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17 Attorneys for Defendant
18 **MICHAEL JOSEPH JACKSON**

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

FEB 04 2005

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

**unsealed pursuant
to 6/16/05 court
order*

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION**

15 **THE PEOPLE OF THE STATE OF**
16 **CALIFORNIA,**

17 **Plaintiffs,**

18 **vs.**

19 **MICHAEL JOSEPH JACKSON,**

20 **Defendant.**

) Case No. 1133603

) NOTICE OF MOTION AND MOTION FOR
) RECUSAL OF THE SANTA BARBARA
) COUNTY DISTRICT ATTORNEY'S
) OFFICE (Penal Code, § 1424);
) MEMORANDUM OF POINTS AND
) AUTHORITIES; DECLARATION OF
) COUNSEL

) **UNDER SEAL**

) Honorable Rodney S. Melville
) Date: February 22, 2005
) Time: 9:30 a.m.
) Dept.: 8

24 **TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE DISTRICT**
25 **ATTORNEY OF THE COUNTY OF SANTA BARBARA, TOM SNEDDON, AND DEPUTY**
26 **DISTRICT ATTORNEYS GERALD FRANKLIN, RON ZONEN AND GORDON AUCHINCLOSS:**

27 Please take notice that on February 22, 2005, or as soon thereafter as the matter may be heard,
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1 before the Honorable Rodney Melville, defendant Michael Jackson, through his counsel, will and hereby
2 does move to recuse the Santa Barbara's District Attorney's office from this case, for the recusal of
3 District Attorney Thomas Sneddon and Deputy District Attorneys Ronald Zonen, Gordon Auchincloss
4 and Gerald McC. Franklin in the alternative, and for such other relief as the Court may deem just and
5 proper based on Penal Code Section 1424 and the fact that the above-mentioned prosecutors have an
6 actual conflict of interest with the prosecution of the defendant, Michael J. Jackson that is so grave as to
7 render it unlikely that Mr. Jackson will receive a fair trial. This conflict threatens to deprive Mr. Jackson
8 of his federal and state constitutional rights to a fair trial, due process of law, and equal protection
9 pursuant to the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article 1,
10 Sections 7, 15 and 24 of the California Constitution.

11 The matter of recusal was previously heard and denied on November 4, 2004. Since that time,
12 however, the circumstances have changed. First, the District Attorney, through his deputy Gordon
13 Auchincloss, has announced that he intends to testify at trial. Second, the matters previously raised are
14 now further illustrated by the conduct of Mr. Auchincloss. Third, the cumulative effect of the other
15 matters, plus this matter, require the remedy of recusal.

16 This motion is based upon this notice, the attached memorandum of points and authorities, the
17 declaration of counsel, the exhibits and evidence lodged with this Court, the file and record herein and
18 any other information presented prior to a ruling hereon.

19 Dated: February 5, 2005

Respectfully submitted,

20 COLLINS, MESEREAU, REDDOCK & YU
21 Thomas A. Mesereau, Jr.
Susan C. Yu

22 SANGER & SWYSEN
23 Robert M. Sanger

24 OXMAN & JAROSCAK
Brian Oxman

25
26 By:

Robert M. Sanger
Attorneys for Defendant
MICHAEL JOSEPH JACKSON

1 **DECLARATION OF ROBERT M. SANGER**

2 I, Robert M. Sanger, declare:

3 1. I am an attorney at law duly licensed to practice law in the courts of the State of California, a
4 partner in the law firm of Sanger & Swysen, and co-counsel for Michael Jackson.

5 2. The matter of recusal was previously heard and denied on November 4, 2004. Since that time,
6 however, the circumstances have changed. First, the District Attorney, through his deputy Gordon
7 Auchincloss, has announced that he intends to testify at trial. Second, the matters previously raised are
8 now further illustrated by the conduct of Mr. Auchincloss. Third, the cumulative effect of the other
9 matters, plus this matter, require the remedy of recusal.

10 3. On November 8, 2003, Mr. Sneddon met with Janet Arvizo behind the Federal Building in Los
11 Angeles for the purpose of securing her signature on victim compensation applications, picking up
12 several items of evidence and showing her a photo lineup of suspects in this case. One of the photos he
13 showed here was of Brad Miller. Mr. Sneddon testified on August 26, 2004, that his meeting with Janet
14 Arvizo lasted approximately 10 minutes. He stated that the purpose of showing her the photograph of
15 Brad Miller was so see if she could confirm that he was the person in the picture.

16 4. On December 17, 2003, Mr. Sneddon met with Mark Geragos, Mr. Jackson's lawyer at the time.
17 This meeting is documented in a police report dated December 21, 2003, written by Sergeant Steve
18 Robel. The information regarding that meeting appears to be provided for background purposes, as the
19 subject of the police report is an interview with Janet Arvizo. There is no indication that a third party
20 was present during the meeting between Mr. Sneddon and Mr. Geragos.

21 5. According to the police report account of the meeting, Mr. Geragos discussed the fact that Janet
22 Arvizo and her family asked for and received money from Mr. Jackson during January and February of
23 2003. Mr. Geragos allegedly told Mr. Sneddon that Janet Arvizo had requested \$100,000 from Mr.
24 Jackson, that Mr. Jackson paid Mrs. Arvizo a total of \$30,000 in five separate payments, and that Gavin
25 Arvizo bragged to reporters, a schoolmate, and other people at Neverland that his mother "was going to
26 get a lot of money from Michael Jackson." Mr. Sneddon is the person in this case who has interviewed
27 Mr. Geragos.
28

1 6. It is illogical to believe that there was no discussion of Brad Miller during Mr. Sneddon's
2 meeting with Mrs. Arvizo. Mrs. Arvizo later testified, in essence, that Brad Miller was a central player
3 in a conspiracy against her and that he personally facilitated an effort to make her believe that her fiancé
4 was in danger of being murdered and that she was in danger of having her children ripped away from
5 her. Given her testimony, it does not make sense that she would have no response to being shown a
6 picture of Brad Miller, other than to confirm his identity to Mr. Sneddon.

7 7. A question exists as to when Mrs. Arvizo first developed the allegations regarding Brad Miller
8 and reported them to law enforcement or the District Attorney. Based on the fact that the subject matter
9 presented to the grand jury is not reflected in police reports prior to the proceeding, defense counsel is
10 entitled to examine the people who conducted the investigation to determine when the allegations
11 against Mr. Miller were made. Mr. Sneddon is one of those people. He is one of approximately six law
12 enforcement officers to speak with Janet Arvizo and is one of four people, including Sergeant Robel,
13 Detective Paul Zelis and District Attorney investigator Chris Clement, who has met with Janet Arvizo
14 outside the presence of any third party, according to the police reports.

15 8. In a police report, Sergeant Robel reports that Mr. Sneddon stated that Mr. Geragos made certain
16 claims regarding demands made by the Arvizo family in January and February of 2003. A true and
17 correct copy of that report is attached to this declaration as Exhibit A. Mr. Geragos is expected to deny
18 making certain of these statements to Mr. Sneddon. The statements in dispute pertain to the details of
19 the Arvizo family's demands for money from Mr. Jackson. Unless Mr. Sneddon concedes the accuracy
20 of Mr. Geragos' recollection, he will be the only witness who can testify contrary to Mr. Geragos. This
21 Court will not permit him to offer rebuttal testimony in the guise of cross-examination.

22 9. The materials provided to defense counsel in discovery suggest that Mr. Sneddon may have had
23 material to suggest that Mr. Geragos was a potential unindicted co-conspirator at the time Mr. Sneddon
24 met with him. His meeting with Mr. Geragos was not simply a meeting between the District Attorney
25 and a defense lawyer, it was a investigative meeting which resulted in a "police report" of the
26 conversation.

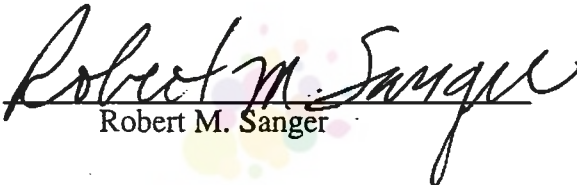
27 10. Henry Russell Halpern, David Arvizo's attorney in a domestic violence case involving Janet
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1 Arvizo, is a witness regarding Ms. Arvizo's claims that she suffers from Battered Women's Syndrome.
2 Mr. Halpern also has knowledge of the Arvizo family's lawsuit against J.C. Penny and of the fact that
3 Mrs. Arvizo coached her children to testify in that case. Mr. Halpern will testify that he was aware of
4 the Arvizo family using scripts to prepare the children's testimony. (Declaration of Robert M. Sanger.)

5 11. The District Attorney plans on defending Janet Arvizo's lack of credibility and bizarre behavior
6 by arguing that she suffers from Battered Women's Syndrome. As the lawyer that represented David
7 Arvizo in the misdemeanor domestic violence case in which Mrs. Arvizo was the complaining witness,
8 Mr. Halpern has personal knowledge of that case and of conduct that occurred in his presence.

9 Furthermore, Mr. Halpern will testify that Janet Arvizo used scripts to coach her children in her lawsuit
10 against J.C. Penny. This testimony is relevant because it demonstrates a pattern and practice by the
11 Arvizo family of coaching their children to lie.

12 I declare under the penalty of perjury under the laws of the State of California that the foregoing is true
13 and correct this 4th day of February 2005, at Santa Maria, California.

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17 Robert M. Sanger
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS**

3 **A. MR. SNEDDON'S THREAT TO TESTIFY AT TRIAL**

4 The District Attorney has declared himself to be a witness in this case. The prosecution filed a
5 motion titled "Plaintiff's Motion in Limine Re: Evidence Code Section 402 Issues," on January 17,
6 2005, in which they threatened that, at trial, Mr. Sneddon will testify to "everything he knows about this
7 defendant," if Mr. Jackson calls Mr. Sneddon's motives for prosecuting this case into question. The
8 District Attorney further threatened that this information "will include all police reports; all statements
9 of past witnesses and victims and among other things, corroborating photographs of defendant's
10 genitalia." This threat was accentuated by the statement that, "[t]he defense does not want to go there."
11 The District Attorney, on page 5 of his Reply to Mr. Jackson's "Opposition to the District Attorney's
12 Motion in Limine Re: Section 402 Issues," filed on January 24, 2005, states that "Mr. Sneddon's
13 complete knowledge of defendant" would be made relevant at trial if Mr. Jackson makes an issue of Mr.
14 Sneddon's motivations at trial.

15 **B. MR. SNEDDON'S ROLE AS A WITNESS TO STATEMENTS OF JANET ARVIZO**

16 On November 8, 2003, Mr. Sneddon met with Janet Arvizo behind the Federal Building in Los
17 Angeles for the purpose of securing her signature on victim compensation applications, picking up
18 several items of evidence and showing her a photo lineup of suspects in this case. One of the photos he
19 showed here was of Brad Miller. Mr. Sneddon testified on August 26, 2004, that his meeting with Janet
20 Arvizo lasted approximately 10 minutes. He stated that the purpose of showing her the photograph of
21 Brad Miller was so see if she could confirm that he was the person in the picture. (Declaration of Robert
22 M. Sanger.)

23 **C. MR. SNEDDON'S ROLE AS A MATERIAL WITNESS TO A MEETING WITH MARK**
24 **GERAGOS**

25 On December 17, 2003, Mr. Sneddon met with Mark Geragos, Mr. Jackson's lawyer at the time.
26 This meeting is documented in a police report dated December 21, 2003, written by Sergeant Steve
27 Robel. The information regarding that meeting appears to be provided for background purposes, as the
28

1 subject of the police report is an interview with Janet Arvizo. There is no indication that a third party
2 was present during the meeting between Mr. Sneddon and Mr. Geragos. (Declaration of Robert M.
3 Sanger.)

4 According to the police report account of the meeting, Mr. Geragos discussed the fact that Janet
5 Arvizo and her family asked for and received money from Mr. Jackson during January and February of
6 2003. Mr. Geragos allegedly told Mr. Sneddon that Janet Arvizo had requested \$100,000 from Mr.
7 Jackson, that Mr. Jackson paid Mrs. Arvizo a total of \$30,000 in five separate payments, and that Gavin
8 Arvizo bragged to reporters, a schoolmate, and other people at Neverland that his mother "was going to
9 get a lot of money from Michael Jackson." Mr. Sneddon is the person in this case who has interviewed
10 Mr. Geragos. (Declaration of Robert M. Sanger.)

11 **D. MR. SNEDDON'S ROLE AS A WITNESS TO A CONVERSATION WITH HENRY**
12 **RUSSELL HALPERN**

13 Henry Russell Halpern, David Arvizo's attorney in a domestic violence case involving Janet
14 Arvizo, is a witness regarding Ms. Arvizo's claims that she suffers from Battered Women's Syndrome.
15 Mr. Halpern also has knowledge of the Arvizo family's lawsuit against J.C. Penny and of the fact that
16 Mrs. Arvizo coached her children to testify in that case. Mr. Halpern will testify that he was aware of
17 the Arvizo family using scripts to prepare the children's testimony. (Declaration of Robert M. Sanger.)

18 At the grand jury proceeding, Mr. Sneddon attempted humiliate Mr. Halpern. Mr. Sneddon
19 stated, through cross-examination questions that amounted to testimony, that Mr. Halpern was lying
20 regarding his account of a telephone conversation that occurred between the two men. (RT
21 715:19-717:6.)

22 **E. THE DISTRICT ATTORNEY'S CONDUCT RAISED IN THE PRIOR RECUSAL**
23 **MOTION**

24 Mr. Jackson previously outlined the following evidence of bias in the original recusal motion:

25 • Prior to issuing the arrest warrant, Mr. Sneddon actively participated in the investigation
26 into Mr. Jackson. Through these actions, he has made himself a witness and, has, indeed, has already
27 testified in one pre-trial hearing.

1 • He announced the issuance of the arrest warrant in a nationally televised press
2 conference, joking with the reporters and acting jovially throughout the conference. The unprofessional
3 way in which he conducted himself drew such criticism that he granted an exclusive interview to CNN,
4 during which he apologized for his behavior.

5 • Rather than proceed with a preliminary hearing, Mr. Sneddon opted to convene a Grand
6 Jury. The prosecution's presentation to the Grand Jury was unprecedented in its disregard for basic
7 evidentiary principles and utter lack of courtroom decorum. Such prosecutorial misconduct would have
8 never been permitted in open court.

9 • The District Attorney has permitted one of its former agents to violate the protective
10 order in this matter and leak information under seal in an attempt to influence the public and jury pool.
11 (See Motion for Recusal of Santa Barbara District Attorney's Office.)

12 ARGUMENT

13 I.

14 THE LAW ON RECUSAL

15 Penal Code, section 1424 (hereinafter, "Section 1424") codifies the defendant's right to have a
16 district attorney recused when the district attorney has a conflict of interest that makes it unlikely that the
17 defendant will receive a fair trial. (Cal. Pen. Code Section 1424(a)(1).) The California Supreme Court
18 has interpreted Section 1424 to require a two pronged analysis: (1) a conflict of interests exists and; (2)
19 the conflict is "so grave as to render it unlikely that [the] defendant will receive fair treatment during all
20 portions of the criminal proceedings." (*People v. Griffin*, (2004) 33 Cal.4th 536, 569.) The crucial issue
21 is whether a conflict exists "such as would render it unlikely that the defendant would receive a fair
22 trial," and that this inquiry makes it unnecessary for the court "to determine whether a conflict is
23 'actual,' or only gives the 'appearance' of a conflict." (*People v. Conner* (1983) 34 Cal. 3d 141, 147-
24 148.)

25 A conflict arises "whenever the circumstances of a case evidence a reasonable possibility that the
26 District Attorneys' office may not exercise its discretionary function in an evenhanded manner." (*People*
27 *v. Griffin* (2004) 33 Cal.4th 536, 569; *People v. Conner* (1983) 34 Cal.3d 141, 148.) "The prosecutorial
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1 discretion goes beyond the decision of what charges to file and the trial itself; it extends to all portions of
2 the proceedings." (*People v. Eubanks* (1996) 14 Cal. 4th 580, 593, opn. mod. 14 Cal.4th 1282D (1997).)

3 There is a reasonable possibility that the prosecutor will not exercise his or her discretionary function in
4 an evenhanded manner where:

5 in the course of his official duties [the prosecutor] acquires a conflicting 'personal
6 interest,' or 'emotional stake' in the case [], or where there is "intense personal
7 involvement" in his public duties [], or where there is "personal, as opposed to purely
8 professional ... involvement," or "the prosecutor is improperly utilizing the criminal
9 proceedings as a vehicle to aid" his personal or fiduciary interests [].
10 (*People v. Superior Court (Martin)* (1979) 98 Cal. App. 3d 515 quoting *People v. Greer* (1977) 19 Cal.
11 3d 255, 267, n. 8, 269, 270.)

12 "A public prosecutor must not be in a position of 'attempting at once to serve two masters,' the
13 People at large and a private person or entity with its own particular interests in the prosecution."
14 (*People v. Choi* (2000) 80 Cal. App. 4th 476, 483 [district attorney's belief the defendant was responsible
15 for the death of a personal friend created an actual conflict].)

16 Under the second prong of Section 1424, recusal is warranted where the prosecutor's conflict
17 "renders it unlikely that defendant will receive fair treatment during all portions of the criminal
18 proceedings." (*People v. Conner, supra*, 34 Cal. 3d at 148.) This discretion extends:

19 over the entire course of the criminal proceedings, from the investigation and gathering of
20 evidence, through the decisions of whom to charge and what charges to bring, to the
21 numeric choices at trial to access, oppose, or challenge judicial rulings.
22 (*People v. Hambarian, supra*, 27 Cal. 4th at 840.)

23 When deciding whether the prosecutor's conflict warrants recusal, the court must consider "the
24 entire complex of facts" when making this assessment. (*Id.* at 834.) The decision to prosecute a weak
25 case is one such factor. (*Id.* at 844.)

26 Recusal may also be proper where the District Attorney is a witness. (*People v. Conner, supra*,
27 80 Cal. App. 4th at 148.)

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II.

THE DISTRICT ATTORNEY'S THREAT TO TESTIFY REGARDING "EVERYTHING HE KNOWS ABOUT THIS DEFENDANT" DEMONSTRATES THAT: (1) HE IS ACTUALLY BIASED AGAINST MR. JACKSON; (2) THAT HE IS INCAPABLE OF EXERCISING THE PROPER DISCRETION OF HIS OFFICE; AND (3) THAT HE PLANS TO SMEAR MR. JACKSON AT TRIAL USING INADMISSIBLE EVIDENCE

The District Attorney's threat to unveil irrelevant and inadmissible evidence and opinion to the jury if Mr. Jackson raises questions regarding his motivation is nothing short of extortion. The schoolyard taunt that "[t]he defense does not want to go there," in the "Plaintiff's Motion in Limine Re: Evidence Code Section 402 Issues," demonstrates that the prosecution's threat that Mr. Sneddon will testify is an attempt to restrict Mr. Jackson's ability to defend himself. It is unseemly for the District Attorney to attempt to bully a defendant in this manner. It is remarkable that the District Attorney of Santa Barbara County would issue a threat to the defendant in a pleading filed in this Court. This type of threat goes far beyond a passing comment under one's breath, in the heat of the moment, in the hallway of the courthouse. Mr. Sneddon and his deputy wanted this threat to be seen, not only by Mr. Jackson and his counsel, but also by the Court. It is hard to imagine such an occurrence in any other case and it is indicative of the District Attorney's total lack of perspective when it comes to this case.

Mr. Sneddon's proffered testimony is inadmissible. The testimony would contain personal belief, hearsay and innuendo. There is no exception to the rules of evidence for a situation where the motives of an overzealous prosecutor are at issue. The fact that Mr. Sneddon, and his deputies, are incapable of using proper discretion to determine whether or not such testimony is admissible at trial is illustrative of the fact that they are incapable, and have been incapable from the moment this prosecution began in 1993, of treating the prosecution of Mr. Jackson like a proper criminal prosecution. Instead, this case has always been treated differently by Mr. Sneddon and his deputies.

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III.

THE DISTRICT ATTORNEY IS A MATERIAL WITNESS TO A MEETING WITH JANET ARVIZO

The defense has not been provided with any report, prior to the grand jury proceeding, in which Janet Arvizo made the kind of detailed allegations regarding Brad Miller that she made in front of the grand jury. Mrs. Arvizo told the grand jurors that she was told that the reason Brad Miller did not mention Jay Jackson's presence on the record during the interview of the Arvizo family on February 16, 2003, is so that Jay Jackson could later be killed. (RT 1074:23-1074:4.) Mrs. Arvizo said that Brad Miller was the person who handed her the phone prior to the conversation with attorney Vicky Podberesky, during which she claims that Ms. Podberesky told her she could lose her children if she did not cooperate. (RT 1076:8-1078:3.) Mrs. Arvizo testified that Brad Miller was present during the taping of the rebuttal video to inform Dieter Weisner as to whether the Arvizos followed an alleged script. (RT 1081:15-16.) This testimony was critical at the grand jury proceeding and was highlighted by the prosecution during their closing argument. (i.e. RT 1797:26-1798:15; 1863:7-1864:1.)

It is illogical to believe that there was no discussion of Brad Miller during Mr. Sneddon's meeting with Mrs. Arvizo. Mrs. Arvizo later testified, in essence, that Brad Miller was a central player in a conspiracy against her and that he personally facilitated an effort to make her believe that her fiancé was in danger of being murdered and that she was in danger of having her children ripped away from her. Either that testimony was a later fabrication or it would have to be discussed with law enforcement or Mr. Sneddon earlier. It does not make sense that she would have no response to being shown a picture of Brad Miller, other than to confirm his identity to Mr. Sneddon if these things occurred. In other words, either her response or lack thereof when Mr. Sneddon showed her the picture is evidence bearing on the credibility of her wild accusations.

A question exists as to when Mrs. Arvizo first developed the allegations regarding Brad Miller and reported them to law enforcement or the District Attorney. Based on the fact that the subject matter presented to the grand jury is not reflected in police reports prior to the proceeding, defense counsel is entitled to examine the people who conducted the investigation to determine when the allegations against Mr. Miller were made. Mr. Sneddon is one of those people. He is one of approximately six law

1 enforcement officers to speak with Janet Arvizo and is one of four people, including Sergeant Robel,
2 Detective Paul Zelis and District Attorney investigator Chris Clement, who has met with Janet Arvizo
3 outside the presence of any third party, according to the police reports. (Declaration of Robert M.
4 Sanger.)

5 IV.

6 **THE DISTRICT ATTORNEY IS A MATERIAL WITNESS TO A MEETING WITH "NAMED**
7 **OR UNNAMED CO-CONSPIRATOR" MARK GERAGOS**

8 Mr. Sneddon is the only witness, other than Mark Geragos, who was present at a meeting that
9 occurred on December 17, 2003, between Mr. Sneddon and Mr. Geragos. According to the District
10 Attorney, Mr. Geragos is a "named or unnamed co-conspirator" (District Attorney's *Sanchez* Motion,
11 pages 8-9.) He is listed on both the prosecution and defense witness lists.

12 In a police report, Sergeant Robel reports that Mr. Sneddon stated that Mr. Geragos made certain
13 claims regarding demands made by the Arvizo family in January and February of 2003. A true and
14 correct copy of that report is attached as Exhibit A to the Declaration of Robert M. Sanger. Mr. Geragos
15 is expected to deny making certain of these statements to Mr. Sneddon. The statements in dispute
16 pertain to the details of the Arvizo family's demands for money from Mr. Jackson. Unless Mr. Sneddon
17 concedes the accuracy of Mr. Geragos' recollection, he will be the only witness who can testify contrary
18 to Mr. Geragos. This Court will not permit him to offer rebuttal testimony in the guise of cross-
19 examination. (Declaration of Robert M. Sanger.)

20 The materials provided to defense counsel in discovery suggest that Mr. Sneddon may have had
21 material to suggest that Mr. Geragos was a potential unindicted co-conspirator at the time Mr. Sneddon
22 met with him. His meeting with Mr. Geragos was not simply a meeting between the District Attorney
23 and a defense lawyer, it was a investigative meeting which resulted in a "police report" of the
24 conversation. (Declaration of Robert M. Sanger.)

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V.

**MR. SNEDDON IS A MATERIAL WITNESS TO A TELEPHONE CONVERSATION WITH
HENRY RUSSELL HALPERN**

The District Attorney plans on defending Janet Arvizo's lack of credibility and bizarre behavior by arguing that she suffers from Battered Women's Syndrome. As the lawyer that represented David Arvizo in the misdemeanor domestic violence case in which Mrs. Arvizo was the complaining witness, Mr. Halpern has personal knowledge of that case and of conduct that occurred in his presence. Furthermore, Mr. Halpern will testify that Janet Arvizo used scripts to coach her children in her lawsuit against J.C. Penny. This testimony is relevant because it demonstrates a pattern and practice by the Arvizo family of coaching their children to lie. (Declaration of Robert M. Sanger.)

Mr. Sneddon offered testimony to rebut the testimony of Mr. Halpern before the grand jury. At trial, the Court will not allow him to testify under the guise of cross-examining Mr. Halpern.

VI.

**MR. SNEDDON SHOULD NOT BE ALLOWED TO SERVE AS BOTH ADVOCATE AND
WITNESS**

Mr. Auchincloss, speaking for his boss, Tom Sneddon, says "Mr. Sneddon's complete knowledge of defendant" would be made relevant at trial if Mr. Jackson makes an issue of Mr. Sneddon's motivations at trial. (Reply to Opposition to the District Attorney's Motion in Limine Re: Section 402 Issues.) This newly announced intention to serve a dual role as advocate and witness is directly in conflict with the law. In *People v. Donaldson* (2001) 93 Cal.App.4th 916, the Court of Appeal stated:

The prohibition against a lawyer acting as a both advocate and witness "is a necessary corollary to the more fundamental tenet of our adversarial system that juries are to ground their decisions on the facts of a case and not on the integrity or credibility of the advocates." (*United States v. Prantil* (9th Cir. 1985) 764 F.2d 548, 553.) The enforcement of that prohibition "is more than just an ethical obligation of individual counsel" but rather "a matter of institutional concern implicating the basic foundations of our system of justice." (*Id.*)

The prohibition against an attorney serving as both witness and advocate is even more necessary in a criminal case. The Court of Appeal stated:

1 Within the criminal justice system, the prohibition against a prosecutor's acting as both
2 advocate and witness addresses "the concern that jurors will be unduly influenced by the
3 prestige and prominence of the prosecutor's office and will base their credibility
4 determinations on improper factors." (*United States v. Edwards* (9th Cir. 1998) 154 F.3d
5 915, 921.) "That counsel should avoid appearing both as advocate and witness except
6 under special circumstances is beyond question." (*United States v. Morris* (7th Cir. 1983)
7 714 F.2d 669, 671.) The maxim "justice must satisfy the appearance of justice" reflects
the "especially acute" need for public confidence in the administration of justice where
the testifying attorney represents the "prosecuting arm" of government. Judicial
condemnation of the "practice of serving as both prosecutor and witness" has deep roots
not only in English and American law but also in Roman law. (*United States v. Birdman*
(3d Cir. 1979) 602 F.2d 547, 551.)
(*People v. Donaldson* (2001) 93 Cal.App.4th 916, 928-929.)

8 The prosecution has threatened to unleash Mr. Sneddon's testimony regarding his belief that Mr.
9 Jackson was guilty in 1993. This testimony is inadmissible. In *People v. Donaldson* (2001) 93
10 Cal.App.4th 916, 931, the Court of Appeal stated:

11 In neither testimony nor argument should a prosecutor express a personal belief in a
12 witness's credibility or in an accused's guilt. (*United States v. McKoy* (9th Cir. 1985) 771
13 F.2d 1207, 1210-1211.) Especially if witness credibility is crucial, a prosecutor's
14 expression of a personal belief in a witness's credibility or in an accused's guilt can
jeopardize the fundamental fairness of the trial. (See *United States v. Molina* (9th Cir.
1991) 934 F.2d 1440, 1445.)

15 The issues of whether Mr. Sneddon's testimony is perceived to help the prosecution or the
16 defense, has no bearing on the question of whether he may serve as both witness and advocate. The
17 Ninth Circuit Court of Appeals, in *United States v. Edwards* (9th Cir 1998) 154 F.3d 915, 923, stated
18 that:

19 It is irrelevant whether a prosecutor is a crucial witness in a matter that favors the defense
20 or in a matter that favors the prosecution, and it is irrelevant which side raises the
21 question as to which his testimony is important. The advocate-witness rule applies in all
such instances.

22 The rule that a prosecutor is not allowed to serve as both an advocate and a witness is not
23 affected by the fact that the testimony in question "was elicited in the first instance by defense counsel."
24 (*United States v. Edwards* (9th 1998) 154 F.3d 915, 922.) In other words, it doesn't matter if it is the
25 defense who "opens the door" to Mr. Sneddon's testimony.

26 Doubts regarding a prosecutor's dual role as an advocate and a witness "should be resolved in
27 favor of the lawyer testifying and against his becoming or continuing as an advocate." (*People v.*
28

1 *Donaldson, supra*, 93 Cal.App.4th 916, 930.)

2 Although acting as both advocate and witness 'is a situation to be avoided if possible,' a
3 prosecutor can do so 'in extraordinary circumstances and for compelling reasons, usually
4 where the evidence is not otherwise available.' (*United States v. Johnston, supra*, 690
F.2d at p. 644) After testifying, however, the prosecutor should 'withdraw from any
5 further participation' in the case.
(*People v. Donaldson, supra*, 93 Cal.App.4th 916, 930.)

6 VII.

7 THE CUMULATIVE EFFECT OF THIS NEW THREAT, COUPLED WITH THE INSIGHT IT 8 GIVES INTO THE DISTRICT ATTORNEY'S PRIOR CONDUCT, NOW REQUIRES 9 RECUSAL

10 Mr. Sneddon and his deputies have demonstrated bias against Mr. Jackson throughout the course
11 of this prosecution. This new remarkable paragraph by Mr. Auchincloss is an additional demonstration
12 of the bias that has infected the Office of the District Attorney. The comments made by Mr. Auchincloss
13 exacerbated the prior conduct of the District Attorney and his office. They also illustrate the depth of the
14 condition previously called to the Court's attention.

15 As raised in the previous motion to recuse:

- 16 1. Mr. Sneddon kicked off the formal proceedings against Mr. Jackson with a press
17 conference in which he ridiculed Mr. Jackson and his music.
- 18 2. Mr. Sneddon made himself a witness in this case. The recent statements by Mr.
19 Auchincloss demonstrate an attempt to distract from the fact that Mr. Sneddon made
20 himself a material witness in this case. Mr. Sneddon has himself to blame for his
21 untenable position in this case. It is impossible for him to exercise sound discretion when
22 he is a material witness in the case.
- 23 3. Mr. Sneddon is not merely a witness to technical matters. He is a material witness. Here,
24 the District Attorney states that if the defense calls Mr. Sneddon as a witness he will
25 testify as a percipient witness which will help the prosecution win its case on the merits.
26 We are then told that the "defense does not want to go there." The defense not only
27 wants to "go there," we are entitled to "go there" under the law. .

1 4. Mr. Sneddon's behavior in front of the grand jury demonstrated his bias against Mr.
2 Jackson and these latest comments only serve to exacerbate that behavior. The Court
3 referred to Mr. Sneddon's performance before the grand jury as "regrettable." His cross-
4 examination of Henry Russell Halpern and David Arvizo included bullying, improper
5 questions, and testimony from Mr. Sneddon himself. Mr. Auchincloss promises, in the
6 recent comments, that should Mr. Jackson dare to question the motives of the District
7 Attorney, Mr. Sneddon will put on a performance that will go far beyond being
8 "regrettable." It is important to note that the District Attorney has not learned his lesson.

9 Even under Mr. Auchincloss's description for Mr. Sneddon's feelings regarding this case, it
10 appears that Mr. Sneddon's conduct in this case stems from his belief that Mr. Jackson was guilty of the
11 uncharged conduct in the 1993-1994 case. The District Attorney argues, essentially, that if Mr. Jackson
12 asks the jury to consider that the District Attorney is prosecuting a weak case, despite a lack of credible
13 evidence, the District Attorney will respond by testifying that there is strong evidence to believe that Mr.
14 Jackson was guilty of the crimes he was investigated for in 1993-1994. This is evidence that Mr.
15 Sneddon is not capable of handling this case in an even-handed fashion.

16 The District Attorney's position is that, if Mr. Jackson were to "attempt to open that door at trial"
17 (Plaintiff's Motion in Limine Re: Evidence Code Section 402 Issues, page 6) by presenting evidence to
18 the jury that there are improprieties in the way this case has been prosecuted, Mr. Sneddon would
19 allowed to take on the dual role of prosecutor and material witness. The fact that the District Attorney
20 would thereafter take the stand and provide inadmissible testimony about a previous case speaks
21 volumes about the prosecution's ability to exercise its discretion.

22 VIII.

23 THE CONTENT AND THE BULLYING TONE OF MR. AUCHINCLOSS' MOTION 24 DEMONSTRATE THAT MR. SNEDDON'S DEPUTIES SHOULD ALSO BE RECUSED

25 The fact that the motion and the reply, containing the threat that Mr. Sneddon will give
26 inadmissible testimony, were drafted by Senior Deputy District Attorney Gordon Auchincloss makes it
27 clear that Mr. Sneddon's deputies have been affected by with the same invectiveness as the District
28

1 Attorney, himself. The tone of the motion and particularly the phrase, "[t]he defense does not want to go
2 there," is indicative of the attitude of the District Attorney's office regarding the prosecution of Mr.
3 Jackson: This case is different than any other case and the regular rules do not apply.

4 As noted above, Deputy District Attorney Auchincloss has demonstrated an utter lack of
5 discretion by threatening to poison the trial with inadmissible evidence related to Mr. Sneddon's
6 personal beliefs regarding the 1993-1994 investigation of Mr. Jackson. The fact that he apparently did
7 not even consider that such testimony would be wholly inadmissible and that his threat to use such
8 testimony constitutes extortion demonstrates that Mr. Sneddon's deputies are incapable of proceeding in
9 an evenhanded manner.

10 **IX.**

11 **CONCLUSION**

12 For the reasons stated above, Mr. Jackson submits that this Court should rule that Mr. Sneddon
13 be recused on the grounds that he cannot serve as both witness and advocate. No other remedy will give
14 Mr. Jackson a chance at a fair trial.

15 Dated: February 5, 2005


Respectfully submitted,

16 COLLINS, MESEREAU, REDDOCK & YU
17 Thomas A. Mesereau, Jr.
Susan C. Yu

18 SANGER & SWYSEN
19 Robert M. Sanger

20 OXMAN & JAROSCAK
Brian Oxman

21
22 By:

23 
24 Robert M. Sanger
Attorneys for Defendant
MICHAEL JOSEPH JACKSON

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 documents on the interested parties in this action by depositing a true copy thereof as follows: NOTICE OF MOTION AND MOTION FOR RECUSAL OF THE SANTA BARBARA COUNTY DISTRICT ATTORNEY'S OFFICE (Penal Code § 1424); MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF COUNSEL on the interested parties in this action by depositing a true copy thereof as follows:

Tom Sneddon
Gerald Franklin
Ron Zonen
Gordon Auchincloss
District Attorney
1112 Santa Barbara Street
Santa Barbara, CA 93101
805-568-2398
(BY FAX ONLY)

Attorney General's Office
Attn. Service Deputy
300 South Spring Street
Los Angeles, CA 90013
(BY MAIL ONLY)

 X **BY U.S. MAIL** - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid and deposited during the ordinary course of business. Service made pursuant to this paragraph, upon motion of a party, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit.

 X **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.

 X **STATE** - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed February 4, 2005, at Santa Barbara, California.


Bobette Tryon



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EXHIBIT A

PAGE 2	SHERIFF'S DEPARTMENT	Case Number 03-5670
	Santa Barbara County	
	CONTINUATION SHEET	
(A) LIST CONTINUATION. (B) DESCRIBE: PHYSICAL EVIDENCE, LOCATION FOUND & DISPOSITION. (C) NARRATIVE. (D) DISPOSITION.		

1 (A) LIST CONTINUATIONS:

2 Attachments:

3 1. Copies of receipts and correspondence between Janet Arvizo and Yolanda Trujillo.

5 (B) PHYSICAL EVIDENCE:

6 Receipts and correspondence between Janet Arvizo and Yolanda Trujillo, regarding Janet's
7 departure from apartment 208. The above items were entered into evidence as Item #210,
8 under tag #122980.

10 (C) NARRATIVE:

11 On Wednesday, 12-17-03, at approximately 1400 hours, I met with District Attorney Tom
12 Sneddon regarding this case. Sneddon told me he had just finished meeting with Mark
13 Geragos, Michael JACKSON'S attorney. Sneddon told me Geragos informed him of the
14 following, which we needed to clarify with Janet Arvizo. Geragos began by telling Sneddon
15 that around January of 2003, Janet demanded \$100,000 from Michael JACKSON for
16 illegally filming the children regarding the show "Living with Michael Jackson". Geragos
17 continued to tell Sneddon that Michael JACKSON paid Janet approximately \$30,000 during
18 the months of January and February, and she received the \$30,000 over 5 separate
19 payments.

21 Geragos said Janet was also interviewed by an attorney while on Neverland Ranch,
22 regarding her demand of \$100,000 from Michael JACKSON.

24 Geragos went on to tell Sneddon some issues he had found regarding victim #1. Geragos
25 told Sneddon the following. During victim #1's February 2003 stay at Neverland, he told
26 several people about how his mom was going to get a lot of money from Michael
27 JACKSON. Also, according to Geragos, victim #1 told a friend at school that his mother
28 was going to get a lot of money from Michael JACKSON. Geragos ended his conversation

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1 with Sneddon, by telling him that victim #1 told reporters at Neverland Ranch, the weekend
2 following their return from Miami, that his family was going to get a lot of money.

3
4 On Thursday, 12-18-03, at approximately 1230 hours, Detective Alvarez and I met with
5 Janet Arvizo and victim #1 regarding the above allegations that Geragos made to Sneddon.
6 After explaining to Janet what Geragos had told Sneddon, regarding her demanding
7 \$100,000, her receiving \$30,000 over 5 separate payments during the months of January
8 and February, 2003 and her being interviewed by an attorney regarding her demand for
9 money, Janet proceeded to tell me the following.

10
11 ~~At no time did she demand or receive any money from Michael JACKSON or any of his~~
12 employees. According to Janet, Michael JACKSON paid for her children's school books,
13 due to them not being allowed to attend school because they were at Neverland Ranch
14 from the beginning of February 2003 through the beginning of March of 2003. The reason
15 they were kept at Neverland Ranch and not allowed to go to school, was due to Michael
16 JACKSON'S people telling her that there were death threats against her family and they
17 needed to stay at the ranch in order to be safe. Janet continued to tell me that she
18 remembered a time when Michael JACKSON'S people, Vinnie Amen and Frank Tyson,
19 were moving her out of her apartment at [REDACTED] in Los
20 Angeles. Janet said she was told that she and her family needed to immediately move out
21 of her apartment, due to the people making threats knowing where she was currently living.
22 They told her she would not be safe staying at her apartment. Janet said at that time,
23 around March 5, 2003, Vinnie Amen paid Janet's landlord \$850.00 for some back rent that
24 was from the year 2000. Janet said there was no rent that was due from the year 2000.
25 Janet continued to tell me that Yolanda Trujillo and her husband, Raymond Trujillo, gave
26 her 2 free months of rent during June and July of 2000 as a gift. The reason for them
27 giving Janet 2 free months of rent was due to victim #1 being diagnosed with cancer at that
28 time. Janet said she asked Vinnie why they paid the \$850.00, and Vinnie told her that Mark

PAGE 4	SHERIFF'S DEPARTMENT	Case Number 03-5670
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Geragos told him that they needed to pay off all of Janet's outstanding debt, so people would not try and locate her for payment.

I asked Janet if she was ever interviewed by an attorney while staying at Neverland Ranch regarding her asking for money from Michael JACKSON. Janet responded by again saying, "I have never asked for money from Michael JACKSON", but remembers an attorney that contacted her attorney, Bill Dickerman, regarding some money to which she would be entitled. Janet told me that she had hired attorney Bill Dickerman towards the end of March 2003 in order to get her property back from Michael JACKSON, who had his people store it shortly after they moved her out of her apartment. During that period of time, Dickerman was corresponding with Michael JACKSON'S attorney, Mark Geragos, regarding her property. During one of the correspondence, attorney David Legrand, who apparently was representing Michael JACKSON during his civil suit against Granada Filming, who filmed "Living with Michael Jackson" asked Janet if she would continue to stay on the civil suit against Granada Filming with Michael JACKSON. Janet told me that she refused to have victim #1 and the rest of her family participating in a civil suit which she had nothing to do with. Janet continued to clarify to me that Michael JACKSON and his people fraudulently had her put on the civil suit, along with Michael JACKSON for the filming of "Living with Michael Jackson". Janet said it was at that time that Legrand told her she would get a large amount of money if she were to continue to stay on the civil suit against Granada Filming. Janet said she refused to do so.

Janet ended by telling me the following. During the time period, around March 5, 2003, when Michael JACKSON'S people were moving her out of her apartment, she did not want to move and was very happy where she was, but Vinnie Amen and Frank Tyson insisted she and her family move due to the threats being made on her family and the people making the threats knowing where they currently live. Janet said that 2 letters were drafted to her landlord, Yolanda Trujillo. Both letters were dated March 4, 2003. According to Janet, the letters were not signed by her and that her signature was forged. It should be

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PAGE 5	SHERIFF'S DEPARTMENT	Case Number 03-5670
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1 noted that a copy of both letters are attached to this report, and the originals have been
2 booked into evidence.

3
4 Next, I spoke with victim #1. I asked victim #1 if while at Neverland Ranch, if he ever told
5 anyone that he or any of his family members would be receiving a lot of money from
6 Michael JACKSON. Victim #1 responded by saying no. I then asked victim #1 if he had
7 told anyone or any friends at his school that he would be receiving a lot of money from
8 Michael JACKSON. Victim #1 told me he had never spoken to anyone at his school about
9 what had taken place while at Neverland, nor did he ever tell anyone about possibly
10 receiving money from Michael JACKSON. Victim #1 continued to tell me that when he did
11 return to school after the airing of "Living with Michael Jackson", he was approached by
12 several people, including people he did not know and was told that he could receive a lot of
13 money from Michael JACKSON if he and his family were to sue him. I asked victim #1 how
14 he responded when people brought that up to him. Victim #1 told me he ignored them and
15 said, "whatever" and walked away.

16
17 I ended by asking victim #1 if during the weekend after returning from Miami in February of
18 2003, if he spoke to the news media about he and his mother possibly receiving a large
19 amount of money from Michael JACKSON. Victim #1 told me he has never spoken to
20 anyone, including the news media about anything pertaining to Michael JACKSON, except
21 during the filming of "Living with Michael Jackson". This concludes my follow up interview
22 with Janet Arvizo and victim #1.

23
24 (D) CASE DISPOSITION:

25 ATTENTION RECORDS: INVESTIGATION CONTINUING.