

Declaration of Robert A. Gibbs

October 6th, 2018

1. For three years, in case # 5736-^{15F-} I have claimed Attorney-Client privilege to my conversation with John M. Feser on 9/11/2015. In that conversation I was provoked by Feser and believed it necessary to inform Feser of Homicidal intent brought on by mental illness that was germane to my legal discussions with Feser (a federal lawsuit against Shasta Sheriffs and Cal. Fish and Wildlife alleging, inter alia, psychological damage). As I am a self-represented plaintiff in that case (# 2:13-cv-02631-KJM-dmc ~ U.S. Dist. Court, Eastern Dist.) and it was reasonably necessary at that moment to expose my Homicidal ideation to further my interests as a litigant, and as my statements were made during a confidential communication over the phone, I have and hereby invoke my lawyer-client privilege. Furthermore, not only did I not make any threats toward specific individuals, but it was not my intent to threaten anyone seriously, but only to express incredibly suppressed emotional content in a frank and open manner with Feser. I recognize that I made Feser fearful, but people need to understand that at that moment I was more afraid of myself than Feser was. It was absolutely necessary, at that moment, to expose my true feelings. California law recognizes the defense of necessity. Anything I may have said that Feser mistook as a criminal threat is far outweighed by any Homicidal actions I may have undertaken in my disturbed state. California law also recognizes the defense of misfortune/misadventure. Having my comments misunderstood by Feser was clearly misadventure. However, these issues are moot because the operating law, in my case, should be Attorney-client privilege, reasonable

(2)

Requirement
of Search
Warrant →

expectation of privacy, Confidential Conversation etc. The applicable laws are the 4th Amendment to the U.S. Constitution (Free from unreasonable Search), Katz v. U.S., 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967), Penal Code § 954 (Burden of proof in re Attorney-Client privilege), Penal Code § 632.7 (illegal recordation of Confidential Communication), Flanagan v. Flanagan, (2002) 27 C. 4th 766, 774, 117 C.R. 2d 574, 41 P. 3d 575 (Calif. Supreme Courts definition of "Confidential communication") Furthermore;

"although exercise of attorney-client privilege may occasionally result in the suppression of relevant evidence, these concerns are outweighed by the importance of preserving confidentiality in the attorney-client relationship" ~ County of Los Angeles Board of Supervisors v. Superior Court of Los Angeles County (2015) 2nd Dist. Div. 3 235 Cal. App. 4th 1154

"a Lawyer who tape records a private conversation engages in 'conduct involving dishonesty, fraud or deceit' in violation of the American Bar Associations Code of professional responsibility, DR 1-102 (A)(4) and ABA Formal opinion 337"

"to protect the sanctity of the attorney-client privilege and to discourage unprofessional conduct, an attorney has an ethical obligation to protect an opponents privileged and Confidential information; and those of third parties when the attorney received the information without a waiver from the holder of the privilege." ~ DP Pham LLC v. Cheadle, 246 Cal. App. 4th 653 4th Dist Div. 3 (2016)

"objective of Attorney-client privilege is to assure the Client has opportunity for full disclosure to the attorney unfettered by fear that others will be informed" ~ Glade v. Superior Court, 76 Cal. App. 3d 738 (3rd Dist. 1978)

"it applies regardless of forum in which privilege is asserted and even when contact with the opposing party is authorized such as during trial or discovery proceedings" ~ Triple A Machine Shop Inc. v. State of California, 213 Cal. App. 3d 131 (1st Dist. 1989)

③

"no privileged communication, such as an attorney-client conversation loses its privileged character by being intercepted. When a law enforcement officer, while engaged in intercepting telephone conversations overhears a privileged conversation, the officer must immediately cease the interception" ~ Penal Code § 629.80

"Even assuming that the initial interception was legal, Penal Code § 631(A) carries out the legislative purpose of prohibiting the independent act of disclosure of the intercepted communication" ~ Penal Code § 631(A)

"a trial court may not require a litigant to disclose assertedly attorney-client privileged information in order to rule upon the claim of privilege" ~ County of Los Angeles Board of Supervisors v. Superior Court of Los Angeles County, 2017 WL 2692842 (2017) 2nd Dist. Div. 3

"the privilege is not to be wittled away by means of specious argument that it has been waived and least of all should the courts seize upon slight and equivocal circumstances as a technical reason for destroying the privilege" ~ Catalina Island Yacht Club v. Superior Court (2015 4th Dist. Div. 3) 242 Cal. App. 4th 653

"attorney-client privilege extends to communications which are intended to be confidential, if they are made to attorneys, to family members, business associates or agents of a party or his attorneys on matters of joint concern, when disclosure is reasonably necessary to further the interests of the litigant" ~ Cooke v. Superior Court (2nd Dist. 1978), 83 Cal. App. 3d 582

"Government's activities in electronically listening to and recording a party's words violated the privacy upon which he justifiably relied while using the telephone and thus constituted a search and seizure under the 4th Amendment, requiring a search warrant" ~ Katz v. U.S.

"state law cannot be less protective of privacy than federal law" ~ People v. Otto, 2 Cal. 4th 1088, 1089 9 Cal. Rptr. 2d 596, 831 P.2d 1178 (1992)

"if a private person acts jointly with or as an agent of police officers, the illegally seized evidence is inadmissible" ~ People v. Tarantino (1955) 45 C. 2d 590, 595 290 P.2d 505

"whether the private individual intended to assist law enforcement should be considered in determining whether a search conducted by a private person constitutes a government search triggering Fourth Amendment protections.

~ Daniels v. Wilkinson 163 Cal. App. 4th 1534 78 Cal. Rptr. 3d 501 (3rd Dist. 2008)

(4)

"Failure to advise re motion to suppress evidence is ineffective assistance of Counsel." ~ U.S. v. McTiernan (9th Cir. 2008) 546 F.3d 1160, 1168

"Failure to move to suppress evidence is ineffective assistance of Counsel"
~ People v. Ledesma, 43 Cal. 3d 171, 216, 218, 233 Cal. Rptr. 404, 729 -
- P. 2d 537 (1987)

"Failure to object to inadmissible evidence is ineffective assistance of Counsel"
~ People v. Stratton, 205 Cal. App. 3d 87, 252, Cal. Rptr. 157 (1st Dist. 1988)

"Prejudice is presumed where counsel entirely fails to subject the prosecution's case to meaningful adversarial testing" ~ Bell v. Cone (2002) 535 U.S. 685, 697
122 S.Ct. 1843, 1851

Argument

It is absolutely clear to me by my extensive legal research that the very purpose of the attorney-client privilege is to protect a litigant's confidential disclosures to attorneys involved in the case from the very same type of invasion that I am experiencing now. I had not only the right, but a moral obligation to expose my homicidal thought to Dep. Atty. General Feser. Feser did the absolute right thing by alerting the police that I could be dangerous. He far overstepped his bounds to illegally record me and to violate my attorney-client privilege. Not only was it not necessary to disclose our conversation in order to protect the public, but Feser mistook what I said to him and then misled the police to believe they had cause to charge me with a crime. Had Feser simply requested that police detain me for being a danger, I would have gotten the help I needed via the states 5150 statutes. Instead, Feser panicked and started a chain reaction whereby I was arrested for five felonies I am not guilty of. Not only am I not guilty, but the law is clear that the entire case must be suppressed.

⑤

Once someone misunderstands a person or a situation and then seeks to involve others (who involve others), the misapprehension is multiplied, with each newly involved person or group of persons adding another layer of their own perception until only chaos remains (anyone who has ever seen T.V.'s "three's Company" will attest to that). Feser started by misunderstanding me, then he involved others who made their own uninformed Judgements, who involved the police, who were sure to Criminalise what they heard. Then the D.A. Formed her opinion and then the Judge. My Judge has even issued a prejudicial, pre-trial characterization that I was "playing with words", intending a threat without actually saying one. Not only could this be farther from the truth (my words meant what my words said), but presumption of intent is unconstitutional. This is precisely why we must respect attorney-client privilege. Only I know what I meant by what I said. Even the person I was speaking to mistook my meaning. A Civilised Society does not parse or re-contextualise the Confidential Communications of others. Fesers concern for others gave him no right to violate my right to privacy wholesale, setting the stage for 3 years of the Civil harassment and False imprisonment of my person. No-one, not even the police or a Judge has the right to put words in my mouth or to recharacterize the meaning of my words. This is, and has been for 3 years Tyranny and I hereby retake my privilege, my words, my privacy. I hereby invoke my Attorney-client privilege.

Signed Under penalty of perjury,
Robert A Gibbs

this 9th day of October 2018