

**From:** Darren Indyke <[REDACTED]>  
**To:** "Miller, Michael" <[REDACTED]>  
**Cc:** Jeffrey Epstein <[REDACTED]>, Justin Chu <[REDACTED]>  
**Subject:** Re: Epstein - Update  
**Date:** Mon, 03 Apr 2017 18:22:22 +0000

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Also, as I am thinking about this, is there anyway to highlight the conflict of interest of her own lawyer who have an outstanding claim against JE in order to introduce the possibility of other motives for this case?

DARREN K. INDYKE  
DARREN K. INDYKE, PLLC  
575 Lexington Avenue, 4th Floor  
New York, New York 10022  
Telephone: [REDACTED]  
Telecopier: [REDACTED]  
Mobile: [REDACTED]  
email: [REDACTED]

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On Apr 3, 2017, at 1:40 PM, Miller, Michael <[REDACTED]> wrote:

Jeffrey and Darren -- I have no problem with that edit assuming we don't create any problems by acknowledging that we are in receipt of the transcript. Mike

Michael C. Miller  
Partner  
[www.step toe.com/miller](http://www.step toe.com/miller)

**Step toe**

[REDACTED] direct	Step toe & Johnson LLP
[REDACTED] fax	1114 Avenue of the Americas
[REDACTED] cell	New York, NY 10036
	<a href="http://www.step toe.com">www.step toe.com</a>

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**From:** Darren Indyke [mailto: [REDACTED]]  
**Sent:** Monday, April 03, 2017 1:39 PM  
**To:** Jeffrey Epstein  
**Cc:** Miller, Michael  
**Subject:** Re: Epstein - Update

Can we insert in the Section relating to Epstein’s and Groff’s Statement of the Discovery Plan, just after the clause”and her departure from the United States of her own volition.” something the following:

“what damages Plaintiff claims to have incurred when she has already testified recently under oath that she is not seeking money damages.”

DARREN K. INDYKE  
DARREN K. INDYKE, PLLC  
575 Lexington Avenue, 4th Floor  
New York, New York 10022  
Telephone: [REDACTED]  
Telecopier: [REDACTED]  
Mobile: [REDACTED]  
email: [REDACTED]

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On Apr 3, 2017, at 1:12 PM, jeffrey E. <[REDACTED]> wrote:

why not highlight the fact that under oath she said she is not seeking money damages. but only wants me in jail

On Mon, Apr 3, 2017 at 5:54 PM, Miller, Michael <[REDACTED]> wrote:

ATTORNEY CLIENT PRIVILEGED COMMUNICATION  
CONFIDENTIAL AND PRIVILEGED ATTORNEY WORK PRODUCT

Dear Jeffrey and Darren:

Further to our March 30, 2017 email to you, please see the following recap of issues on which we would appreciate your input.

## **Rule 26(f) Report**

Attached is a draft Rule 26(f) report which is required to set forth the parties' positions on the Jane Doe matter, a general plan for discovery in this case, and an overview of any unique issues which will require the Court's consideration. This report must be agreed to by the parties and then submitted to the Court before the initial case management conference scheduled for April 6. Given the timing, your thoughts on these issues on Monday would be helpful.

One potential "unique issue" which we might choose to highlight in the Rule 26(f) report is the potential for Jeffrey and Lesley to assert their Fifth Amendment privileges in this case. We recommend that we do not highlight the potential for a Fifth Amendment invocation in this report.

Please note, however, that when we represent a client who is under indictment or is the target and/or subject of a criminal investigation, we are more inclined to mention the client's potential invocation of his Fifth Amendment rights. We do this so that there is no ambiguity about our plans to seek this protection and no suggestion that we have intentionally waived the client's Fifth Amendment rights. As a practical matter, civil cases proceeding parallel to criminal prosecutions are stayed so that the prosecution's witnesses are protected from civil discovery. In this scenario, the invocation of Fifth Amendment is a bit of a place holder and can be revisited after the criminal proceedings have concluded. Where civil discovery proceeds in tandem with criminal proceedings, it is typically limited to paper discovery and we can usually revisit the invocation of the Fifth Amendment with respect to depositions after the criminal proceedings have resolved.

We are unaware of any criminal proceeding or investigation targeting Lesley or you. In light of this, we think it makes sense to refrain from referencing your Fifth Amendment rights in the Rule 26(f) report. We avoid inviting the Court to speculate about why Lesley and you are invoking your Fifth Amendment rights, avoid the efforts of plaintiff's counsel to link an invocation of Fifth Amendment rights to other proceedings, past and present, and retain the ability to invoke that protection at a later stage of the case (e.g., in response to demands for document production and/or deposition testimony).

To ensure that we do not inadvertently or intentionally trigger a waiver of your Fifth Amendment rights in the Rule 26(f) report, we have crafted our portions of the report so that we are emphatic about the legal deficiencies in this case as plead, but do not make factual statements which might be viewed by the Court as a waiver of your protections. We cannot, of course, guarantee that the Court will agree with our analysis and conclusion about waiver, but it is our considered judgment that there is no waiver in submitting the Rule 26(f) report in the form attached here.

## **Anonymous Proceeding**

We believe there are substantial grounds to challenge Jane Doe's efforts to proceed with this case using her pseudonym.

The basic principle in this regard is that judicial proceedings are presumed to be conducted in the open. Rule 10(a) of the Federal Rules of Civil Procedure requires that "[t]he title of [a] complaint must name all the parties." Fed.R.Civ.P. 10(a). "This requirement, though seemingly pedestrian, serves the vital purposes of facilitating public scrutiny of judicial proceedings and therefore cannot be set aside lightly." Sealed Plaintiff v. Sealed Defendant, 537 F.3d 185, 188–89 (2d Cir.2008). The use of pseudonyms is not allowed except in limited circumstances, balancing the interests of the party seeking anonymity, the public interest to know and the opposing parties' right to confront the accuser.

Courts have required an anonymous plaintiff to proceed in her own name under similar circumstances. In Doe v. Shakur, 164 FRD 359 (S.D.N.Y. 1996), the plaintiff alleged that she was sexually assaulted by the rapper Tupac Shakur. The Court denied the plaintiff's request to proceed anonymously, explaining:

First, plaintiff has chosen to bring this lawsuit. She has made serious charges and has put her credibility in issue. Fairness requires that she be prepared to stand behind her

charges publicly.

Second, this is a civil suit for damages, where plaintiff is seeking to vindicate primarily her own interests. This is not a criminal case where rape shield laws might provide some anonymity to encourage victims to testify to vindicate the public's interest in enforcement of our laws.

Third, Shakur has been publicly accused. If plaintiff were permitted to prosecute this case anonymously, Shakur would be placed at a serious disadvantage, for he would be required to defend himself publicly while plaintiff could make her accusations from behind a cloak of anonymity.

Finally, the public has a right of access to the courts. Indeed, "lawsuits are public events and the public has a legitimate interest in knowing the facts involved in them. Among those facts is the identity of the parties.

*Id.* at 36. Similarly, a plaintiff who alleged sexual molestation and abuse cannot proceed anonymously without a sufficient showing of particularized harm to the plaintiff if anonymity is not allowed. *Doe v. Smith*, 189 FRD 239 (S.D.N.Y. 1998) (anonymous action alleging sexual molestation against psychiatrist not allowed), vacated on reconsideration based on newly admitted evidence, in the form of a psychiatric report, that "revelation of the plaintiff's identity will likely cause psychological and emotional pain so intense that it would threaten her stability, her safety, and even her life," such that "plaintiff will be unable to pursue this action should she not be allowed to proceed anonymously." *Doe v. Smith*, 105 FRD 40, 43-44 (S.D.N.Y. 1999); *Doe v. Del Rio*, 241 FRD 154 (S.D.N.Y. 2006) (plaintiff alleging sexual abuse by police required to proceed in her actual name, in that her therapist report fails to establish a link between public disclosure of plaintiff's name and alleged harm, and distinguishing *Doe v. Smith*).

Even if a party is permitted to proceed anonymously during pre-trial proceedings, that party will often be precluded from remaining anonymous at trial. In *Doe v. Delta Airline*, Judge Englemayer held that a plaintiff who had proceeded anonymously cannot continue to do so at trial. Judge Englemayer held that doing so at trial would give plaintiff unfair advantages, such as providing her with an aura of stature and legitimacy, and prejudice the defendant in not allowing the defendant to confront the plaintiff in open court. 310 FRD at 225 (S.D.N.Y. 2015).

We have reserved our rights in the Rule 26(f) report to seek an order from the Court requiring our plaintiff to proceed in her actual name.

### **Confidentiality Order**

We have a right to seek the issuance by the Court of a confidentiality order which would, to varying extents, preclude both parties from sharing publicly (or in other proceedings) confidential information gathered in this case. Such an order might also limit the ability of the parties to speak to the press about this litigation. Both aspects of a typical confidentiality order is a mixed bag for us – we may want the ability to share what we learn in this case publicly or use it in other litigation, and we may want to be able to speak to the media about this case and your perspective. The Court may raise this issue on April 6, 2017, so we should discuss in advance your preferences.

### **Chronology and Background of Other Matters**

We recommend that Justin and Mike Keough meet with Darren to expand our knowledge about other proceedings, past and present, which might have a bearing on our case. We believe that this approach will be relatively quick and efficient. We will undertake this approach in an effort to minimize a risk that information shared by Darren somehow undermines any claim of privilege or work product protection attached to the work in his files. We believe that this meeting take place as an adjunct to online research that we recommend you authorize us to conduct.

### **Coordination Between Defense Counsel**

As we noted in our prior email, we have spoken with Johnny Stephenson, counsel for [REDACTED]. We suggest that we coordinate with him in the defense of this matter. In particular, we believe it will be useful to let him know about our approach to the Rule 26(f) report, potential motions to dismiss, and his plans for the

defense of [REDACTED]. Johnny would like to us work together and is generally in accord with our view of the case.

**Call in Preparation for the Court Conference**

It would be helpful to have a conference call with you in advance of the April 6, 2017 court appearance to discuss our plans for the appearance. In particular, we would like to agree on talking points about the merits of this case. We will review the allegations over the next two days and send you some preliminary thoughts on talking points. Please let me know if a call on April 5, 2017 would be convenient for you.

We would appreciate your input on all of the above.

All the best.

Mike

**Michael C. Miller**

Partner

[www.stepto.com/mmiller](http://www.stepto.com/mmiller)

**Step toe**

[REDACTED] direct	Step toe & Johnson LLP
[REDACTED] fax	1114 Avenue of the Americas
[REDACTED] cell	New York, NY 10036
	<a href="http://www.stepto.com">www.stepto.com</a>

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