

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE APPLICATION TO QUASH :  
SUBPOENAS TO DAILY NEWS, L.P., : No. 10 M8-85 (LMM)  
AND GEORGE RUSH :  
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**SUPPLEMENTARY AFFIDAVIT OF GEORGE RUSH**

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

GEORGE RUSH, being duly sworn, deposes and says:

1. I make this affidavit in further support of the motion of Daily News, L.P., and myself to quash subpoenas served on us in this action.
  
2. My counsel was recently advised by one of plaintiff's attorneys that there is an additional individual -- Michael Fisten, private investigator for Doe's attorney Bradley Edwards -- to whom I described certain aspects of the taped interview with Jeffrey Epstein but whom I did not identify in my prior affidavit. Hearing that refreshed my memory that in fact I did speak to Mr. Fisten about the interview. The attorney's representation that the interview with Mr. Epstein must have occurred prior to October 22, 2009, because my conversation with Mr. Fisten took place on or about that date, is also correct. My statement in my prior affidavit that the interview took place on November 18, 2009, was drawn from an erroneous entry in my Outlook calendar. (Despite a diligent effort, I have been unable to establish the exact date on which the interview with Mr. Epstein took place.) My mistakes in failing to recall the discussion six months ago with Mr. Fisten (which in my memory became conflated with my conversations with Mr. Edwards) and in giving the wrong date for the interview were wholly inadvertent and by no means were, as

Doe's lawyers suggest in their opposition papers to this motion, intentional falsities.

3. Although I do not have a present memory of every item we discussed concerning the interview, I cannot dispute the subject matters that Fisten and Edwards say in their affidavits were covered, because most of them do at least roughly correspond to parts of the content of the interview. There are, however, additional matters discussed in the interview that plaintiff does not allege were disclosed to her litigation team and that have little or no relevance to this case.

4. I do dispute both men's characterization of a number of matters discussed, however. As this Court will be able to confirm if it does an *in camera* review of the recording, Edwards' and Fisten's accounts of what I allegedly told them -- or what is allegedly on the tape -- are off the mark or simply untrue in several important respects. Most prominently, Mr. Epstein did not state on the tape either that "he may have come too close to the line" (Edwards Aff't ¶ 13) or that "the only thing he might have done wrong was to maybe cross the line a little too closely" (Fisten Aff't ¶ 7).

5. Mr. Epstein did not make a "damning admission" during the interview about Jane Doe (or any other woman). (Doe Opp. Br. at 1, 20.) In fact, he made no reference whatsoever to Jane Doe, the plaintiff in this case. Therefore, plaintiff's allegation that the tape "is the only direct evidence in existence or available to Jane Doe to prove what Epstein thinks about what he did to her" (Opp. Br. at 22-23) is untrue.

6. As I stated in my prior affidavit, in my meeting with my three sources for whom I played a short segment of the interview tape in the process of an exchange of information to assist my reporting, there was an agreement that the contents of the interview were to be held in confidence. Plaintiff Jane Doe does not contest this. In addition, I have since learned from one of those three sources that in fact he was not present in the room when the recording was played

and heard none of it. He has expressed a willingness to submit an affidavit to that effect in this proceeding, should the Court find that appropriate or necessary.

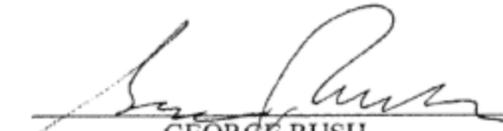
7. I reiterate that the disclosures I made about the contents of the tape were solely in the context of seeking information from sources in the course of my reporting. Reporters doing investigative journalism customarily use information given to them by one side in a dispute as a basis for questions aimed at testing the veracity of that information and drawing out the positions of the other side, as I did in this case. I do not view my having used certain information gained during the Epstein interview in this way to be a waiver of the essential confidentiality of the interview because I did not intend to, and did not, publish the information imparted to me by Mr. Epstein during the interview. Mr. Edwards' bald statement that he and my other sources with whom I spoke about the tape "were not sources in the tradition [*sic*] sense of the word," but rather individuals with whom I was "simply chatting" (Edwards Aff't ¶ 23) fundamentally misunderstands how I and reporters generally gather information.

8. While it is correct that, in response to Mr. Fisten's request for a copy of the tape, I said that I would consider doing that but needed to check with the newspaper's lawyer (Fisten Aff't ¶ 10), in fact I never intended to give him a copy, never discussed the issue with the newspaper's lawyer, and never gave him a copy, as he confirms.

9. The statements by Mr. Fisten that I told him that I had "compiled very negative information on Epstein concerning his exploits with underage girls and how he eluded the justice system" and that I presented the story to my publisher, "who killed [it]" (Fisten Aff't ¶ 6), is false: I never represented that I had gathered any information about Mr. Epstein that was not a matter of public record, and the Daily News publisher did not "kill" my story -- in fact my article about the Epstein case was subsequently published in the paper. Besides being wrong, Mr.

Fisten's statements are also gratuitous because they have no bearing at all on the issues before this Court.

10. There is no question that the subpoenas in this case are oppressive and highly burdensome to the Daily News and to me as a reporter. Forcing me to testify and to give up the tape of my off-the-record interview would compromise my reporting by deterring other sources from speaking to me out of fear that they will become involved in third-party litigations and force me to change the way I go about my work; for example, I would no longer keep newsgathering materials important to my work, and I know I would have to think twice before taking on reporting projects that involve civil litigations, which up to now I have done frequently. Such subpoenas against the press in aid of private disputes, seeking information that offers, in this case, at best marginal support, would place extraordinary and undue time demands on myself and other reporters and impose heavy financial costs on newspapers seeking to protect their reporting at a time when the industry is struggling.

  
GEORGE RUSH

Sworn to before me this  
30<sup>th</sup> day of April, 2010

  
Notary Public  
BARBARA E. TORRES  
Notary Public, State of New York  
No. 01T06219589  
Qualified in New York County  
Commission Expires March 29, 2014