

JAN 24 2005

GARY M. BLAIR, Executive Officer

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

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 I. 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

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SANTA BARBARA

10 SANTA MARIA DIVISION

11  
12 THE PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14  
15 v.

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18 MICHAEL JOE JACKSON,

19 Defendant.

No. 1133603

PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR  
COURT'S REVIEW OF  
PLAINTIFF'S OPPOSITION TO  
DEFENDANT'S MOTION FOR  
ORDER ALLOWING  
INDIVIDUAL SEQUESTERED  
VOIR DIRE OF PROSPECTIVE  
JURORS, TO DETERMINE  
WHETHER SEALING IS  
APPROPRIATE; DECLARATION  
OF GERALD McC. FRANKLIN;  
MEMORANDUM OF POINTS  
AND AUTHORITIES

20 DATE: January 28, 2005

21 TIME: 9:30 a.m.

22 DEPT: TBA (Melville)

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

26 PLEASE TAKE NOTICE that on January 28, 2005, at 9:30 a.m. or as soon  
27 thereafter as the matter may be heard, in the Department to be assigned, Plaintiff will, and  
28

1 hereby does, request the Court to review Plaintiff's Opposition to Defendant's Motion for  
2 Order Allowing Individual Sequestered Voir Dire of Prospective Jurors, filed  
3 contemporaneously with this Motion, to determine for itself whether an order directing that the  
4 Plaintiff's Opposition to Defendant's Motion for Order Allowing Individual Sequestered Voir  
5 Dire of Prospective Jurors is an appropriate document for sealing, and that the Opposition be  
6 maintained under conditional seal until further order of court, pursuant to California Rules of  
7 Court rule 243.1 et seq.

8 The motion will be made on the ground that the discussion of facts in Plaintiff's  
9 Plaintiff's Opposition to Defendant's Motion for Order Allowing Individual Sequestered Voir  
10 Dire of Prospective Jurors, as established by the accompanying declaration of Gerald McC.  
11 Franklin, may not be sufficient to justify sealing the specified motion pursuant to California  
12 Rules of Court, rule 243.1 et seq.

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

17 DATED: January 24, 2005

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19 THOMAS W. SNEDDON, JR.  
District Attorney

20 By:   
21 Gerald McC. Franklin, Senior Deputy

22 Attorneys for Plaintiff  
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MEMORANDUM OF POINTS AND AUTHORITIES

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

5 Rule 243.1(d) provides that

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

8 (1) There exists an overriding interest that overcomes the right of  
9 public access to the record;

10 (2) The overriding interest supports sealing the record;

11 (3) A substantial probability exists that the overriding interest will  
12 be prejudiced if the record is not sealed;

13 (4) The proposed sealing is narrowly tailored; and

14 (5) No less restrictive means exist to achieve the overriding interest.

15 Rule 243.1(e) provides, in pertinent part:

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

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

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1 DATED: January 24, 2005

2 Respectfully submitted

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

5 By:   
6 Gerald McC. Franklin, Senior Deputy

7 Attorneys for Plaintiff  
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REQUEST THAT COURT DETERMINE APPROPRIATENESS OF SEALING OPPOSITION TO MOTION FOR  
SEQUESTERED VOIR DIRE

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PROOF OF SERVICE

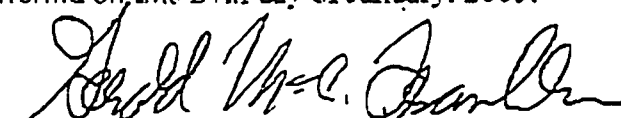
STATE OF CALIFORNIA }  
COUNTY OF SANTA BARBARA } SS

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and I am not a party to the within-entitled action. My business address is: District Attorney's Office; Courthouse: 1112 Santa Barbara Street, Santa Barbara, California 93101.

On January 18, 2005, I served the within PLAINTIFF'S NOTICE OF MOTION FOR COURT'S REVIEW OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR ORDER ALLOWING INDIVIDUAL SEQUESTERED VOIR DIRE OF PROSPECTIVE JURORS TO DETERMINE WHETHER SEALING IS APPROPRIATE, ETC. and PROPOSED ORDER on THEODORE BOUTROUS, Media's counsel and on Defendant, by THOMAS A. MESEREAU, JR. and ROBERT SANGER, by personally delivering a true copy to Mr. Sanger's Office and then transmitting a true copy thereof to Mr. Mescreau at (805) 456-0699 and to Mr. Boutrous at (213) 229-6758.

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

Executed at Santa Barbara, California on this 24th day of January, 2005.

  
Gerald McC. Franklin