

FILED

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

FEB 22 2005

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

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Senior Deputy District Attorney

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

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

13 THE PEOPLE OF THE STATE OF CALIFORNIA,

14 Plaintiff,

15 v.

16 MICHAEL JOE JACKSON.

17 Defendant.

No. 1133603

PLAINTIFF'S NOTICE OF
MOTION AND MOTION FOR
REVIEW OF COURT TO
DETERMINE IF SEALING OF
PEOPLE'S REPLY TO
DEFENDANT'S OPPOSITION
TO PEOPLE'S MOTION TO
EXCLUDE TESTIMONY OF
WITNESSES IS
APPROPRIATE

Date: February 28, 2003
Time: 8:30 a.m.
Dept.: SM2 (Melville)

22 TO: MICHAEL JOE JACKSON, AND TO THOMAS A. MESEREAU, JR.,
23 ROBERT SANGER AND BRIAN OXMAN, HIS ATTORNEYS OF RECORD, AND TO
24 THEODORE J. BOUTROUS, JR., ESQ., GIBSON, DUNN & CRUTCHER, LLP:
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28 PLEASE TAKE NOTICE that on February 28, 2005, at 8:30 a.m. or as soon


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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, filed contemporaneously with this Motion, to
4 determine for itself whether an order directing that the PEOPLE'S REPLY TO
5 DEFENDANT'S OPPOSITION TO PEOPLE'S MOTION TO EXCLUDE TESTIMONY OF
6 WITNESSES is an appropriate document for sealing., and that the Motion be maintained under
7 conditional seal until further order of court, pursuant to California Rules of Court, rule 243.1 et
8 seq.

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

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

16 DATED: February 18, 2005

17 THOMAS W. SNEDDON, JR.
18 District Attorney

19 By: 
20 Gordon Auchincloss, Senior Deputy
21 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
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 the contemporaneously-filed PEOPLE'S
7 REPLY TO DEFENDANT'S OPPOSITION TO PEOPLE'S MOTION TO EXCLUDE
8 TESTIMONY OF WITNESSES and requesting that the Court determine for itself whether the
9 motion is appropriate for sealing, is made on the ground that the PEOPLE'S REPLY TO
10 DEFENDANT'S OPPOSITION TO PEOPLE'S MOTION TO EXCLUDE TESTIMONY OF
11 WITNESSES does not, in the undersigned's opinion, itself reveal any information that would
12 warrant sealing.

13 3. I believe that the interest of each party to a fair trial dictates that the PEOPLE'S
14 REPLY TO DEFENDANT'S OPPOSITION TO PEOPLE'S MOTION TO EXCLUDE
15 TESTIMONY OF WITNESSES should remain under conditional seal until the appropriateness
16 of sealing the document and, if sealing is ordered, of the release of a redacted version of the
17 opposition is determined by the court.

18 I declare under penalty of perjury under the laws of California that the foregoing is
19 true and correct, except as to matters stated upon my information and belief, and as to such
20 matters I believe it to be true. I execute this declaration at Santa Barbara, California on
21 February 18, 2005.

22
23 
24 _____
25 Gordon Auchincloss

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: February 18, 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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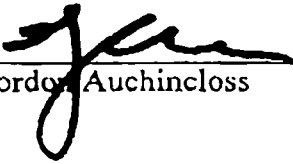
PROOF OF SERVICE

STATE OF CALIFORNIA }
 } SS
COUNTY OF SANTA BARBARA }

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 January 26, 2005, I served the within PEOPLE'S REPLY TO DEFENDANT'S OPPOSITION TO PEOPLE'S MOTION TO EXCLUDE TESTIMONY OF WITNESSES on THEODORE BOUTROUS, Media's counsel and on Defendant, by THOMAS A. MESEREAU, JR. and ROBERT SANGER, by personally delivering a true copy to Mr. Sanger's Office and then transmitting a true copy thereof to Mr. Mesereau by facsimile at his confidential fax number.

I declare under penalty of perjury that the foregoing is true and correct.
Executed at Santa Barbara, California on this 18th day of February, 2005.


Gordon Auchincloss