

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY  
County of Santa Barbara  
2 By: RONALD J. ZONEN (State Bar No. 85094)  
Senior Deputy District Attorney  
3 J. GORDON AUCHINCLOSS (State Bar No. 150251)  
Senior Deputy District Attorney  
4 GERALD McC. FRANKLIN (State Bar No. 40171)  
Senior Deputy District Attorney  
5 1112 Santa Barbara Street  
Santa Barbara, CA 93101  
6 Telephone: (805) 568-2300  
FAX: (805) 568-2398

**FILED**  
SUPERIOR COURT of CALIFORNIA  
COUNTY of SANTA BARBARA

FEB - 9 2005

GARY M. BLAIR, Executive Officer  
*Carrie L. Wagner*  
CARRIE L. WAGNER, Deputy Clerk

\* Unsealed pursuant to  
611665 Court order

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SANTA BARBARA  
10 SANTA MARIA DIVISION

12 THE PEOPLE OF THE STATE OF CALIFORNIA,  
13 Plaintiff,

16 MICHAEL JOE JACKSON,  
17 Defendant.

No. 1133603  
PLAINTIFF'S REPLY TO  
DEFENDANT'S OPPOSITION TO  
PEOPLE'S MOTION TO EXCLUDE  
REFERENCE TO JANE DOE'S  
REFUSAL TO WAIVE ATTORNEY  
CLIENT PRIVILEGE AS TO  
ATTORNEY DICKERMAN  
DATE: TBA  
TIME: 8:30 a.m.  
DEPT: TBA (Melville)

**FILED UNDER SEAL**

20 A. Introduction:

21 The People moved to exclude any reference by the defense to the fact that Jane Doe  
22 would not waive the attorney-client privilege as to her communications with Attorney Bill  
23 Dickerman, having previously waived as to other attorneys. Defendant argues in response that  
24 Jane Doe waived the privilege by referring to the conversation in her testimony and by having a  
25 third party present during the interview.

26 B. Summary Of Our Reply

27 1. The client holds the privilege of confidentiality and may waive it by discussing  
28 the content of the communications. However, the disclosure must reveal a "substantial

1 portion" of the conversation before it can be deemed waived. Simply disclosing that a person  
2 sought the assistance of an attorney, and why, does not waive the privilege.

3 2. A third party may be present during a confidential communication between an  
4 attorney and his client, and if the third party's presence is required by either the lawyer or the  
5 client to facilitate the attorney-client relationship, his or her presence will not affect the  
6 confidentiality of the communication.

7 3. If the third party is not necessary to the relationship than the privilege is waived  
8 as to that conversation only, not the entire relationship.

9 Argument

10 I

11 **THE ATTORNEY-CLIENT PRIVILEGE IS NOT WAIVED**  
12 **BY VOLUNTARY DISCLOSURE OF A PART OF IT**  
13 **UNLESS THE DISCLOSURE CONSTITUTES A**  
14 **"SIGNIFICANT" PORTION OF THE CONVERSATION**

15 Defendant contends that Jane Doe revealed a "significant" portion of her  
16 conversation with Attorney Dickerman during her testimony before the Grand Jury. The  
17 entire testimony relating to Doc's conversations with Dickerman are as follows:

18 Q: All right. At the time that you didn't go back to Neverland, this is now after the—

19 A: I didn't know where my things were until Bill got involved.

20 Q: All right. Bill is Bill Dickerman?

21 A: Yes.

22 Q: That's the attorney that you had previously visited?

23 A: Yes.

24 Q: You went to him and said you wanted your things back?

25 A: Yes.

26 Q: Did you also talk with him about dealing with the issue of the Martin Bashir Tape?  
27  
28

1 A: Yes.

2 (GJ Tx 1148:8-22.)

3 The transcript of Jane Doe's testimony before the court on September 17, 2004  
4 reveals very little, which is why the Defendant did not quote any of the testimony in his brief.  
5 Ultimately Jane Doe's testimony concerning her conversations with Bill Dickerman are less  
6 than a few sentences and reveal nothing more than the fact that she went to Bill Dickerman to  
7 get her things back and to get her kids off the Bashir documentary. She offered no details of  
8 the conversations with Dickerman other than saying that she had them and the subject matter of  
9 those conversations. There was no disclosure at all of the content of the communications,  
10 never mind any "substantial" disclosure.

11 Disclosure of the subject matter of the communications without disclosing the  
12 content does not waive the privilege. Jane Doe did not waive the attorney/client privilege  
13 either expressly or by an act of disclosure. She should not be questioned about her  
14 communications nor should the defense be entitled to ask about her decision to waive the  
15 privilege as to other attorneys but not as to Bill Dickerman.

16 II

17 JANE DOE'S MEETINGS WITH BILL DICKERMAN  
18 IN THE PRESENCE OF JAIME MASADA

19 "As used in this article, 'confidential communication between client and lawyer'  
20 means information transmitted between a client and his or her lawyer in the course of that  
21 relationship and in confidence by a means which, so far as the client is aware, discloses the  
22 information to no third persons other than those where are there to further the interest of the  
23 client in the consultation or those to whom disclosure is reasonably necessary for the  
24 transmission of the information or the accomplishment of the purpose for which the lawyer is  
25 consulted . . . ." (Evid. Code, § 952; emphasis added.)

26 The emphasis language was added by the 1965 amendment to section 952.  
27 Defendant's reliance on *People v. Hall* (1942) 55 Cal.App.2d 343 is therefore misplaced.

28 Jane Doe was introduced to Bill Dickerman by Jaime Masada, after Jane Doe told

1 Mr. Masada about the problems she was having at Neverland. He was present during a few of  
2 the meetings with Dickerman, at Jane Doe's request. Masada is a close personal friend who  
3 gave a lot of support to Jane Doe during her child's illness. She wanted him present both for  
4 moral support and to discuss what he know about the Does' association with Neverland. Mr.  
5 Masada's presence did not make Jane Doe's conversations with her lawyer less privileged.

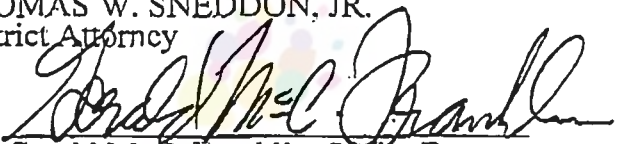
6 Any claimed disclosure of the content of an otherwise privileged communication  
7 must be of a "significant part" of that communication. (See *Motown Record Corp. v. Superior*  
8 *Court (Brodckert)* (1984) 155 Cal.App.3d 482, 492; *Samuels v. Mix* (1999) 22 Cal.4th 1, 20, n.  
9 5.)

10 In any event, disclosure of a "significant part" of one communication does not  
11 constitute a waiver of the privilege as to other, separate communications. Defendant does not  
12 argue otherwise.

13 DATED: February 9, 2005

14 Respectfully submitted,

15  
16 THOMAS W. SNEDDON, JR.  
District Attorney

17 By:   
18 Gerald McC. Franklin, Senior Deputy  
19 Attorneys for Plaintiff  
20  
21  
22  
23  
24  
25  
26  
27  
28



1 SERVICE LIST

2 THOMAS A. MESEREAU, JR.  
3 Collins, Mesereau, Reddock & Yu, LLP  
4 1875 Century Park East, No. 700  
5 Los Angeles, CA 90067  
6 FAX: [CONFIDENTIAL]

7 Attorney for Defendant Michael Jackson

8 ROBERT SANGER, ESQ.  
9 Sanger & Swysen, Lawyers  
10 233 E. Carrillo Street, Suite C  
11 Santa Barbara, CA 93001  
12 FAX: (805) 963-7311

13 Co-counsel for Defendant

14 BRIAN OXMAN, ESQ.  
15 Oxman & Jaroscak, Lawyers  
16 14126 E. Rosecrans Blvd.,  
17 Santa Fe Springs, CA 90670

18 Co-counsel for Defendant