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* unsealed pursuant to 6/16/05 Court order

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiffs, vs. MICHAEL JOSEPH JACKSON, Defendant.	Case No. 1133603 REPLY TO THE DISTRICT ATTORNEY'S OPPOSITION TO MOTION FOR RECUSAL ~~UNDER SEAL~~ Honorable Rodney S. Melville Date: ~~February 28, 2005~~ Time: ~~9:30 am~~ Dept: SM 8

MEMORANDUM OF POINTS AND AUTHORITIES

I.

THE PROSECUTORS HAVE A CONFLICT OF INTEREST THAT IS SO GRAVE IT IS UNLIKELY THAT MR. JACKSON WILL RECEIVE A FAIR TRIAL

Thomas Sneddon has made himself a witness in this case. As demonstrated by the motion, he met with Janet Arvizo behind the federal building without an investigator, testified at the grand jury to his conversation with Henry Russell Halpern, and is the only person who could attempt to impeach "named or unnamed co-conspirator" Mark Geragos when his testimony disagrees with the District Attorney's theory of the case.

The District Attorney's Office, through Gordon Auchincloss, clearly threatened that Mr. Sneddon would testify at trial, either through direct testimony, or through the kind of improper testimony via cross-examination that he engaged in at the grand jury proceeding. The case law is quite clear that Mr. Sneddon may not take on the dual roles as advocate and witness. (*People v. Donaldson* (2001) 93 Cal.App.4th 916.) Faced with this legal argument, the District Attorney now takes the position that he does not intend to testify and that Mr. Auchincloss' bold statement that Mr. Sneddon would disclose "everything he knows about defendant," based on his personal knowledge, was a "caution." (Opposition, page 3.) In other words, they acknowledge that it was a threat but now claim it was an empty threat.

However, by making this threat, Mr. Sneddon and his deputies have shown a breathtaking lack of even-handed discretion that would almost certainly never occur in any other case. The fact that this threat may ultimately prove empty does not negate the fact that the making of it demonstrates that there is "a reasonable possibility that the District Attorneys' office may not exercise its discretionary function in an evenhanded manner." (*People v. Griffin* (2004) 33 Cal.4th 536, 569; *People v. Conner* (1983) 34 Cal.3d 141, 148.)

The District Attorney argues that Mr. Auchincloss' original statements that "Mr. Sneddon's complete knowledge of defendant" would be relevant at trial if "Mr. Jackson makes an issue of Mr. Sneddon's motivations at trial," and that the District Attorney will introduce

"everything he knows about this defendant," "cannot fairly be read to 'announce'" Mr. Sneddon's intention to testify. (Opposition, page 3.) To restate it is not to refute it. Th explain language, tone and meaning of Mr. Auchincloss' original threat cannot be minimized after the fact. The only possible ways for Mr. Sneddon's *personal* knowledge and opinion of Mr. Jackson to be introduced at trial would be for Mr. Sneddon to formally testify as a witness or to improperly present testimony while examining witnesses, as he regrettably did before the grand jury. This is exactly what Mr. Auchincloss threatened Mr. Sneddon would do. Now, faced with case law stating that such testimony would require recusal, the District Attorney euphemistically refers to this threat as a mere "caution" to defense counsel. (Opposition, page 3.)

The Court should recognize the significance of Mr. Auchincloss' bullying taunt. First, it demonstrates that the District Attorney's office has lost its ability to treat this case in an even-handed manner, in that they are unable to see the conflict inherent in acting as both witness and advocate. Second, the threat demonstrates that Mr. Sneddon's deputies are infused by the same invective demonstrated by Mr. Sneddon. Third, when viewed in the context of the improper behavior outlined in the previous recusal motion, the cumulative effect requires the remedy of recusal.

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II.

CONCLUSION

Mr. Jackson has demonstrated that Mr. Sneddon, and his deputies, cannot exercise their discretion in an even-handed manner and that his right to a fair trial is in grave danger. Recusal is the required remedy.

Dated: February 17, 2005

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