

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 GORDON AUCHINCLOSS (State Bar No. 150251)  
Senior Deputy District Attorney  
4 GERALD McC. FRANKLIN (State Bar No. 40171)  
Senior Deputy District Attorney  
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**FILED**  
SUPERIOR COURT of CALIFORNIA  
COUNTY of SANTA BARBARA

FEB 11 2005

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

*\* Unsealed pursuant  
to 116605 Court  
order*

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.

16 MICHAEL JOE JACKSON,

17 Defendant.

No. 1133603

PLAINTIFF'S OPPOSITION TO  
DEFENDANT'S MOTION TO  
RECUSE THE DISTRICT  
ATTORNEY AND ONE OR  
MORE OF HIS DEPUTIES

18 DATE: ~~February 22, 2005~~  
TIME: ~~8:50 a.m.~~  
DEPT: ~~SM 2 (Merville)~~

**FILED UNDER SEAL**

19  
20  
21 **A. Introduction:**

22 Defendant moves to recuse the entire District Attorney's office or, "in the  
23 alternative," the District Attorney and Deputy District Attorneys Zonen, Auchincloss and  
24 Franklin. Defendant acknowledges that his earlier effort to recuse the office was denied on  
25 November 4, 2004, but asserts that "circumstances have changed. First, the District Attorney,  
26 through his deputy Gordon Auchincloss, has announced that he intends to testify at trial.  
27 Second, the matters previously raised are now further illustrated by the conduct of Mr.  
28 Auchincloss. Third, the cumulative effect of the other matters, plus this matter, require the

1 remedy of recusal.” (Motion 2:11-15.)

2 B. Summary of Response

3 1. The District Attorney does not intend to testify in this case, and Deputy District  
4 Attorney Gordon Auchincloss made no “announcement” to the contrary;

5 2. Nothing about the content or tone of Deputy District Attorney Auchincloss’  
6 “Reply to Opposition to the District Attorney’s Motion In Limine Re: Section 402 Issues”  
7 “demonstrate that Mr. Sneddon’s deputies should also be recused” (Motion 16:23-24).

8 Argument

9 I

10 THE DISTRICT ATTORNEY DOES NOT INTEND TO  
11 TESTIFY AS A WITNESS IN THIS CASE

12 The District Attorney has neither stated, “announced” or “threatened” to testify as a  
13 witness in this case. (Please see the attached Declaration of Thomas W. Sneddon, Jr.)

14 A. Contact with Janet Arvizo

15 The assertion that Mr. Sneddon was a potential witness with respect to his brief  
16 conversation with Janet Arvizo was made in the previous, unsuccessful motion to recuse him.  
17 There is no need for Mr. Sneddon to testify concerning that meeting. This was, and continues  
18 to be, a non-issue.

19 B. Contact with Mark Geragos

20 Defendant correctly asserts that Mr. Sneddon had a conversation with Mark  
21 Geragos, defendant’s former lead counsel, before the felony complaint was filed in this case.  
22 He does not suggest how that conversation might be the gist of relevant testimony by Mr.  
23 Sneddon at the trial of this matter. None is apparent. (Again, please see Mr. Sneddon’s  
24 declaration, attached.)

25 C. Telephone Conversation with Russell Halpern

26 Defendant notes that there may have been a conversation between Mr. Sneddon and  
27 Russell Halpern, the attorney for David Arvizo, the former husband of Janet Arvizo.  
28 Defendant argues that “Mr. Sneddon offered testimony to rebut the testimony of Mr. Halpern

1 before the grand jury.” (Motion 13:11-12.) Defendant continues, “At trial, the Court will not  
2 allow him to testify under the guise of cross-examining Mr. Halpern.” That observation  
3 appears to answer the argument that any telephone conversation Mr. Sneddon may have had  
4 with Mr. Halpern makes Mr. Sneddon a necessary “witness” at defendant’s trial.

5 II

6 THE DISTRICT ATTORNEY’S KNOWLEDGE OF THE  
7 EVIDENCE COLLECTED IN AN EARLIER INVESTIGATION,  
8 AS IT RELATES TO HIS “MOTIVE” TO PROSECUTE THIS  
9 CASE, DOESN’T REQUIRE HIM TO TESTIFY IF DEFENDANT  
10 MAKES HIS “MOTIVE” RELEVANT

11 Defendant notes, correctly enough, that Deputy District Attorney Auchincloss “says  
12 ‘Mr. Sneddon’s complete knowledge of defendant’ would be made relevant if Mr. Jackson  
13 makes an issue of Mr. Sneddon’s motivations at trial.” (Motion 16-17.) Defendant reads that  
14 as a “newly announced intention to serve a dual role as advocate and witness . . .” (*Id.*, 13:19-  
15 20.)

16 Mr. Auchincloss’ comment cannot fairly be read to “announce” any such thing.

17 In “Plaintiff’s Motion In Limine Re: Evidence Code § 402 Issues,” authored by  
18 Deputy District Attorney Auchincloss and filed January 17, 2005, Mr. Auchincloss noted  
19 defense counsel’s repeated references “concerning the prosecutor’s alleged motive for  
20 prosecuting the defendant.” He cautioned:

21 Should the defense attempt to open that door at trial they will invite the  
22 jury to see everything that is behind it. Obviously, if Mr. Sneddon’s  
23 subjective motives are called into question, then *all* the information  
24 available to him about defendant will be offered in rebuttal. In other  
25 words, if the defense wants to argue that Tom Sneddon is persecuting an  
26 innocent man in order to “take down a major celebrity, then the jury  
27 should be allowed to form their own opinion about Mr. Sneddon’s  
28 motives based upon everything he knows about this defendant. This will  
include all police reports; all statements of past witnesses and victims and

1 among other things, corroborating photographs of defendant's genitalia.  
2 The defense does not want to go there.

3 (Plaintiff's Motion 6:7-17; emphasis in the original.)

4 Defendant doesn't quarrel with the logic of that argument, nor could he. And  
5 please note, nowhere in that argument is it suggested that Mr. Sneddon would testify  
6 concerning the evidentiary particulars of the earlier investigation. Mr. Sneddon's testimony  
7 would not be necessary to introduce the materials that were in the prosecution's hands at the  
8 time of the indictment. Indeed, in Plaintiff's Reply to Defendant's Opposition re: Evidence  
9 Code § 402 Issues," filed January 24, 2005, Mr. Auchincloss characterized defendant's own  
10 announced intention to call Mr. Sneddon as a witness as "clearly improper." (Reply 4:20-22.)

11 In pretending that the prosecution has "announced" that Mr. Sneddon will testify,  
12 and in suggesting that any such testimony would be inadmissible, and in characterizing Mr.  
13 Auchincloss' response as "extortion" (Motion 10:7-8), defendant tugs firmly at the bootstraps  
14 of his recusal motion.

15 Defendant argues that "Mr. Sneddon's proffered testimony" is "inadmissible" as,  
16 among other things, "hearsay." "There is no exception to the rules of evidence for a situation  
17 where the motives of an overzealous prosecutor are at issue." (Motion 10:18-20.)

18 Defendant has failed to reflect on the admissibility of out-of-court statements and  
19 other evidence for the non-hearsay purpose of proving the hearer's reaction to it and the  
20 motivation for his subsequent conduct, where motive is an issue.

21 Defendant insists he "not only wants to 'go there,' we are entitled to 'go there'  
22 under the law." (Motion 15:26-27.) There will be time enough to reargue the legal merits and  
23 tactical wisdom of that view when defendant offers argument or evidence concerning the  
24 prosecutor's "motive." This recusal motion is not the occasion for that argument.

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III

NOTHING IN DEPUTY DISTRICT ATTORNEY AUCHINCLOSS'  
MOTIONS OR RESPONSES REQUIRE THAT HE OR ANYONE  
IN THE DISTRICT ATTORNEY'S OFFICE BE RECUSED

Defendant's characterization of Mr. Auchincloss' argument as "extortion:" was offered by defendant in an earlier submission of his. Mr. Auchincloss responded to that overstatement, observing, "defendant confuses the rules of evidence with the crime of extortion. Defendant has apparently failed to fully consider the ramifications of how making an issue of Tom Sneddon's motive in this case would make Mr. Sneddon's complete knowledge about defendant relevant. This is not extortion. It is the law and defendant would be wise to consider it."

Defendant severely mischaracterizes Deputy District Attorney Auchincloss' arguments and responses as evidence of a disqualifying animus. It is nothing of the sort. If anything, it exhibits rather more patience with defense counsels' demagoguery than it deserves.

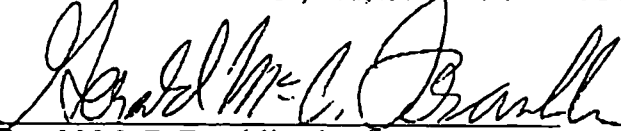
CONCLUSION

Defendant's newest motion to recuse the prosecutor's office has no more merit than his earlier motion to that end. It offers nothing new that is of substance. It simply affords the defense one more excuse for slandering the prosecution. It should be denied as the previous effort was denied: without argument and the opportunity for yet another public airing of defendant's inappropriate attack on the motives of the prosecutor.

DATED: February 11, 2005

Respectfully submitted,

THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY

By:   
Gerald McC. Franklin, Senior Deputy

Attorneys for Plaintiff



Declaration of Thomas W. Sneddon, Jr.

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2  
3 1. I am the District Attorney for the County of Santa Barbara and one of the  
4 attorneys representing the People in the case of *The People of the State of California vs.*  
5 *Michael Joe Jackson.*

6 2. No one associated with the prosecution of the above-entitled action has stated  
7 that I intend to be a witness called by the prosecution. I have no intention of testifying.  
8 Consistent with their practices throughout this case, the defense has manipulated statements  
9 and conversations to fit their current motions. My name does not appear on our witness list. It  
10 does on theirs. It was in response to their listing me on their witness list, that comments about  
11 the scope of my testimony were addressed in the motions.

12 3. In November of 2003, I received several calls from Mr. Geragos in his capacity  
13 as the attorney representing defendant Jackson in the subject matter that resulted in his eventual  
14 Indictment. In one of those conversations Mr. Geragos requested an opportunity to discuss the  
15 case with me before the decision was made to file charges. I represented to him in fairness to  
16 Mr. Jackson I would give him that opportunity before charges were filed.

17 4. During this time period, Mr. Geragos was involved in making appearances in the  
18 *Scott Peterson* case so the decision was made to have a meeting in early December. On the  
19 date set for meeting, Mr. Geragos was in a criminal proceeding in Pasadena, so I agreed to  
20 drive to Pasadena and meet him during the lunch break in the proceedings. We met and had a  
21 lot of general conversations that had little to do with the merits of the case or his request. He  
22 talked in generalities and asked for more time because of his busy schedule. I agreed and it was  
23 left for him to contact me when and if he was ready to discuss his client's case. Given the  
24 serious nature of the charges in this case, I felt it was my responsibility to extend every  
25 opportunity for Mr. Jackson's attorney to present any information related to the charges that  
26 would bear upon the charging decision and I told Mr. Geragos that.

27 5. Eventually December 19, 2003, was set for the filing of the criminal complaint.  
28 Mr. Geragos called and requested a meeting before the charges were filed. The meeting was

1 set for my office on December 18th. Around noon, Mr. Geragos arrived for the meeting. He  
2 was accompanied by a Mr. Kopp, who was introduced as an attorney associated with Mr.  
3 Geragos's firm.

4 6. There was no interview. After exchanging pleasantries, Mr. Geragos did most of  
5 the talking. He related to me the information set forth in the SBSO report referenced in the  
6 defense motion. The meeting lasted approximately one-half hour. At the conclusion of the  
7 meeting I told him I would share the information with the case detectives and get back to him.

8 7. I immediately went to the Sheriff's Department and briefed them on the  
9 information provided to me by Mr. Geragos. One detective was assigned to contact Mrs.  
10 Arvizo and address the information with her. After receiving her denial of Geragos's  
11 allegations, it was decided to re-contact him and determine if he had any cancelled checks to  
12 verify his assertions or contradict Mrs. Arvizo's information. I called Mr. Geragos from the  
13 Sheriff's Department and in the presence of at least seven people. I asked him if he had any  
14 cancelled checks to corroborate his assertions that Mrs. Arvizo solicited and obtained money  
15 from Mr. Jackson or one of his representatives. He told me he thought they had four checks,  
16 but he would have to check. When I asked if they were made out to Mrs. Arvizo, he replied  
17 that he believed they were made out to cash and did not know whose signature was found on  
18 the endorsement. This ended the exchanges and the decision was made to proceed with the  
19 filing of formal charges.

20 8. My conversation with Mr. Geragos was an extension of the same courtesies that I  
21 have extended to countless attorneys during my career as a DDA, Chief Trial Deputy and as  
22 District Attorney, including on occasion current counsel for Mr. Jackson, Robert Sanger. I  
23 have never considered these conversations as interviews or in any way somehow admissible as  
24 evidence. Such conversations would be considered as rank hearsay as to any criminal  
25 defendant and not covered by any exception to the Hearsay Rule that I am familiar with.  
26 Moreover, I consider such conversations as covered by the 'Rule of Tanner,' Evidence Code  
27 section 1153 and Penal Code section 1192.4, as specifically not admissible.


28 9. At the time of my conversations with Mr. Geragos, he was considered nothing



1 but an attorney representing his client. As the criminal complaint reflects, no conspiracy was  
2 initially charged and Mr. Geragos's name is not listed as those indicted by the Grand Jury. At  
3 no time during the December 18th conversation was Mr. Geragos considered to be part of the  
4 eventual conspiracy set forth in Count 1 of the Indictment.

5 10. I would be surprised if Mr. Geragos would deny the accuracy of the information  
6 that he provided to me, but inasmuch as the assertion is not accompanied by a declaration or  
7 any specific information about what it is that is conflict, I consider this to be a typical defense  
8 allegation without substantive proof. In any event, since his statements are inadmissible, any  
9 differences in our recollections are of no legal consequence.

10 I declare under penalty of perjury that the foregoing is true and correct, except as to  
11 matters stated upon information and belief, and as to such matters I believe it to be true. I  
12 execute this Declaration at Santa Barbara, California, February 10, 2005.

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17 Thomas W. Sneddon, Jr.  
18 District Attorney  
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PROOF OF SERVICE

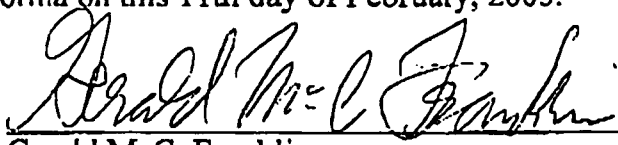
STATE OF CALIFORNIA }  
COUNTY OF SANTA BARBARA } SS

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 February 11, 2005, I served the within PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO RECUSE THE DISTRICT ATTORNEY AND ONE OR MORE OF HIS DEPUTIES on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER, and BRIAN OXMAN by personally delivering a true copy thereof to Mr. Sanger's office in Santa Barbara, by transmitting a facsimile copy thereof to Attorney Mesereau at his confidential Fax number in Santa Maria and by causing a true copy thereof to be mailed to Mr. Mesereau, first class postage prepaid, at the addresses shown on the attached Service List.

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

Executed at Santa Barbara, California on this 11th day of February, 2005.

  
Gerald McC. Franklin

**SERVICE LIST**

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