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13

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF SANTA BARBARA
16 SANTA MARIA DIVISION

17 THE PEOPLE OF THE STATE OF
18 CALIFORNIA,

19 Plaintiff,

20 vs.

21 MICHAEL J. JACKSON

22 Defendant.
23

CASE NO. 1133603

MR. JACKSON'S OPPOSITION
TO THE MEDIA'S MOTION TO
UNSEAL GRAND JURY
TRANSCRIPTS AND THE
INDICTMENT; MEMORANDUM
OF POINTS AND AUTHORITIES

Hearing Date: May 28, 2004
Time: 8:30 a.m.
Dept.: 9

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

MAY 21 2004

GARY M. BLAIR, Executive Officer

By *Carrie L. Wagner*
CARRIE L. WAGNER, Deputy Clerk

1 Defendant Michael J. Jackson, through his counsel, hereby opposes motions
2 by the press to unseal the indictment and grand jury transcripts. Denial of those
3 motions is necessary to avoid contamination of the jury pool and preserve Mr.
4 Jackson's constitutional right to a fair trial. Alternatively, a decision on these
5 motions should be held in abeyance until the defense has the additional time
6 necessary to obtain discovery from the prosecution and further analyze the under-seal
7 material.

8 This opposition is based upon the attached memorandum of points and
9 authorities, the file and record herein and any other information presented prior to a
10 ruling hereon.

11 May 21, 2004

Respectfully submitted,

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

14 By Thomas Mesereau
Thomas A. Mesereau, Jr.

15 By Susan Yu
16 Susan C. Yu

17 Steve Cochran
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27 MICHAEL J. JACKSON
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. THE SALIENT FACTS

3 This case has attracted as much media attention, if not more, than any other
4 litigation ever. Insatiable press coverage began in mid-November of last year when a
5 small army of police searched, videotaped and conducted interviews of employees at
6 Mr. Jackson's ranch. Tom Sneddon, himself, the District Attorney of the County,
7 held a press conference broadcast world-wide to announce allegations against and an
8 arrest warrant for Mr. Jackson. Within the next day or two, Mr. Jackson voluntarily
9 appeared at the Sheriff's station for what turned out to be another event televised
10 throughout the world.

11 Prior counsel for Mr. Jackson understandably responded to Mr. Sneddon's
12 press conferences and press releases. The nature of the press commentary on both
13 sides contributed to the intensity of the media coverage.

14 The prosecution filed a complaint in mid-December 2003 and the case was
15 assigned to this Court for all purposes. The media frenzy continued as arraignment
16 approached on January 16, 2004. At that appearance this Court issued a protective
17 order designed to avoid contamination of the jury pool and protect the parties'
18 interests to a fair trial. Since then, search warrant affidavits, discovery materials and
19 certain papers filed with the Court have been kept under seal. The parties and their
20 agents have been prohibited from commenting or revealing information about the
21 case, with limited exceptions.

22 The press coverage in this case is of the sensationalist variety. Even after this
23 Court's careful rulings, the press runs stories and entertainment pieces on every
24 rumor. The Court's protective and under-seal orders have, however, reduced the
25 intensity.

26 Following a couple of hearings to address, among other things, readiness for a
27 preliminary hearing, the prosecution opted to convene a grand jury. Like prior
28 proceedings concerning the issuance of the arrest warrant and search warrants, the

1 grand jury process requires minimal involvement by a judge and no presence by the
2 defense, much less opportunity for cross-examination and to present evidence of
3 innocence.

4 The indictment imagines an elaborate conspiracy among Mr. Jackson, five
5 identified persons and unidentified others. Twenty-eight overt acts are mentioned in
6 furtherance of supposed objectives to abduct children, falsely imprison and commit
7 extortion.

8 Four counts of lewd conduct with a minor are alleged, along with one count of
9 attempt. There are also four counts of providing alcohol to a minor. The indictment
10 includes special allegations that involve sentencing enhancements. Witnesses
11 expected to testify for the prosecution are identified. Mr. Jackson vigorously denies
12 these false charges.

13 Voluminous grand jury transcripts were provided to the defense relatively
14 recently. Discovery by the prosecution has commenced but, in the view of defense
15 counsel, is far from complete.

16 **II. THE GRAND JURY TRANSCRIPTS AND THE INDICTMENT MUST**
17 **REMAIN UNDER SEAL TO PROTECT MR. JACKSON'S RIGHT TO**
18 **A FAIR TRIAL**

19 The indictment and the grand jury transcripts are rife with prejudicial
20 information that reflect a one-sided, prosecution theory of the case. The
21 admissibility of information presented to the grand jury and the overall propriety of
22 those proceedings have yet to be determined. It is plainly unfair to Mr. Jackson to
23 saturate the media, again, with only the prosecution's view of this case, particularly
24 while Mr. Jackson is subject to the constraints of the protective order.

25 Contrary to the premise of the media's position, this is not a the-cat-already-
26 out-of-the-bag situation. Sealed portions of the indictment and the grand jury
27 transcripts contain previously undisclosed information. In any event, whether the
28 public and press already know about it is not the pertinent inquiry. The test is

1 whether premature release of information contained in the grand jury transcripts and
2 the indictment unduly jeopardize a fair trial. Because the answer is yes, this Court's
3 inclination to seal portions of the indictment and the grand jury transcripts is correct.

4 **III. ALTERNATIVELY, THE HEARING ON THESE MOTIONS SHOULD**
5 **BE CONTINUED TO ALLOW DEFENSE REVIEW OF DISCOVERY**
6 **BY THE PROSECUTION AND FURTHER ANALYSIS OF UNDER-**
7 **SEAL MATERIAL**

8 By virtue of the volume of materials in this case and the scope of the
9 investigation, additional time is necessary for defense counsel to assess whether there
10 may come a time when the indictment and the grand jury transcripts can be unsealed
11 without sacrificing Mr. Jackson's fair trial right. That further evaluation requires
12 ample opportunity to obtain and review discovery, investigate and analyze the under-
13 seal material in view of the whole fund of information.

14 A court appearance will probably be set on the next furlough day, June 25,
15 2004. If this Court is not inclined to deny the media's motion outright, Mr. Jackson
16 respectfully proposes that a decision on the media's motion be held in abeyance
17 pending further input from the parties before the next court appearance.

18 May 21, 2004


Respectfully submitted,

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

22 Steve Cochran
23 KATTEN MUCHIN ZAVIS ROSENMAN

24 Robert M. Sanger
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26 By:


Steve Cochran
Attorneys for Defendant
MICHAEL J. JACKSON

PROOF OF SERVICE BY MAIL

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action, and my business address is Katten Muchin Zavis Rosenman (the "business"), 2029 Century Park East, Suite 2600, Los Angeles, California 90067.

() I am readily familiar with the business's practice for collection and processing of correspondence for mailing with the United States Postal Service; such correspondence would be deposited with the United States Postal Service the same day of deposit in the ordinary course of business.

(X) By Facsimile Machine, I caused the above-referenced document(s) to be transmitted to the persons listed below:

On May 21, 2004 I served the foregoing documents described as MR. JACKSON'S OPPOSITION TO THE MEDIA'S MOTION TO UNSEAL GRAND JURY TRANSCRIPTS AND THE INDICTMENT MEMORANDUM OF POINTS AND AUTHORITIES on the interested parties in this action as follows:

Thomas W. Sneddon, Jr.
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct

Executed on May 14, 2004, at Los Angeles, California.


Shirley Appleton