

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 GORDON AUCHINCLOSS (State Bar No. 150251)  
Senior Deputy District Attorney  
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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

JUN 25 2004

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

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **IN AND FOR THE COUNTY OF SANTA BARBARA**  
11 **SANTA MARIA DIVISION**

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13  
14 THE PEOPLE OF THE STATE OF CALIFORNIA,

15 Plaintiff,

16 vs.

17 MICHAEL JOE JACKSON,

18 Defendant.

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23 No. 1133603  
NOTICE OF MOTION AND  
MOTION FOR ORDER THAT  
A CERTAIN REQUEST FOR  
CLARIFICATION BE  
MAINTAINED UNDER SEAL  
UNTIL FURTHER ORDER  
OF THE COURT;  
DECLARATION OF  
GORDON AUCHINCLOSS;  
MEMORANDUM OF POINTS  
AND AUTHORITIES

Date: July 9, 2004  
Time: 830 AM  
Dept.: SM2 (Melville)

24 TO: MICHAEL JOE JACKSON, AND TO THOMAS A. MESEREAU, JR., STEVE  
25 COCHRAN, AND ROBERT SANGER, HIS ATTORNEYS OF RECORD, AND TO GIBSON,  
26 DUNN & CRUTCHER, I.L.P. ATTORNEYS FOR "MEDIA";  
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1 PLEASE TAKE NOTICE that on July 9, 2004, at 8:30 a.m. or as soon thereafter as the  
2 matter may be heard, in Department SM 2, Plaintiff will, and hereby does, move for an order  
3 directing that the following records be maintained under conditional seal until further order of  
4 court, pursuant to California Rules of Court, rule 243.1 et seq:

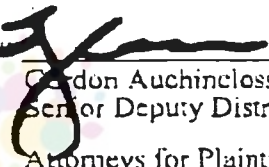
5 "REQUEST FOR CLARIFICATION," filed June 24, 2004.

6 The motion will be based on this notice of motion, on the declaration of Gordon  
7 Auchincloss and the memorandum of points and authorities served and filed herewith, on the  
8 records and the file herein, and on such evidence as may be presented at the hearing of the  
9 motion.

10 A proposed redacted version of the Request for Clarification is submitted, under seal,  
11 with this request for sealing.

12 DATED: June 24, 2004

13 THOMAS W. SNEDDON, JR.  
14 District Attorney

15 By  \_\_\_\_\_  
16 Gordon Auchincloss,  
17 Senior Deputy District Attorney  
18 Attorneys for Plaintiff

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DECLARATION OF GORDON AUCHINCLOSS

I, GORDON AUCHINCLOSS, 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 seal records pertains to "PEOPLE'S REQUEST FOR CLARIFICATION," filed June 24, 2004.

3. I believe some of the information set out in these documents should remain confidential, because it discloses matters which may influence potential jurors in this case.

4. I believe the interests of both parties in a fair trial by a jury would be enhanced if this document was sealed

5. I therefore believe that the interest in a fair trial overrides the public's access to an unredacted version of plaintiff's request and its supporting declaration, and supports the sealing of those documents until further order of court.

6. I believe an order maintaining the Request and supporting Declaration under seal in the interim would avert the probability of prejudice, and that no more narrowly tailored order with respect to that request 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 June 24, 2004.

  
Gordon Auchincloss

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MEMORANDUM OF POINTS AND AUTHORITIES

The procedure for sealing records under California Rules of Court, rule 243.1 et seq. applies only to records that are deemed public. (*Id.*, rule 243.1(a)(2).)

Rule 243.1(d) provides that

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

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

Rule 243.1(e) provides, in pertinent part:

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

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

DATED: June \_\_, 2004

Respectfully submitted,

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

By:   
Gordon Auchincloss,  
Senior Deputy District Attorney