

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY
County of Santa Barbara
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Senior Deputy District Attorney
3 J. GORDON AUCHINCLOSS (State Bar No. 150251)
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

MAY 20 2005

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

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

11
12 THE PEOPLE OF THE STATE OF CALIFORNIA,) No. 1133603
13 Plaintiff,)
14 v.) PLAINTIFF'S MEMORANDUM
15) REGARDING THE CLAIM THAT
16 MICHAEL JOE JACKSON,) REQUEST A GRANT OF
IMMUNITY FOR VINCENT AMEN;
17 Defendant.) DECLARATION OF GORDON
AUCHINCLOSS
18) DATE: TBA
TIME: TBA
DEPT: SM-2 (Melville)

19
20 A. Introduction:

21 Defendant has asked the Court to "clarify" whether Vincent Amen was granted "use
22 immunity" by the District Attorney for his anticipated testimony as a witness for the defense.

23 By "clarification," defendant wants the Court to rule as a matter of law that on the
24 basis of an understanding among the District Attorney, Sheriff's investigators, Mr. Amen and
25 his counsel John Fahey on December 30, 2004, concerning the use against him of statements
26 he might make in the course of an interview on that date, Mr. Amen is immune from
27 prosecution for anything he might say under oath as a witness for the defense, *and* that the
28 District Attorney

1 must now petition the Court to grant immunity to Mr. Amen for whatever he may say as a
2 witness for the defense.

3 Defendant offers no relevant authority to support his theory of immunity.

4 B. Discussion:

5 Defendant cites Penal Code section 1324 and *In re Williams* (1994) 7 Cal.4th 572 as
6 authority for his argument that “The prosecution has a statutory right to grant use immunity,”
7 and he asserts that “The agreement was that Mr. Amen be granted ‘use immunity’ in exchange
8 for his truthful statements and testimony concerning his involvement in this investigation”
9 (closely paraphrasing the sheriff’s report regarding the meeting), and that the prosecution must
10 now ask the Court to grant Mr. Amen immunity for his testimony on behalf of defendant.

11 Actually, the agreement was that Mr. Amen would be granted “use immunity” if he
12 were called by the People to testify in this matter, and he was assured that his statements to the
13 prosecutors and investigators in the course of the interview would not be used against him in
14 any later prosecution of him.

15 The power to grant immunity to a witness in this state is a creature of statute:

16 “Penal Code section 1324 provides for the granting of immunity upon petition of the
17 prosecutor and upon the court finding such a grant of immunity to be in the public interest.
18 Our courts have also recognized that ‘[i]t was undoubtedly within the power of the Legislature
19 to make the grant of immunity conditional upon a request of the district attorney of the county
20 or the Attorney General, the power to provide for the exercise of a grant of immunity being
21 essentially a legislative function.’ (*In re Weber* (1974) 11 Cal.2d 703, 720.)” (*People v.*
22 *Superior Court (Perry)* (1989) 213 Cal.App.3d 536, 538-539.)

23 Pursuant to Penal Code section 1324, a witness’s truthful testimony cannot be used
24 against him in a later proceeding if, but only if, all of the following conditions are met:

- 25 -- 1) The witness “refuses to answer a question . . . on the ground that he or she may be
26 incriminated thereby”;
- 27 -- 2) “the district attorney of the county . . . in writing requests the court, in and for that
28 county, to order that person to answer the question;

1 -- 3) the court "shall set a time for hearing and order the person to appear before the
2 court and show cause, if any, why the question should not be answered, . . .

3 -- 4) "the court shall order the question answered unless it finds that to do so would be
4 clearly contrary to the public interest, or could subject the witness to a criminal prosecution in
5 another jurisdiction; and

6 -- 5) the person "shall comply with the order."

7 "After complying, and if, but for this section, he or she would have been privileged
8 to withhold the answer given . . . no testimony or other information compelled under the order
9 or any information directly or indirectly derived from the testimony or other information may
10 be used against the witness in any criminal case." (Pen.Code, § 1324, in pertinent part.)

11 "The decision to initiate the request [for immunity] rests in the sole discretion of the
12 prosecuting attorney." (*People v. Label* (1974) 43 Cal.App.3d 766, 774.)

13 The defendant in a criminal case cannot insist that a prosecutor initiate a grant of
14 immunity for a witness he intends to call to testify on his behalf. In *People v. Williams, supra*,
15 7 Cal.4th 572, the Supreme Court observed:

16 Petitioner's claim of a right to compulsory prosecutorial immunity
17 for his witnesses is easily rejected. Petitioner has no such right. (*In re*
18 *Weber* (1974) 11 Cal.4th 703, 720; *People v. St. Joseph* (1990) 226
19 Cal.App.3d 289, 298-299, and cases cited; *People v. DeFreitas* (1983)
20 140 Cal.App.3d 835, 838-841, and cases cited.) As these cases disclose,
21 although the prosecution has a statutory right, incident to its charging
22 authority, to grant immunity and thereby compel testimony (Pen. Code,
23 § 1324), California cases have uniformly rejected claims that a criminal
defendant has the same power to compel testimony by forcing the
prosecutor to grant immunity."

24 (7 Cal.4th 572, 611.)

25 The understanding that Mr. Amen and his counsel had with the prosecutor
26 concerning his immunity for any adverse use of his statements to them in the interview likely
27 would bind the Santa Barbara District Attorney and any other prosecutor if the resulting
28 statements were offered against him in a later prosecutor in state or federal court. (See *People*

1 v. *Brunner* (1973) 32 Cal.App.3d 908 [prosecutor may be estopped from asserting failure to
2 comply with Penal Code section 1324 when witness testifies for the prosecution upon an
3 informal assurance of immunity, but not as the prosecutor had hoped, and the witness was later
4 indicted for her part in the crime concerning which she testified; dismissal of indictment
5 affirmed].)

6 But the limited grant of immunity given Mr. Amen in exchange for his statements to
7 the prosecutor and investigator in their interview of him cannot be used to compel the Santa
8 Barbara District Attorney to seek a court order compelling Mr. Amen to testify in this
9 proceeding. (See *People v. St. Joseph* (1990) 226 Cal.App.3d 289, 297-298 [grant of immunity
10 to witness as to certain matters did not require district attorney to seek immunity as to other
11 crimes in which the witness may have been involved: "Nothing prevents the prosecution from
12 reaching a consensual agreement with the witness to testify under a narrower grant of
13 immunity than he might otherwise be entitled to under Penal Code section 1324. Thus, for
14 example, in *People v. Superior Court (Perry)* (1989) 213 Cal.App.3d 536, the court
15 specifically held that, 'while the district attorney is entitled to *offer* immunity outside [Penal
16 Code] section 1324, such offer is not enforceable until it has been accepted or relied upon.'
17 (*Id.*, at p. 540, original italics.)"])

18 Defendant's apparent belief -- that the informal assurance of immunity given Mr.
19 Amen to encourage him to discuss his role in the events surrounding the Arvizo family's
20 interaction with Defendant Jackson obliges the prosecutor to petition this court for a grant of
21 formal immunity to Mr. Amen so that he might testify for the defense at trial -- is groundless.

22 DATED: May 20, 2005

23 THOMAS W. SNEDDON, JR.
24 District Attorney

25 By: 
26 Gerald McC. Franklin, Senior Deputy District Attorney
27 Attorneys for Plaintiff
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DECLARATION OF GORDON AUCHINCLOSS

I, Gordon Auchincloss, say:

1. I am a Senior Deputy District Attorney for the County of Santa Barbara. I am assigned to the case of *The People of the State of California v. Michael Joe Jackson*, Santa Barbara Superior Court Case No. 1133603.

2. On December 30, 2004, Vincent Amen, his attorney John Fahy, District Attorney Thomas W. Sneddon, Jr., Senior Deputy District Attorney Gordon Auchincloss, Santa Barbara Sheriff's Lieutenant Jeff Klapakis and Santa Barbara Sheriff's Department Sgt. Steve Robel met at the Santa Barbara County District Attorney's Office.

3. It was verbally agreed among those present that a law enforcement interview of Mr. Amen would not be used against him by the Santa Barbara District Attorney's Office in some future prosecution.

4. It was further agreed that if Mr. Amen was completely honest and forthcoming in this interview and he was called as a witness to the stand by the People, the People would ask the court for a grant of formal testimonial use immunity.

5. I have spoken to counsel for Mr. Amen, John Fahy and he agreed with me that he understood that the district attorney would not be requesting immunity at trial for Mr. Amen unless the District Attorney decided to call him as a witness.

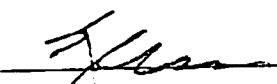
6. I have asked Mr. Fahy for a declaration on this issue and he informed me he would like to talk to his client first. At the time of filing I have not received Mr. Fahy's declaration.

I declare under penalty of perjury that the foregoing is true and correct except for those statements made on information and belief, and as to those statements, I believe them to be true.

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Executed May 20, 2005, at Santa Maria, California.

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Gordon Auchincloss


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2 **PROOF OF SERVICE**

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4 STATE OF CALIFORNIA
5 COUNTY OF SANTA BARBARA } SS
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7 I am a citizen of the United States and a resident of the County aforesaid; I am over
8 the age of eighteen years and I am not a party to the within-entitled action. My business
9 address is: District Attorney's Office; Courthouse; 1112 Santa Barbara Street, Santa Barbara,
10 California 93101.

11 On May ____, 2005, I served the within PLAINTIFF'S MEMORANDUM RE:
12 THE CLAIM THAT THE DISTRICT ATTORNEY MUST REQUEST A GRANT OF
13 IMMUNITY FOR VINCENT AMEN; DECLARATION OF GORDON AUCHINCLOSS on
14 Defendant, by THOMAS A. MESEREAU, JR. and ROBERT SANGER, his counsel in this
15 matter, by personally delivering a true copy thereof to defense counsel in open court. I declare
16 under penalty of perjury that the foregoing is true and correct.

17 Executed at Santa Maria, California on this 20th day of May, 2005.

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19 
20 _____
Gordon Auchincloss
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