

FEB 13 2004

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

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2 County of Santa Barbara  
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11 Attorneys for Plaintiff

*Unsealed  
pursuant to  
6/16/05 court  
order*

12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 FOR THE COUNTY OF SANTA BARBARA  
15 SANTA MARIA DIVISION

16 THE PEOPLE OF THE STATE OF CALIFORNIA,

17 Plaintiff,

18 v.

19 MICHAEL JOE JACKSON,

20 Defendant.

21 No. 1133603

22 PLAINTIFF'S EX PARTE  
23 MOTION FOR THE COURT'S  
24 RECONSIDERATION OF ITS  
25 ORDER OF FEBRUARY 12,  
26 2004 REQUIRING DISCLOSURE  
27 TO DEFENSE COUNSEL OF  
28 CERTAIN SEARCH WARRANTS  
AND THEIR SUPPORTING  
AFFIDAVITS UNDERGIRDING  
AN ONGOING CRIMINAL  
INVESTIGATION;  
MEMORANDUM OF POINTS  
AND AUTHORITIES;  
DECLARATION OF THOMAS  
W. SNEDDON, JR. IN SUPPORT  
THEREOF

~~UNDER CONDITIONAL SEAL~~

DATE: February 13, 2004  
TIME: 7:45 a.m.  
DEPT: SM 2 (Melville)

29 By leave of court, Plaintiff respectfully requests the Court to reconsider its order of  
30 February 12, 2004, modifying its conditional sealing orders "filed on and after January 28,  
31 2004" and requiring that "The District Attorney shall forthwith provide for Defendant's

1 counsel a copy of all search warrants, search warrant affidavits and returns relating to the  
2 above case which are presently under seal and have not already been provided.” (Emphasis  
3 added.)

4 The Court explains that “The copies shall be for the purpose of permitting Defendant’s  
5 counsel to address the merits of the motion to unseal the material at the hearing on February 13,  
6 2004.”

7 It is apparent to Plaintiff that Plaintiff and the affiants whose information supported  
8 certain of those search warrants did not make as clear as they should have that the warrants  
9 were sought in aid of an ongoing investigation focusing not only on the charges currently  
10 pending against Defendant but on suspected criminal activity of other individuals that may well  
11 result in separate criminal proceedings against one or more of them.

12 As the case cited in the accompanying Memorandum of Points and Authorities notes, a  
13 sealing order may be appropriate where an investigation is continuing after the 10-day time  
14 limit for public disclosure has elapsed and the investigation would be prejudiced by premature  
15 disclosure of the search warrant and its supporting affidavit..

16 In some such cases, the suspect may not yet be charged, but the identity of his or her  
17 lawyer is known, and that lawyer demands to be informed of the progress of the ongoing  
18 investigation. In such cases, counsel’s request is politely refused. To Plaintiff’s knowledge, no  
19 one has seriously argued that the suspect’s own counsel must be excepted from an order of  
20 non-disclosure, so that he or she might be heard on the question whether the integrity of the  
21 investigation of his client would be prejudiced by disclosure of the documents to the public.

22 As the accompanying Declaration of Thomas W. Sneddon, Jr., Plaintiff’s chief counsel  
23 discloses, the on-going investigation of the defendant in this high-profile case, and of others  
24 whose activities have exposed them to the distinct possibility of a separate criminal  
25 prosecution, will be seriously crippled and frustrated if the Court does not reconsider its order  
26 of February 12th. Sheriff’s Sergeant Steve Robel, the lead investigator in the pending matter,  
27 will be present in court on February 13th and is prepared to give further evidence of the critical  
28 need to maintain the confidentiality of the warrants and supporting affidavits identified by

1 District Attorney Sneddon.

2 There is additional concern that turning information over to Defendant Jackson's  
3 attorneys could compromise their ability to properly represent their client. Even if instructed  
4 not to disclose the information contained in the affidavits, the attorneys would be placed in the  
5 situation of knowing information that is harmful to their client but not being able to disclose it,  
6 even though doing so would significantly reduce their client's risk. Should the information  
7 become public the attorneys would be presumed to be the source of the leak, even if that were  
8 not the case.

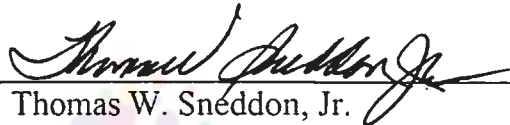
9 What if the attorneys maintained the confidentiality of that information, and the  
10 information led to the discovery of further evidence against the defendant. It would reasonably  
11 follow that the defendant would resent the fact that his attorney had been in possession of  
12 information that could have helped him, had his attorney disclosed it. Attorneys have been  
13 fired for less.

14 For the foregoing reasons, Plaintiff urges the Court to reconsider its Further Order  
15 Concerning Sealing of Search Warrants, dated February 12, 2004.

16  
17 DATED: February 13, 2004

18 Respectfully submitted,

19 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY  
20 County of Santa Barbara

21   
22 Thomas W. Sneddon, Jr.

23 Attorney for Plaintiff

1 MEMORANDUM OF POINTS AND AUTHORITIES

2  
3 In *PSC Geothermal Services Co. v. Superior Court* (1994) 25 Cal.4th 1697, our  
4 Supreme Court noted:

5 Section 1534 provides that the documents associated with the  
6 warrant are public documents 10 days after its execution. Typically  
7 after the search, arrests are made. There is no exception in the  
8 statute for instances, such as that here, where the search is used to  
9 further an ongoing investigation. Such information, however, may  
10 be privileged as official information under Evidence Code sections  
11 1040, subdivision (a) and 1042, subdivision (b). (*Id.*, at p. 1714.)

12 Evidence Code section 1040, subdivision (a) provides: "As used in this section, 'official  
13 information' means information acquired in confidence by a public employee in the course of  
14 his or her duty and not open, or officially disclosed, to the public prior to the time the claim of  
15 privilege is made."

16 Evidence Code section 1042, subdivision (b) provides: "Notwithstanding subdivision (a)  
17 [requiring a court to make adverse findings adverse to the public entity upon any issue in a  
18 court proceeding to which privileged information is material], where a search is made pursuant  
19 to a warrant valid on its face, the public entity bringing a criminal proceeding is not required to  
20 reveal to the defendant *official information* or the identity of an informer in  
21 order to establish the legality of the search or the admissibility of any evidence obtained as a  
22 result of it." (Emphasis added.)

23 The procedure for sealing records under California Rules of Court, rule 243.1 et seq.  
24 applies only to records that are deemed public. (*Id.*, rule 243.1(a)(2).) Search warrants, their  
25 supporting affidavits and the returns thereto are open to the public within 10 days of issuance  
26 or until the warrant is executed and returned, whichever is earlier. (Pen. Code, § 1534, subd.  
27 (a).)

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1 Rule 243.1(d) provides that

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

4 (1) There exists an overriding interest that overcomes the right of  
5 public access to the record;

6 (2) The overriding interest supports sealing the record;

7 (3) A substantial probability exists that the overriding interest will  
8 be prejudiced if the record is not sealed;

9 (4) The proposed sealing is narrowly tailored; and

10 (5) No less restrictive means exist to achieve the overriding interest.

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


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

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

20 DATED: February 13, 2004

21 Respectfully submitted,

22 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY  
23 County of Santa Barbara

24   
25 Thomas W. Sneddon, Jr.

26 Attorney for Plaintiff  
27  
28



1 Robinson. That disclosure likely will prompt others to destroy or conceal evidence that has  
2 been located in another state as a result of the ongoing investigation.

3 6. As a result of the investigators' contact with Rudy Provencio, he has been acting as an  
4 informant and is in almost daily contact with several of the individuals identified in earlier  
5 warrants as participating in efforts to confine the Arvizo family at Neverland Ranch until a  
6 video praising Michael Jackson was made. One of those individuals is Vinnie Amen.  
7 Investigators have learned of the existence and location of photographs and documents that  
8 Vinnie Amen has suggested would be relevant and important to the Michael Jackson  
9 investigation if they are disclosed. As of today, Vinnie Amen remains in New Jersey.  
10 Although the existence of the items has been known for about a week, it was not until a few  
11 days ago that investigators learned through Provencio's conversations with Amen that the items  
12 were secreted at a particular location in New York.

13 7. Rudy Provencio also learned from Vinnie Amen that Amen is in contact with Frank  
14 Tyson and Marc Schaffel, two other individuals intimately involved in the efforts to sequester  
15 the Arvizo family, and they have discussed their concerns over their roles in Micheal Jackson's  
16 involvement with the Arvizo family. Mr. Provencio himself has also been contacted by and  
17 had telephone or in-person conversations with suspects Frank Tyson and Mark Schaffel. These  
18 conversations have revealed previously-unknown details about their involvement with Jackson  
19 and the Arivizo family. Provencio has gained the confidence of Amen, Tyson and Schaffel,  
20 and his daily telephone conversations with one or more of them are producing valuable  
21 evidence and likely will continue to do so if his role is kept confidential.

22 8. In addition, both warrants disclose information regarding a confidential informant  
23 who also has provided important corroborating information and leads in the Michael Jackson  
24 case. Despite the fact that the term "CC#1" is used in the warrant affidavits, the information  
25 they provide, if prematurely disclosed, would likely lead to the identification of that informant  
26 by the defense and end the informant's ability to further assist detectives.

27 9. In summary, it is your Affiant's opinion and belief that the disclosure of these  
28 warrants and affidavits would result in the disclosure of the identities of these individuals ,

1 terminate their ability to act as informants , possible result in the concealment or destruction of  
2 evidence, and compromise the ability of the investigators to successfully pursue the on-going  
3 investigation of Michael Jackson and the other individuals believed to be involved in the  
4 charged offenses and other, related offenses.

5 I declare under penalty of perjury that the foregoing is true, except as to matters stated  
6 upon my information and belief, and as to such matters I believe it to be true. I execute this  
7 Declaration at Santa Maria, California on February 13, 2004.

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9   
10 THOMAS W. SNEDDON, JR.