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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  
*Carrie L. Wagner*  
CARRIE L. WAGNER, Deputy Clerk

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

11 ~~PROPOSED~~ REDACTED VERSION

12 THE PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 v.

15  
16 MICHAEL JOE JACKSON,

17 Defendant.

No. 1133603

18 } PLAINTIFF'S MOTION TO  
EXCLUDE REFERENCE TO  
19 } JANE DOE'S REFUSAL TO  
WAIVE THE CONFIDENTIALITY  
OF HER CONVERSATIONS  
WITH ATTORNEY [REDACTED]

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

23 } ~~UNDER SEAL~~

24 TO: THE CLERK OF THE SUPERIOR COURT AND TO DEFENDANT AND HIS  
25 COUNSEL:

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

The motion will be based on this notice and the accompanying Memorandum of  
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 [REDACTED], 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 [REDACTED]  
27 [REDACTED] 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 [REDACTED] 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 [REDACTED].

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. Shardellai* (1995) 34 Cal.App.4th 1527, 1541.)



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3 **PROOF OF SERVICE**

4 STATE OF CALIFORNIA }  
5 COUNTY OF SANTA BARBARA } SS

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 *Redacted* PLAINTIFF'S MOTION TO EXCLUDE  
11 REFERENCE TO JANE DOE'S REFUSAL TO WAIVE THE CONFIDENTIALITY OF HER  
12 CONVERSATIONS WITH ATTORNEY [REDACTED] 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 *[Handwritten Signature]*  
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2 **SERVICE LIST**

3 **THOMAS A. MESEREAU, JR.**  
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14 Co-counsel for Defendant

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19 Co-counsel for Defendant  
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