

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

JAN 24 2005

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

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 J. GORDON AUCHINCLOSS (State Bar No. 150251)
Senior Deputy District Attorney
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Senior Deputy District Attorney
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA BARBARA
10 SANTA MARIA DIVISION

11 THE PEOPLE OF THE STATE OF CALIFORNIA,

12 Plaintiff,

13 v.

14 MICHAEL JOE JACKSON,

15 Defendant.

No. 1133603

16 PLAINIFF'S NOTICE OF
17 MOTION FOR ORDER
18 DIRECTING THAT PLAINTIFF'S
19 RESPONSE TO MARTIN
20 BASHIR'S MOTION FOR
21 PROTECTIVE ORDER
22 PRECLUDING HIM FROM
23 TESTIFYING BEMAINED
24 UNDER SEAL UNTIL FURTHER
25 ORDER OF COURT;
26 DECLARATION OF GERALD
27 McC. FRANKLIN IN SUPPORT
28 OF SEALING; MEMORANDUM
OF POINTS AND AUTHORITIES

DATE: January 28, 2005
TIME: 8:30 a.m.
DEPT: TBA (Melville)

24 TO: MICHAEL JOE JACKSON, AND TO THOMAS A. MESEREAU, JR.,

25 ROBERT SANGER AND BRIAN OXMAN, HIS ATTORNEYS OF RECORD, AND TO
26 THEODORE J. BOUTROUS, JR., ESQ., GIBSON, DUNN & CRUTCHER, LLP;

27 PLEASE TAKE NOTICE that on January 28, 2005, at 8:30 a.m. or as soon
28 thereafter as the matter may be heard, in Department SM 2, Plaintiff will, and hereby does.

1 move for an order directing that Plaintiff's Response to Martin Bashir's Motion for Protective
2 Order, Etc., filed contemporaneously with this Request for Conditional Sealing, be maintained
3 under conditional seal pending further Order of Court, pursuant to California Rules of Court,
4 rule 243.1 et seq.

5 The motion will be made on the ground that the facts, as established by the
6 accompanying declaration of Gerald McC. Franklin, are sufficient to justify sealing the
7 specified motion pursuant to California Rules of Court, rule 243.1 et seq.

8 The motion will be based on this notice of motion, on the declaration of Gerald
9 McC. Franklin and the memorandum of points and authorities served and filed herewith, on the
10 records and the file herein, and on such evidence as may be presented at the hearing of the
11 motion.

12 DATED: January 24, 2005

13 THOMAS W. SNEDDON, JR.
14 District Attorney

15 By: Gerald McC. Franklin
16 Gerald McC. Franklin, Senior Deputy

17 Attorneys for Plaintiff
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DECLARATION OF GERALD McC. FRANKLIN

1. Gerald McC. Franklin, say:

1. I am a lawyer admitted to practice in the State of California. I am a Senior Deputy of the District Attorney of Santa Barbara County. I am one of the lawyers of record for the People, Plaintiff in this action.

2. This motion to conditionally seal Plaintiff's Response to Martin Bashir's Motion for Protective Order, Etc. is made on the ground that the Response makes reference to the names of certain witnesses.

3. I believe that the interest of each party to a fair trial overrides the public's prompt access to Plaintiff's Response to Martin Bashir's Motion for Protective Order, Etc. until the appropriateness of the release of a redacted version of the Response is determined by the court.

4. I believe an order maintaining this Response under seal in the interim would avert the probability of prejudice, and that no more narrowly tailored order with respect to that pleading could be drafted to achieve the overriding interest in a fair trial.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct, except as to matters stated upon my information and belief, and as to such matters I believe it to be true. I execute this declaration at Santa Barbara, California on January 24, 2005.

Gerald McC. Franklin

Gerald McC. Franklin

MEMORANDUM OF POINTS AND AUTHORITIES

1
2 The procedure for sealing records under California Rules of Court, rule 243.1 et seq.
3 applies only to records that are deemed public. (*Id.*, rule 243.1(a)(2).) Motions and responsive
4 pleadings in criminal cases are, ordinarily, "public" records of the court.

5 Rule 243.1(d) provides that

6 The court may order that a record be filed under seal only if it
7 expressly finds facts that establish:

- 8 (1) There exists an overriding interest that overcomes the right of
9 public access to the record;
- 10 (2) The overriding interest supports sealing the record;
- 11 (3) A substantial probability exists that the overriding interest will
12 be prejudiced if the record is not sealed;
- 13 (4) The proposed sealing is narrowly tailored; and
- 14 (5) No less restrictive means exist to achieve the overriding interest.

15 Rule 243.1(e) provides, in pertinent part:

16 (1) An order sealing the record must (i) specifically set forth the
17 facts findings that support the findings and (ii) direct the sealing of
18 only those documents and pages, or, if reasonably practicable,
19 portions of those documents and pages, that contain the material that
20 needs to be placed under seal. All other portions of each documents
or page must be included in the public file.

21 Rule 243.2(b) provides, in pertinent part, that "Pending the determination of the
22 motion [of a party to file a record under seal], the lodged record will be conditionally under
23 seal."

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1 DATED: January 24, 2005

2 Respectfully submitted.

3 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY
4 County of Santa Barbara

5 By: Gerald McC. Franklin
6 Gerald McC. Franklin, Senior Deputy

7 Attorneys for Plaintiff

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PROOF OF SERVICE

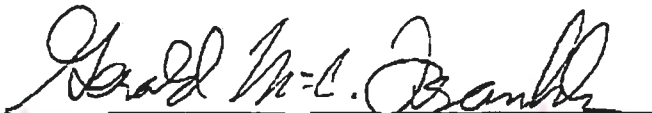
STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA) SS

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.

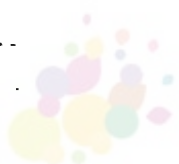
On January 10, 2005, I served the within PLAINTIFF'S REQUEST FOR ORDER DIRECTING THAT PLAINTIFF'S RESPONSE TO MARTIN BASHIR'S MOTION FOR PROTECTIVE ORDER, ETC. BE MAINTAINED UNDER CONDITIONAL SEAL PENDING FURTHER ORDER OF COURT on Media's counsel and on Defendant, by THOMAS A. MESEREAU, JR. and ROBERT SANGER and BRIAN OXMAN, by personally delivering a true copy thereof to Mr. Sanger at his office in Santa Barbara, then faxing a true copy to other counsel at the facsimile number shown with the address of each on the attached Service List (except Mr. Sanger and Mr. Oxman), and then by causing to be mailed a true copy to each counsel (except Mr. Sanger and Mr. Oxman) at that address.

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

Executed at Santa Barbara, California on this 24th day of January, 2005.


Gerald McC. Franklin

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