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France-Presse

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

FEB 01 2005

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

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

THE PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff,

vs.

MICHAEL JOE JACKSON,

Defendant.

Case No.: 1133603

NOTICE OF MOTION &  
EMERGENCY MOTION OF CERTAIN  
NON-PARTY NEWS ORGANIZATIONS TO  
MODIFY ORDER FILED JANUARY 31,  
2005 RE JURY VENIRE; DECLARATION  
OF WILLIAM E. THOMSON

[EXPEDITED HEARING AND RESPONSES  
REQUESTED]

Date: ~~Not set~~ 2/7/05  
Time: ~~Not set~~ 8:30 A.M.  
Place: Department SM-8  
Judge Rodney S. Melville

[VIA FACSIMILE]

EMERGENCY MOTION OF CERTAIN NON-PARTY NEWS ORGANIZATIONS TO VACATE OR  
MODIFY ORDER FILED JANUARY 31, 2005 RE JURY VENIRE

1 TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that as soon as the matter may be heard before the above-entitled  
3 Court, located at 312-C East Cook Street, Santa Maria, California 93456-5369, NBC Universal, Inc.;  
4 CBS Broadcasting Inc.; Fox News Network L.L.C.; ABC, Inc.; Cable News Network LP, LLLP; The  
5 Associated Press; *Los Angeles Times*; The New York Times Company; *USA Today*, and Agence  
6 France-Presse (collectively, the "Access Proponents") will, and hereby do, move this Court to grant  
7 immediate public access to the jury questionnaire forms the Court is using for voir dire in this case  
8 and also to grant access to the completed forms once they are prepared.

9 *Movants respectfully suggest that the Court hear this matter at 1:30 p.m. on Wednesday,*  
10 *February 2, 2005, or as soon thereafter or before, as practicable, and that any responses be filed*  
11 *and served by facsimile on or before 10:00 a.m. on February 2, 2005.*

12 This Motion is made pursuant to the First Amendment of the United States Constitution and  
13 California law. This Motion is based upon this Notice, the attached Memorandum of Points and Au-  
14 thorities, all pleadings, records and papers on file herein, all matters of which the Court may properly  
15 take judicial notice, and upon such further argument and evidence as may be presented at the hearing  
16 on this Motion.

17 DATED: February 1, 2005

18 GIBSON, DUNN & CRUTCHER LLP  
19 Theodore J. Boutros, Jr.  
20 William E. Thomson  
21 Michael H. Dore

22 By: Theodore J. Boutros, Jr.  
23 Theodore J. Boutros, Jr.

24 Attorneys for NBC Universal, Inc.; CBS Broadcasting  
25 Inc.; Fox News Network L.L.C.; ABC, Inc.; Cable News  
26 Network LP, LLLP; The Associated Press; *Los Angeles*  
27 *Times*; The New York Times Company; *USA Today*,  
28 and Agence France-Presse

1 The movants, a group of news organizations,<sup>1</sup> respectfully request that this Court modify its  
2 Order filed January 31, 2005 respecting the jury venire ("the Order"). Because the restrictions on  
3 movants' First Amendment freedoms is ongoing and substantial, movants respectfully request that  
4 the Court hold a hearing at the earliest possible time, and order any responses to movants' Motion be  
5 filed on shortened time. *Movants respectfully suggest that the Court hear this matter at 1:30 p.m.*  
6 *on Wednesday, February 2, 2005, or as soon thereafter or before, as practicable, and that any re-*  
7 *sponses be filed and served by facsimile on or before 10:00 a.m. on February 2, 2005.*

### INTRODUCTION

10 The Court's January 31, 2005 Order regarding the jury venire should be modified for several  
11 reasons. *First*, it contains several provisions virtually identical to those contained in the original  
12 Grand Jury Decorum Order in the related grand jury proceeding that Judge Anderson modified in re-  
13 sponse to movants' objections. And those provisions are far broader than those that have already  
14 been ordered stayed by the Court of Appeal in response to movants' writ petition challenging the  
15 Amended Grand Jury Decorum Order. See Exhibits A, B, & C, attached hereto. In particular, the  
16 Order's ban on photographing prospective jurors on public property outside of the courthouse and  
17 prohibiting the press from speaking with prospective jurors *who have been dismissed* sweep far be-  
18 yond what is permissible under the First Amendment to the United States Constitution, Article 1, sec-  
19 tion 2 of the California Constitution, and other provisions of California law. *Second*, in contravention  
20 of well-established law, it impermissibly purports to bind the world at large—including members of  
21 the press who are not parties to the criminal trial. *Third*, and finally, immediate modification is re-  
22 quired because time is of the essence where First Amendment freedoms are at stake. Accordingly,

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25 <sup>1</sup> The non-party objecting news organizations here represented refer to NBC Universal, Inc.;  
26 CBS Broadcasting Inc.; Fox News Network L.L.C.; ABC, Inc.; Cable News Network LP, LLLP;  
27 The Associated Press; *Los Angeles Times*; The New York Times Company; *USA Today*, and  
28 Agence France-Presse. These entities are not parties to the criminal trial. The news organizations  
hereby respectfully make a special appearance and preserve and do not waive any rights or chal-  
lenges to the jurisdiction of the Court to enforce the present Order against them by way of con-  
tempt or otherwise.



1 movants respectfully request a hearing at the earliest time possible, as suggested in the preamble  
2 above, together with the filing of any responses on shortened time.

### 3 ARGUMENT

#### 4 I. The Order's Prohibitions Against Photography Are Overbroad, Impermissibly 5 Vague, And Unconstitutional.

6 Paragraph 1 of the Order prohibits the photographing of "any prospective juror while in the  
7 Superior Court, Santa Maria Division, its courtrooms, jury assembly area, or while entering or exiting  
8 the Courthouse, its courtrooms, jury assembly area or any other facility or property used by the jury."  
9 This provision is an overbroad and unconstitutional prohibition of newsgathering, speech and expres-  
10 sive activity protected by the First Amendment and California law. This provision is virtually identi-  
11 cal to Paragraph 2 of the original Grand Jury Decorum Order—which, at the movants' request, Judge  
12 Anderson modified—and is substantially broader and vaguer than the analogous provision of the  
13 Amended Grand Jury Decorum Order the Court of Appeal ordered stayed. *See* Exhs. A, at ¶ 4 & B at  
14 ¶ 2, & C.<sup>2</sup>

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16 <sup>2</sup> On March 24, 2004, Judge Clifford R. Anderson III issued a Grand Jury Decorum Order ("Deco-  
17 rum Order") in the grand jury matter related to this case. The Decorum Order imposed a series of  
18 restrictions for the avowed purpose of "protect[ing] the integrity of the grand jury process." *See*  
19 Exh. A at p.2. For example, paragraph 4 prohibited any person from photographing any grand ju-  
20 ror, prospective grand juror, or witness "while entering or exiting the [Santa Barbara Superior]  
21 Courthouse . . . or any other facility or property utilized by the grand jury." *Id.* at 2, ¶ 4. Para-  
22 graph 5 ordered that "[n]o person shall communicate with anyone summoned as a grand juror  
23 who appears and is not selected for service as a grand juror concerning . . . the reasons that person  
24 was not selected for grand jury service." *Id.* at ¶ 5.

21 Movants here filed an Emergency Motion before Judge Anderson seeking to vacate or modify  
22 the Decorum Order on constitutional overbreadth and vagueness grounds. Following a hearing,  
23 Judge Anderson modified some of the provisions and entered an Amended Grand Jury Decorum  
24 Order. In particular, Judge Anderson deleted paragraph 5 restricting communications with those  
25 citizens *not* selected for grand jury service, and modified the prohibitions on photography by  
26 eliminating the ban on photographing jurors "while entering or exiting the Courthouse . . . or any  
27 other facility or property utilized by the grand jury." *Compare* Exhs. A & B.

25 On April 1, 2004, in response to movants' Petition For Writ Of Mandate, the Court of Appeal  
26 stayed certain provisions of the Amended Decorum Order, including paragraph 1 (which, as  
27 modified by Judge Anderson, ordered that "[n]o person shall obstruct, impede, attempt to influ-  
28 ence or otherwise unlawfully interfere with any grand juror or witness") and paragraph 2 (which,  
as modified by Judge Anderson, prohibited photographing "any grand juror . . . while in the Santa  
Barbara Superior [Court] Courthouse, its courtrooms, jury assembly area or grand jury room, or  
locations where the grand jury is in session"). *See* Exh. C. The Court also ordered that "as a  
condition of this stay: (1) No person shall attempt to influence any grand juror or witness; (2) No

[Footnote continued on next page]

1 As the Court of Appeal's Stay Order implicitly recognizes, the Courthouse and its public en-  
2 viron has, of course, long been recognized as a public forum, and "[i]f government property has by  
3 law or tradition been given status as a public forum, a state's right to limit protected expressive activ-  
4 ity is sharply circumscribed." *Telemundo of Los Angeles v. City of Los Angeles*, 283 F. Supp. 2d  
5 1095, 1102 (C.D. Cal. 2003) (citing *Capital Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753,  
6 761 (1995)). The news organizations recognize and appreciate the significant logistical burdens that  
7 this type of case can impose upon the Court and its staff, and that some "time, place, or manner"  
8 guidelines concerning newsgathering in and around the Courthouse might be permissible to protect  
9 the free flow of pedestrian traffic, orderly proceedings and the like. *See, e.g., Telemundo*, 283 F.  
10 Supp. 2d at 1102 ("The government may impose reasonable restrictions on the time, place, or manner  
11 of protected speech, *provided* the restrictions are content-neutral, that they are narrowly tailored to  
12 serve a significant governmental interest, *and that they leave open ample alternative channels for*  
13 *communication of the information.*") (emphasis added) (citing *Ward v. Rock Against Racism*, 491  
14 U.S. 781, 791 (1989)). The prohibitions in the Order, however, go well beyond any legitimate gov-  
15 ernmental interest in maintaining orderly proceedings or protecting significant, compelling interests.  
16 Indeed, the Order is substantially overbroad and sweeps in protected activity that has no relation to  
17 any such interest. *See, e.g., Dorfman v. Meisner*, 430 F.2d 558, 561-62 (7th Cir. 1970) (striking  
18 down as overbroad a court rule prohibiting all photography in courthouse corridors: "The achieve-  
19 ment of a legitimate governmental object cannot be pursued by means that broadly stifle fundamental  
20 personal liberties when the end can be more narrowly achieved.") (internal quotation and citation  
21 omitted).

22 In addition, the Order is unduly and unconstitutionally vague and ambiguous, since there will  
23 be no way for the public, including members of the press, to know who the people entering and exit-  
24 ing, or walking through the Courthouse are and whether or not it would violate the Court's Order to  
25 photograph them. "It is established that a law fails to meet the requirements of the Due Process

26  
27 [Footnote continued from previous page]

28 grand juror or witness shall be photographed while in a courtroom, or jury assembly room of the  
Santa Barbara Superior Court, or in any other room where the grand jury meets." *Id.*

1 Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohib-  
2 its.” *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999) (quoting *Giaccio v. Pennsylvania*, 382 U.S.  
3 399, 402-03 (1966)). Especially where First Amendment freedoms are at issue, the dangers posed by  
4 vague laws threaten some of our most fundamental principles:

5 It is a basic principle of due process that an enactment is void for vagueness if its pro-  
6 hibitions are not clearly defined: Vague laws offend several important values. First,  
7 because we assume that man is free to steer between lawful and unlawful conduct, we  
8 insist that laws give the person of ordinary intelligence a reasonable opportunity to  
9 know what is prohibited, so that he may act accordingly. Vague laws may trap the in-  
10 nocent by not providing fair warning. Second, if arbitrary and discriminatory en-  
11 forcement is to be prevented, laws must provide explicit standards for those who apply  
12 them. A vague law impermissibly delegates basic policy matters to policemen, judges,  
13 and juries for resolution on an ad hoc and subjective basis, with the attendant dangers  
14 of arbitrary and discriminatory application. Third, but related, where a vague statute  
15 “abut[s] upon sensitive areas of basic First Amendment freedoms,” it “operates to in-  
16 hibit the exercise of [those] freedoms.”

17 *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972). Uncertain meanings inevitably lead citi-  
18 zens to “steer far wider of the unlawful zone” . . . than if the boundaries of the forbidden areas were  
19 clearly marked.” *Id.* at 109 (quoting *Baggett v. Bullitt*, 377 U.S. 360, 372 (1964)).

20 Given the vagueness of the terms employed—including “entering” and “exiting the Court-  
21 house . . . or any other facility or property used by the jury”—the press will necessarily be compelled  
22 to “steer far wider of the unlawful zone,” *Spieser v. Randall*, 357 U.S. 513, 526 (1958), and to restrict  
23 their activities “to that which is unquestionably safe.” *Baggett v. Bullitt*, 377 U.S. 360, 372 (1963).  
24 Such a chilling effect flows inevitably from the vagueness of the terms employed. Even if the terms  
25 of the Order were not ambiguous, however, the scope of the restrictions on constitutionally-protected  
26 newsgathering and expressive activity on public property is overbroad.

27 Immediate modification of the Order is necessary. Indeed, before the Court of Appeal entered  
28 its Order staying the analogous provision of the Decorum Order, this provision resulted in the specta-  
cle of a Santa Barbara County Sheriff’s deputy forcing a member of the press—a photographer on  
assignment from the Associated Press—to delete digital photographs he had taken *outside* the court-  
house because the Deputy thought “they revealed too much of the people entering the building.” See  
Exh. D. The deputy also demanded to see a television cameraman’s footage to see if it conformed  
with the Decorum Order. *Id.* This Court should act before another such episode transpires.



1 II. The Order's Restrictions Relating To Prospective Jurors—Especially Those Who  
2 Have Been Dismissed—Must Be Modified.

3 Paragraph 1 orders that "No person shall obstruct, impede, attempt to influence or otherwise  
4 interfere with any prospective juror who has been summoned on this case." This provision is over-  
5 broad and vague. It is virtually identical to paragraph 1 of the original Grand Jury Decorum Order  
6 that Judge Anderson ordered modified and is substantially broader than even the modified provision  
7 in the Amended Decorum Order that the Court of Appeal already has ordered stayed. See Exhs. A at  
8 ¶ 1, B at ¶ 1, & C. Accordingly, it must be modified.

9 In addition, paragraph 4 of the Order prohibits "communication with anyone summoned as a  
10 juror who appears and is *not* selected for service as a juror concerning the reasons that person was not  
11 selected for jury service until such time as the jury selection process for regular and alternate jurors  
12 has been completed." (emphasis added) Although movants recognize that the Court has the author-  
13 ity to instruct actual members of the jury according to their duties as jurors (including the duty not to  
14 converse with others about the case), this prohibition against *former* members of the venire clearly  
15 sweeps far beyond the bound of permissible regulation of the speech of those who no longer consti-  
16 tute part of the adjudicative process. In this respect the Order is a "classic example" of a prior re-  
17 straint. See *Alexander v. United States*, 509 U.S. 544, 550 (1993) (noting that "court orders that actu-  
18 ally forbid speech activities . . . are classic examples of prior restraints"). Prior restraints are the  
19 "most serious and least tolerable infringement on First Amendment rights." *Nebraska Press Ass'n v.*  
20 *Stuart*, 427 U.S. 539, 558 (1976). And although not unconstitutional per se, a prior restraint bears "a  
21 heavy presumption against its constitutional validity." *New York Times Co. v. United States*, 403  
22 U.S. 713, 714 (1971) (per curiam) (quotations omitted). See also *Gerawan Farming, Inc. v. Lyons*,  
23 24 Cal. 4th 468, 491, 493 (2000) (stating that Article I, Section 2's free-speech guarantee is "even  
24 'broader' and 'greater'" than those afforded under the First Amendment, and that "[A]rticle I's right  
25 to freedom of speech, unlike the First Amendment's, is 'unlimited' in scope").

26 The Order does not fall within, or even near, any of the "narrowly defined exceptions" that  
27 would theoretically justify a prior restraint. See *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S.  
28 546, 559 (1975). In fact, even before reaching the issue of whether any narrow exception would ap-

ply, it must be shown that the restraint "[has] been accomplished with procedural safeguards that reduce the danger of suppressing constitutionally protected speech." *Id.* (refusing to consider any applicable exception because "the standard, whatever it may have been, was not implemented . . . under a system with appropriate and necessary procedural safeguards"). The Order clearly lacks the precision necessary to satisfy the Supreme Court's insistence on "rigorous procedural safeguards" for prior restraints. *Id.* at 561.

For all of these reasons, the Court should modify the restrictions imposed by the Order on dismissed prospective jurors.

**III. The Order Should Be Modified Because It Purports To Bind And Prohibit Speech and Conduct of the World At Large, Which Is Unconstitutional And Impermissible, And It Was Issued Without Affording Notice And An Opportunity To Be Heard.**

In addition to the particular infirmities identified above, the Court's January 31, 2005 Order as a whole suffers from the defect that is an injunction that purports to proscribe speech, expressive activities, and conduct by *any* person, including members of the press and public who are not members of the jury venire or parties to the criminal trial. Such a universal injunction is in excess of the Court's jurisdiction, since it is "well established that injunctions are not effective against the world at large." *People ex rel. Gwinn v. Kothari*, 83 Cal. App. 4th 759, 765 (2000). Injunctions do not apply to the world at large "because injunctions are fashioned and enforced without the safeguards that attend the passage and govern the enforcement of more general prohibitions." *People v. Conrad*, 55 Cal. App. 4th 896, 902 (1997).<sup>3</sup> Therefore, "an injunction is binding only on parties to an action or those acting in concert with them." *People ex rel. Gwinn*, 83 Cal. App. 4th at 769; *see also Berger v. Superior Court*, 175 Cal. 719, 721 (1917) (same).

There is no exception to this principle even if the broad reach of the Order is designed "to maintain public trust and confidence in the judicial system, protect privacy rights of jurors in these proceedings, maintain security and the dignity of the court, and maintain orderly conduct of the pro-

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<sup>3</sup> By prohibiting a wide range of expressive activities, the Order acts as an injunction, which section 525 of the Code of Civil Procedure defines as "a writ or order requiring a person to refrain from a particular act." Code Civ. Proc. § 525.



ceedings." Order at 1. According to the Supreme Court, "[a]n injunction, by its very nature applies only to a particular group (or individuals) and regulates the activities, and perhaps the speech, of that group." *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 762 (1994). Regardless of its purpose, an all-inclusive injunction is impermissible because "the court hearing the action is charged with fashioning a remedy for a specific deprivation, not with the drafting of a statute addressed to the general public." *Id.*; see also *Planned Parenthood Golden Gate v. Foti*, 107 Cal. App. 4th 345, 354 (2003) (holding that "because [the injunction's notice provision] purports to enjoin all demonstrators in addition to the enjoined parties, the restriction is overbroad on its face"). Consequently, the Order's stated application to "any person" is overbroad and impermissible. As Judge Learned Hand declared long ago,

[N]o court can make a decree which will bind any one but a party; a court of equity is as much so limited as a court of law; it cannot lawfully enjoin the world at large, no matter how broadly it words its decree. If it assumes to do so, . . . the persons enjoined are free to ignore it.

*Alemite Mfg. Corp. v. Staff*, 42 F.2d 832 (2d Cir. 1930). But even an injunction against the movants alone would be overbroad because "[f]or over 50 years California has recognized that a judgment may not be entered either for or against one who is not a party to an action or proceeding." *Bronco Wine Co. v. Frank A. Logothus Farms*, 214 Cal. App. 3d 699, 717 (1989); see also *Kothari*, 83 Cal. App. 4th at 769.

Before even a temporary injunction could be issued against members of the press and public, basic due process and First Amendment principles require that potentially affected persons be given notice and opportunity to be heard, especially since expressive activities protected by the First Amendment are at stake:

There is a place in our jurisprudence for *ex parte* issuance, without notice, of temporary restraining orders of short duration; but there is no place within the area of basic freedoms guaranteed by the First Amendment for such orders where no showing is made that it is impossible to serve or to notify the opposing parties and to give them an opportunity to participate.

*Carroll v. Princess Anne*, 393 U.S. 175, 180 (1968).

1 Finally, to the extent that any portions of the Order would permit punishing members of the  
2 press for publishing truthful, lawfully-obtained information, it clearly violates the First Amendment.  
3 See, e.g., *Bartnicki v. Vopper*, 532 U.S. 514 (2001) (First Amendment precluded punishing publica-  
4 tion of recording lawfully-obtained from third party who had obtained it illegally, despite privacy in-  
5 terests); *Florida Star v. B. J. F.*, 491 U.S. 524 (1989) (First Amendment precluded State from impos-  
6 ing damages for publication of rape victim's name).

7 **IV. Immediate Modification Of The Order Is Essential Because Time Is Of The Es-**  
8 **sence Where First Amendment Freedoms Are At Stake.**

9 Finally, this Court's immediate modification of the Order is necessary to avoid irreparable in-  
10 jury. The "Supreme Court has made clear that '[t]he loss of First Amendment freedoms, for even  
11 minimal periods of time, unquestionably constitutes irreparable injury . . .'" *Sammartino v. First*  
12 *Judicial Dist. Court*, 303 F.3d 959, 973 (9th Cir. 2002) (quoting *Elrod v. Burns*, 427 U.S. 347, 373  
13 (1976)). Where newsgathering is involved, every passing moment threatens even greater irreparable  
14 harm. "Timeliness of publication is the hallmark of 'news' and the difference between 'news' and  
15 'history' is merely a matter of hours." *United States v. Dickinson*, 465 F.2d 496, 512 (5th Cir. 1973);  
16 see also *Associated Press v. United States Dist. Court*, 705 F.2d 1143, 1145 (9th Cir. 1983) (holding  
17 that 48 hours was too long to keep documents under seal, because "[t]he effect of the order is a total  
18 restraint on the public's first amendment right of access even though the restraint is limited in time").  
19 Accordingly, the Court should immediately modify the Order because of the "critical importance of  
20 contemporaneous access . . . to the public's role as overseer of the criminal justice process." *Wash-*  
21 *ington Post v. Robinson*, 935 F.2d 282, 287 (D.C. Cir. 1991) (emphases added) (citing *Richmond*  
22 *Newspapers, Inc. v. Virginia*, 448 U.S. 555, 592 (1980) (Brennan, J., concurring)).

1 CONCLUSION

2 For the foregoing reasons, movants respectfully request the Court modify the Order.

3 DATED: February 1, 2005

4 Respectfully submitted,

5 GIBSON, DUNN & CRUTCHER LLP

6 Theodore J. Boutros, Jr.

7 William E. Thomson

8 Michael H. Dore

9 By:

10   
Theodore J. Boutros, Jr.

11 Attorneys for NBC Universal, Inc.; CBS Broadcasting  
12 Inc.; Fox News Network L.L.C.; ABC, Inc.; Cable News  
13 Network LP, LLLP; The Associated Press; *Los Angeles*  
14 *Times*; The New York Times Company; *USA Today*,  
15 and Agence France-Presse

16 10843094\_1.DOC



DECLARATION OF WILLIAM E. THOMSON

1. William E. Thomson, declare:

1. I am an attorney duly licensed to practice before this Court. I am an associate with Gibson, Dunn & Crutcher LLP, which has been retained by movants NBC Universal, Inc.; CBS Broadcasting Inc.; Fox News Network L.L.C.; ABC, Inc.; Cable News Network LP, LLLP; The Associated Press; *Los Angeles Times*; The New York Times Company, *USA Today*, and Agence France-Presse in this case. The following facts are true of my own personal knowledge and, if called as a witness, I could and would testify thereto.

2. Attached hereto as Exhibit "A" is a true and correct copy of the original Grand Jury Decorum Order in the matter of *In Re The Santa Barbara Criminal Grand Jury*, Case Number 04-002, filed March 24, 2004.

3. Attached hereto as Exhibit "B" is a true and correct copy of the Amended Grand Jury Decorum Order in the matter of *In Re The Santa Barbara Criminal Grand Jury*, Case Number 04-002, filed March 29, 2004.

4. Attached hereto as Exhibit "C" is a true and correct copy of the Court Appeal's Order filed April 1, 2004 in Case No. B174116.

5. Attached hereto as Exhibit "D" is a true and correct copy of the Associated Press article entitled "Media Access Again Issue In Jackson Molestation Case," dated March 26, 2004.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this February 1, 2005, at Los Angeles, California.

  
William E. Thomson

Exhibit A

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

MAR 24 2004

GARY M. BLAIR, ESQ. CLERK

By [Signature]  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

In Re The Santa Barbara

Criminal Grand Jury

Case No.: No. 04-002

Grand Jury Decorum Order

The impanelling of a criminal grand jury in Santa Barbara County has created significant media and public interest. This kind of interest presents a significant challenge to the court charged with responsibility for ensuring the integrity of the grand jury process. Dissemination of any information disclosed during the grand jury proceedings by witnesses and grand jurors, particularly prior to any indictment, violates the integrity of the grand jury process.

The secrecy of all grand jury proceedings is deeply rooted in our traditions. Since the very beginning of the grand jury system, grand jury proceedings have been closed to the public and records of such proceedings have been kept from the public eye. The California Supreme Court has recognized the importance of maintaining the heritage of grand jury secrecy when there has not been an indictment, in order to preserve the effectiveness of the grand jury process, as well as to protect witnesses against the adverse consequences, including damage to reputation, of disclosing their testimony.



1 In order to protect the integrity of the grand jury process, the court makes  
2 the following orders:

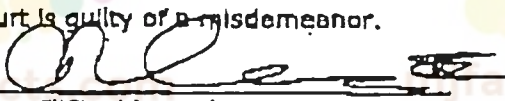
3 Except as expressly authorized by this court:

- 4
- 5
- 6 1. No person shall communicate with any person summoned to appear for  
7 service as grand jurors.
- 8 2. No person shall obstruct, impede, attempt to influence or otherwise  
9 interfere with any prospective grand juror, grand juror or witness.
- 10 3. No person shall communicate with any prospective grand juror, grand  
11 juror or witness concerning any matter disclosed by the court or  
12 prosecution to the grand jury.
- 13 4. No person shall photograph any prospective grand juror, grand juror or  
14 witness while in the Santa Barbara Superior Courthouse, its courtrooms,  
15 jury assembly area or grand jury room, or while entering or exiting the  
16 Courthouse, its courtrooms, jury assembly area, grand jury room, or any  
17 other facility or property utilized by the grand jury.
- 18 5. No person shall communicate with anyone summoned as a grand juror  
19 who appears and is not selected for service as a grand juror concerning  
20 any matter disclosed by the court or prosecution, or concerning the  
21 reasons that person was not selected for grand jury service.
- 22 6. No witness, prospective grand juror, grand juror or any person  
23 summoned to appear as a grand juror and who is not selected for service  
24 as a grand juror may disclose anything concerning what occurred in the  
25 grand jury room.

26 Anyone in violation of this court order may be subject to contempt of court.

27 Any person found guilty of contempt of court is guilty of a misdemeanor.

28 Dated this 24<sup>th</sup> day of March 2004

  
Clifford R. Anderson III  
Presiding Judge

**Exhibit B**

MAR 29 2004  
GRAND JURY ROOM  
By: [Signature]

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

In Re: The Santa Barbara Criminal Grand Jury

Case No.: No. 04-002  
Amended Grand Jury Decorum  
Order [3-29-04]

The Impanelling of a criminal grand jury in Santa Barbara County has created significant media and public interest. This kind of interest presents a significant challenge to the court's responsibility for maintaining the integrity of the grand jury process, the fair and equal administration of justice and the dignity of the proceedings. This order is also mindful of the privacy rights of any person who may be a witness in the proceedings. Contact with or photographs of any minor witness would significantly infringe on his or her privacy rights. In addition, dissemination of any information disclosed during the grand jury proceedings by witnesses and grand jurors, particularly prior to any indictment, violates the integrity of the grand jury process and threatens to undermine the fairness and dignity.

The secrecy of all grand jury proceedings is deeply rooted in our traditions. Since the very beginnings of the grand jury system, grand jury proceedings have been closed to the public and records of such proceedings have been kept from the public eye. The California Supreme Court has recognized the importance of maintaining the heritage of grand jury secrecy when there has not been an indictment in order to preserve the effectiveness of the grand jury process, as well



1 as to protect witnesses against the, adverse consequences, including damage to  
2 reputation, of disclosing their testimony.

3  
4 In Branzburg v. Hayes (1972) 408 U.S. 665, the court stated: It is clear that  
5  
6 the First Amendment does not invalidate every incidental burdening of the press  
7  
8 that may result from the enforcement of civil or criminal statutes of general  
9  
10 applicability. Under prior cases, otherwise valid laws serving substantial public  
11  
12 interests may be enforced against the press as against others, despite the possible  
13  
14 burden that may be imposed. The Court has emphasized that, "the publisher of a  
15  
16 newspaper has no special immunity from the application of general laws. He has no  
17  
18 special privilege to invade the rights and liberties of others." [pp. 682-683] [see  
19  
20 also Associated Press v. NLRB (1937) 301 U.S. 103, 132-133.]

21 In Branzburg, the court stated, "The prevailing view is that the press is not  
22  
23 free to publish with impunity everything and anything it desires to publish." [p.  
24  
25 683]. "It has generally been held that the First Amendment does not guarantee the  
26  
27 press a constitutional right of special access to information not available to the  
28  
public generally." [at p. 684] [see Zemel v. Rusk (1965) 381 U.S. 1, 16-17]

In People v. Mersino (1965) 237 CA 2d 265, the court said, "There are good  
and satisfying reasons why witnesses before a grand jury may be admonished not  
to disclose the questions asked them or their answers. One sufficient reason is that  
a charge may be under investigation as to a person against whom no indictment is  
returned. [p. 269]

As noted in 66 Ops.Cal.Atty.Gen. 85, "The secrecy of grand jury proceedings  
would be defeated if witnesses were free to relate their testimony to the press as


Except as ~~expressly authorized~~ for this court:

1. No person shall obstruct, impede, attempt to influence or otherwise unlawfully interfere with any grand juror or witness.
2. No person shall photograph any grand juror or witness while in the Santa Barbara Superior Courthouse, its courtrooms, jury assembly area or grand jury room, or locations where the grand jury is in session.
3. No person shall communicate with or photograph any minor who is called to testify as a witness before the grand jury.
4. No person shall communicate with any witness or grand juror concerning or relating to any information that was disclosed to them while in the grand jury room.
5. No grand juror may disclose anything concerning what occurred in the grand jury room.
6. No witness who may or has testified before the grand jury may disclose anything concerning what occurred in the grand jury room and shall not make any statement as to the existence or possible existence of any document, exhibit, photograph, the identity of any prospective witness(es) or disclose any other evidence or testimony given, until an indictment is handed down and a transcript is prepared and made public. Notwithstanding this, as to any person subpoenaed or expected to testify in the underlying trial, this order will remain in effect.

Anyone in violation of this court order may be subject to contempt of

court. Any person found guilty of contempt of court is guilty of a misdemeanor.

Dated this 29<sup>th</sup> day of March 2004

  
Clifford R. Anderson, III  
District Judge



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Exhibit C



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COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

NATIONAL BROADCASTING  
COMPANY, INC., et al,

Petitioners,

v.

SUPERIOR COURT OF THE STATE OF  
CALIFORNIA, COUNTY OF SANTA  
BARBARA.

Respondent,

PEOPLE OF THE STATE OF  
CALIFORNIA; MICHAEL JOE JACKSON,

Real Parties in Interest.

B174116

Sup.Ct. No. 04-002

(Santa Barbara County)

(Hon. Clifford Anderson III, Judge)

ORDER FOR TEMPORARY STAY

COURT OF APPEAL SECOND DIST.

FILED

APR - 1 2004

JOSEPH A. LANE, Clerk

MAZY J. ROSA, Deputy Clerk

THE COURT:

Respondent court's amended order of March 29, 2004, as it applies to the parties in this writ petition, is stayed in the following particulars:

Paragraphs 1 and 2 are stayed pending further order of this court. The last sentence of paragraph 6, beginning with the word "Notwithstanding" and ending with the word "effect," is stayed pending further order of this court.



IT IS FURTHER ORDERED that, as a condition of this stay:

1. No person shall attempt to influence any grand juror or witness;
2. No grand juror or witness shall be photographed while in a courtroom, or jury assembly room of the Santa Barbara Superior Court, or in any other room where the grand jury meets.

Real parties may file their informal opposition on or before April 9, 2004.

Petitioners may file their response on or before April 15, 2004.

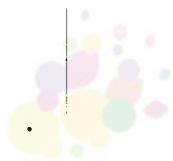


Exhibit D

March 26, 2004, 11:33AM

Media access again issue in Jackson molestation case

By TIM MOLLOY

Associated Press

SANTA BARBARA, Calif. — Media access in the Michael Jackson child molestation case came to the forefront again as prospective grand jurors arrived at court.

Jackson

An attorney representing news organizations, including The Associated Press, called on Superior Court Judge Clifford R. Anderson III to vacate or modify his order banning journalists from photographing or speaking to prospective grand jurors.

As prospective jurors headed into the assembly room Thursday, reporters and photographers zeroed in on the jurors' spouses — not mentioned in Anderson's ruling. Sheriff's officials in turn handed the media copies of the order, which warned that violations may be contempt of court, a misdemeanor.

The attorney, Theodore Boutsous Jr., made his request in an emergency motion, which also asks Anderson to hold a hearing on his order Friday or as early as possible.

According to the motion, the order was unconstitutional because it "purports to bind and prohibit speech and conduct of the world at large," and was issued without notice or an opportunity for opponents to be heard.

It also faulted the order, issued Wednesday, for precluding witnesses from discussing their testimony, and described the prohibitions against photography as overbroad and impermissibly vague.

At one point Thursday, Deputy Scott Hunter approached a TV cameraman and asked to see his footage to make sure it didn't show the faces of prospective grand jurors.

Michael A. Mariant, a freelance still photographer on assignment for the AP, said Hunter ordered him to delete six or seven photos from his digital camera because they revealed too much of the people entering the building.

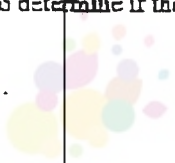
One of the prospective grand jurors was the wife of Eric Beltz, 28, of Santa Barbara. "I was ribbing her about it being the Michael Jackson case," he said.

Beltz hoped his wife would not be chosen because of the time commitment but said she would serve.

A summons obtained by AP said grand jurors may have to serve up to 90 days.

Jackson, whose Neverland estate is in Santa Barbara County, was charged by the district attorney late last year with seven counts of committing lewd or lascivious acts upon a child under age 14 and two counts of administering an intoxicating agent to the child. Jackson has pleaded not guilty.

Prosecutors are now seeking a grand jury indictment, which would mean they would not have to present evidence at a preliminary hearing to determine if the case should go to trial.



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## CERTIFICATE OF SERVICE

I, Betty A. Mendelovitz, declare as follows:

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 333 South Grand Avenue, Los Angeles, California 90071-3197, in said County and State. On February 1, 2005, I served the following document(s):

**NOTICE OF MOTION & EMERGENCY MOTION OF CERTAIN NON-PARTY NEWS ORGANIZATIONS TO MODIFY ORDER FILED JANUARY 31, 2005 RE JURY VENIRE; DECLARATION OF WILLIAM E. THOMSON**

on the parties stated below, by placing a true copy thereof in an envelope addressed as shown below by the following means of service:

Thomas W. Sneddon  
District Attorney  
Santa Barbara County  
1105 Santa Barbara Street  
Santa Barbara, CA 93101-2007  
Tel: (805) 568-2300  
Fax: (805) 568-2398  
Call Back No.: (213) 229-7180

Robert Sanger  
Sanger & Swysen  
233 E. Carrillo Street  
Santa Barbara, CA 93101-2104  
Tel: (805) 962-4887  
Fax: (805) 963-7311  
Call Back No.: (213) 229-7180

Thomas Mesereau, Jr.  
Collins, Mesereau, Reddock & Yu, LLP  
1875 Century Park East, 7th Floor  
Los Angeles, CA 90067  
Tel: (310) 284-3120  
Fax: (310) 861-1007  
Call Back No.: (213) 229-7180

- ☒ **BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above, on the above-mentioned date. I am familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☐ **BY PERSONAL SERVICE:** I placed a true copy in a sealed envelope addressed to each person[s] named at the address[es] shown and giving same to a messenger for personal delivery before 5:00 p.m. on the above-mentioned date.
- ☒ **BY FACSIMILE:** From facsimile number (213) 229-7520, I caused each such document to be transmitted by facsimile machine, to the parties and numbers indicated above, pursuant to Rule 2008. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine.
- ☐ **BY UPS NEXT DAY AIR:** On the above-mentioned date, I placed a true copy of the above mentioned document(s), together with an unsigned copy of this declaration, in a sealed envelope or package designated by the United Parcel Service with delivery fees paid or provided for, addressed to the person(s) as indicated above and deposited same in a box or other facility regularly maintained by United Parcel Service or delivered same to an authorized courier or driver authorized by United Parcel Service to receive documents.

☒ I am employed in the office of William E. Thomson, a member of the bar of this court, and that the foregoing document(s) was(were) printed on recycled paper.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ (FEDERAL) I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 1, 2005.

108431451.DOC

Betty A. Mendelovitz  
Betty A. Mendelovitz