

DEC 13 2004

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

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY
County of Santa Barbara
2 By: RONALD J. ZONEN (State Bar No. 85094)
Senior Deputy District Attorney
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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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14 THE PEOPLE OF THE STATE OF CALIFORNIA,

15 Plaintiff,

16 vs.

17 MICHAEL JOE JACKSON,

18 Defendant.

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

Date: December 23, 2004
Time: ~~8:30 AM~~ 9:30 AM
Dept.: SM2 (Melville)

24 TO: MICHAEL JOE JACKSON, AND TO THOMAS A. MESEREAU, JR., BRIAN OXMAN,
25 AND ROBERT SANGER, HIS ATTORNEYS OF RECORD, AND TO GIBSON, DUNN &
26 CRUTCHER, LLP, ATTORNEYS FOR "MEDIA":

PLEASE TAKE NOTICE that on December 23, 2004, at ~~8:30~~ a.m. or as soon thereafter as the matter may be heard, in Department SM 2, Plaintiff will, and hereby does, move for an order directing that the following records be maintained under conditional seal until further order of court, pursuant to California Rules of Court, rule 243.1 et seq:

"REQUEST FOR ORDER TO SHOW CAUSE," filed Decemeber 13, 2004.

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

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

DATED: Decemeber 13, 2004

THOMAS W. SNEDDON, JR.
District Attorney

By: *[Signature]*
Gordon Auchincloss,
Senior Deputy District Attorney
Attorneys for Plaintiff

1 DECLARATION OF GORDON AUCHINCLOSS

2 I, GORDON AUCHINCLOSS, say:

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

6 2. This motion to seal records pertains to "PEOPLE'S REQUEST FOR ORDER TO
7 SHOW CAUSE," filed December 13, 2004.

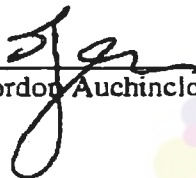
8 3. I believe some of the information set out in these documents should remain
9 confidential, because it discloses matters which may influence potential jurors in this case.

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

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

15 6. I believe an order maintaining the Request and supporting Declaration under seal in
16 the interim would avert the probability of prejudice, and that no more narrowly tailored order
17 with respect to that request could be drafted to achieve the overriding interest in a fair trial.

18 I declare under penalty of perjury under the laws of California that the foregoing is true
19 and correct, except as to matters stated upon my information and belief, and as to such matters I
20 believe it to be true. I execute this declaration at Santa Barbara, California on December 13,
21 2004.

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23 _____
24 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: December 4, 2004

Respectfully submitted,

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

By: _____


Gordon Auchincloss,
Senior Deputy District Attorney

1 **PROOF OF SERVICE**

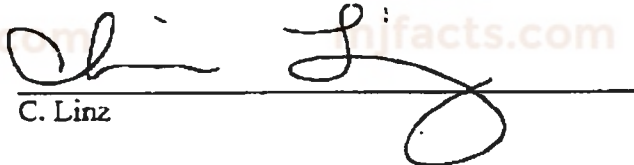
2 mjfacts.com mjfacts.com mjfacts.com
3 STATE OF CALIFORNIA)
4) SS
5 COUNTY OF SANTA BARBARA)

6 I am a citizen of the United States and a resident of the County aforesaid; I am over the
7 age of eighteen years and I am not a party to the within-entitled action. My business address is:
8 District Attorney's Office; Courthouse; 1105 Santa Barbara Street, Santa Barbara, California
9 93101.

10 On June 24, 2004, I served the within NOTICE OF MOTION AND MOTION
11 FOR ORDER DIRECTING THAT A CERTAIN REQUEST FOR ORDER TO SHOW CAUSE
12 BE MAINTAINED UNDER SEAL UNTIL FURTHER ORDER OF COURT; DECLARATION
13 OF GORDON AUCHINCLOSS; on Defendant, by THOMAS A. MESEREAU, JR.; ROBERT
14 SANGER; BRIAN OXMAN, and GIBSON, DUNN & CRUTCHER, LLP , by faxing a true copy
15 to counsel at the facsimile number shown with the address of each on the attached Service List,
16 and then by causing to be mailed a true copy to each counsel at that address.

17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed at Santa Barbara, California on this 13th day of December, 2004.

19 mjfacts.com mjfacts.com
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21 C. Linz

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PLAINTIFF'S REQUEST FOR SEALING ORDER