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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

JAN 18 2005

GARY M. BLAIR, Executive Officer
BY *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
12 THE PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 v.

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16
17 MICHAEL JOE JACKSON,

18 Defendant.

No. 1133603

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PLAINTIFF'S NOTICE OF
MOTION AND MOTION FOR
ORDER DIRECTING THAT
THE TESTIMONY OF CHILD
WITNESSES BE CLOSED TO
THE PUBLIC; MEMORANDUM
OF POINTS AND AUTHORITIES
(Pen. Code, § 859.1)

DATE: January 28, 2005
TIME: 8:30 a.m.
DEPT: SM 2 (Melville)

~~FILED UNDER SEAL~~

21 TO: DEFENDANT MICHAEL JOE JACKSON, AND TO THOMAS
22 MESEREAU, JR, ROBERT SANGER AND R. BRIAN OXMAN, HIS COUNSEL OF
23 RECORD:

24 PLEASE TAKE NOTICE that on January 28, 2005, at 8:30 a.m. or as soon
25 thereafter as the matter may be heard, the People will move the Court to conduct a hearing
26 pursuant to Penal Code section 859.1 to determine whether the testimony of, and relating to,
27 John Doe and his younger brother should be closed to the public in order to protect the minor's
28 reputation, and for its order that such testimony be closed to the public.

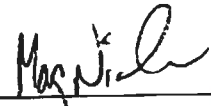
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The motion will be based on this notice and the accompanying memorandum of points and authorities.

DATED: January 18, 2005

Respectfully submitted,

THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY

BY: 

GORDON AUCHINCLOSS
Senior Deputy District Attorney

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 THIS CASE IS PRECISELY THE KIND OF
3 CASE THE LEGISLATURE HAD IN MIND
4 IN ENACTING PENAL CODE § 859.1.

5
6 A. Introduction

7 The international media attention focused upon this case will reach historic
8 proportions. It is no exaggeration to say that this may be the most reported criminal trial to
9 occur in our lifetimes. Allegations of child molestation, false imprisonment, child abduction
10 and extortion will square off against a defense that the child victim and his family are all liars
11 and this is an ill conceived attempt to make a quick dollar. The defense has announced their
12 desire to destroy any witness who dares to accuse the defendant at trial. At the very center of
13 this hurricane will be a teenage boy, John Doe.

14 B. Background

15 John Doe was a 13-year-old cancer survivor when he was molested by the
16 defendant. He turned 15 in December of last year. John Doe's younger brother, who was a
17 percipient witness to these crimes, was 12 years old at the time. He is now 14.

18 C. Motion

19 The People request the protection of the Court for these two child witnesses by
20 closing the courtroom to the public pursuant to Penal Code Section 859.1. To facilitate the
21 interests of the public and the media in listening to this testimony, it is suggested that an audio-
22 only feed be provided to an overflow courtroom that is open to the public.

23 D. Argument

24 Penal Code section 859.1 provides, in relevant part:

- 25 (a) In any criminal proceeding in which the defendant is charged with
26 any offense specified in Section 868.8 on a minor under the age of 16
27 years, . . . the court shall, upon motion of the prosecuting attorney,
28 conduct a hearing to determine whether the testimony of, and testimony

1 relating to, a minor . . . shall be closed to the public in order to protect the
2 minor's . . . reputation.

3 (b) In making this determination, the court shall consider all of the following:

- 4 (1) The nature and seriousness of the offense.
- 5 (2) The age of the minor
- 6 (3) The extent to which the size of the community would preclude the
7 anonymity of the victim.
- 8 (4) The likelihood of public opprobrium due to the status of the victim.
- 9 (5) Whether there is an overriding public interest in having an open hearing.
- 10 (6) Whether the prosecution has demonstrated a substantial probability that
11 the identity of the witness would otherwise be disclosed to the public during
12 that proceeding, and demonstrated a substantial probability that the
13 disclosure of his or her identity would cause serious harm to the . . . witness.
- 14 (7) Whether the witness has disclosed information concerning the case to
15 the public through press conferences, public meetings, or other means.
- 16 (8) Other factors the court may deem necessary to protect the interests of
17 justice.

18 Penal Code Section 288(a) is one of the offenses identified in Penal Code Section
19 868.8.

20 This motion requires little argument. It is unquestionable that this trial, perhaps
21 more than any other in the annals of jurisprudence, justifies the closure of the courtroom to the
22 public during the testimony of child witnesses. The harm presented to these children by public
23 presentation of their trial testimony would be immeasurable. Even before trial has begun,
24 these child witnesses have been forced to move their home twice, change schools and even
25 change their names because of the adversity presented by media attention. They have been the
26 subject of hounding and surveillance by reporters. They have been publicly humiliated and
27 defamed in the international press.

28 The substantial harm these boys have already experienced as a result of being
witnesses in this case would increase exponentially after public testimony. John Doe and his

1 brother would become this trial's sacrificial icons and their faces would be on the cover of
2 every tabloid newspaper from Miami to Tokyo.

3 The fact that Penal Code section 859.1, subdivision (b) was written to protect such
4 witnesses is evident in the fact that virtually every paragraph of this section applies in this case.
5 There is no question that in this case, more than any other ever tried, provides compelling
6 justification for the closure of the courtroom during the testimony of these child witnesses.

7
8 CONCLUSION

9 The people respectfully request that the courtroom be closed to the public during
10 the testimony of John and James Doe. It is further suggested that the interests of the media and
11 public can be served by an audio-only feed provided to an overflow courtroom during the
12 testimony of these two witnesses.

13
14 DATED: January 18, 2005

15 Respectfully submitted,

16 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY

17
18 BY: 

19 GORDON AUCHINCLOSS
20 Senior Deputy District Attorney

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 January 18, 2005, I served the within PLAINTIFF'S MOTION FOR ORDER DIRECTING THAT THE TESTIMONY OF CHILD WITNESSES BE CLOSE TO THE PUBLIC, etc. on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER, and BRIAN OXMAN by personally delivering a true copy thereof to Mr. Sanger's office in Santa Barbara, by transmitting a facsimile copy thereof to Attorney Mesereau, and by causing a true copy thereof to be mailed to Mr. Mesereau, first class postage prepaid, at the addresses shown on the attached Service List.

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

Executed at Santa Barbara, California on this 18th day of January, 2005.


Chris Linz

SERVICE LIST

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