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County of Santa Barbara
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

JAN 31 2005

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

** Unsealed pursuant
to 6/16/05 court order*

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

FILED
JAN 31 2005
COURT CLERK
SANTA MARIA DIVISION

12 THE PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 v.

16 MICHAEL JOE JACKSON,

17 Defendant.

No. 1133603

PLAINTIFF'S MOTION TO
EXCLUDE REFERENCE TO
JANE DOE'S REFUSAL TO
WAIVE THE CONFIDENTIALITY
OF HER CONVERSATIONS
WITH ATTORNEY WILLIAM
DICKERMAN

DATE: February 10, 2005
TIME: 9:30 a.m.
DEPT: TBA (Melville)

UNDER SEAL

20 TO: THE CLERK OF THE SUPERIOR COURT AND TO DEFENDANT AND HIS
21 COUNSEL:


22 PLEASE TAKE NOTICE that on February 10, 2005, Plaintiff will move the court
23 for its order forbidding counsel to inquire about or comment on Jane Doe's assertion of her
24 privilege not to comment on or discuss the content of her confidential conversations with and
25 communications to Attorney William Dickerman and other lawyers she may have contacted
26 concerning matters unrelated to Michael Jackson.

27 The motion will be based on this notice and the accompanying Memorandum of
28 Points and Authorities.

1 DATED: January 31, 2005

2 Respectfully submitted,

3 THOMAS W. SNEDDON, JR.
4 District Attorney

5 By: 
6 Ronal J. Zonen, Senior Deputy

7 Attorneys for Plaintiff
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I

3 AN INDIVIDUALS CONFIDENTIAL COMMUNICATIONS WITH
4 HER LAWYER ARE PRIVILEGED, AND SHE OUGHT NOT TO
5 BE REQUIRED TO ASSERT THE PRIVILEGE BEFORE THE
6 JURY IN ORDER TO AVAIL HERSELF OF ITS PROTECTIONS
7 WITHOUT PREJUDICE. REFERENCE TO JANE DOE HAVING
8 RETAINED COUNSEL IN UNRELATED MATTERS, AND HER
9 REFUSAL TO WAIVER HER PRIVILEGE CONCERNING HER
10 COMMUNICATIONS WITH COUNSEL, OUGHT NOT TO BE
11 COMMENTED UPON IN OPENING STATEMENTS OR IN THE
12 COURSE OF CROSS-EXAMINATION

13 A. Introduction

14 This motion is based on Attorney Mesereau’s examination of Jane Doe in the course
15 of the litigation of defendant’s motion to suppress evidence seized from the office of
16 Investigator Bradley Miller, in which he inquired of her concerning her having retained the
17 services of lawyers in connection with civil and domestic matters unrelated to Michael Jackson.

18 B. Background

19 Jane Doe was called by the defense to testimony in court in September, 2004.
20 Attorney Mesereau questioned her about the lawyers she had previously retained.

21 Some of Attorney Mesereau’s questions were plainly disingenuous, such as why
22 Jane Doe stated on her Waiver form that she had consulted a particular attorney to “help her
23 with Michael Jackson” before she ever met Mr. Jackson, when he knew she had consulted that
24 lawyer for an entirely different reason.

25 C. Argument

26 Whether Jane Doe retained counsel to assist her in her successful litigation against
27 JCPenney is not relevant to any issue at bench, even if the fact that she retained counsel was
28 made public by court filings by an attorney on her behalf. Nor is it relevant that she was
represented by Michael Manning or Sandra Polin in her family law disputes with her former
husband. Unless Defendant can show that retaining lawyers to represent oneself in civil

1 actions and in divorce and child custody proceedings somehow constitutes a character flaw, he
2 ought not to be allowed to question her about why she retained those lawyers and should not be
3 allowed to discuss the subject in opening statement.

4 II

5 JANE DOE'S WILLINGNESS TO WAIVE ATTORNEY/
6 CLIENT CONFIDENTIALITY AS TO HER COMMUNICATIONS
7 WITH SOME OF HER FORMER LAWYERS DOES NOT MAKE
8 HER REFUSAL TO WAIVE HER PRIVILEGE AS TO HER
9 CONFIDENTIAL COMMUNICATIONS WITH OTHER OF
10 HER LAWYERS EITHER RELEVANT OR ADMISSIBLE IN
11 THIS PROCEEDING. TO THE EXTENT A PRIVILEGE OF
12 CONFIDENTIALITY CONTINUES TO PROTECT HER
13 COMMUNICATIONS WITH CERTAIN LAWYERS, HER
14 REFUSAL TO WAIVE THAT PRIVILEGE IS NOT
15 RELEVANT AND IS NOT A PROPER SUBJECT FOR
16 INQUIRY OR COMMENT BY THE DEFENSE IN THIS
17 PROCEEDING

18 To assist the Santa Barbara Sheriff's investigation of the pending matter, Jane Doe
19 waived the attorney/client privilege concerning her communications with some but not all of
20 her prior attorneys. She specifically declined to waive her privilege concerning her
21 communications with Attorney William Dickerman.


22 The confidentiality that attaches to the communications between lawyer and client is
23 statutory and absolute. (Evid.Code, § 954; *Solin v. O'Melveny & Meyers, LLP* (2001) 89
24 Cal.App.4th 451, 457.) Jane Doe is the holder of the privilege concerning her communications
25 with one or another of her lawyers, and she is the only one entitled to waive that privilege.
26 (Evid. Code, § 953.)

27 If Jane Doe has asserted her privilege of confidentiality in her communications with
28 an attorney, neither court nor counsel may comment upon her exercise of that privilege. (Evid.
Code, § 913.) There are no exceptions to the rule that prohibits comment on the exercise of a
privilege (*Buehler v. Sbardellati* (1995) 34 Cal.App.4th 1527, 1541.)

1 Defense counsel should be admonished to resist the temptation to comment
2 adversely on Jane Doe's engagement of counsel to represent her in matters that are extraneous
3 and irrelevant to the issues in this criminal prosecution. He should be instructed not to
4 comment at all on Jane Doe's exercise of her absolute privilege of confidentiality concerning
5 her communications with counsel on any matter.

6 DATED: January 31, 2005

7 THOMAS W. SNEDDON, JR.
8 District Attorney

9 By: 
10 Ronald J. Zonen, Senior Deputy

11 Attorneys for Plaintiff
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1 **PROOF OF SERVICE**

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3 STATE OF CALIFORNIA)
4 COUNTY OF SANTA BARBARA) SS

5
6 I am a citizen of the United States and a resident of the County aforesaid; I am over
7 the age of eighteen years and I am not a party to the within-entitled action. My business
8 address is: District Attorney's Office; Courthouse; 1112 Santa Barbara Street, Santa Barbara,
9 California 93101.

10 On January 31, 2005, I served the within PLAINTIFF'S MOTION TO EXCLUDE
11 REFERENCE TO JANE DOE'S REFUSAL TO WAIVE THE CONFIDENTIALITY OF HER
12 CONVERSATIONS WITH ATTORNEY WILLIAM DICKERSON on Defendant, by
13 THOMAS A. MESEREAU, JR., ROBERT SANGER and BRIAN OXMAN, by personally
14 delivering a true copy thereof to the attorney representing Defendant in the jury selection
15 proceedings in court. I declare under penalty of perjury that the foregoing is true and correct.

16 Executed at Santa Maria, California on this 31st day of January, 2005.

17 *Ronald M. C. Franklin*
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2 **SERVICE LIST**

3 THOMAS A. MESEREAU, JR.
4 Collins, Mesereau, Reddock & Yu, LLP
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7 FAX: [CONFIDENTIAL]

8 Attorney for Defendant Michael Jackson

9 ROBERT SANGER, ESQ.
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14 Co-counsel for Defendant

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

19 Co-counsel for Defendant
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