

1 **COLLINS, MESEREAU, REDDOCK & YU**
2 Thomas A. Mesereau, Jr., State Bar Number 091182
3 Susan C. Yu, State Bar Number 195640
4 1875 Century Park East, 7th Floor
5 Los Angeles, CA 90067
6 Tel.: (310) 284-3120, Fax: (310) 284-3133

7 **SANGER & SWYSEN**
8 Robert M. Sanger, State Bar Number 058214
9 233 East Carrillo Street, Suite C
10 Santa Barbara, CA 93101
11 Tel.: (805) 962-4887, Fax: (805) 963-7311

12 **OXMAN & JAROSCAK**
13 Brian Oxman, State Bar Number 072172
14 14126 East Rosecrans
15 Santa Fe Springs, CA 90670
16 Tel.: (562) 921-5058, Fax: (562) 921-2298

17 Attorneys for Defendant
18 **MICHAEL JOSEPH JACKSON**

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

21 *REDACTED*

22 THE PEOPLE OF THE STATE OF CALIFORNIA,

23 Plaintiffs,

24 vs.

25 MICHAEL JOSEPH JACKSON,

26 Defendant.

27) Case No. 1133603

28) **REPLY TO THE DISTRICT ATTORNEY'S
OPPOSITION TO MOTION FOR RECUSAL**

29) ~~UNDER SEAL~~

30) Honorable Rodney S. Melville

31) Date: February 28, 2005

32) Time: 9:30 am

33) Dept: SM 8

34 **REPLY TO THE DISTRICT ATTORNEY'S OPPOSITION TO MOTION FOR RECUSAL**

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

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 [REDACTED] behind the federal building without an investigator, testified at
7 the grand jury to his conversation with [REDACTED], and is the only person who could
8 attempt to impeach [REDACTED] 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.4th 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.

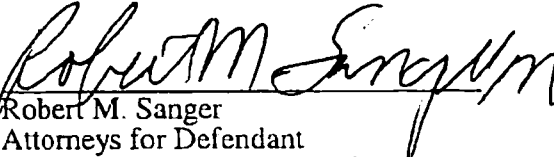
Dated: February 17, 2005

COLLINS, MESEREAU, REDDOCK & YU
Thomas A. Mesereau, Jr.
Susan C. Yu

SANGER & SWYSEN
Robert M. Sanger

OXMAN & JAROSCAK
Brian Oxman

By:


Robert M. Sanger
Attorneys for Defendant
MICHAEL JOSEPH JACKSON

PROOF OF SERVICE

I, the undersigned declare:

I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 233 East Carrillo Street, Suite C, Santa Barbara, California, 93101.

On February 17, 2005, I served the foregoing document EX PARTE APPLICATION FOR AN ORDER THAT EXPARTE APPLICATION FOR AN ORDER THAT REPLY TO THE DISTRICT ATTORNEY'S OPPOSITION TO MOTION FOR RECUSAL and REPLY TO THE DISTRICT ATTORNEY'S OPPOSITION TO MOTION FOR RECUSAL and REDACTED VERSION on the interested parties in this action by depositing a true copy thereof as follows:

Santa Barbara District Attorney
Tom Sneddon
Ron Zonen
Jerry Franklin
Gordon Auchincloss
FAX 805-568-2398

 BY U.S. MAIL - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid and deposited during the ordinary course of business. Service made pursuant to this paragraph, upon motion of a party, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit.

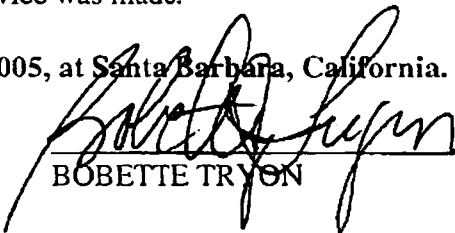
 X BY FACSIMILE - I caused the above-referenced document(s) to be transmitted via facsimile to the interested parties

 BY HAND - I caused the document to be hand delivered to the interested parties at the address above.

 X STATE - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

 FEDERAL - I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed February 17, 2005, at Santa Barbara, California.



BOBETTE TRYON