

JAN 23 2004

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA BARBARA

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

MICHAEL JOE JACKSON,

Defendant.

Case No.: Case No. 1133603

FINDINGS AND ORDER RE: MOTION FOR A  
PROTECTIVE ORDER

There are two different standards in the case law under which a request for a protective order burdening First Amendment rights may be analyzed. In Younger v. Smith (1973) 30 CA3d 138, 163, the court, in a criminal case, imposed a protective order based on a *reasonable likelihood* of prejudicial news that would make difficult the impaneling of an impartial jury and tend to prevent a fair trial. In Hurvitz v. Hoefflin (2000) 84 CA4th 1232, 1241, a civil case, the court, without reference to or discussion of Younger, stated: "Orders which restrict or preclude a citizen from speaking in advance are known as "prior restraints," and are disfavored and presumptively invalid. Gag orders on trial participants are unconstitutional unless (1) the speech sought to be restrained poses a *clear and present danger or serious and imminent threat* to a protected competing interest; (2) the order is

1 narrowly tailored to protect that interest; and (3) no less restrictive alternatives are available.”  
2 [Emphasis added.]

3 The court finds that under either test a protective order is warranted here.

4 This case has generated significant media and public interest. Michael Jackson is a  
5 worldwide celebrity and the events surrounding the present prosecution have received intense  
6 and pervasive publicity. Partially because of the significant public curiosity surrounding these  
7 events, the Court has ordered the affidavit in support of the search warrant sealed to avoid  
8 the possibility of tainting the jury pool with information not yet admitted in evidence.  
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10 Both Mr. Jackson and the media argue that the prosecution has not produced sufficient  
11 evidence that the right to a fair trial has been or will be compromised by pretrial publicity. The  
12 prosecution has offered the transcripts of two interviews: Michael Jackson’s December 28,  
13 2003, interview broadcast on “60 Minutes”; and Mark Geragos’s December 18, 2003, interview  
14 on “Larry King Live.” In Mr. Jackson’s interview, he proclaimed his innocence, discussed his  
15 relationship with the minor, accused the Sheriff of mistreatment when he was taken into  
16 custody and discussed the details of that mistreatment, accused the Sheriff of destroying his  
17 property when executing the search warrant, and asserted that greed was the motivating  
18 factor in this case, and that the minor was being manipulated by his parents.

19 In Mr. Geragos’s interview with Larry King, he emphasized favorable aspects of an  
20 investigation conducted by the Los Angeles authorities, stated that the case revolves around a  
21 financial motive, vouched for Michael Jackson’s character, reported that the minor’s mother  
22 first retained a civil lawyer, then reported the allegations, asserted that the child’s accusations  
23 are a “shakedown” and a “scam”, reported that the minor’s brothers testified to the L.A.  
24 authorities and said nothing ever happened, stated that the media reported that the minor’s  
25 mother has a documented history of manipulating her children and that she provided the  
26

1 children with scripts before depositions, and stated that Michael Jackson is "factually  
2 innocent."

3         The prosecution has participated in media activities as well. Mr. Jackson notes that the  
4 D.A. has conducted at least three separate nationally televised press conferences, preceded by  
5 press releases, and suggests that a well-timed leak led to live coverage of the search of  
6 Neverland Ranch. During a nationally televised interview on Court TV, the D.A. referred to Mr.  
7 Jackson as "Wacko Jacko." The D.A. later apologized for the remark. It should also be noted  
8 that the D.A.'s website vouches for the credibility of witnesses and makes other comments on  
9 the handling of the case. Thus, sufficient evidence is available upon which to find the  
10 existence of a serious and imminent threat to the right to a fair and impartial jury.

11         Mr. Jackson and the media suggest that the court must first pursue less restrictive  
12 alternatives than a protective order to control the effect the publicity may have on the  
13 potential jury pool. They suggest that an admonishment to counsel of the mandates of CRPC  
14 5-120 would be a sufficient mechanism to control the publicity. However, CRPC 5-120, by its  
15 terms, only applies to the attorneys in the case. Nor does it seem a workable solution to  
16 incorporate the terms of 5-120 into a court order, the violation of which would be punishable  
17 by contempt. The imprecision of the rule could lead to "mini-trials" on whether a statement  
18 had a "substantial likelihood of materially prejudicing an adjudicative proceeding." CRPC 5-  
19 120(C) provides that a member may make statements that he or she "would believe is  
20 required to protect a client from the substantial undue prejudicial effect of recent publicity not  
21 initiated by the member or the member's client." The ambiguity of this provision makes  
22 enforcement problematic.

23         The media also suggests using alternatives such as voir dire to eliminate those with a  
24 fixed opinion as a result of the publicity and charging those who have been selected to  
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1 disregard any publicity to which he or she has been exposed. But, these seem unworkable. It  
2 is far more desirable to avoid the prejudice in the first instance than to hope to identify  
3 unaffected jurors later. The attached order, which modifies slightly the version proposed by  
4 the District Attorney, is in this court's judgment narrowly tailored to meet the extraordinary  
5 interest in the case.

6 The court retains continuing jurisdiction to modify the Protective Order as may seem  
7 appropriate in the unfolding development of the case.

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9 DATED: January 23, 2004

  
10 RODNEY S. MELVILLE  
11 Judge of the Superior Court  
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PROOF OF SERVICE  
1013A(1)(3), 1013(c) CCP

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 JANUARY 23, 20 04, I served a copy of the attached FINDINGS AND ORDER RE: MOTION FOR A PROTECTIVE ORDER addressed as follows:

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

GERAGOS & GERAGOS  
c/o MARK GERAGOS, ESQ.  
350 S. GRAND AVENUE, 39<sup>TH</sup> FLOOR  
LOS ANGELES, CA 90071-3480

GIBSON, DUNN & CRUTCHER  
c/o THEODORE J. BOUTROUS, ESQ.  
333 SOUTH GRAND AVENUE  
LOS ANGELES, CA 90071

FAX

By faxing true copies thereof to the receiving fax numbers of: 805-568-2398 (DISTRICT ATTORNEY); 213-625-1600 (MARK GERAGOS, ESQ.); 213-229-7520 (GIBSON, DUNN & CRUTCHER), 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.

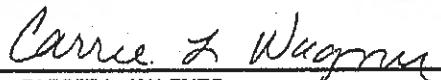
PERSONAL SERVICE

By leaving a true copy thereof at their office with their clerk therein or the person having charge thereof.

EXPRESS MAIL

By depositing such envelope in a post office, mailbox, subpost 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 23<sup>RD</sup> day of JANUARY, 20 04, at Santa Maria, California.

  
CARRIE L. WAGNER