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19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

21 THE PEOPLE OF THE STATE OF
22 CALIFORNIA,

23 Plaintiffs,

24 vs.

25 MICHAEL JOSEPH JACKSON,

26 Defendant.

) Case No. 1133603

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

) UNDER SEAL

) Honorable Rodney S. Melville
) Date: ~~February 10, 2005~~
) Time: 9:30 a.m.
) Dept.: 8

27 MEMORANDUM OF POINTS AND AUTHORITIES

28 INTRODUCTION

The prosecution asks this Court to exclude reference to Jane Doe's "refusal to waive the

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

FEB - 4 2005

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

* Unsealed pursuant to
cellular court order

SANTA BARBARA
FEB 4 11 2005
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1 regarding the release of the Martin Bashir program. (RT 1148:12-22.) The District Attorney
2 asked her about those communications and she opted not to take advantage of her opportunity to
3 claim the privilege. She no longer holds any privilege as to those communications.

4 On September 17, 2004, Janet Arvizo testified before this court and disclosed extensive
5 conversations between her and Attorney William Dickerman. (*Jasmine Networks, Inc. v. Marvel*
6 *Semiconductor, Inc.* (2004) 117 Cal. App. 4th 794, 805 (once a confidential communication has
7 been disclosed, the client can no longer claim the communication to be privileged).) When the
8 District Attorney objected that there was an attorney-client privilege between them, Mr. Thomas
9 Mesereau pointed out to the court the privilege had been waived by extensive prior testimony
10 about conversations between the attorney and his client. The Court agreed, overruled the
11 objection, and permitted Mr. Mesereau to ask and the witness to answer questions about her
12 conversations and communications with Attorney Dickerman. (9-17-04 Tr., p. 8, ln 18 to p. 10,
13 ln 10).

14 Furthermore, Ms. Doe disclosed a significant part of the communication with Mr.
15 Dickerman to law enforcement. A police report dated August 13, 2003 reflects a videotaped
16 interview of Ms. Doe in which she discusses the details of her communications with William
17 Dickerman.

18 II.

19 **THERE IS NO PRIVILEGE WITH REGARD TO COMMUNICATIONS THAT**
20 **OCCURRED IN FRONT OF A THIRD PARTY WITNESS**

21 The communications between Ms. Doe and Mr. Dickerman are not privileged because
22 they occurred in front of a third party witness, Jamie Masada. Communications made in the
23 presence of third person who is present as a witness are not "privileged." (*People v. Hall* (1942)
24 55 Cal.App. 2d 343, 356.) According to his grand jury testimony, Jaime Masada was present
25 during at least three meetings with Jane Doe and William Dickerman. (RT 306:7-309:1.) A
26 police report dated December 23, 2003, contains a detailed summary of the communications

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1 between Jane Doe and William Dickerman. This report is based on Jamie Masada's account of
2 those statements. He was clearly present during those meetings. Therefore, the communications
3 that occurred during those meetings are not privileged.

4 **III.**

5 **REGARDLESS OF WHETHER OR NOT JANE DOE HOLDS A PRIVILEGE WITH**
6 **REGARD TO OTHER ATTORNEYS, DEFENSE COUNSEL MAY COMMENT ON**
7 **THE FACT THAT SHE HAS HIRED LAWYERS AND FILED LAWSUITS**

8 Contrary to the prosecution's assertion (Motion, pages 4-5), Evidence Code Section 913
9 does not prevent opposing counsel from commenting on the fact that a witness has retained
10 counsel or filed a lawsuit. Section 913 prohibits commenting on the exercise of attorney-client
11 privilege, not commenting on the fact that one has engaged counsel or filed a lawsuit.¹

12 **IV.**

13 **CONCLUSION**

14 For the above stated reasons, the Court should deny the District Attorney's motion.

15 Dated: February 4, 2005

COLLINS, MESEREAU, REDDOCK & YU
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18 OXMAN & JAROSCAK
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20
21 By: 

Robert M. Sanger
Attorneys for Defendant
MICHAEL JOSEPH JACKSON

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25 ¹ While it is clear that Jane Doe's litigious nature is relevant to the case at bar, in part
26 due to her own insistence that she is unsophisticated and not interested in filing lawsuits, this
27 issue has been and will be the subject of other motions before the Court.

PROOF OF SERVICE

I, the undersigned declare:

I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 233 East Carrillo Street, Suite C, Santa Barbara, California, 93101.

On February 4, 2005, I served the foregoing document **OPPOSITION TO DISTRICT ATTORNEY'S MOTION TO EXCLUDE REFERENCE TO JANE DOE'S REFUSAL TO WAIVE THE CONFIDENTIALITY** on the interested parties in this action by depositing a true copy thereof as follows:

Tom Sneddon
Gordon Auchincloss
Ron Zonen
Jerry Franklin
District Attorney
568-2398

- BY FACSIMILE** -I caused the above-referenced document(s) to be transmitted via facsimile to the interested parties
- BY HAND** - I caused the document to be hand delivered to the interested parties at the address above.
- STATE** - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- FEDERAL** - I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed February 3, 2005, at Santa Maria, California.


Bobette J. Tryon