

JAN 25 2005

GARY M. BLAIR, Executive Officer  
*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  
3 J. GORDON AUCHINCLOSS (State Bar No. 150251)  
Senior Deputy District Attorney  
4 GERALD McC. FRANKLIN (State Bar No. 40171)  
Senior Deputy District Attorney  
5 1112 Santa Barbara Street  
Santa Barbara, CA 93101  
6 Telephone: (805) 568-2300  
7 FAX: (805) 568-2398

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

RECEIVED  
65 JAN 25 PM 2:14  
SUPERIOR COURT  
SANTA MARIA DIVISION

11 THE PEOPLE OF THE STATE OF CALIFORNIA,

12 Plaintiff,

13 v.

14 MICHAEL JOE JACKSON,

15 Defendant.

No. 1133603

16 PLAINTIFF'S NOTICE OF  
17 MOTION AND MOTION  
18 FOR REVIEW OF COURT  
19 TO DETERMINE IF  
20 SEALING OF PLAINTIFF'S  
21 REPLY TO DEFENDANT'S  
22 OPPOSITION RE:  
23 ADMISSION OF EXPERT  
24 TESTIMONY ON  
25 BATTERED WOMEN'S  
26 SYNDROME AT TRIAL IS  
27 APPROPRIATE

28 Date: January 28, 2005  
Time: 8:30 a.m.  
Dept.: SM2 (Melville)

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

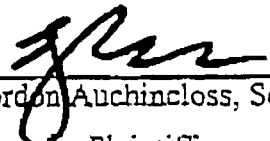
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1 PLEASE TAKE NOTICE that on January 28, 2005, at 8:30 a.m. or as soon  
2 thereafter as the matter may be heard, in the Department to be assigned, Plaintiff will, and  
3 hereby does, request the Court to review PLAINTIFF'S REPLY TO DEFENDANT'S  
4 OPPOSITION RE: ADMISSION OF EXPERT TESTIMONY ON BATTERED  
5 WOMEN'S SYNDROME AT TRIAL, filed contemporaneously with this Motion, to  
6 determine for itself whether an order directing that the PLAINTIFF'S REPLY TO  
7 DEFENDANT'S OPPOSITION RE: ADMISSION OF EXPERT TESTIMONY ON  
8 BATTERED WOMEN'S SYNDROME AT TRIAL is an appropriate document for sealing,  
9 and that the Motion be maintained under conditional seal until further order of court, pursuant  
10 to California Rules of Court, rule 243.1 et seq.

11 The motion will be made on the ground that the facts, as established by the  
12 accompanying declaration of Gordon Auchincloss, may not be sufficient to justify sealing the  
13 specified motion pursuant to California Rules of Court, rule 243.1 et seq.

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

18 DATED: January 25, 2005

19 THOMAS W. SNEDDON, JR.  
20 District Attorney

21 By:   
22 Gordon Auchincloss, Senior Deputy  
23 Attorneys for Plaintiff

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 conditionally seal the contemporaneously-filed **PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION RE: ADMISSION OF EXPERT TESTIMONY ON BATTERED WOMEN'S SYNDROME AT TRIAL**, and requesting that the Court determine for itself whether the motion is appropriate for sealing, is made on the ground that the **PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION RE: ADMISSION OF EXPERT TESTIMONY ON BATTERED WOMEN'S SYNDROME AT TRIAL** does not, in the undersigned's opinion, itself reveal any information that would warrant sealing.

3. I believe that the interest of each party to a fair trial dictates that the **PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION RE: ADMISSION OF EXPERT TESTIMONY ON BATTERED WOMEN'S SYNDROME AT TRIAL** should remain under conditional seal until the appropriateness of sealing the document and, if sealing is ordered, of the release of a redacted version of the opposition is determined by the court.

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 January 25, 2005.



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Gordon Auchincloss

MEMORANDUM OF POINTS AND AUTHORITIES

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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: January 25, 2005

2 Respectfully submitted,

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

5 By:   
6 Gordon Auchincloss, Senior Deputy

7 Attorneys for Plaintiff  
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3 **PROOF OF SERVICE**


4 STATE OF CALIFORNIA  
5 }  
6 COUNTY OF SANTA BARBARA } SS  
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8 I am a citizen of the United States and a resident of the County aforesaid; I am over  
9 the age of eighteen years and I am not a party to the within-entitled action. My business  
10 address is: District Attorney's Office; Courthouse; 1105 Santa Barbara Street, Santa Barbara,  
11 California 93101.

12 On January 25, 2004, I served the within PLAINTIFF'S NOTICE OF MOTION  
13 AND MOTION FOR REVIEW OF COURT TO DETERMINE IF SEALING OF  
14 PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION RE: ADMISSION OF  
15 EXPERT TESTIMONY ON BATTERED WOMEN'S SYNDROME AT TRIAL IS  
16 APPROPRIATE on THEODORE BOUTROUS, Media's counsel and on Defendant, by  
17 THOMAS A. MESEREAU, JR. and ROBERT SANGER, by personally delivering a true copy  
18 to Mr. Sanger's Office and then transmitting a true copy thereof to Mr. Mesereau by facsimile,  
19 at (310) 284-3122.

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

21 Executed at Santa Barbara, California on this 25th day of January, 2005.  
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Gordon Auchincloss

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THOMAS A. MESEREAU, JR.  
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Co-counsel for Defendant

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Co-counsel for Defendant

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Julian W. Poon, Esq.  
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Los Angeles, CA 90071-3917  
FAX: (213) 229-6758

Counsel for, collectively, "Media"