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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

14  
15 THE PEOPLE OF THE STATE OF CALIFORNIA,

16 Plaintiffs,

17 vs.

18  
19 MICHAEL JOSEPH JACKSON,

20 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

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

FEB 17 2005

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

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

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

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

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

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

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

25 The District Attorney argues that Mr. Auchincloss' original statements that "Mr.  
26 Sneddon's complete knowledge of defendant" would be relevant at trial if "Mr. Jackson makes  
27 an issue of Mr. Sneddon's motivations at trial," and that the District Attorney will introduce  
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1 “everything he knows about this defendant,” “cannot fairly be read to ‘announce’” Mr.  
2 Sneddon’s intention to testify. (Opposition, page 3.) To restate it is not to refute it. Th explain  
3 language, tone and meaning of Mr. Auchincloss’ original threat cannot be minimized after the  
4 fact. The only possible ways for Mr. Sneddon’s *personal* knowledge and opinion of Mr. Jackson  
5 to be introduced at trial would be for Mr. Sneddon to formally testify as a witness or to  
6 improperly present testimony while examining witnesses, as he regrettably did before the grand  
7 jury. This is exactly what Mr. Auchincloss threatened Mr. Sneddon would do. Now, faced with  
8 case law stating that such testimony would require recusal, the District Attorney euphemistically  
9 refers to this threat as a mere “caution” to defense counsel. (Opposition, page 3.)

10 The Court should recognize the significance of Mr. Auchincloss’ bullying taunt. First, it  
11 demonstrates that the District Attorney’s office has lost its ability to treat this case in an even-  
12 handed manner, in that they are unable to see the conflict inherent in acting as both witness and  
13 advocate. Second, the threat demonstrates that Mr. Sneddon’s deputies are infused by the same  
14 invective demonstrated by Mr. Sneddon. Third, when viewed in the context of the improper  
15 behavior outlined in the previous recusal motion, the cumulative effect requires the remedy of  
16 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.

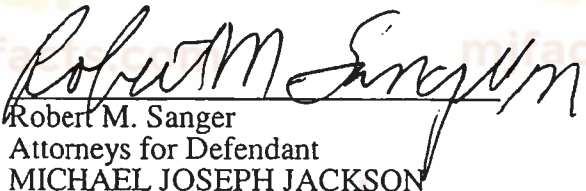
Dated: February 17, 2005

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