

DEC 15 2004

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

1 **COLLINS, MESEREAU, REDDOCK & YU**  
2 Thomas A. Mesereau, Jr., State Bar Number 091182  
3 Susan C. Yu, State Bar Number 195640  
4 1875 Century Park East, 7<sup>th</sup> Floor  
5 Los Angeles, CA 90067  
6 Tel.: (310) 284-3120, Fax: (310) 284-3133

7 **SANGER & SWYSEN**  
8 Robert M. Sanger, State Bar Number 058214  
9 233 East Carrillo Street, Suite C  
10 Santa Barbara, CA 93101  
11 Tel.: (805) 962-4887, Fax: (805) 963-7311

12 **OXMAN & JAROSCAK**  
13 Brian Oxman, State Bar Number 072172  
14 14126 East Rosecrans  
15 Santa Fe Springs, CA 90670  
16 Tel.: (562) 921-5058, Fax: (562) 921-2298

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

*PROPOSED REDACTED*

21 THE PEOPLE OF THE STATE OF  
22 CALIFORNIA,

23 Plaintiffs,

24 vs.

25 MICHAEL JOSEPH JACKSON,

26 Defendant.

Case No. 1133603

APPLICATION TO RECALL ORDER TO  
SHOW CAUSE [REDACTED]  
DECLARATIONS OF THOMAS  
MESEREAU JR., SUSAN C. YU AND  
[REDACTED], PROPOSED  
ORDER

~~UNDER SEAL~~

Honorable Rodney S. Melville

27 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE DISTRICT  
28 ATTORNEY OF THE COUNTY OF SANTA BARBARA, TOM SNEDDON, AND DEPUTY

APPLICATION TO RECALL ORDER TO SHOW CAUSE

1 DISTRICT ATTORNEYS GERALD FRANKLIN, RON ZONEN AND GORDON

2 AUCHINCLOSS:

3 Mr. Jackson requests that the Court recall its order to show cause [REDACTED] issued on  
4 December 14, 2004 and for such other such further relief as the Court may deem just and proper.  
5 This application is made on the grounds that the request for an order to show cause [REDACTED]  
6 is not properly supported by evidence as required by C.C.P. Section 1211 and the right of a  
7 person accused of [REDACTED] to proper notice and due process of law under the state and federal  
8 constitution.

9 This application is based on this application, the memorandum of points and authorities  
10 attached hereto, the declarations of counsel, the records, pleadings and papers herein, and such  
11 other and further matters as may be submitted to the Court.

12 Dated: December 15, 2004

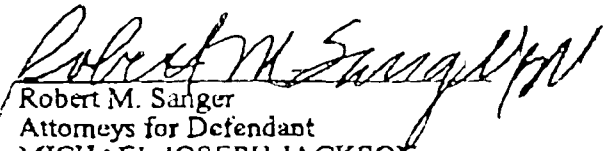
13 Respectfully submitted,

14 COLLINS, MESEREAU, REDDOCK & YU  
15 Thomas A. Mescreau, Jr.  
Susan C. Yu

16 SANGER & SWYSEN  
17 Robert M. Sanger

18 OXMAN & JAROSCAK  
19 Brian Oxman

20 By:

  
21 Robert M. Sanger  
22 Attorneys for Defendant  
MICHAEL JOSEPH JACKSON

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APPLICATION TO RECALL ORDER TO SHOW CAUSE

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 The Court was presented with a request for an order to show cause [REDACTED] on  
5 December 13, 2004. An order was issued on December 14, 2004. Counsel for Mr. Jackson did  
6 not have an opportunity to respond to the request prior to the Court's order.

7 The last time such an order was requested was when defense counsel requested an order  
8 to show cause [REDACTED]. The  
9 District Attorney had an opportunity to respond to the request before the OSC issued. Defense  
10 counsel was not given such an opportunity. However, we respectfully request the Court to recall  
11 the order to show cause issued on December 14, 2004 for the reasons set forth below.

12 Here, the affidavit is defective in that it is based on unreliable hearsay. Furthermore, the  
13 [REDACTED]  
14 [REDACTED]. This OSC [REDACTED] is not based on a review of the prosecution of legitimate  
15 evidence and the timing suggests it is for [REDACTED]  
16 [REDACTED]

17 II.

18 THE AFFIDAVIT OFFERED TO SUPPORT THE ORDER TO SHOW CAUSE IS  
19 INSUFFICIENT

20 The [REDACTED] and its contents are not reliable.  
21 Furthermore, as a matter of law, a declaration which seeks to rely on statements attributed to a  
22 person in a [REDACTED] is hearsay and, as such, cannot be the basis for a proper affidavit. Code of  
23 Civil Procedure Section 1211 states, in relevant part:

24 When the [REDACTED] is not committed in the immediate view and presence of the  
25 court, or of the judge at chambers, an affidavit shall be presented to the court or  
judge of the facts constituting the [REDACTED]

26 The requirement of filing an affidavit is jurisdictional. Any [REDACTED] order made concerning  
27 matters not occurring in the court's presence, and not supported by a proper affidavit, is  
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APPLICATION TO RECALL ORDER TO SHOW CAUSE

1 procedurally invalid. (*Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518, 532.)  
2 Without a proper and sufficient affidavit, no indirect [REDACTED] may be found or punished.  
3 (*Sorell v. Superior Court* (1967) 248 Cal.2d 157, 160.) The affidavit's insufficiency cannot be  
4 cured by presenting proof of [REDACTED] at a hearing. (*In re Cowan* (1991) 230 Cal.App 3d 1281.)

5 III.

6 [REDACTED]  
7 First, as set forth above, [REDACTED] is simply not a reliable source of  
8 information.

9 Second, it is extremely unlikely that [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]

14 Third, [REDACTED] was present in the room when he was  
15 speaking to [REDACTED]. She heard [REDACTED] that [REDACTED]  
16 [REDACTED] (Declaration of Maureen Jaroscak, ¶ 3.)

17 Fourth, immediately upon discovering the following day that [REDACTED]  
18 [REDACTED] (Declarations of Thomas Mesereau, Jr., ¶ 5.)

19 IV.

20 WERE THIS NOT A [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28

1 [REDACTED]  
2 [REDACTED]  
3 The use of the [REDACTED] process not based on reliable information or admissible evidence  
4 is improper. The extreme prejudice that this distraction has caused to the defense should not be  
5 tolerated by the Court.

6 V.

7 [REDACTED]  
8 While the prosecution should be aware that the [REDACTED]  
9 [REDACTED] is not reliable, they may or may not have  
10 known that [REDACTED] As set forth in the declaration of Thomas  
11 Mesereau Jr., [REDACTED] (Declaration of Thomas Mesereau, Jr.,  
12 at ¶ 7.) Therefore, whether or not [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15 Therefore, even if the affidavit in support of the OSC were technically proper, which it is  
16 not, the Court should recall the OSC due to the additional information regarding the extreme  
17 unreliability of the underlying information.

18 VI.

19 IT IS INAPPROPRIATE FOR EITHER SIDE TO BE TAKING THE COURT'S TIME  
20 OR THE TIME OF OPPOSING COUNSEL TO DEAL WITH ILL THOUGHT OUT  
21 AND UNSUPPORTED [REDACTED]

22 In the past, both Mr. Sneddon and Mr. Mesereau have attempted to resolve [REDACTED]  
23 [REDACTED] by attorneys on either side by way of a clarification.<sup>1</sup>

24 Recently, [REDACTED]  
25 [REDACTED]

26  
27 <sup>1</sup> The only time defense sought an order to show cause [REDACTED] it was denied after a  
28 thoughtful hearing by the court. In that instance, however, the defense only came before the  
Court with an actual [REDACTED]

[REDACTED] The OSC was denied based on the lack of [REDACTED]  
[REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 (Attached as Exhibit A to the Declaration of Thomas Mesereau, Jr.)

5 While [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED] (Declaration  
11 of Thomas Mesereau, Jr., ¶ 10.)

12 The decision of [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]

18 VII.

19 THERE WOULD BE NO PURPOSE IN INVOKING THE [REDACTED]  
20 UNDER THESE CIRCUMSTANCES

21 The [REDACTED]  
22 [REDACTED] A technical, but innocuous, violation  
23 of a pretrial publicity order that has no tendency to prejudice a pending criminal proceeding is  
24 not punishable as contempt. (*Younger v. Smith* (1973) 30 Cal.App.3d 138, 150.) [REDACTED]  
25 [REDACTED]  
26 [REDACTED] (Declaration of Thomas Mesereau, Jr., at ¶ 5.) If there was any harm to  
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1 the case, [REDACTED] Even if there were some  
2 means to prove these untrue allegations about [REDACTED] no harm was done and he took the  
3 appropriate remedies. Therefore, there would be no purpose in invoking [REDACTED]

4 [REDACTED]  
5 It is also clear that the timing of this request for an OSC re contempt is designed for  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]

10 Were we not subject ourselves to the same objections, it would be easy to request  
11 [REDACTED] Prosecutors are required to review cases to determine if they  
12 have credible evidence before seeking prosecution. Prosecutors are required to review the  
13 motives of the accusers and their own motions before seeking prosecution. Had the prosecution  
14 done that here in a clear-headed fashion, neither counsel nor the Court would be wasting valuable  
15 time and resources on this matter.

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VIII.

CONCLUSION

As stated before, Mr. Jackson is entitled to neither more nor less protection under the law. The same can be said for his lawyers. We respectfully submit that the Court should issue a clarification as to the manner in which the prosecution has attempted to invoke the serious [REDACTED] and that the Court should recall the order to show cause.

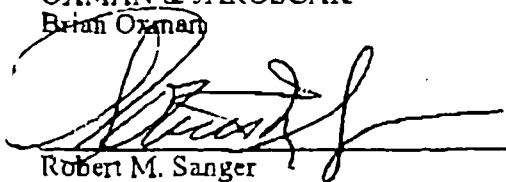
Dated: December 15, 2004

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

SANGER & SWYSEN  
Robert M. Sanger

OXMAN & JAROSCAK  
Brian Oxman

By:

  
Robert M. Sanger  
Attorneys for Defendant  
MICHAEL JOSEPH JACKSON



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DECLARATION OF THOMAS A. MESEREAU, JR.

I, Thomas A. Mesereau, Jr., declare as follows:

1. I am an attorney at law duly licensed to practice law in the courts of the State of California, a partner in the law firm of Collins, Mesereau, Reddock & Yu, and lead counsel for Mr. Michael Jackson in this criminal proceeding. I have personal knowledge of the facts set forth herein and, if called and sworn as a witness, I could and would competently testify thereto under oath.

2. This declaration is being submitted in opposition to the [REDACTED]

3. I was at the Neverland Ranch during the Prosecution's search of the premises on December 3, 2004. I returned to the Neverland Ranch the following day and was present when Mr. Jackson voluntarily [REDACTED]

4. I received a phone call from [REDACTED]

5. I advised [REDACTED] followed my advice.

6. [REDACTED]

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7. I have prior experience with [REDACTED]

[REDACTED]

8. Because of the [REDACTED]

[REDACTED]

9. I submit that a [REDACTED]

[REDACTED]

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10. Recently, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]ady.

[REDACTED]  
[REDACTED]

[REDACTED]

11. While [REDACTED] he made them, would have [REDACTED]

[REDACTED]

[REDACTED] We made the decision not to bring such a request because both sides must  
prepare for trial and because the content of the [REDACTED]

[REDACTED] We were also mindful of the fact that [REDACTED]

[REDACTED]

[REDACTED]

12. I respectfully request that the Court accept the declarations and information  
submitted in opposition to [REDACTED]

[REDACTED]

I declare under penalty of perjury under the laws of the State of California that the foregoing  
is true and correct and that this declaration was executed on this 14<sup>th</sup> day of December 2004, at Los  
Angeles, California.

*Thomas A. Mesereau, Jr.*  
THOMAS A. MESEREAU, JR.

**ATTACHMENT OMITTED**

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DECLARATION OF SUSAN C. YU

I, Susan C. Yu, declare as follows:

1. I am an attorney at law duly licensed to practice law in the courts of the State of California, a partner in the law firm of Collins, Mesereau, Reddock & Yu, and co-counsel for Mr. Michael Jackson in this criminal proceeding. I have personal knowledge of the facts set forth herein and, if called and sworn as a witness, I could and would competently testify thereto under oath.

2. I submit this declaration in opposition to the Prosecution's Request for an OSC [REDACTED] as to my colleague and co-counsel, [REDACTED]

3. On December 3, 2004, Mr. Jackson's Neverland Ranch was searched. At that time, my staff and I were busy working on the Court's mandated December 6, 2004 discovery compliance deadline. So too was [REDACTED]. He and I were on the phone throughout that day discussing the discovery compliance.

4. The following day, on December 4, 2004, I received a call from [REDACTED]. He was very shocked and upset about an [REDACTED]. [REDACTED] told me that [REDACTED]. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]


5. I have been working very closely with [REDACTED] in this case since May of this year. Thus, I believe I know [REDACTED] well enough to represent to the Court that [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

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[REDACTED]

[REDACTED]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on this 14<sup>th</sup> day of December 2004, at Los Angeles, California.

  
\_\_\_\_\_  
SUSAN C. YU

DECLARATION OF [REDACTED]

I, [REDACTED] declare and say:

[REDACTED]

2. On December 3, 2004, I was present when [REDACTED]

3. On December 4, 2004, [REDACTED]

4. [REDACTED]

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.

Executed this 14th day of December, 2004, at Santa Fe Springs, California.

[REDACTED SIGNATURE]