

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

OCT 20 2004

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

4 GERALD McC. FRANKLIN (State Bar No. 40171)
Senior Deputy District Attorney

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

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA BARBARA
10 SANTA MARIA DIVISION

12 THE PEOPLE OF THE STATE OF CALIFORNIA,
13 Plaintiff,

14 v.

16 MICHAEL JOE JACKSON,
17 Defendant.

No. 1133603

PLAINTIFF'S NOTICE OF
MOTION FOR ORDER
DIRECTING THAT PLAINTIFF'S
OPPOSITION TO DEFENDANT'S
MOTION TO RECUSE THE
DISTRICT ATTORNEY'S OFFICE
BE MAINTAINED UNDER SEAL
UNTIL FURTHER ORDER OF
COURT; DECLARATION OF
GERALD McC. FRANKLIN IN
SUPPORT OF SEALING;
MEMORANDUM OF POINTS
AND AUTHORITIES

~~UNDER SEAL~~

DATE: November 4, 2004
TIME: 8:30 a.m.
DEPT: TBA (Melville)

25 TO: MICHAEL JOE JACKSON, AND TO THOMAS A. MESEREAU, JR.,
26 ROBERT SANGER AND BRIAN OXMAN, HIS ATTORNEYS OF RECORD, AND TO
27 THEODORE J. BOUTROUS, JR., ESQ., GIBSON, DUNN & CRUTCHER, LLP:

28 PLEASE TAKE NOTICE that on November 4, 2004, at 8:30 a.m. or as soon

1 thereafter as the matter may be heard, in Department SM 2, Plaintiff will, and hereby does,
2 move for an order directing that Plaintiff's Opposition to Motion to Recuse The District
3 Attorney's Office, filed under seal and contemporaneously with this Request for Conditional
4 Sealing, be maintained under conditional seal until further order of court, pursuant to California
5 Rules of Court, rule 243.1 et seq.

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

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

13 DATED: October 20, 2004

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15 THOMAS W. SNEDDON, JR.
District Attorney

16 By: 
17 Gerald McC. Franklin, Senior Deputy

18 Attorneys for Plaintiff
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1 DECLARATION OF GERALD McC. FRANKLIN

2 I, Gerald McC. Franklin, say:

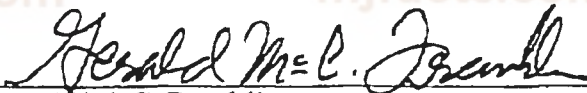
3 1. I am a lawyer admitted to practice in the State of California. I am a Senior
4 Deputy of the District Attorney of Santa Barbara County. I am one of the lawyers of record for
5 the People, Plaintiff in this action.

6 2. This motion to conditionally seal Plaintiff's Opposition to Defendant's Motion
7 to Recuse The District Attorney's Office is made on the ground that the Opposition makes
8 reference to the names of certain witnesses.

9 3. I believe that the interest of each party to a fair trial overrides the public's prompt
10 access to Plaintiff's Opposition to Defendant's Motion to Recuse until the appropriateness of
11 the release of a redacted version of the Opposition is determined by the court.

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

15 I declare under penalty of perjury under the laws of California that the foregoing is
16 true and correct, except as to matters stated upon my information and belief, and as to such
17 matters I believe it to be true. I execute this declaration at Santa Barbara, California on
18 October 20, 2004.

19 
20 _____
Gerald McC. Franklin

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).) Motions and responsive pleadings in criminal cases are, ordinarily, “public” records of the court.

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.”

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1 DATED: October 20, 2004

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; 1105 Santa Barbara Street, Santa Barbara, California 93101.

On October 18, 2004, I served the within PLAINTIFF'S NOTICE OF MOTION FOR ORDER DIRECTING THAT PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO RECUSE THE DISTRICT ATTORNEY'S OFFICE, ETC. on Media's counsel and on Defendant, by THOMAS A. MESEREAU, JR. and ROBERT SANGER, and on the ATTORNEY GENERAL OF CALIFORNIA 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 20th day of October, 2004.


Gerald McC. Franklin



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SERVICE LIST

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