

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

DEC 16 2004

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

MICHAEL JACKSON, et al.

Defendant.

) Case No.: 1133603
)
) Order for Release of Redacted Documents
)
) [Plaintiff's Objection to the Subpoena and
) Request that the Court Limit the Scope of
) Records]

The redacted form of Plaintiff's Objection to the Subpoena and Request that the Court Limit the Scope of Records attached to this order shall be released and placed in the public file. The unredacted originals shall be maintained conditionally under seal pending the hearing on December 20, 2004.

DATED: DEC 16 2004

Rodney S. Melville
RODNEY S. MELVILLE
Judge of the Superior Court

1 This motion is made on the ground that Defendant has abused the process of the
 2 court in issuing subpoenas duces tecum in this case, both by seeking information that could not
 3 possibly lead to evidence relevant to his defense and by violating the constitutional right of
 4 privacy of the individuals whose records are demanded and by securing records that are
 5 privileged.

6 This motion is supported by the Declaration of Ronald J. Zoncn and the
 7 accompanying Memorandum of Points and Authorities.

8 DATED: December 8, 2004

9 Respectfully submitted,

10 THOMAS W. SNEDDON, JR.
 11 District Attorney

12 By: RJ Zoncn
 13 Ronald Zoncn, Senior Deputy
 14 Attorneys for Plaintiff

DECLARATION OF RONALD ZONEN

I, Ronald Zonen, say;

1. I am an attorney licensed to practice in the state of California. I am currently employed as a prosecutor for the District Attorney of Santa Barbara County. I am assigned the prosecution of the above entitled matter.

2. I have reviewed each of the subpoenas duces tecum issued by defendant to various entities, a copy of which his counsel sent to the Doe family in compliance with the court's order dated November 29, 2004.

3. The defense has sought subpoena's from all banking institutions ever used by the Doe family, from [redacted], from [redacted], from [redacted], from [redacted] and from [redacted]

4. The [redacted] records sought are those of [redacted]. The records are for any document ever generated by [redacted] during the [redacted] years [redacted] has been associated with them [redacted].

5. Defendant directed a subpoena duces tecum to the [redacted] seeking all records of Jane Doe including [redacted]

6. Defendant directed a subpoena duces tecum to [redacted], seeking all [redacted] records of each member of the family [redacted]

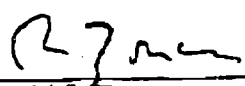
7. The subpoenas seek documents with little or no limitation on the information about the Doe family that would be revealed by those documents. I have been asked by the Doe family to ask the court to limit access to records that are obviously irrelevant to the defense and intrude severely upon their privacy, [redacted]

8. It appears that with each of the subpoenas issued the defense has included and order of the court, signed by Brian Oxman, restricting the Doe family from communicating

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with the prosecution that they are in receipt of the subpoenas. (See Exhibit "A.") This order appears to be inconsistent with the Court's ruling on November 29th, that the restraining order would be issued to the third party custodians of the records but not to the parties whose records are the subject of the subpoenas. The subpoenas sent to the Doe family also includes the advisement that they must object within "five [calendar] days" rather than five court days. (See exhibit "B.") Mr. Oxman has been notified by letter of his error. (See Exhibit "C.")

I declare under penalty of perjury the foregoing is true and correct except as to those matters which I state upon my information and belief, and as to those matters I believe it to be true. I execute this declaration at Santa Barbara, California on December 8, 2004.



Ronald J. Zonen

1 and to prevent another from disclosing, a confidential communication
2 between patient and psychotherapist if the privilege is claimed by:

3 (a) The holder of the privilege.

4 (b) A person who is authorized to claim the privilege by the holder of
5 the privilege.

6 (c) The person who was the psychotherapist at the time of the
7 confidential communication, but the person may not claim the privilege
8 if there is no holder of the privilege in existence or if he or she is
9 otherwise instructed by a person authorized to permit disclosure.

10 The relationship of a psychotherapist and patient shall exist between a
11 psychological corporation as defined in Article 9 (commencing with
12 Section 2995) of Chapter 6.6 of Division 2 of the Business and
13 Professions Code, a marriage and family therapy corporation as defined
14 in Article 6 (commencing with Section 4987.5) of Chapter 13 of
15 Division 2 of the Business and Professions Code, or a licensed clinical
16 social workers corporation as defined in Article 5 (commencing with
17 Section 4998) of Chapter 14 of Division 2 of the Business and
18 Professions Code, and the patient to whom it renders professional
19 services, as well as between those patients and psychotherapists
20 employed by those corporations to render services to those patients. The
21 word "persons" as used in this subdivision includes partnerships,
22 corporations, limited liability companies, associations and other groups
23 and entities.

24 The records subpoenaed by the defense from [REDACTED] include records of mental
25 health therapies protected under Evidence Code section 1014. Records of mental health therapies
26 should be redacted from those records to be furnished to the defense unless and until a waiver has
27 been established.

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2 III
3 MEDICAL RECORDS UNRELATED TO
4 THE CASE SHOULD BE DENIED

5 Subpoenaced medical records from [REDACTED] include all records [REDACTED]
6 [REDACTED] They are justified on two grounds: First that Jane Doc
7 asked for a continuance of her testimony originally set for August 29, 2004 because of [REDACTED]
8 [REDACTED]. Second, that the [REDACTED]
9 [REDACTED]

10 The court continued Jane Doc's testimony seven weeks [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 This is no longer an issue for the defense. [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 As to Attorney Oxman's claim that the defense needs information concerning Jane
20 Doc's [REDACTED], the subpoena should be limited in its scope to
21 [REDACTED]. Notes of Jane Doc's conversations with her doctors
22 or complications with her health [REDACTED] are irrelevant to that issue.

23 The subpoena for [REDACTED] records is without date or limitation as to each
24 member of the family. That subpoena should be quashed for lack of specificity as to the
25 identity of the family member as to whom records are sought, and what exactly the defense is
26 looking for by means of the subpoena.

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1 ACCESS TO [REDACTED]
2 RECORDS SHOULD BE RESTRICTED

3 The defense justifies the issuance of a subpoena duces tecum for all [REDACTED] records
4 of [REDACTED] over the entirety of his career with the [REDACTED]
5 [REDACTED] It is justified on two grounds; [REDACTED]
6 [REDACTED]

7 And second that his behavior during the times of these events was inconsistent with what
8 would have been expected [REDACTED]

9 The People have no objection to records of Mr. Doe's discussions with his
10 supervisor [REDACTED] The
11 justification for the balance of Mr. Doe's file is disingenuous. Unless the defense can establish
12 good cause for its disclosure the balance of [REDACTED] records should be returned [REDACTED]
13 [REDACTED]

14 V

15 THE RIGHT OF PRIVACY UNDER THE
16 CALIFORNIA CONSTITUTION

17 Article 1, section 1 of the California Constitution provides: "All people are by
18 nature free and independent and have inalienable rights. Among these are enjoying and
19 defending life and liberty, acquiring, possessing, and protecting property, and pursuing and
20 obtaining safety, happiness, and privacy." The phrase "and privacy" was added to article 1,
21 section 1's list of "inalienable rights" in 1972 by the "Privacy Initiative"; the provision was
22 reworded to read as above by an initiative measure in 1974.

23 In *White v. Davis* (1975) 13 Cal.3d 757, our Supreme Court overturned the trial
24 court's ruling sustaining a demurrer to a taxpayer's suit seeking to enjoin the expenditure of
25 public funds in connection with the Los Angeles Police Department's covert intelligence-
26 gathering activities which included sending undercover agents into college classrooms to
27 [REDACTED]
28 [REDACTED]

1 report on classroom discussions. The Supreme Court regarded the constitutional amendment
2 as "controlling." It took appreciative note of a statement in the election brochure ("a statement
3 which represents, in essence, the only 'legislative history' of the constitutional amendment
4 available to us" - *id.*, at p. 775) which identified "the overbroad collection and retention of
5 unnecessary personal information by government and business interests" and "makes clear that
6 the amendment does not purport to prohibit all incursion into individual privacy but rather than
7 any such intervention must be justified by a compelling interest." (*Ibid.*)

8 "The constitutional provision is self-executing; hence, it confers a judicial right of
9 action on all Californians. (*White v. Davis, supra*, 13 Cal.3d at p. 775.) Privacy is protected
10 not merely against state action; it is considered an inalienable right which may not be violated
11 by anyone." (*Porten v. University of San Francisco* (1976) 64 Cal.3d 825, 829-830; *fn.*
12 omitted.)

13 Where a person whose communications with another are privileged by statute and
14 who is not a party to given court proceedings, "the appropriate court, in its discretion and on its
15 own motion, may protect an absentee holder of the privilege who has not waived it." (*Rudnick*
16 *v. Superior Court* (1974) 11 Cal.3d 924, 932-933.)

17 Quite apart from statutorily-created privileges, the constitutional right of privacy
18 "may be invoked by a litigant as justification for refusal to answer questions which
19 unreasonably intrude on that right. [Citations.]" (*Fults v. Superior Court* (1979) 88
20 Cal.App.3d 899, 903.) *Fults* arose out of a paternity action brought by the petitioner mother.
21 The Court of Appeal granted a peremptory writ of mandate directing the trial court to vacate its
22 discovery order with respect to Mr. Fults' inquiries into plaintiff's sexual activities unrelated to
23 the possible period of conception. The court noted that "the right [of privacy] is invoked
24 against governmental process to compel disclosure.

25 Petitioner is represented by state attorneys but it is the state, over her
26 objection, that seeks, in the form of a judicial order, to compel the
27 answers. When the state itself employs judicial process to compel
28 disclosure, the governmental involvement is obvious [citation] but
[since?] 'judicial discovery orders inevitably involve *state-compelled*

1 [since?] 'judicial discovery orders inevitably involve *state-compelled*
 2 disclosure of presumptively protected information, the [constitutional]
 3 principles have equal application to purely private litigation.' (*Britt v.*
 4 *Superior Court* [(1978)] 20 Cal.3d [844] at 856, fn. 3.) (Italics in
 5 original.) 'When the inquiry is conducted by the use of compulsory
 6 process, the judiciary must bear the responsibility of protecting
 7 individual rights.' [Citations.]"

8 (88 Cal.App.3d, at p. 903, n. 2.)

9 CONCLUSION

10 If the subpoenas duces tecum served upon the [REDACTED]
 11 [REDACTED] and [REDACTED] may be taken as a representative sampling, Defendant
 12 has sought far more information than he is entitled to, upon little or no showing of the
 13 materiality or relevance of that information to his defense, and with no regard whatsoever for
 14 the constitutionally-protected right of privacy of the individuals whose records he demands.
 15 The Court should hold Defendant strictly accountable for his overreaching.

16 DATED: December 8, 2004

17 Respectfully submitted,

18 THOMAS W. SNEDDON, JR.
 19 District Attorney

20 By: RJ Zonen
 21 Ronald J. Zonen, Senior Deputy
 22 Attorneys for Plaintiff
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PROOF OF SERVICE

STATE OF CALIFORNIA }
COUNTY OF SANTA BARBARA } SS

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

On December 8, 2004, I served the within PLAINTIFF'S OBJECTION TO THE SUBPOENA OF [REDACTED] RECORDS, AND REQUEST THAT THE COURT LIMIT THE SCOPE OF [REDACTED] RECORDS; ETC. on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER, and BRIAN OXMAN by delivering a true copy thereof to Mr. Sanger at his office, and by faxing a true copy to Mr. Mesereau at the facsimile number shown with his address on the attached Service List, and then by causing to be mailed a true copy to him.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Santa Barbara, California on this 8th day of December, 2004.

Gerald McG. Franklin
Gerald McG. Franklin
Christy N. Linoz

SERVICE LIST

1
2 THOMAS A. MESEREAU, JR.
3 Collins, Mescreau, Reddock & Yu, LLP
4 1875 Century Park East, No. 700
5 Los Angeles, CA 90067
6 FAX: (310) 284-3122
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 FAX: (562) 921-2298
19 Co-counsel for Defendant
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[EXHIBITS A - C OMITTED]

PROOF OF SERVICE
1013A(1)(3), 1013(c) CCP

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA:

I am a citizen of the United States of America and a resident of the county aforesaid. I am employed by the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action. My business address is 312-H East Cook Street, Santa Maria, California.

On DECEMBER 16, 20 04, I served a copy of the attached ORDER FOR RELEASE OF REDACTED DOCUMENTS (PLAINTIFF'S OBJECTION TO THE SUBPOENA AND REQUEST THAT THE COURT LIMIT THE SCOPE OF RECORDS) _____ addressed as follows:

THOMAS A. MESEREAU, JR.
COLLINS, MESEREAU, REDDOCK & YU, LLP
1875 CENTURY PARK EAST, 7TH FLOOR
LOS ANGELES, CA 90067

THOMAS W. SNEDDON, JR.
DISTRICT ATTORNEY'S OFFICE
1112 SANTA BARBARA STREET
SANTA BARBARA, CA 93101

X FAX

By faxing true copies thereof to the receiving fax numbers of: (310) 861-1007 (Thomas Mesereau, Jr.); (805) 568-2398 (Thomas Sneddon) . Said transmission was reported complete and without error. Pursuant to California Rules of Court 2005(i), a transmission report was properly issued by the transmitting facsimile machine and is attached hereto.

 MAIL

By placing true copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States Postal Service mail box in the City of Santa Maria, County of Santa Barbara, addressed as above. That there is delivery service by the United States Postal Service at the place so addressed or that there is a regular communication by mail between the place of mailing and the place so addressed.

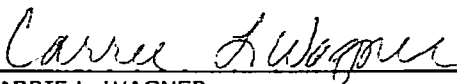
 PERSONAL SERVICE

By leaving a true copy thereof at their office with the person having charge thereof or by hand delivery to the above mentioned parties.

 EXPRESS MAIL

By depositing such envelope in a post office, mailbox, sub-post office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with express mail postage paid.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 16TH day of DECEMBER , 20 04, at Santa Maria, California.



CARRIE L. WAGNER