regardless of state statutes to the  
contrary.

In the instant case, Counsel represents a defendant charged with an offense  
within the Magistrate's exclusive jurisdiction. S.C. Code Ann. § 22-3-540.  
Therefore, the Circuit Court would not have the authority to grant a subpoena  
*duces tecum*.

### **CONCLUSION**

The right to present a defense under the due process clause and the right to  
compulsory process under the Sixth Amendment gives Magistrates inherent power  
and obligation to issue a subpoena *duces tecum*.

Respectfully Submitted:

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