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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

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25 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
26 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

27 THE PEOPLE OF THE STATE OF  
28 CALIFORNIA,

Plaintiffs,

vs.

MICHAEL JOSEPH JACKSON,

Defendant.

) Case No. 1133603

) PSYCHOTHERAPIST-PATIENT PRIVILEGE  
) MEMORANDUM

) ~~UNDER SEAL~~

) Honorable Rodney Melville

) Date: August 17, 2004

) Time: 1:30 PM

) Dept: SM 8

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 IN THIS CASE, THE IDENTITY OF DR. KATZ'S PATIENT IS NOT PROTECTED BY  
4 THE PSYCHOTHERAPIST-PATIENT PRIVILEGE.

5 The psychotherapist-patient privilege may apply to prevent the compelled disclosure of  
6 confidential communications between a patient and his psychotherapist. (Evid. Code, § 1014.) The  
7 patient's very identity may sometimes be protected by a judicial expansion of the privilege. (*County*  
8 *of Alameda v. Superior Court (Darlene W.)* (1987) 194 Cal.App.3d 254, 260.) This rule should not  
9 rigidly apply in every case, however. (*Id.* at p. 261.) Rather, the Court has discretion to reveal the  
10 patient's identity in cases where "the state's interest in facilitating the ascertainment of truth in  
11 connection with legal proceedings" outweighs the potential harm to the patient's privacy interest  
12 upon revelation of his identity as a patient. (*Id.* at pp. 260-261.) Because the state's interest in  
13 ensuring that Mr. Jackson only be convicted on true facts greatly outweighs the patient's privacy  
14 interest in the present case, the court should hold that Dr. Katz may not invoke the psychotherapist-  
15 patient privilege to prevent the disclosure of his patient's identity.

16 In *County of Alameda*, a civil case, the plaintiff was a patient in a locked mental health  
17 facility who was allegedly raped by a male patient of the same facility. (*County of Alameda v.*  
18 *Superior Court (Darlene W.)*, *supra*, at p. 257.) The plaintiff sought discovery of the identities of  
19 the other patients in the facility in an effort to identify the assailant. (*Ibid.*) The defendant asserted  
20 the privilege, citing an earlier civil appellate decision holding that the identity of a patient was  
21 privileged as a "confidential communication" under Evidence Code, section 1014. (*Ibid.*; see *Smith*  
22 *v. Superior Court (Smith)* (1981) 118 Cal.App.3d 136.) On the one hand, the *Alameda* court  
23 considered that the disclosure of a patient's identity, apart from any discussion of the cause of his  
24 consultations, could carry the stigma of a "mental or emotional problem. (*Alameda, supra*, at p.  
25 259.) On the other hand, the court considered the plaintiff's compelling need for disclosure of the  
26 identities, without which she might have been "deprived of her day in court, stymied in her efforts  
27 at meaningful discovery and perhaps hampered in proving that the assault took place." (*Id.* at p.

1 261.) Accordingly, the court held that the privilege had to give way to the plaintiff's need. (*Id.* at  
2 pp. 263-264.)

3 Mr. Jackson's need for disclosure is at least as compelling as that of the plaintiff in *Alameda*.  
4 As an initial matter, Mr. Jackson's liberty is at stake in the present criminal action, not merely a  
5 pursuit for damages. Additionally, the disclosure of the patient's identity in this case will not  
6 actually allow either party to discover information that it does not already know. Dr. Katz has  
7 already disclosed his patient's name to the state.

8 Moreover, the weight of the patient's right under the privilege is, if anything, even less  
9 substantial than that in *Alameda*. The *Alameda* court recognized that the potentially negative  
10 inference remains, at best, static from one case to another. (*Id.* at p. 261.) However, over 17 years  
11 ago, that same court also realized that "with growing understanding and acceptance of psychotherapy  
12 by the public in general, the mere fact of having sought or received psychotherapy will someday lose  
13 all negative connotations." (*Id.* at p. 259.) Mr. Jackson respectfully contends that that day has  
14 arrived.

### 15 CONCLUSION

16 For the above reasons, because Mr. Jackson's need for disclosure of Dr. Katz's patient's  
17 name outweighs that patient's interest in the privilege, the court should exercise its discretion to deny  
18 Dr. Katz's assertion of the psychotherapist-patient privilege.

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1 Dated: August 17, 2004

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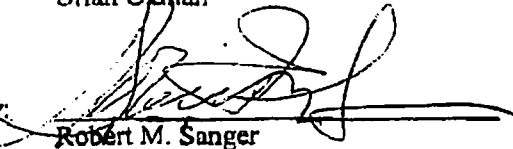
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