

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY  
County of Santa Barbara

2 By: RONALD J. ZONEN (State Bar No. 85094)  
Senior Deputy District Attorney

3 J. GORDON AUCHINCLOSS (State Bar No. 150251)  
Senior Deputy District Attorney

4 GERALD McC. FRANKLIN (State Bar No. 40171)  
Senior Deputy District Attorney

5 1112 Santa Barbara Street  
Santa Barbara, CA 93101

6 Telephone: (805) 568-2300

7 FAX: (805) 568-2398

SEP 16 2004  
SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA BARBARA

SEP 16 2004

GARY M. CLARK, CLERK OF COURT  
GARY M. CLARK, CLERK OF COURT  
GARY M. CLARK, CLERK OF COURT

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SANTA BARBARA

10 SANTA MARIA DIVISION

12 THE PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 v.

16 MICHAEL JOE JACKSON,

17 Defendant.

No. 1133603

18 PLAINTIFF'S NOTICE OF  
19 MOTION FOR ORDER  
20 DIRECTING THAT PLAINTIFF'S  
21 MEMORANDUM RE: AN  
22 APPROPRIATE LIMIT TO  
23 CROSS-EXAMINATION, ETC. BE  
24 MAINTAINED UNDER SEAL  
25 UNTIL FURTHER ORDER OF  
26 COURT; DECLARATION OF  
27 GERALD McC. FRANKLIN IN  
28 SUPPORT OF SEALING;  
MEMORANDUM OF POINTS  
AND AUTHORITIES

~~UNDER SEAL~~

DATE: September 16, 2004

TIME: 8:30 a.m.

DEPT: TBA (Melville)

24 TO: MICHAEL JOE JACKSON, AND TO THOMAS A. MESEREAU, JR.,  
25 STEVE COCHRAN, ROBERT SANGER AND BRIAN OXMAN, HIS ATTORNEYS OF  
26 RECORD, AND TO THEODORE J. BOUTROUS, JR., ESQ., GIBSON, DUNN &  
27 CRUTCHER, LLP:

28 PLEASE TAKE NOTICE that on September 16, 2004, at 8:30 a.m. or as soon


1 thereafter as the matter may be heard, in the Department to be assigned, Plaintiff will, and  
2 hereby does, move for an order directing that Plaintiff's Memorandum Re: An Appropriate  
3 Limit To Cross-Examination Of Witness Called By The Defense On A Limited Issue Relevant  
4 To Search Of Bradley Miller's Office , filed September 7, 2004 under seal upon the assurance  
5 that this Request for Conditional Sealing would follow, be maintained under conditional seal  
6 until further order of court, pursuant to California Rules of Court, rule 243.1 et seq.

7 The motion will be made on the ground that the facts, as established by the  
8 accompanying declaration of Gerald McC. Franklin, are sufficient to justify sealing the  
9 specified motion pursuant to California Rules of Court, rule 243.1 et seq.

10 The motion will be based on this notice of motion, on the declaration of Gerald  
11 McC. Franklin and the memorandum of points and authorities served and filed herewith, on the  
12 records and the file herein, and on such evidence as may be presented at the hearing of the  
13 motion.

14 DATED: September 8, 2004

15  
16 THOMAS W. SNEDDON, JR.  
District Attorney

17  
18 By:   
Gerald McC. Franklin, Senior Deputy

19 Attorneys for Plaintiff  
20  
21  
22  
23  
24  
25  
26  
27  
28



MEMORANDUM OF POINTS AND AUTHORITIES

The procedure for sealing records under California Rules of Court, rule 243.1 et seq. applies only to records that are deemed public. (*Id.*, rule 243.1(a)(2).) Motions and responsive pleadings in criminal cases are, ordinarily, "public" records of the court.

Rule 243.1(d) provides that

The court may order that a record be filed under seal only if it expressly finds facts that establish:

- (1) There exists an overriding interest that overcomes the right of public access to the record;
- (2) The overriding interest supports sealing the record;
- (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed,
- (4) The proposed sealing is narrowly tailored; and
- (5) No less restrictive means exist to achieve the overriding interest.

Rule 243.1(e) provides, in pertinent part:

(1) An order sealing the record must (i) specifically set forth the facts findings that support the findings and (ii) direct the sealing of only those documents and pages, or, if reasonably practicable, portions of those documents and pages, that contain the material that needs to be placed under seal. All other portions of each documents or page must be included in the public file.

Rule 243.2(b) provides, in pertinent part, that "Pending the determination of the motion [of a party to file a record under seal], the lodged record will be conditionally under seal."

////  
////  
////  
////  
////

1 DATED: September 8, 2004

2 Respectfully submitted,

3 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY  
4 County of Santa Barbara

5 By: Gerald McC. Franklin  
6 Gerald McC. Franklin, Senior Deputy

7 Attorneys for Plaintiff

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

PROOF OF SERVICE

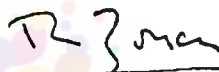
STATE OF CALIFORNIA                      }  
COUNTY OF SANTA BARBARA            } SS

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; 1105 Santa Barbara Street, Santa Barbara, California 93101.

On September 8, 2004, I served the within PLAINTIFF'S NOTICE OF MOTION FOR ORDER DIRECTING THAT PLAINTIFF'S MEMORANDUM RE: AN APPROPRIATE LIMIT TO CROSS-EXAMINATION OF WITNESS CALLED BY THE DEFENSE ON A LIMITED ISSUE RELEVANT TO SEARCH OF BRADLEY MILLER'S OFFICE BE MAINTAINED UNDER SEAL on Media's counsel and on Defendant, by THOMAS A. MESEREAU, JR., STEVE COCHRAN, ROBERT SANGER and BRIAN OXMAN, by faxing a true copy to Media's counsel at the facsimile number shown with the address for counsel on the attached Service List, and then personally serving defense counsel in open court.

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

Executed at Santa Barbara, California on this 8th day of September, 2004.

  
\_\_\_\_\_  
Ronald J. Zonen