

1 COLLINS, MESEREAU, REDDOCK & YU
Thomas A. Mesereau, Jr., State Bar Number 091182
2 Susan C. Yu, State Bar Number 195640
1875 Century Park East, 7th Floor
3 Los Angeles, CA 90067
Tel.: (310) 284-3120, Fax: (310) 284-3133

4 SANGER & SWYSEN
Robert M. Sanger, State Bar Number 058214
233 East Carrillo Street, Suite C
5 Santa Barbara, CA 93101
Tel.: (805) 962-4887. Fax: (805) 963-7311

7 OXMAN & JAROSCAK
8 Brian Oxman, State Bar Number 072172
14126 East Rosecrans
9 Santa Fe Springs, CA 90670
Tel.: (562) 921-5058, Fax: (562) 921-2298

10 Attorneys for Defendant
11 MICHAEL JOSEPH JACKSON

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

14
15
16 THE PEOPLE OF THE STATE OF CALIFORNIA,

17 Plaintiffs,

18 vs.

19
20 MICHAEL JOSEPH JACKSON,

21 Defendant.

) Case No. 1133603

) MOTION FOR AN ORDER ALLOWING
) INDIVIDUAL SEQUESTERED VOIR DIRE
) OF PROSPECTIVE JURORS;
) DECLARATION OF ROBERT M. SANGER

) ~~UNDER SEAL~~

) Honorable Rodney S. Melville
) Date: January 28, 2005
) Time: 9:30 am
) Dept: SM 8

22)
23)
24)
25 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE DISTRICT
26 ATTORNEY OF THE COUNTY OF SANTA BARBARA, TOM SNEDDON, AND DEPUTY
27 DISTRICT ATTORNEYS GERALD FRANKLIN, RON ZONEN AND GORDON

28 MOTION FOR AN ORDER ALLOWING INDIVIDUAL SEQUESTERED VOIR DIRE OF PROSPECTIVE
JURORS

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

JAN 14 2005

GARY M. BLAIR, Executive Officer

BY *Carrie L Wagner*
CARRIE L WAGNER, Deputy Clerk

1 AUCHINCLOSS:

2 PLEASE TAKE NOTICE that, on January 28, 2005, at ⁹ 9:30 a.m., or as soon thereafter as
3 the matter may be heard, Mr. Jackson will move, and hereby does move, for an order allowing
4 individual sequestered voir dire, or for such other and further relief as the Court may deem just
5 and proper. The grounds for this motion are that the grand jury transcripts have been leaked to
6 the media, and, as a result, the jury pool has been prejudiced by reports of the content of the
7 grand jury proceedings. This motion is based on the federal and state constitutional rights to a
8 fair trial, due process of law, and right to a reliable verdict and sentence pursuant to the Fifth,
9 Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I,
10 Sections 7, 15, 17 and 24 of the California Constitution.

11 This motion is based on this motion, the memorandum of points and authorities attached
12 hereto, the records, pleadings and papers herein, and such other and further matters as may be
13 submitted to the Court.

14 Dated: January 14, 2005

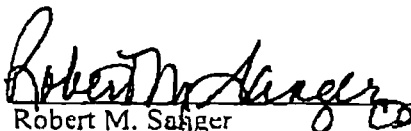
15 Respectfully submitted,

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

18 SANGER & SWYSEN
19 Robert M. Sanger

20 OXMAN & JAROSCAK
21 Brian Oxman

22 By:


23 Robert M. Sanger
Attorneys for Defendant
24 MICHAEL JOSEPH JACKSON
25
26
27

28 MOTION FOR AN ORDER ALLOWING INDIVIDUAL SEQUESTERED VOIR DIRE OF PROSPECTIVE
29 JURORS

1 DECLARATION OF ROBERT M. SANGER

2 I, Robert M. Sanger, declare:

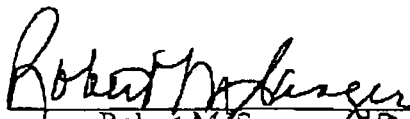
3 1. I am an attorney at law duly licensed to practice law in the courts of the State of
4 California, a partner in the law firm of Sanger & Swysen, and co-counsel for Mr. Michael
5 Jackson.

6 2. The grand jury transcripts were released on "Primetime Live" on ABC television and
7 excerpts have been reported in worldwide news reports. On the January 13, 2005 edition of
8 "Primetime Live," "journalists" read the parts of the persons testifying and asking questions, as if
9 they were actors. The "journalists" even played the role of the prosecutor in making the closing
10 argument.

11 3. These leaks, timed just before the jurors are to report to the courthouse, seem calculated
12 to have the most significant impact. Whether they were actually released by the prosecution or
13 law enforcement or, even if they were purloined by those who support the prosecution, the
14 impact is devastating. Prior to the leaks, it would have been hard enough to obtain a fair and
15 impartial jury. Now the attainability of that goal, under any circumstances, may be impossible.

16 4. Therefore, sequestered voir dire of each potential juror, one at a time, is necessary to
17 assess the nature and extent of the damage caused by this leak. This is the only reasonable way
18 to attempt to save the present jury pool, otherwise it would be necessary to discharge the
19 members subject to this pool and to continue the case until the prejudicial effect of these leaks is
20 dissipated.

21 I declare under the penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct this 14th day of January 2005, at Santa Barbara, California.

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25 
26 Robert M. Sanger
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INDIVIDUAL SEQUESTERED VOIR DIRE IS NECESSARY DUE TO THE RELEASE
4 OF THE CONTENTS OF THE GRAND JURY TRANSCRIPTS TO THE PUBLIC

5 The Court, in fulfilling its affirmative duty to select an impartial jury, may utilize
6 sequestered voir dire. (*People v. Rutkowsky* (1975) 53 Cal.App.3d 1069, 1073.) "Under Code
7 of Civil Procedure Section 223, sequestration is left to the trial court's discretion, based on the
8 court's determination that it is practicable to conduct voir dire in the presence of other
9 prospective jurors." (*People v. Ramos* (2004) 34 Cal.4th 494, 513.)

10 Holding voir dire in the presence of other prospective jurors is impracticable based on the
11 leak of the contents of the grand jury transcripts to the media. The already summoned jurors are
12 likely to have already been exposed to media reports of the contents of the grand jury transcripts.
13 As the Court acknowledged when it ordered that the grand jury transcripts be sealed, pursuant to
14 Rule of Court 243.1, sealing the grand jury transcripts was necessary to protect Mr. Jackson's
15 overriding interest to a fair trial. Now that the prejudicial information contained in the transcripts
16 have been released, Mr. Jackson's right to a fair trial is in jeopardy. It is too late to simply
17 admonish jurors not to expose themselves to media coverage of the case. Voir dire on the
18 publicity surrounding this case, including the newly leaked grand jury transcripts, is necessary to
19 ensure that the jurors are not tainted or biased. In order to conduct any such meaningful voir
20 dire, it is necessary to do so one juror at a time, out of the presence of the others, in order to not
21 make matters worse.

22 The grand jury transcripts were released on "Primetime Live" on ABC television and
23 excerpts have been reported in worldwide news reports. On the January 13, 2005 edition of
24 "Primetime Live," "journalists" read the parts of the persons testifying and asking questions, as if
25 they were actors. The "journalists" even played the role of the prosecutor in making the closing
26 argument. (Declaration of Robert M. Sanger.)

1 These leaks, timed just before the jurors are to report to the courthouse, seem calculated
2 to have the most significant impact. Whether they were actually released by the prosecution or
3 law enforcement or, even if they were purloined by those who support the prosecution, the
4 impact is devastating. Prior to the leaks, it would have been hard enough to obtain a fair and
5 impartial jury. Now the attainability of that goal, under any circumstances, may be impossible.
6 Therefore, sequestered voir dire of each potential juror, one at a time, is necessary to assess the
7 nature and extent of the damage caused by this leak. This is the only reasonable way to attempt
8 to save the present jury pool, otherwise it would be necessary to discharge the members subject
9 to this pool and to continue the case until the prejudicial effect of these leaks is dissipated.

10 (Declaration of Robert M. Sanger.)

11 The United States Supreme Court has stated that "postponement of a trial to allow public
12 attention to subside" is a reasonable alternative to protect the free trial rights of a defendant.
13 (*Nebraska Press Ass'n v. Stuart* (1976) 427 U.S. 539, 563-564.) Prejudicial pretrial publicity
14 that threatens a defendant's right to a fair trial constitutes grounds for a continuance. (See
15 *Sheppard v. Maxwell* (1966) 384 U.S. 333, 363; *Maine v. Superior Court* (1968) 68 Cal.2d 375,
16 387.)

17 The best way to proceed at this juncture is to commence the jury selection process. If,
18 during the course of sequestered voir dire and careful questioning, it appears that it is not
19 possible to secure an unbiased jury, then the remedy of a continuance can be considered.

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28 MOTION FOR AN ORDER ALLOWING INDIVIDUAL SEQUESTERED VOIR DIRE OF PROSPECTIVE
JURORS

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II.

CONCLUSION

Therefore, based on the reasons set forth above, Mr. Jackson respectfully requests that the Court issue an order allowing for sequestered individual voir dire, or, alternatively, that the trial be postponed until the public attention regarding the contents of the grand jury transcripts has subsided.

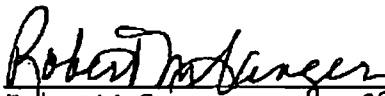
Dated: January 14, 2004

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

SANGER & SWYSEN
Robert M. Sanger

OXMAN & JAROSCAK
Brian Oxman

By:


Robert M. Sanger *RS*
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 January 14, 2005, I served the foregoing document: MOTION FOR AN ORDER ALLOWING INDIVIDUAL SEQUESTERED VOIR DIRE OF PROSPECTIVE JURORS: DECLARATION OF ROBERT M. SANGER on the interested parties in this action by depositing a true copy thereof as follows:

Tom Suddon
Gerald Franklin
Ron Zonen
Gordon Auchincloss
District Attorney
1112 Santa Barbara Street
Santa Barbara, CA 93101
805-568-2398

- 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.
- BY FACSIMILE - I caused the above-referenced document(s) to be transmitted via facsimile to the interested parties at
- BY HAND - I caused the document to be hand delivered to the interested parties at the address above.
- STATE - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed January 14, 2005 at Santa Barbara, California.


Carol Dowling