

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

x

**IN RE APPLICATION FOR CPLR 3102(E) ORDER Index No.
TO PRODUCE TAPE RECORDING**

x

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the annexed Affidavit of Bradley James Edwards dated September 14, 2010, the Affidavit of Michael Fisten dated September 14, 2010, the Affirmation of Robert Y. Lewis dated September 15, 2010, the accompanying Memorandum of Law and all exhibits attached thereto, Bradley James Edwards, as defendant and counterclaimant in the underlying Florida action, and Freeman Lewis LLP as his New York counsel will move this Court in the Motion Submissions Part Room 130, 60 Centre Street at 9:30 a.m. on October 29, 2010, or as soon thereafter as the matter can be heard, for an order pursuant to CPLR 3102(e) compelling a *Daily News* custodian of records to appear for a deposition duces tecum, and at said deposition to produce a certain audio tape in Daily News, L.P.'s custody and control of a conversation between George Rush, one of its reporters, and Jeffrey Epstein, and granting such other relief as the Court deems just.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR 2214(b) any answering papers shall be served on counsel for Applicant on or before October 18, 2010.

Dated: September 15, 2010
New York, New York

FREEMAN LEWIS LLP

By: _____

Robert Y. Lewis
228 East 45th Street
17th Floor
New York, New York 10017
Tel. (212) 980-4084
Fax: (212)-980-4055

PAUL G. CASSELL, ESQ.

(Motion for Pro Hac Vice
Admission Pending)
332 S. 1400 E.
Salt Lake City, Utah 84112
Tel.: 801-585-5202
Fax: 801-585-6833
E-Mail: _____

Counsel for Bradley James Edwards

LEWIS AFF.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

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**IN RE APPLICATION FOR CPLR 3102(E)
ORDER TO PRODUCE TAPE
RECORDING**

Index No.

x

**AFFIRMATION OF ROBERT Y. LEWIS IN SUPPORT OF MOTION FOR CPLR
3102(E) ORDER TO PRODUCE TAPE RECORDING**

Robert Y. Lewis affirms, under penalty of perjury, as follows:

1. I am an attorney admitted to practice law in the State of New York and a founding member of the law firm Freeman Lewis LLP, with offices at 228 East 45th Street, in Manhattan, New York. I submit this Affirmation in support of motion for an order pursuant to CPLR 3102(e) for production of a certain tape recording of an interview by George Rush, a *Daily News* reporter, of Jeffrey Epstein, a party to an action pending in Florida, for use in that Florida action. I attach as Exhibit #1 a true and correct copy of the Florida Commission for such an order, and as Exhibit #2 a proposed order pursuant to CPLR 3102(e). Except where otherwise noted, my Affirmation is based on the Affidavits of Bradley James Edwards and Michael Fisten, both dated September 14, 2010, as well as a review of the files and records in an earlier proceeding for production of the recording in the United States District Court, Southern District of New York.

2. The Court should issue the order for the production of the recording pursuant to CPLR 3102(e) because (i) a Florida Court has issued an order for the appointment of a Commissioner in New York to procure the tape; (ii) the tape's contents falls easily within the issues in the Florida action; and (iii) production of the tape does not infringe any fundamental rights of the *Daily News*.

The Lawsuits in Florida.

2. Several years ago, Jeffrey Epstein pleaded guilty in Florida to procuring sex from a minor and soliciting prostitution in Florida. Subsequently, Bradley James Edwards, a Florida lawyer, brought civil actions on behalf of several girls alleging molestation by Epstein while they were minors. *Jane Doe v. Jeffrey Epstein*, (08-80893)(United States District Court, S.D. Fl.); [REDACTED] v. *Jeffrey Epstein* (Case No. 502008CA028051XXXXMBAB)(Florida Circuit Court, 15th Judicial Circuit); [REDACTED] v. *Jeffrey Epstein* (Case No. 502008CA028058XXXXMBAB)(Florida Circuit Court, 15th Judicial Circuit).

3. In December 2009, Epstein brought a vendetta lawsuit against Edwards and others alleging abuse of process in connection with those civil actions. *Jeffrey Epstein v. Bradley Edwards, et al.* (Case No: 502009CA040800XXXMBAG)(Florida Circuit Court, 15th Judicial Circuit). Edwards has counterclaimed, alleging malicious prosecution and seeking actual and punitive damages. It is for use in this *Epstein v. Edwards* lawsuit that the tape is now being sought.

Epstein's Efforts to Shield Evidence of His Molestation and Lack of Remorse

4. In all of these proceedings, Epstein has blocked all substantive discovery against him about his sexual abuse of the plaintiff-victims and other young girls by, among other means, invoking his Fifth Amendment to remain silent – thereby functionally denying the allegations that the girls made. (The details of Epstein's efforts to block discovery concerning his molestation are detailed in the accompanying Affidavit of Bradley James Edwards dated September 14, 2010). As a result, the girls (represented by Edwards) and Edwards in his own case has been unable to obtain any admission from

Epstein that he sexually abused the girls while they were minors. The girls and Edwards were also unable to obtain any evidence to prove Epstein's lack of remorse for this abuse, a showing critical for securing substantial punitive damages.

The Daily News' Recorded Interview of Epstein Concerning His Molestation

5. In the fall of 2009, Michael Fisten, an investigator working for Edwards, heard from an author that *Daily News* reporter George Rush had made a tape recording of Epstein discussing the sexual abuse of minor girls. The author told Fisten that Rush had played the tape for her and two other persons. The author concluded: "You've got to get that tape." Fisten then called Rush. Rush described the tape at great length to Fisten, including damning admissions made by Epstein. Rush also later called Brad Edwards and again described the salient parts of the tape – including statements by Epstein about "coming close to crossing a line" concerning sex with underage girls, while blaming them for the abuse.¹

The New York Federal Court's Order for Production of the Recording

6. Earlier this year, one of Edwards' clients -- Jane Doe -- filed a proper subpoena for the tape in the U.S. District Court for the South District of New York. In June 2010, the District Court (McKenna, J.) denied the *Daily News'* motion to quash the subpoena, finding that in view of its importance, the tape was properly discoverable despite the claim of journalist privilege. (Judge McKenna's Order attached hereto as Ex. 5).

¹ The details of the Fisten conversation with Rush about his taped conversation with Epstein are set forth in the accompanying Affidavit of Michael Fisten. Additional information is provided by Rush in a Declaration he submitted in connection with the federal proceeding in which the court ordered production by the *Daily News* of the recording. I attach the Rush declaration hereto as Ex. 3.

7. The *Daily News* then took an appeal to the Second Circuit. While the appeal was pending, however, the underlying civil suits by the three girls settled, leading to an automatic vacation of the district court ruling. (Second Circuit Order attached hereto as Ex. 4).

The Florida Order for Appointment of Commissioner to Procure the Recording

8. Edwards and Epstein, however, continue to be in litigation on these issues. Accordingly, on August 3, 2010, Edwards obtained an order from a Florida Court for appointment of a Commissioner in New York to procure the tape. (Ex. 1). The *Daily News*, however, has told counsel for Edwards that it will refuse – once again -- to comply with a subpoena for the tape.

9. As detailed in the Affidavit of Bradley James Edwards, Michel Fisten and the Memorandum of Law submitted in support of an order to enforce the requested subpoena, the *Daily News* cannot carry its burden of showing proper justification for producing the tape for two simple reasons.

10. First, the *Daily News*' reporter, George Rush, has waived whatever privilege might attach to the recording by playing a significant portion of the recording to three people and describing the recording in detail to two other persons – attorney Brad Edwards and private investigator Michael Fisten. Accordingly, any privilege has now been obviously waived. *See N.Y. Civil Rights Law* CRL § 79-h(g) (reporter privilege waived through voluntary disclosure of information).

11. Second, even if the material could somehow be viewed as being protected by a journalist's privilege, the privilege would be only a qualified one. The reporter's privilege in this state can be overcome by a showing that the materials at issue

are highly relevant, critical or necessary to the maintenance of a party's claim, and not obtainable from any alternative source. Brad Edwards easily meets this test. He can show that the tape is in fact highly relevant and critical to the maintenance of his claims. Indeed, Judge McKenna, in ordering production, has already found that the evidence was relevant to one of the girl's (Jane Doe's) claims. In view of Epstein's invocations of the Fifth Amendment – both during past discovery and his promised invocation during the upcoming trial – the tape recording is Edwards' *only* opportunity to place Epstein's own words before the jury. Moreover, the record is a uniquely important piece of evidence, because no other recording of Epstein discussing the sexual abuse exists. Edwards can thus easily overcome any claim of privilege by the *Daily News*.

* * * * *

12. For the foregoing reasons, as well as those set forth in the Affidavits of Bradley James Edwards and Michael Fisten, and the accompanying Memorandum of Law, Affirmant requests that the Court issue an order pursuant to CPLR 3102(e) for production of the Recording.

New York, New York
September 15, 2010

A large black rectangular redaction box covering the signature of Robert Y. Lewis.

ROBERT Y. LEWIS

EXHIBIT 1

IN THE CIRCUIT COURT OF THE 15th
JUDICIAL CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA

CASE NO: 502009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff,

v.

SCOTT ROTHSTEIN, individually.
BRADLEY J. EDWARDS, individually,
and [REDACTED], individually,

Defendants.

FILED
2010 AUG -3 PM 4:16
STATION R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 5

ORDER ON DEFENDANT'S MOTION TO APPOINT COMMISSIONER

THIS CAUSE, having come on before the Court upon Defendant Bradley J. Edwards's Motion to Appoint Commissioner, and the Court having heard argument of counsel, and being otherwise duly advised in the premises, it is,

ORDERED and ADJUDGED that said Motion be and the same is hereby granted. A commissioner shall be appointed in New York for the purpose of taking the deposition duce tecum of the Records Custodian of The New York Daily News. Said commissioner to be: Metro Attorney Service, Inc., 305 Broadway, 14th Floor, New York, NY 10007.

DONE and ORDERED in Chambers at West Palm Beach, Florida, this 3rd day of

Aug, 2010.

2010 AUG 3 PM 4:16
STATION R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 5



[Signature]
CIRCUIT JUDGE

cc: Jack Scardia, 2139 Palm Beach Lakes Blvd, West Palm Beach, FL 33409
Robert D. Critton, Jr., 303 Banyan Boulevard, Suite 400, West Palm Beach, FL 33401
Gary M. Farmer, Jr., 425 N. Andrews Ave., Suite 2, Fort Lauderdale, FL 33301
Jack Alan Goldberger, Esq., 250 Australian Avenue South, Suite 1400, WPB, FL 33401

EXHIBIT 2

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

x

**IN RE APPLICATION FOR CPLR 3102(E) ORDER
TO PRODUCE TAPE RECORDING**

**ORDER
Pursuant to CPLR 3102(e)**

Index No.

x

An Application having been made by Petitioner Freeman Lewis LLP for the purpose of taking the deposition duces tecum of the Records Custodian of the New York Daily News pursuant to a commission issued by the Circuit Court of the 15th Judicial Circuit In and For Palm Beach County, Florida for use in the case of *Jeffrey Epstein v. Bradley Edwards, et al.* (Case NO. 502009CA040800XXXXMBAG); and upon reading the Affirmation of Robert Y. Lewis dated September 15, 2010, the Affidavits of Bradley James Edwards and Michael Fisten both dated September 14, 2010, the Memorandum of Law dated September 16, 2010, and all the exhibits attached thereto, and it appearing therefrom that the taking of the deposition of the Records Custodian of the New York Daily News is necessary and proper, IT IS HEREBY

ORDERED: that pursuant to CPLR 3102(e) the Records Custodian of the New York Daily News is directed to appear at the offices of Freeman Lewis LLP at 228, East 45th Street, 17th Floor, New York, New York 10017 on _____, 2010 at 10:00 a.m. or at such other time and place as the parties might agree, and to produce at that place and time the audio tape recording of the conversation between *Daily News* reporter George Rush and Jeffrey Epstein recorded in November 18, 2009. And it is further

ORDERED: that service of a copy of this Order shall be made upon counsel for the New York Daily News on or before _____.

Dated:

ENTER: _____

J.S.C.

EXHIBIT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
IN RE APPLICATION TO QUASH :
SUBPOENAS TO DAILY NEWS, L.P., :
AND GEORGE RUSH :
-----x

No. 10 M8-85 (LAK)

AFFIDAVIT OF GEORGE RUSH

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

GEORGE RUSH, being duly sworn, deposes and says:

1. I am a reporter for the New York *Daily News* and co-writer with my wife, Joanna Molloy, of the *News'* weekly gossip column, Rush & Molloy.

2. In the fall of last year, I began to follow as a reporter developments in the evolving scandal surrounding Jeffrey Epstein, including the institution of a large number of civil suits against him by young women who claimed that he had sexually molested them over a period of years when they were in their mid-teens, the mushrooming of the scandal to touch other individuals who had long been associated with him, the continued ferment in Palm Beach over his lurid criminal case, the controversy over a recently-unsealed Non-Prosecution Agreement he had entered into with the U.S. Attorney's office, and the arrest of a prominent south Florida attorney who was accused of defrauding investors by inducing them to put money into a fictitious fund supposedly backed by a pool of hundreds of millions of dollars put up by Epstein to finance settlements with the young women who were suing him.

3. Over time, I began to develop contacts among lawyers, residents of Palm Beach, and others close to the case or to major figures in the case who could provide tips, leads and

information to assist in my reporting.

4. I eventually was able to arrange a telephone interview with Epstein himself about the status of the civil cases against him and other matters, which took place on November 18, 2009. To the best of my knowledge, he was in Palm Beach.. One of my editorial colleagues and I were at the Daily News offices in New York.

5. Epstein said at the beginning of the conversation that it was off-the-record and we agreed. I understood that to mean that the contents of the call, though not the fact of it, were to be treated as confidential and not to be published. My colleague and I listened and spoke to Epstein through a speaker phone. I put a small digital recorder on the desk next to the phone and recorded the conversation as an aid for my own memory. The interview lasted for approximately 22 minutes.

6. Several days later, I met with three individuals who were very familiar with the intricacies of the Epstein case and had already provided me with leads, research and information about it. One was a filmmaker and journalist who was investigating child sex trafficking, one an activist with an intense interest in the social policy issues raised by the Epstein case; and the third an attorney who had been following the case closely and introduced me to the other two sources. They were all valuable news sources whom I considered well worth cultivating as such. As part of an exchange of information, and under an agreement of strict secrecy, I played for them a segment of the recording, starting at the very beginning and lasting approximately three to four minutes.

7. Bradley Edwards, the attorney for the Jane Doe plaintiff in whose case this subpoena has been issued (and who, as I understand it, also represents at least two other Jane Does suing Epstein) was also a source for my newsgathering on this story. By late 2009 he and I were speaking about the Epstein cases by telephone on a fairly regular basis, and I regarded him, as

well, as a valuable source. Initially, I used some information I heard in my interview of Epstein as a basis for questions to him. I told him at a later point that I had interviewed Epstein, and as part of an exchange of information with him, apprised him of a development in one of the Jane Doe cases that Epstein had related to during the interview.

8. In a later call, Edwards asked me for a copy of the Epstein interview recording. I declined, telling him that the interview had been off the record and that, in any case, nothing had been said during it that would be of help to his clients. I gave Edwards a one or two word characterization of what I perceived to be Epstein's overall stance and repeated to him one sentence from the interview -- both of which I believed made the point that there was nothing there for him or his client. It was my impression that Edwards accepted me at my word, and I didn't expect to hear any more about it. Finding out about the subpoena months later was a surprise.

9. I have not revealed any part of the contents of the Epstein interview to anyone other than the individuals I have described here, except for Anne Carroll, the attorney representing me in this proceeding.

[Redacted signature area]

GEORGE RUSH

Sworn to before me this
6th day of April, 2010

[Redacted signature area]

Notary Public

CYNA ALDERMAN
NOTARY PUBLIC, State of New York
No. 31-5078416
Qualified in New York County
Commission Expires May 27, 2008

10/26/2011

EXHIBIT 4

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 28th day of July, two thousand and ten.

Before: Dennis Jacobs,
Chief Judge.

In Re: Application to Quash Subpoenas to Daily News,
L.P., and George Rush

Daily News, L.P., George Rush,

Movants-Appellants,

v.

Jane Doe,

Real Party in Interest-Appellee.

AMENDED ORDER
Docket No. 10-2438 (L)
10-2573 (con)

IT IS HEREBY ORDERED that the motion by Appellants Daily News L.P. and George Rush to dismiss the consolidated appeals as moot and to vacate the district court orders of May 21, 2010 and June 25, 2010 is GRANTED.

FOR THE COURT,
Catherine O'Hagan Wolfe,
Clerk

The image shows a handwritten signature in black ink that reads "Catherine O'Hagan Wolfe". The signature is written in a cursive style and is positioned over a circular seal of the United States Court of Appeals for the Second Circuit. The seal features the text "UNITED STATES COURT OF APPEALS" around the perimeter and "SECOND CIRCUIT" in the center.

Joy Fallek, Administrative Attorney

EXHIBIT 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
IN RE APPLICATION TO QUASH	:	M8-85
SUBPOENAS TO DAILY NEWS, L.P.,	:	
AND GEORGE RUSH	:	<u>MEMORANDUM AND ORDER</u>
-----X	:	

McKENNA, D.J.,

1.

Daily News, L.P., the publisher of the Daily News, and George Rush, a Daily News reporter, move, pursuant to Fed. R. Civ. P. 45(c)(3)(A)(iii), for an order quashing subpoenas issued by counsel for the plaintiff in an action pending in the United States District Court for the Southern District of Florida entitled Jane Doe v. Jeffrey Epstein (08 Civ. 80893 KAM), in which the plaintiff seeks to recover damages arising out of the defendant's alleged sexual abuse of her when she was a minor. The subpoenas seek the production of "[a]ll taped conversations between George Rush and Jeffrey Edward Epstein, including telephone recordings, all emails to and from Jeffrey Edward Epstein or someone representing themselves to be Jeffrey Epstein," and the testimony of George Rush and Anne B. Carroll, a Vice President and General Counsel of Daily News, L.P. (Carroll Decl., Apr. 7, 2010, Exs. A & B.) In the alternative, the subpoenaed parties seek a protective order barring disclosure under Fed. R. Civ. P. 26(c).

COPIES MAILED TO COUNSEL 18 MAY 2010

2.

The subpoenaed parties base their motion on "the qualified reporter's privilege accorded by the First Amendment to the United States Constitution and federal common law." (Revised Notice of Mot., Apr. 12, 2010, at 1.)

3.

Mr. Rush states that he (with his wife) is a weekly columnist in the Daily News, that in the fall of 2009 he began to follow criminal and civil legal proceedings in Florida relating to Mr. Epstein (Rush Aff., Apr. 6, 2010 [Carroll Decl., Apr. 7, 2010, Ex. G] ¶¶ 1-2), and that in November of 2009 he was able to arrange a telephone interview of Mr. Epstein (who was apparently in Florida) from the New York City office of the Daily News. (Id. ¶ 4.) Mr. Rush made a recording of the conversation (which lasted about 22 minutes) and a transcription thereof, both of which have been submitted to the Court for in camera inspection. Mr. Rush advised counsel for the plaintiff in Jane Doe v. Jeffrey Epstein that he had interviewed Mr. Epstein (id. ¶ 7) and declined to give counsel a copy of the interview recording. (Id. ¶ 8.) Mr. Rush subsequently corrected the date of the interview to "prior to October 22, 2009." (Rush Supp. Aff., Apr. 30, 2010 [Carroll Reply Decl., May 3, 2010, Ex. C] ¶ 2.)

At the outset of the interview, Mr Epstein said that it was off-the-record, and Mr. Rush agreed. (Rush Aff., Apr. 6, 2010

¶ 5.) Several days after the interview, Mr. Rush played a three or four minute segment of the recording to three persons whom he regarded as valuable news sources, under an agreement of strict secrecy. (Id. ¶ 6.) On an occasion after he first told counsel for Jane Doe that he had interviewed Mr. Epstein, Mr. Rush gave him "a one or two word characterization of what [he] perceived to be Epstein's overall stance and repeated to him one sentence from the interview -- both of which [he] believed made the point that there was nothing there for [counsel] or his client." (Id. ¶ 8.)

Mr. Rush also, on October 22, 2009, spoke with Michael Fisten, an investigator for counsel to Jane Doe, who had heard from a third party about Mr. Rush's interview of Mr. Epstein. (Fisten Aff., Apr. 23, 2010 [Real Party in Interest Jane Doe's Resp. in Opp'n to Mot. of Daily News, L.P., to Quash Subpoena, Ex. B] ¶ 3.) Mr. Rush paraphrased the interview relatively thoroughly. (Id. ¶ 7.)

4.

As noted above, the present motion has been argued on the qualified reporter's privilege.¹

The Second Circuit recognizes not only a qualified

¹ The First Amended Complaint in Jane Doe v. Jeffrey Epstein (Carroll Decl., Apr. 7, 2010, Ex. E) asserts two claims under Florida common law (Counts I & III), one claim under federal law (18 U.S.C. § 2255) (Count II), and two claims under Florida statutes (Counts IV & V); federal subject matter jurisdiction is premised on diversity of citizenship, Jane Doe being alleged to be a resident of Florida, and Mr. Epstein a resident of New York (First Am. Compl. ¶¶ 3, 4 & 7).

privilege protecting journalists' confidential sources but also a privilege that extends to nonconfidential materials. Gonzales v. Nat'l Broad. Co., Inc., 194 F.3d 29, 33 (2d Cir. 1999) ("Gonzales III").²

In the present case, Mr. Rush's source -- Mr. Epstein -- is not confidential: Mr. Rush disclosed his source to counsel for Jane Doe not long after the interview. The Second Circuit, in Gonzales III, held that

while nonconfidential press materials are protected by a qualified privilege, the showing needed to overcome the privilege is less demanding than the showing required where confidential materials are sought. Where a civil litigant seeks nonconfidential materials from a nonparty press entity, the litigant is entitled to the requested discovery notwithstanding a valid assertion of the journalists' privilege if he can show that the materials at issue are of likely relevance to a significant issue in the case, and are not reasonably obtainable from other available sources.

194 F.3d at 36.

5.

This Court has reviewed both the recording and Mr. Rush's transcript in camera. The Court finds that portions of the recording "are of likely relevance to a significant issue in [Jane

² In Gonzales v. Pierce, 175 F.R.D. 57 (S.D.N.Y. 1997) ("Gonzales I"), the district court granted in part and denied in part a motion to compel production of unedited videotapes from NBC and the deposition of certain NBC personnel. In Gonzales v. Nat'l Broad. Co., Inc., 155 F.3d 618 (2d Cir. 1998) ("Gonzales II"), the Second Circuit affirmed Gonzales I. In III the Second Circuit, on rehearing, withdrew its Gonzales II opinion (see 194 F.3d at 30 & n.**), and affirmed the district court.

Doe v. Epstein],” Gonzales III, 194 F.3d at 36, or, rather, depending on how used, two issues, liability and damages. The Court notes, in particular, a statement included in the first full paragraph attributed to Mr. Epstein at page 15 of the transcript.

The Court also finds that the materials at issue “are not reasonably obtainable from other available sources,” id., since the record is quite clear that Mr. Epstein has regularly been asserting, and will continue to assert, his Fifth Amendment privilege to relevant questions. The fact that the recording is in Mr. Epstein’s own voice is also significant from a trial perspective.

The deposition of Mr. Rush is to be limited to authentication of the recording and the transcript.

6.

Not everything in the recording is relevant, but some non-relevant statements may (or may not) have context value. Ultimately, the amount of the recorded conversation that it would be appropriate to admit in a jury trial is one for the trial judge, with input from counsel on both sides. This Court defers to the trial court in this regard.

7.

Plaintiff’s counsel’s access to the recording and transcript has been given for a specific purpose only: use in the trial of Jane Doe v. Epstein. This order does not authorize the

use of, or reference to, the conversation reflected in the recording and the transcript in any other context, unless so authorized by the trial court in the case in which such use is sought, and it does not in any way authorize dissemination to the press or other media of all or any part of the conversation, the recording, or the transcript.³

8.

The recording and transcript will be held in chambers or under seal until any appeal from this decision is decided or the time to file a notice of appeal has expired.

SO ORDERED.

Dated: May 18, 2010



Lawrence M. McKenna
U.S.D.J.

³ Persons other than Jane Doe and Mr. Epstein are mentioned in the conversation.

EDWARDS AFF.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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IN RE APPLICATION FOR 3120(E) ORDER
TO PRODUCE TAPE RECORDING

x

AFFIDAVIT OF BRADLEY JAMES EDWARDS IN SUPPORT OF
MOTION FOR CPLR 3102(E) ORDER TO PRODUCE TAPE RECORDING

Bradley James Edwards, being duly sworn, deposes and states:

1. I am an attorney in good standing with the Florida Bar. I am a partner in the law firm of Farmer Jaffe Weissing Edwards Fistos and Lehrman. I make this affidavit in support of the motion for an order compelling production by the *Daily News* of a certain tape recording it possesses of a conversation between a *Daily News* reporter and Jeffrey Epstein for use in a lawsuit between Epstein and me, which at bottom concerns his sexual abuse of girls while they were minors, the very topic of the recorded conversation. *Jeffrey Epstein v. Bradley Edwards, et al.* (Case NO. 502009CA040800XXXXMBAG)(Florida Circuit Court, 15th Judicial Circuit).

I. The Sexual Molestation Actions Against Epstein and His Vendetta Action Against Me and Others

2. In 2008, I acted as lead attorney in bringing three separate actions against Jeffrey Epstein for sexually abusing several minor girls. *Jane Doe v. Jeffrey Epstein*, (08-80893)(United States District Court, S.D. Fl.); [REDACTED] v. *Jeffrey Epstein* (Case No. 502008CA028051XXXXMB AB)(Florida Circuit Court, 15th Judicial Circuit) [REDACTED] v. *Jeffrey Epstein* (Case No. 502008CA028058XXXXMB AB)(Florida Circuit Court, 15th Judicial Circuit).

3. In December 2009, Epstein brought a vendetta action against me and others. In that action, he alleged that I, my client [REDACTED], and my then-law partner (Scott Rothstein)

conspired to fabricate sexual molestation cases against him. I answered the complaint and interposed a counterclaim alleging abuse of process by Epstein and seeking damages.

II. Epstein's Vicious Attacks on the Girls and His Efforts to Shield the Evidence of Sexual Molestation

4. The lawsuits I filed on behalf of the three girls against Epstein were very contentious. In the *Jane Doe v. Jeffrey Epstein*, Case No. 9:08-cv-80893-MARRA (S.D. Fla.) case (which was consolidated with *Doe v. Epstein*, 9:08-cv-80119-MARRA for discovery purposes), more than 500 docket entries appear. Because the cases involved allegations by girls that Epstein repeatedly sexually abused them behind the walls of his private mansion in Palm Beach, Florida, the case at some level became one of "he said, she said." Epstein employed a strategy of viciously attacking the girls' reputation and credibility and shielding any disclosure of evidence of his molestation from discovery. It is for this reason, among others, that production of the tape on which he speaks about his molestation is critical.

A. Epstein's Vicious Attacks on the Girls

5. Epstein's battery of attorneys have taken the girls' depositions, in which they have asked numerous questions suggesting that each has fabricated her claims against him. Indeed, the *Daily News* conceded in earlier litigation concerning the recording sought here that the questioning of the girls has been (in its words) "savage." Daily News Memo. filed with Judge McKenna at 11 (referring to questioning of Jane Doe "by [Epstein's] defense team . . . so savage it made local headlines"). And the girls, of course, have no other witnesses they can call to tell what Epstein did to them behind closed doors in his mansion – no direct eyewitnesses to prove that what they are saying is true.

A. Shielding Non-Prosecution Agreement from Use

6. After federal and state investigators learned of Epstein's sexual abuse of Jane Doe and more than thirty other under-age girls, Epstein hired a battery of attorneys who negotiated a plea bargain. In 2008, Epstein entered into a "non-prosecution agreement" (NPA) with the federal government for sex crimes against minors. Under that agreement, the federal government agreed not to file criminal charges against Epstein for sex crimes committed against more than thirty girls, including Jane Doe. In exchange, Epstein agreed to plead guilty to state law criminal charges involving solicitation of prostitution and procuring a minor for prostitution. The victims of the criminal charges to which he has pled were not my clients.

7. Under the NPA, Epstein has agreed not to contest civil liability of any of his approximately thirty victims – provided that the victim agrees to limit themselves to the damages provided by 18 U.S.C. § 2255 . However, my clients did not agree to limit their recoveries to those limited damages. Therefore, the terms of the NPA purported to prevent my clients from using the NPA to prove liability.

B. Epstein's Refusal to Testify

8. Epstein "answered" my clients' complaints and my counterclaim in the action between us by invoking his Fifth Amendment right to silence with respect to the allegations that he molested the girls while they were minors. At the same time, he argued that this Fifth Amendment invocation is the functional equivalent of, and must be treated as, a specific denial of the allegations.

9. Epstein's deposition has been taken on several occasions in *Jane Doe* and related cases; at each deposition Epstein has refused to testify concerning any of the substantive allegations, invoking the Fifth Amendment. He has also refused to produce any documents or answer interrogatories on the same ground. I have been informed that Epstein will continue to assert the Fifth Amendment in all related, subsequent proceedings.

10. Epstein's invocation of the Fifth Amendment has permitted him to refuse to answer questions relating to punitive damages issues, such as his intent when committing the crimes, his lack of remorse and his intent to recidivate. These will be central issues in the punitive damages case against Epstein.

C. Epstein's Co-Conspirators Refusal to Testify

11. In addition to deposing Mr. Epstein in the various civil cases, other attorneys and I have taken the depositions of his various co-conspirators (as labeled by the federal government in the NPA), including [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. Each of those individuals was employed by Epstein to bring him underage girls for him to molest and to ensure that he was protected from detection by law enforcement, and thus those individuals could likely provide general testimony that would assist my clients in proving liability and damages, including punitive damages. However, none of these individuals was present during acts of sexual abuse by Epstein.

12. In any event, ALL of those individuals have also invoked their Fifth Amendment rights against self-incrimination, and thus have provided no information about what Epstein or other conspirators inside his house were doing during the sexual abuse of my clients and other minor girls. This creates a serious issue for a civil case that revolves around proving a sexual molestation claim against Epstein. By its nature, sexual molestation takes place in private, with only the abuser and the victim typically available to testify. Epstein has savagely attacked the credibility of the girls who have alleged that he sexually abused them. Accordingly, there is no other reasonable avenue of discovery to provide direct proof of the claim of sexual abuse by Epstein.

III. Epstein's False Allegation of Fabrication

13. While seeking to shield all the evidence of his repeated molestation of young girls for use in his action against me and all the girls actions against him, Epstein has alleged that the allegations are fabricated. For example, he has asserted that his Fifth Amendment refusal to answer the complaint or questions at deposition constitutes a substantive denial of the claims, and during his deposition of me he asked numerous questions designed to suggest that I had fabricated the claims against him.

IV. The Tape Recording Constitutes Critical Evidence Needed to Prove Molestation and Disprove Fabrication

14. While Epstein and all of his co-conspirators have consistently and uniformly asserted their Fifth Amendment privilege against self-incrimination, George Rush of the *New York Daily News* contacted me to inform me that Epstein spoke personally with him about issues related to the charges of sexual abuse against him and that Rush recorded the conversation.

15. Paraphrasing from memory of my conversation with Mr. Rush, Mr. Epstein told Mr. Rush that he may have come “too close to the line”, but that he should not have been punished as severely as he was and that his conduct was at most worthy of a monetary fine. This statement shows two things of great importance to the civil action currently pending between Epstein and me.

16. First, it is an admission by Epstein that he did, in fact, sexually molest minor girls, thus disproving his claim that that I fabricated such claims against him. I do not have any other admission of Epstein of his sexual abuse of the clients on whose behalf I filed sexual abuse claims. I have diligently pursued all possible avenues for possibly obtaining an admission from Epstein of his molestation of my clients without success.

17. Second, Epstein’s statement to Mr. Rush is a clear demonstration that Epstein lacks remorse for committing felony child molestation against my clients and other girls.

This will be a central issue in my punitive damages case against Epstein at trial. Here again, I have diligently pursued all possible ways of obtaining a statement from Epstein about his lack of remorse for abusing minor girls without success. There are no other reasonable means of obtaining a statement from Epstein on these subjects.

18. Mr. Rush also told me that Mr. Epstein spoke specifically about me and about one of my clients, ■■■■■, and made derogatory comments about both of us. At a deposition in one of the Florida actions, Epstein denied under oath that he knew ■■■■■. Mr. Rush also told me that Mr. Epstein spoke directly about another civil case that was filed against him, *Jane Doe 102 v. Epstein*, No. 9:09-CV-80656-KAM(S.D. Fla. 2009), which involved an allegation that Mr. Epstein repeatedly sexually abused a 15-year-old girl, forced her to have sex with his friends, and flew her on his private plane nationally and internationally for the purposes of sexually molesting and abusing her, and that Mr. Epstein had flippantly said that the case was dismissed, indicating that the allegations were ridiculous and untrue.

19. Mr. Rush also spoke at length to Michael Fisten, an investigator with my firm who was assisting with the investigation of the case. Mr. Fisten reported to me shortly after the conversation with Mr. Rush that he had such a conversation. Mr. Fisten is submitting a separate affidavit concerning his conversation with Mr. Rush.

V. Other Possible Evidence Concerning the Molestation

20. While investigations by other plaintiffs' attorneys and I have uncovered other persons who were acquaintances of Epstein, specifically David Trump, Alan Dershowitz, Bill Clinton, Tommy Mottola, and David Copperfield, we have no information that any of those people (other than Mr. Dershowitz) have spoken to Epstein about Jane Doe or any of the other victims of Epstein's molestation. Mr. Dershowitz is acting as an attorney for Epstein, and therefore will likely take the position that he is not at liberty to disclose any admissions that

Epstein may have made regarding abusing minors girls. Additionally, I have no information that any of those individuals or any other individuals have any taped statements of Epstein's own voice relating to these matters.

21. George Rush's taped conversation with Mr. Epstein is the only one known to exist, making it unique; it contains information not otherwise obtainable through other means or sources. I have been informed by Epstein's attorney that Epstein intends to invoke his Fifth Amendment rights rather than answer any substantive questions about the abuse of girls at trial. Therefore, without the Rush taped conversation, the jury that handles the case will not hear any words from Epstein himself about his abuse of young girls.

22. The Rush interview is also unique and not otherwise obtainable from other witnesses for the additional reason that it proves perjury by Epstein (a federal crime). Epstein lied about not knowing George Rush. *See* deposition of Jeffrey Epstein, taken in [REDACTED] v. Jeffrey Epstein, case 50-2008-CA-028051, page 154, line 4 through 155 line 9, wherein Epstein clearly implies that he does not recognize George Rush from the *Daily News*, despite the fact that he gave a personal interview that we all now know to have been tape recorded. It is therefore evidence of a criminal event.

VI. The Daily News Has Waived Any Possible Privilege

23. During a telephone call with George Rush, Rush provided me particulars as to what Epstein said, as well as the general tenor of the entire interview, so that nothing in the interview can be fairly regarded as confidential at this point.

24. The people for whom George Rush played the tape or told in detail of the information on the tape were not "sources" in the traditional sense of the word; they were simply chatting with Mr. Rush about Epstein and his propensity to molest children. For example, when

I discussed the tape with Mr. Rush, I was not a "source" in the traditional sense of that term. At no point did Mr. Rush tell me that I was a "source" for his reporting.

25. Because Epstein and all other co-conspirators have invoked the Fifth Amendment as to all relevant questions, this tape is the *only* way that I can put Epstein's own perceptions of what he has done and his admissions and statements before the jury. I have made exhaustive attempts to obtain information from Epstein about his abuse – in both this and other cases – without success. I have not been able – and none of the girls who filed civil suits against Epstein has been able -- to obtain even a single word of information from Epstein about his abuse of minor girls.

VII. The Daily News' Intention to Refuse to Honor a Subpoena

26. I have been informed by attorneys for the *Daily News* that it will not honor any subpoena for the recording without a New York court order enforcing it. It is for that reason that we are seeking an order on notice pursuant to 3102(e) for production of the tape.

27. For the foregoing reasons, as well as those set forth in the Affidavit of Michael Fisten, the Affirmation of Robert Y. Lewis, and the accompanying Memorandum of Law, Affiant requests that the Court issue an order pursuant to CPLR 3102(e) for production of the recording.

On September 14, 2010, before me came Bradley James Edwards and swore that the foregoing was true and correct.

[Redacted Signature]

Notary Public

[Redacted Signature]

Bradley James Edwards



FISTEN AFF.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

_____x

IN RE APPLICATION FOR 3120(E) ORDER
TO PRODUCE TAPE RECORDING

_____x

**AFFIDAVIT OF MICHAEL FISTEN IN SUPPORT OF MOTION FOR
CPLR 3102(E) ORDER TO PRODUCE TAPE RECORDING**

Michael Fisten, being duly sworn, deposes and says:

1. I am a private investigator who has been retained by Bradley James Edwards in connection with a case brought by one Jeffrey Epstein against him in the Florida Circuit Court, 15th Judicial Circuit. In that action Mr. Edwards, the defendant, has also brought a counterclaim seeking damages inflicted on him by Mr. Epstein. I have also worked on several related sexual assault cases brought against Epstein by various girls, including a case brought by "Jane Doe." Before becoming a private investigator, I was a law enforcement officer for thirty years in south Florida.

2. I make this Affidavit in support of a motion for an order compelling the *Daily News* to produce a certain recording it possesses of a conversation between one of its reporters and Mr. Epstein concerning Mr. Epstein's molestation of girls, among other things.

3. On October 22, 2009, in pursuit of information related to the girls' sexual molestation litigation against Jeffrey Epstein, I had a conversation with George Rush, a reporter with the *New York Daily News*.

4. I called Rush after an author advised me that Epstein had given him (Rush) information that would be extremely valuable for the cases I was working on. The author advised that Rush played a recording of a conversation he taped between Rush and Epstein. This tape recording was played for the author and another person. I had the impression that Rush had played the entire tape for this author. The author stated words to the effect of, "My god, you've got to get this tape. He talks about the girls." The author advised me that the admissions made by Epstein in the tape would be very helpful to the girls pursuing civil suits against Epstein.

5. At this point, I called Rush in New York to try to get the tape. Rush had no hesitancy in telling me that he had tape recorded a recent conversation with Epstein.

6. Rush then began telling me in detail about the contents of the tape recorded call.

7. Rush had previously spoken to attorney Edwards (the attorney representing Jane Doe) and me concerning a story he (Rush) was writing on Epstein. Rush stated that he compiled very negative information on Epstein concerning his exploits with underage girls and how he eluded the justice system.

8. Rush agreed to paraphrase his recorded interview of Epstein, providing me with the following highlights. He stated that Epstein spoke in a New York accent advising how he came from Brooklyn and became wealthy. He stated that people do not like it when people make good and that was one reason he was being targeted. He stated that he did nothing wrong and went to jail for no reason. He stated that the time he spent in jail was too harsh of a sentence and if the same circumstances would have happened in

New York he would have only received a \$200 fine. He continued by making very negative comments concerning Attorney Edwards (the lead attorney for the girls), and blamed his problems on Edwards. He spoke derogatorily about the girls, including Edwards's clients, such as ■■■■■, as persons who came to him as prostitutes and drug addicts. He stated that all the girls suing him are only trying to get a "meal ticket" and the only thing he might have done wrong was maybe to cross the line a little too closely. Rush advised that Epstein was very upset that Edwards subpoenaed Ghislaine Maxwell.

9. At no point during this phone call was I told that the discussion was "off the record" or otherwise "confidential". I was never told that there was any agreement for secrecy. I had the clear impression that Rush knew I would be relaying all of the information that he had provided to me to Brad Edwards and other attorneys and investigators working on Jane Doe's case and other similar cases.

10. After I interviewed Rush, I asked for a copy of the tape of Epstein. He said he had no problem with giving it to me. He just had to run by his legal people. But later that day, he called me back and said "legal" would not let him give me the tape.

11. On October 26, 2009, when my discussion with Rush was fresh in my mind, I wrote up a report memorializing what Rush had told me.

12. Rush later sent me e-mails about the Epstein case, including forwarding to me an e-mail that Epstein had apparently written about the case.

13. I have been extensively involved in the investigation attempting to support Jane Doe's and Brad Edwards's claims against Epstein. As part of my duties in investigating the cases, I have attempted to locate all recorded statements made by

Epstein regarding his sexual abuse of Jane Doe and other minor girls and about Edwards' lawsuits. I have not been able to locate any such recordings. Nor do I currently possess any investigative leads for tracking down such recordings.

On September 14, 2010, before me came Michael Fisten and swore that the foregoing was true and correct.

[Redacted signature]

Notary Public

[Redacted signature]

Michael Fisten

