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17 Attorneys for Defendant
18 **MICHAEL JOSEPH JACKSON**

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

21 THE PEOPLE OF THE STATE OF
22 CALIFORNIA,

23 Plaintiffs,

24 vs.

25 MICHAEL JOSEPH JACKSON,

26 Defendant.

27 ~~REDACTED~~ REDACTED BY
28 COURT

Case No. 1133603

REPLY TO THE DISTRICT ATTORNEY'S
OPPOSITION TO MOTION FOR RECUSAL
OF SANTA BARBARA COUNTY
DISTRICT ATTORNEY'S OFFICE
PURSUANT TO PENAL CODE SECTION
1424

~~UNDER SEAL~~

Honorable Rodney S. Melville
Date: November 4, 2004
Time: 8:30 am
Dept: SM 8

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 MR. JACKSON HAS DEMONSTRATED THAT THE PROSECUTORS HAVE A
4 CONFLICT OF INTEREST WITH THE PROSECUTION OF MR. JACKSON THAT IS
5 SO GRAVE IT IS UNLIKELY THAT MR. JACKSON WILL RECEIVE A FAIR TRIAL

6 The District Attorney of this County does not have a personal right to prosecute Mr.
7 Jackson. Instead he has a duty to prosecute cases in a fair and even handed manner. If there is a
8 reasonable possibility that he cannot do so, he must step aside and allow another professional
9 prosecutor to handle the case. (*People v. Conner* (1983) 34 Cal. 3d 141, 147-148.) This is a
10 matter that has to be examined in an objective fashion by a neutral trial judge. Unfortunately,
11 from a neutral vantage point there is no question that the District Attorney crossed the line so
12 many times during the course of this case that more than the required "reasonable possibility"
13 exists. So be it. If Mr. Jackson ought to be prosecuted, the Attorney General¹ will step in and do
14 so but the Santa Barbara District Attorney should step down.

15 The Court, of course, should not be asked by the prosecution to be an apologist for the
16 prosecutors actions, nor should they ask the Court to turn a blind eye to the obvious. The Court
17 has the duty to "call balls and strikes" without regard to the consequences to who is at bat. The
18 facts, obvious to the most casual observer, demonstrate more than a reasonable possibility of
19 bias.

20 This is not a close case. There is more than sufficient evidence to suspect that the District
21 Attorney has a personal bias against Mr. Jackson. His conduct, going back to his failure to
22 obtain a conviction against Mr. Jackson in the investigation ten years ago, creates that
23 "reasonable possibility that the prosecutor's office may not exercise its discretionary function in
24 an even-handed manner." (*People v. Conner* (1983) 34 Cal. 3d 141, 147-148.) Mr. Jackson is
25 not requesting this Court to appoint a District Attorney "who likes him." (Opposition, page 10.)

26 ¹ We have not received the Attorney General's Opposition to the Motion for Recusal. We
27 will ask leave to reply to the Attorney General's Opposition if and when we receive it.

1 Mr. Jackson is asking this Court to recognize that the evidence shows that the prosecutors have a
2 conflict with the prosecution of this case that is so grave that it threatens to deprive Mr. Jackson
3 of his right to a fair trial under the Sixth Amendment to the United States Constitution.

4 Mr. Sneddon's active participation in the investigation of Mr. Jackson, without the
5 presence of an investigator, has made him a witness in this case. (Motion for Recusal, pages 6-7.)
6 He will be required to testify at trial since [REDACTED] credibility, or lack thereof, is central to
7 both the prosecution's and the defense's case.

8 Mr. Sneddon also demonstrated bias against Mr. Jackson in several ways that are unheard
9 of in other cases. Mr. Sneddon held a press conference, in which he mocked Mr. Jackson and his
10 music. This demonstrated his personal bias against Mr. Jackson and resulted in criticism of his
11 unprofessional demeanor. (Motion for Recusal, pages 7-8.) The presentation by all of the
12 prosecutors in front of the grand jury demonstrated a complete disregard for their duties to
13 present evidence fairly. (Motion for Recusal, page 8.) Mr. Sneddon's personal performance in
14 front of the grand jury showed his intense personal dislike for Mr. Jackson and his utter inability
15 to restrain himself when faced with facts that challenge his biased interpretation of the evidence.
16 in this case. (Motion for Recusal, page 11-21.) This evidence establishes a reasonable possibility
17 that the District Attorney's office may not be capable of exercising its discretionary function in a
18 fair manner. (*People v. Conner, supra*, 34 Cal. 3d 141, 147-148.)

19 The District Attorney claims that the 1993-1994 grand juries, convened in both Santa
20 Barbara County and Los Angeles County, were "not asked to indict anyone" because they were
21 "investigative grand juries." (Opposition, pages 3-4.) The prosecution's argument amounts to a
22 *post hoc* rationalization for the prosecution's failure to obtain an indictment from those grand
23 juries. These grand juries were convened in earnest. Recent discovery shows that the
24 prosecutors presented numerous witnesses to each body. With the resources of two counties at
25 his disposal, and without defense counsel for Mr. Jackson present, the District Attorney was
26 unable to convince either grand jury that probable cause existed to indict Mr. Jackson. The fact
27 that neither grand jury was asked "to indict anyone" suggests that even the prosecutors were
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1 aware of the weak nature of their case. A grand jury does not become "investigative" when the
2 District Attorney realizes that it would be futile to ask for an indictment.

3 The District Attorney's inability to act in an even-handed manner was demonstrated in
4 the recent grand jury proceedings. Determined not to fail to obtain an indictment with a third
5 grand jury, the District Attorney presented the grand jury with a mountain of inadmissible
6 evidence and displayed an unprecedented lack of courtroom decorum. Attorney [REDACTED]
7 and [REDACTED] were called in the early stages of the proceedings and were invited to prejudice
8 the jurors with inflammatory and irrelevant testimony about matters that poisoned the well and
9 eliminated any chance that the grand jury proceeding would be fair. (Motion for Recusal, pages
10 8-11.) Witnesses who contradicted the prosecution's incredible theory of a conspiracy to cover
11 up a child molestation, followed by the child molestation itself, were subjected to bullying by Mr.
12 Sneddon. (Motion for Recusal, pages 11-21.) The claim that Mr. Sneddon's conduct with [REDACTED]
13 [REDACTED] and [REDACTED] amounted to "apparent impatience" with "two distinctly" hostile
14 witnesses (Opposition, page 7) is simply not supported by the grand jury transcripts.

15 The District Attorney's claim that their investigation was vindicated by the fact that Mr.
16 Jackson was indicted (Opposition, pages 4-5) ignores the fact that this indictment was obtained
17 after a grand jury presentation in which the District Attorneys failed to present evidence fairly
18 and behaved in a fashion that would not have been permitted in open court.

19 The District Attorney's attempt to downplay the bias demonstrated by Mr. Sneddon's
20 behavior at the November 19, 2003 press conference is belied by the fact that the press
21 conference was roundly criticized by media observers and resulted in the District Attorney taking
22 unusual steps to prevent further embarrassment. The prosecution writes sarcastically that
23 "[e]veryone knows that a sense of humor and a willingness to admit error are defining
24 characteristics of the zealot." (Opposition, page 7.) In fact, the press conference was such a
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1 debacle² and raised so many questions about the District Attorney's bias that, in an
2 unprecedented move, the Santa Barbara District Attorney's Office hired a public relations firm to
3 repair the damage done by the press conference. Despite the District Attorney's efforts to
4 suppress its obvious bias against Mr. Jackson, it remains apparent that the prosecution's blind
5 zeal to convict Mr. Jackson creates the reasonable possibility that it is unable to exercise its
6 discretion in an even-handed fashion.

7 IL

8 **THE EVIDENCE OF PROSECUTORIAL BIAS ESTABLISHES THAT THE ENTIRE**
9 **OFFICE OF THE SANTA BARBARA DISTRICT ATTORNEY MUST BE RECUSED**

10 Mr. Sneddon is the District Attorney of Santa Barbara County. If the Court finds that he
11 must be recused, then it follows that his deputies must be recused as well. (See *People v. Choi*
12 (2000) 80 Cal.App.4th 476; *People v. Lepe* (1985) 164 Cal.App.3d 684.) The technical aspects
13 of Santa Barbara County's civil service system (Opposition, page 9) are unimportant to this
14 discussion. Mr. Sneddon is the head of the District Attorney's office and his deputies answer to
15 him. If Mr. Sneddon must be recused, it follows that his deputies must be recused as well.
16 Furthermore, the size of the Santa Barbara District Attorney's office, alone, compels a complete
17 recusal of the office.

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26 ² The president of Tellem Worldwide, the public relations firm hired by the District
27 Attorney, has publicly referred to the November 19, 2003 press conference as a "debacle." ("PR
28 Agency Touts Sneddon Success: D.A. Needed Help, Tellem Says at Seminar," Santa Barbara
News Press, July 16, 2004.)

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III.

CONCLUSION

Mr. Sneddon's bias as documented by his unprecedented conduct compels recusal of him and his entire office. Let a fair and even-handed prosecutor from the Attorney General's Office determine if Mr. Jackson deserves to be prosecuted -- and, if so, for what -- based on an objective view of the law and the evidence. Then, let that fair and even-handed prosecutor try the case. The Santa Barbara District Attorney has no vested right to this case. No other remedy will give Mr. Jackson a chance at a fair trial.

Dated: November 1, 2004

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

SANGER & SWYSEN
Robert M. Sanger

OXMAN & JAROSCAK
Brien Oxman

By: 

Robert M. Sanger
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 November 1,, 2004, I served the foregoing document **REPLY TO DISTRICT ATTORNEYS OPPOSITION TO MOTION FOR RECUSAL OF SANTA BARABRA COUNTY DA OFFICE** on the interested parties in this action by depositing a true copy thereof as follows:

SEE ATTACHED SERVICE LIST

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.

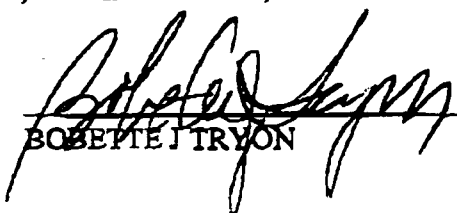
BY FACSIMILE - I caused the above-referenced document(s) to be transmitted via facsimile to the interested parties at to **DISTRICT ATTORNEY** and **ATTORNEY GENERAL**

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.

FEDERAL - I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed November 1, 2004, at Santa Barbara, California.


BOBETTE J TRYON

SERVICE LIST

District Attorney of the County of Santa Barbara

Tom Sneddon

Gerald Franklin

Ron Zonen

Gordon Auchincloss

1112 Santa Barbara Street

Santa Barbara, CA 93101

Fax - 805-568-2398

Attorney General

Bill Lockyer

300 South Spring Street

Los Angeles, CA 90013

Fax 213-897-6496

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA:

I am a citizen of the United States of America and a resident of the county aforesaid. I am employed by the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action. My business address is 312-H East Cook Street, Santa Maria, California.

On NOVEMBER 2, 20 04, I served a copy of the attached REPLY TO THE DISTRICT ATTORNEY'S OPPOSITION TO MOTION FOR RECUSAL OF SANTA BARBARA COUNTY DISTRICT ATTORNEY'S OFFICE PURSUANT TO PENAL CODE SECTION 1424 (FURTHER REDACTED BY COURT) addressed as follows:

THOMAS W. SNEDDON, DISTRICT ATTORNEY
DISTRICT ATTORNEY'S OFFICE
1105 SANTA BARBARA STREET
SANTA BARBARA, CA 93101

THOMAS A. MESEREAU, JR.
COLLINS, MESEREAU, REDDOCK & YU, LLP
1875 CENTURY PARK EAST. 7TH FLOOR
LOS ANGELES, CA 90067

BILL LOCKYER
ATTORNEY GENERAL'S OFFICE
300 S. SPRING STREET
LOS ANGELES, CA 90013

X FAX

By faxing true copies thereof to the receiving fax numbers of: (805) 568-2398 (District Attorney's Office); (310) 861-1007 (Thomas Mesereau, Jr.); (213) 897-6496 (Attorney General) . Said transmission was reported complete and without error. Pursuant to California Rules of Court 2005(i), a transmission report was properly issued by the transmitting facsimile machine and is attached hereto.

 MAIL

By placing true copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States Postal Service mail box in the City of Santa Maria, County of Santa Barbara, addressed as above. That there is delivery service by the United States Postal Service at the place so addressed or that there is a regular communication by mail between the place of mailing and the place so addressed.

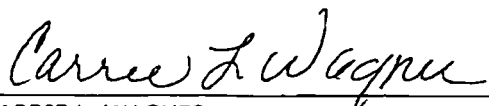
 PERSONAL SERVICE

By leaving a true copy thereof at their office with the person having charge thereof or by hand delivery to the above mentioned parties.

 EXPRESS MAIL

By depositing such envelope in a post office, mailbox, sub-post office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with express mail postage paid.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 2ND day of NOVEMBER, 20 04, at Santa Maria, California.


CARRIE L. WAGNER