

OCT 07 2004

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA BARBARA

THE PEOPLE OF THE STATE OF  
CALIFORNIA,  
  
Plaintiff,  
  
vs.  
  
MICHAEL JACKSON,  
  
Defendant.

) Case No.: 1133603  
) Order for Release of Redacted Documents  
) [Defendant's Motion for Recusal of Santa  
) Barbara County District Attorney's Office ]

The redacted form of the Defendant's Motion for Recusal of Santa Barbara County District Attorney's Office attached to this order shall be released and placed in the public file. The court finds that there is more material in the motion that can be released than that contained in the proposed redacted version. The unredacted originals shall be maintained conditionally under seal pending the hearing on October 14, 2004.

DATED: October 7, 2004

*Rodney S. Melville*  
RODNEY S. MELVILLE  
Judge of the Superior Court

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REDACTED  
COPY

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA BARBARA  
19 SANTA MARIA DIVISION

20 THE PEOPLE OF THE STATE OF CALIFORNIA,  
21 Plaintiff,  
22 vs.  
23 MICHAEL JOE JACKSON  
24 Defendant.  
25

CASE NO. 1133603  
NOTICE OF MOTION AND  
MOTION FOR RECUSAL OF  
SANTA BARBARA COUNTY  
DISTRICT ATTORNEY'S OFFICE  
PURSUANT TO PENAL CODE  
SECTION 1424; MEMORANDUM  
OF POINTS AND AUTHORITIES;  
DECLARATION OF COUNSEL

Hearing: October 14, 2004  
Time: 8:30 a.m.  
Place: Dept. 9

FILED UNDER SEAL

1 TO THE PEOPLE OF THE STATE OF CALIFORNIA AND THEIR COUNSEL:

2 Please take notice that on October 14, 2004, or as soon thereafter as the matter  
3 may be heard, before the Honorable Rodney S. Melville, defendant Michael J.  
4 Jackson, through his counsel, will and hereby does move to recuse the Santa  
5 Barbara's District Attorney's office. Relief is sought under Penal Code section 1424  
6 for the recusal of District Attorney Thomas Sneddon and Deputy District Attorneys  
7 Ronald Zonen, Gordon Auchincloss and Gerald McC. Franklin in the alternative, and  
8 for such other relief as the Court may deem just and proper. The prosecutors have an  
9 actual conflict of interest with the prosecution of defendant Michael J. Jackson that is  
10 so grave it is unlikely that Mr. Jackson will receive a fair trial as a result of which  
11 Mr. Jackson will be deprived of his rights to a fair trial, due process of law and equal  
12 protection of the laws under the fourth, fifth, sixth and fourteenth amendments to the  
13 United States Constitution and Article I, Section 7 of the California Constitution.

14 This motion is based upon this notice, the attached memorandum of points and  
15 authorities, the declaration of counsel, the exhibits and evidence lodged with this  
16 Court, the file and record herein and any other information presented prior to a ruling  
17 hereon.

18 DATED: October 4, 2004

Respectfully submitted,

19 Thomas A. Mesereau, Jr.  
20 Susan Yu  
21 COLLINS, MESEREAU, REDDOCK & YU

22 Steve Cochran  
23 Stacey McKee Knight  
24 KATTEN MUCHIN ZAVIS ROSENMAN

25 Robert M. Sanger  
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27 Brian Oxman  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. OVERVIEW

3 District Attorney, Thomas Sneddon is blinded by his zeal to convict Michael  
4 Jackson. This action is the second time that this District Attorney has expended  
5 extraordinary resources to prosecute Mr. Jackson. Mr. Sneddon's first efforts in  
6 1994-1994 were unsuccessful.

7 A decade later and on the eve of his retirement, Mr. Sneddon renewed his  
8 campaign against Mr. Jackson based upon the February 2003 Bashir documentary.  
9 The investigating officer originally assigned to the matter concluded that there was no  
10 criminal misconduct, based in large part, on an interview of the current complaining  
11 witness and his family conducted by Los Angeles Child Protective Services  
12 ("LACPS"). Mr. Sneddon was forced to abandon the investigation for lack of  
13 evidence. In June 2003, Mr. Sneddon again pursued Mr. Jackson based solely on the  
14 [REDACTED] family's recantation of their prior statements to LACPS, made just a few  
15 months earlier.

16 The manner in which Mr. Sneddon has handled the current investigation  
17 reveals an actual conflict of interest that is so grave as to render it highly unlikely that  
18 Mr. Jackson will obtain a fair trial. See People v. Conner, 34 Cal. 3d 141, 148-49  
19 (1983) (recusal warranted based on court's conclusion that DA's discretionary powers  
20 "consciously or unconsciously, could be adversely affected to a degree rendering it  
21 unlikely that defendant would receive a fair trial," entire DA's office recused). In  
22 short, Mr. Sneddon has abandoned his role as public prosecutor and is motivated by  
23 his personal animosity toward Mr. Jackson.

24 Evidence of Mr. Sneddon's bias is abundant.

- 25 • Prior to issuing the arrest warrant, Mr. Sneddon actively participated in  
26 the investigation into Mr. Jackson. Mr. Sneddon has made himself a  
27 witness and, indeed, has already testified in one pre-trial hearing.
- 28 • He announced the issuance of the arrest warrant in a nationally televised

1 press conference, joking with the reporters and acting jovially  
2 throughout the conference. The unprofessional way in which he  
3 conducted himself drew such criticism that he apologized for his  
4 behavior during a televised interview.

- 5 • Rather than proceed with a preliminary hearing, Mr. Sneddon opted to  
6 convene a Grand Jury. The prosecution's presentation to the Grand Jury  
7 was unprecedented in its disregard for basic evidentiary principles and  
8 utter lack of courtroom decorum. Such prosecutorial misconduct would  
9 have never been permitted in open court.
- 10 • The District Attorney has permitted one of its former agents to violate  
11 the protective order in this matter and leak information under seal in an  
12 attempt to influence the public and jury pool.

13 Every action Mr. Sneddon has taken has exposed his personal bias against Mr.  
14 Jackson. His behavior evidences a conflict of interest so grave that Mr. Jackson  
15 cannot obtain a fair trial from Mr. Sneddon. Moreover, because Mr. Sneddon's  
16 conflict taints all of his deputies, the entire District Attorney's office must be recused.

## 17 II. THE SALIENT FACTS

### 18 A. NATURE OF THIS CASE

19 This case first made headlines on November 18, 2003 when search warrants  
20 were executed at three locations, including Mr. Jackson's home in Los Olivos. The  
21 next day, the prosecution announced its decision to file charges. Mr. Jackson  
22 appeared voluntarily and posted bail on November 20, 2003. (Cochran Decl. ¶ 2.)

23 The prosecution filed a complaint on December 18, 2003. Arraignment  
24 occurred on January 16, 2004. Mr. Jackson appeared that day and pled not guilty.  
25 (Cochran Decl. ¶ 3.)

26 In March 2004, the prosecution convened a grand jury in lieu of a preliminary  
27 hearing. Mr. Jackson was charged by way of indictment on April 21, 2004 alleging  
28 violations of Penal Code §§ 182, 288a, 664 and 222. Mr. Jackson appeared for



1 arraignment on the indictment on April 30, 2004, at which Mr. Jackson pled no:  
2 guilty to all counts and denied the special allegations. (Cochran Decl. ¶ 4.)

3 The bond originally posted remains in effect. Jury trial is set for January 31,  
4 2005. (Cochran Decl ¶ 5.)

5 **B. CONDUCT BY THE DISTRICT ATTORNEY BEFORE THE**  
6 **CHARGES WERE FILED**

7 **1. The District Attorney's Attempt To Prosecute Mr. Jackson In 1993**

8 In 1993, the District Attorneys for Santa Barbara and Los Angeles initiated a  
9 multiple county investigation into allegations that Mr. Jackson had committed child  
10 molestation. Police and prosecutors from this county coordinated efforts with law  
11 enforcement from Los Angeles County in pursuit of allegations against Mr. Jackson  
12 of improprieties with a minor. Grand juries were convened in both counties.  
13 Numerous witnesses testified in those proceedings. Searches were conducted  
14 pursuant to warrants and well over one hundred people were interviewed. The  
15 District Attorney expended significant time and resources in an effort to prosecute  
16 Mr. Jackson. The grand juries in Los Angeles and Santa Barbara did not indict Mr.  
17 Jackson. Criminal charges were not filed by prosecutors in either jurisdiction. Civil  
18 litigation involving the same allegations was settled. (Cochran Decl ¶ 6.)

19 **2. The District Attorney Opens An Investigation Based Upon The**  
20 **February 2003 Martin Bashir Program**

21 On February 6, 2003, the program "Living With Michael Jackson" filmed by  
22 Martin Bashir aired in Britain. In one segment of the program, Mr. Jackson was  
23 interviewed in the presence of [REDACTED]. The [REDACTED] witness  
24 explained to Mr. Bashir that Mr. Jackson had helped him with his struggle with  
25 cancer and allowed his family to visit Neverland Ranch. He recalled one occasion  
26 when Mr. Jackson allowed him and his brother to sleep in his bed while Mr. Jackson  
27 slept in a sleeping bag on the floor. Mr. Bashir twisted what had actually been said  
28 and questioned Mr. Jackson about "sharing his bed" with minor children, giving the

1 mis-impression that Mr. Jackson had slept in the same bed with [REDACTED] ( See  
2 Exh. A to Cochran Decl. ¶ 7.)

3 As a result of this segment, the District Attorney received complaints from  
4 Carole Lieberman, a psychologist, and Gloria Allred, a Los Angeles attorney, who  
5 wanted him to initiate an investigation into Mr Jackson based only upon what they  
6 had viewed on television. ( See Exhs. B, C to Cochran Decl. ¶ 8.) As a result of their  
7 complaints, the LACPS dispatched investigators to interview [REDACTED] about their  
8 interaction with Mr. Jackson. The interview took place on February 20, 2003. Each  
9 of the [REDACTED] denied any wrongdoing by Mr. Jackson. Quite the opposite, the  
10 [REDACTED] praised Mr. Jackson for his support during [REDACTED] struggle with cancer and  
11 for the generosity he had shown to their family. The LACPS concluded that the none  
12 of the [REDACTED] children was at risk of harm and closed the investigation. (Cochran  
13 Decl. ¶ 9.)

14 The Santa Barbara Sheriff's department also opened an investigation into  
15 suspected child sexual abuse. On March 10, 2003, Santa Barbara County Sheriff's  
16 Detective Terry Flaa interviewed LACPS about its investigation [REDACTED]  
17 Based upon this interview and LACPS's interviews [REDACTED] Detective  
18 Flaa determined that the elements of criminal activity were not met and no further  
19 action was required. (Exh. D to Cochran Decl. ¶ 10.)

20 **3. The District Attorney Left The Jurisdiction To Conduct Surveillance**  
21 **And Interview The Complaining Witness' Mother By Himself**

22 A new investigation began in June 2003 into allegations that Mr. Jackson  
23 molested [REDACTED]. Mr. Sneddon personally conducted part of this investigation.

24 On November 8, 2003, Mr. Sneddon traveled alone from Santa Barbara to  
25 Beverly Hills to obtain a description of the offices he believed were occupied by  
26 private investigator Bradley G. Miller. Lieutenant Klapakis, the lead investigator,  
27 admitted he could have easily assigned an investigator to investigate Mr. Miller's  
28 office, meet with [REDACTED] and retrieve the items of evidence. Mr. Sneddon

1 insisted, though that he would make the trip outside the jurisdiction. He did not  
2 request an investigator. (Cochran Decl. ¶ 11.)

3       When Mr. Sneddon arrived at the Beverly Boulevard address in Beverly Hills,  
4 he canvassed the building, photographed the outside of the office and attempted to  
5 verify Mr. Miller's address in a public telephone book. He then returned to the  
6 building to take an additional picture of the building. When he finished, he met [REDACTED]  
7 [REDACTED] at the Federal Building in Westwood to give her the applications for victim  
8 compensation she requested. He brought along a photo array and asked her to  
9 identify individuals under investigation. She apparently did so. Mr. Sneddon did not  
10 record his interview [REDACTED]. He gathered evidence, a CD disk and jacket,  
11 [REDACTED] and put those items in the trunk of his car. Mr. Sneddon prepared a  
12 memorandum concerning his investigation and his role as a chain of custody witness  
13 and delivered the evidence to the investigators. (Cochran Decl. ¶ 12, Exh. E.)

14       At the August 16, 2004 hearing on Defense Counsel's Motion to Suppress, Part  
15 1, Mr. Sneddon refused to acknowledge that his actions in Beverly Hills amounted to  
16 investigating, instead characterizing his conduct as "discussions" or "ministerial."  
17 However, Lieutenant Klapakis, the lead investigating officer, conceded that gathering  
18 evidence is one of an investigator's principal duties. Similarly, lead investigating  
19 Officer Robel testified that he has never participated in an investigation where the  
20 district attorney has taken this type of action without the presence of an investigator.  
21 He admitted that he was not aware of any investigation in which the District Attorney  
22 of the County had engaged in such behavior. (Cochran Decl. ¶ 13.)

23       4.     **The District Attorney's Behavior At The Press Conference To**  
24             **Announce The Charges**

25       On November 19, 2003, Mr. Sneddon and Sheriff Jim Anderson called a  
26 televised press conference to announce the issuance of an arrest warrant for Mr.  
27 Jackson. Despite the seriousness of the alleged charges against Mr. Jackson, Mr.  
28 Sneddon appeared jovial throughout the press conference. Mr. Sneddon welcomed

1 the reporters to Santa Barbara by joking "I hope that you all stay long and spend lots  
2 of money because we need your sales tax to support our offices." (Exh. F to Cochran  
3 Decl. ¶ 14.) He bantered with reporters and drew chuckles as he poked fun at Mr.  
4 Jackson and his music. He smiled and smirked throughout the conference.

5 Mr. Sneddon drew immediate criticism for his demeanor and the levity of the  
6 press conference. He acknowledged his poor judgment in a televised interview on  
7 CNN News, admitting "he should have known better." (Exh. G to Cochran Decl. ¶  
8 15.)

### 9 C. THE CONDUCT OF THE DISTRICT ATTORNEY BEFORE THE 10 GRAND JURY

11 Rather than proceed with a preliminary hearing, the District Attorney decided  
12 to convene a Grand Jury. The record reveals that the District Attorneys completely  
13 disregarded their duties to present evidence fairly and accurately and to behave in a  
14 fashion that would have been permitted in open court. The following illustrates Mr.  
15 Sneddon's intense personal dislike for Mr. Jackson creates a conflict of interest which  
16 makes it unlikely that he can exercise his discretionary functions in an even handed  
17 manner.

#### 18 1. Poisoning The Well With Larry Feldman And Dr. Stan Katz.

19 The District Attorney called Mr. Feldman and Dr. Katz, both of whom were  
20 allowed to offer inadmissible evidence. Early in the examination, Mr. Sneddon asked  
21 Mr. Feldman about the 1993 lawsuit against Mr. Jackson and prompted Mr. Feldman  
22 to inform the grand jury that the lawsuit resulted in a settlement for  
23 "[m]ulti-multi-millions of dollars." (RT: 63:23-64:19.)<sup>1/</sup> Mr. Sneddon asked Mr.  
24 Feldman if "Johnnie Cochran of the O.J. Simpson fame" represented Mr. Jackson in  
25 that lawsuit. (RT: 64:5-13.) The prosecution attempted to correct their grave error  
26 with a limiting instruction advising the jurors that Mr. Feldman's testimony about the  
27

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28 <sup>1/</sup> The Grand Jury Transcripts are attached as Exhibit H to Cochran Decl. ¶ 16.

1 1993 action was introduced only to explain his course of conduct in the current  
2 matter. (RT: 227:28-228:10.) Nevertheless, the grand jurors continued to ask about  
3 the 1993 case even after instructed. ( See e.g. RT: 492:3-20.)

4 The prosecution repeatedly sought inadmissible and irrelevant testimony from  
5 Mr. Feldman. They then failed to intervene to limit the inadmissible testimony.

6 Q: Why didn't it work out?

7 A: Well, I took Dr. Katz, along with a colleague of mine, we went to the  
8 Department of Children's Services. And we got to the Department of  
9 Children's Services, and in this room - I met the head of the  
10 organization. He took me into a room with Dr. Katz. And there were  
11 two investigators there whose names escape me. Two females.  
12 And they -- Dr. Katz started to make the report. And the question -- the  
13 only question they asked us in this whole thing was, "Do you believe the  
14 child was in imminent danger at the present time?" And Dr. Katz said,  
15 "No, I don't, because the child's with the mother. And he's removed from  
16 Michael Jackson. And I don't think there's any risk that he'll be involved  
17 with Michael Jackson again." And they said, "Then what are you doing  
18 here?"

19 And either he or I, I can't remember who, spoke up and said, "We are  
20 making the report. I'm a mandatory child reporter. I need to make a  
21 report. I'm making the report."

22 And the question is, again, what -- "Do you believe he's -- the child is in  
23 any imminent danger?" And, again, the answer was, "No. I just told you  
24 this. We don't think the child's in imminent danger because he's with his  
25 mother. We're making the report. You do what you want to do with this  
26 report."

27 (RT: 72:9-27)

28 The prosecution further inquired about Mr. Feldman's attempt to file a DCFS  
report in a leading, suggestive manner. Without foundation, the testimony created the  
impression that the DCFS employees had acted improperly.

Q: Eventually you had another contact with the Department of Child Family  
Services in Los Angeles as a result of their failure to incorporate some  
information to a report that was leaked to the media, correct?

A: Yes.

(RT: 75:3-7)

Moreover, the prosecution allowed Mr. Feldman to make lengthy speeches to  
the grand jury that were unrelated to the question posed.

Q: And did you express -- in other words, the information that was leaked  
did not include the fact that you had tried to contact them and report this  
case?

1 A: Well, I was astounded, number one, that the department leaked anything  
2 after I went to the trouble that I went to to keep this secret. And then to  
3 leak a report like they did that was created after Michael Jackson was  
4 arrested. This report isn't some report where they took notes, but rather  
5 was created after Michael Jackson was arrested, and then leave out the  
6 fact that Dr. Katz was there making a report and telling them that he had  
7 a reasonable suspicion of child abuse, was the most outrageous thing that  
8 I had ever heard of from an agency that was supposed to be protecting  
9 children and asking people to report.  
10 And I asked, and I still ask, and nobody's done a darn thing about it to  
11 this point, for a criminal investigation of this agency for leaking this  
12 report.

13 And it turns out that the woman who wrote the report, I didn't realize this  
14 at the time, was indeed the same woman who was sitting in the room  
15 with me when we made the report. So it was unbelievable to me.

16 Q: What's her name?

17 A: Aside from Michael Jackson, that an agency in Los Angeles that is  
18 designed to protect kids could leak a report, and then leak half a report.  
19 It's just unbelievable to me that that took place.

20 (RT:75:8-76:6)

21 In an effort to suggest the media was unfairly treating [REDACTED], the district  
22 attorney routinely prefaced questions by testifying about media coverage.

23 Q: Let me conclude with this question to you. Since the charges have been  
24 filed against Mr. Jackson back in November, or December, actually, of  
25 2002, there's been extensive media coverage. And some of that coverage  
26 is focused upon your client [REDACTED] and the family, correct?

27 (RT: 76:7-12)

28 Q: And you've heard media reports, and especially from Mr. Geragos who  
29 represents Michael Jackson, making statements to the public that the  
30 mother, [REDACTED] is greedy and is after Mr. Jackson's money. I want  
31 to ask you a question.

32 A: All right.

33 (RT: 76:14-19.)

34 Most remarkably, the prosecution encouraged Mr. Feldman to speculate about  
35 his ability to resolve the [REDACTED]'s claims for money, thus creating the wholly  
36 improper inference that: 1) the [REDACTED] allegations are meritorious; 2) Mr. Jackson  
37 would have paid money to settle; and 3) the [REDACTED] did not want any money. No  
38 foundation was provided for this line of questioning.

39 A: If I wanted to settle this lawsuit for money, if [REDACTED] wanted to do that, or  
40 the kid wanted to do that, all I had to do was pick up a phone and tell

1           them what I had. And I could have done this secretly, nobody would  
2           have known. We could have -- I don't know what he would have done,  
3           and what Michael Jackson would have done, I can't tell you that. But  
          there's no question, in my view, I could have settled this lawsuit any time  
          I wanted to settle the lawsuit.

4 (RT: 78:1-9)

5           **2. The District Attorneys Bullied Witnesses Adverse To Their Case**  
6           **And Vouched For Their Own Witnesses**

7           Still early on in the proceedings, the District Attorney called certain witnesses  
8           and attacked them in front of the grand jury in a way that a court would never permit.  
9           For instance, Mr. Sneddon attempted to humiliate Mr. ██████ several times  
10          throughout his examination for failing to answer a question to Mr. Sneddon's  
11          satisfaction.

12          Q: All right. Well, you got half the question. That'll get you in the hall of  
13          fame of baseball.

14 (RT:703:27-704:1).

15          Q: Yeah. It answers my question to the extent that I was right the first time.  
          So let me try again.

16 (RT:706:14-15).

17          Q: Did you at the time that you heard that these serious charges had been  
18          leveled against a worldwide known entertainer, ever come to the DA's  
19          office and say, "Hey, Mr. Sneddon, I've got these ██████ or, "I heard  
          about these ██████," or "You want to know this." Did you ever do that  
          before you went on national TV?

20          A: No. I found the DA's office to be hostile when I called. I found the head  
          DA, that being yourself, to be very uncooperative.

21          In fact, I called your office in the beginning to find out whether my  
22          client's son was the person who was charged with molestation. You  
23          initially refused to tell me. I asked you if my client's son was dying.  
          You initially refused to tell me. It was only after I told you that I might  
          have to tell the press of your reaction that you called me back and then  
          told me.

24          I found your attitude, conduct to be very hostile, and not an office that  
          would be wanting to hear from me, period

25          Now, I have other information. And if you want to ask me other  
          information, I'll provide - -

26          Q: That is a total - that is not the way that conversation went and you know  
          it.

27          A: You know it too.

28          Q: I explained to you why at that time we couldn't tell who the victim was.  
          Because nobody knew the family at that time, did I not?

          A: No, you didn't.

1 Q: And then you said, "Wouldn't you as the father want to know if the child  
2 was sick?" And I said to you, "Okay. I'm going to tell you." And I did  
3 tell you the child was fine, did I not?  
4 A: I'll tell you, I remember the conversation specifically because I took  
5 notes.  
6 Q: So do I.  
7 A: And I took notes when we did that. I asked you - -  
8 Q: Okay. Let me make this real simple. Would you like to send those notes  
9 to the ladies and gentlemen of the Grand Jury so we can see them and see  
10 whose recollection is better?  
11 A: I'll bring in my computer. I can bring them - -  
12 Q: Bring them out, bring them down, have them faxed. I'll submit them as  
13 evidence.

14 (RT: 715:19-717:6).

15 Upset with [REDACTED] testimony concerning a prior conversation, Mr.  
16 Sneddon essentially testified about the contents of the conversation.

17 A: ... I told you at the time that I would have to then, when asked by the  
18 press, repeat what you'd told me. Five minutes later, if you want to be  
19 truthful, you called me back. And when you called me back, that's when  
20 you said to me, "In fact, it is your client's son. And your client's son is  
21 not in danger of dying."  
22 I called my client and told him that, which he was relieved to hear.  
23 Q: That's your recollection  
24 A: It is the absolute truth. And I'm sure you're aware of it.

25 (RT:717:15-25.)

26 Throughout the examination, Mr. Sneddon encouraged [REDACTED] to disclose  
27 attorney client privileged communications.

28 Q: Yeah. Did [REDACTED] come to you or any member of your firm and ask  
you to change those orders during that two-year period, after they'd been  
put in place, not while they're put in place?

(RT: 704:20-23.)

29 Q: First of all, I'm not confusing anything. It's a very clear question. Very  
30 simple, [REDACTED]. At a certain point in time you indicated to the  
31 ladies and gentlemen of the Grand Jury, at 2000, somebody who used to  
32 be associated with you stopped representing [REDACTED], is that correct?

(RT: 705:14-19.)

33 Q: In 2002 when your wife stopped representing [REDACTED], to the time in  
34 November, prior to the Michael Jackson case going public, did Mr.  
35 [REDACTED] ever approach you, you, to represent him [REDACTED]  
36 [REDACTED]



1 (RT: 706:26-707:2)

2 Q: Well, [REDACTED], your client already told us about it.

3 A: What my client may have told you - -

4 Q: And secondly - - let me finish.

5 (RT: 708:6-9.)

6 A: I don't believe I can discuss what I -- what arrangements we had, or what  
7 our discussions between he and I, and what I received or did not receive  
8 from him due to the attorney-client privilege.

9 Q: Well, [REDACTED], your client already told us about it.

10 ...

11 Q: Now, the fact that you may have showed those photographs to the  
12 attorney would waive whatever privilege whatever was there, wouldn't  
13 it? Because now it's no longer a confidential communication.

14 (RT: 708:2-709:4.)

15 ...

16 Q: So as far as you know, they're still in your file in your office?

17 (RT: 709:26-27.)

18 A: You know, come to think of it, if I did say something of that nature, it  
19 could have been a waiver of the client -- attorney-client privilege.

20 Q: Yeah. It really could, couldn't it?

21 (RT: 710:28-711:3.)

22 A: ... So at this time I'm actually not sure whether I actually had them in my  
23 hand or whether I just was told of them. But I definitely was told of the  
24 [REDACTED]

25 Q: By your client [REDACTED]?

26 A: Yes. And also by -- I think other people, family members.

27 (RT: 712:15-20.)

28 When [REDACTED] did not capitulate to disclosing his client's confidential  
communications, Mr. Sneddon threatened him with legal action.

Q: You're claiming the privilege as to that question?

A: I feel I'm obligated to claim those privilege - -

Q: All right. We'll have you come back in front of the Judge and have that  
litigated.

27 (RT:710:5-10.)

28

1 If he could not elicit the testimony he wanted, the District Attorney resorted to  
2 arguing with the witness:

3 Q: You don't know? Your client knew about it. The fact that they were in  
4 [REDACTED] You never spoke --

5 A: Pardon me?

6 Q: Your client knew about it. You didn't know that those photographs were  
7 in [REDACTED]?

8 (RT: 709:13-18)

9 In another lapse of professional decorum, the District Attorney challenged Mr.  
10 Sneddon on the legal standard concerning exculpatory evidence

11 Q: Have you ever represented an indicted individual before?

12 A: Yes.

13 Q: And you're aware of the Johnson case in dealing with exculpatory  
14 evidence.

15 A: Yes.

16 Q: And basically that is that if the prosecution is aware of any evidence  
17 that's exculpatory, including impeaching evidence, that they're required  
18 to put it in front of the Grand Jury?

19 A: No. It's not quite that. If you read Johnson again, Johnson says that it's  
20 discretionary on the part of the People that if they feel it is reasonably - -  
21 is a reasonable chance that the evidence could be impeaching, but  
22 exculpatory evidence, I read Johnson recently.

23 Q: Well - -

24 A: It's a discretionary call by the DA's office that can later be reviewed by  
25 995.

26 Q: Well, defense attorney is likely to not complain if the prosecution errs on  
27 the side of caution and puts in exculpatory evidence; is that correct?

28 A: That could be a tactical choice on the part of the District Attorney's  
office. Yes. However - -

Q: And secondly - -

A: However - - however, hearsay evidence - - hearsay evidence is not  
admissible even in a Grand Jury proceeding.

(RT:718:2-719:1.)

Q: You're not even close. Have you read the cases that interpret Johnson to  
include - - or the cases that define exculpatory evidence as anything  
that's impeaching?

A: No. I haven't. I'm not sure that it is, to tell you the truth.

Q: All right. If you were - - if you were in possession of these [REDACTED] that  
you say on national TV that you have seen, would that be something that  
I would be obligated to present to the ladies and gentlemen of the jury - -  
of the Grand Jury.

A: Well, depends. First of all, I didn't have the [REDACTED].

(RT:719:7-19.)

28

1 Q: So we now have two imprudent things that you may have said.  
2 A: Well, I - - as we all know, we all do imprudent things, including the  
3 district attorney of this county on national TV. And - -

4 (RT:720:19-23.)

5 Q: Have you received any money from Mr. Geragos in conjunction - - since  
6 the Michael Jackson charges surfaced?

7 A: Categorically no.

8 Q: Have you ever received any money from Michael Jackson?

9 A: I never received any money from Michael Jackson, Geragos, anybody at  
10 all connected with the Jackson defense.

11 Q: No representatives of them, no third parties or anybody else?

12 A: No. I have not received any money, period. I spent money, but I haven't  
13 received any money.

14 (RT:721:3-15.)

15 Q: Well, I have a transcript, so I don't have to rely on your recollection,  
16 okay.

17 A: Okay. Yeah. Do you have it so I can read it?

18 Q: I'm going to direct you to certain pages of the transcript. I'll get there,  
19 just relax.

20 A: Okay.

21 (RT:722:6-11.)

22 Q: [REDACTED], did not the Judge in that case say that he found the  
23 witness's testimony, [REDACTED], to be compelling? Did he not say that? Is  
24 that not in the transcript on page 33?

25 A: I think it's a mischaracterization when you say it in that way.

26 Q: Are those his words? I really don't want to characterize

27 (RT: 731:8-15.)

28 Through leading questions and argument with [REDACTED], Mr. Sneddon  
29 attempted to vouch for [REDACTED].

30 Q: Now, your client, [REDACTED], one of the things that he was very  
31 forthcoming in, described what occurred. And he said simply that his  
32 wife was smart enough when they came home the day of the incident to  
33 sit down and ask everybody to write down their recollections. And that  
34 is the only thing that he's ever seen her prepare for that lawsuit. Would  
35 that surprise you?

36 A: No.

37 Q: And that's not consistent [REDACTED], is it? You say questions and  
38 answers, four or five pages of questions and answers. Those don't seem  
39 to be consistent?

40 (RT: 714:13-25.)

1 He presented irrelevant and prejudicial information to the Grand Jury in the  
2 purported form of a question.

3 Q: Yes. "If I go to jail I'm going to quit my job. I'm going to kill your -- I  
4 could have your mom killed if I want to. I could have your mom killed."  
Do you recall that?

5 (RT: 723:17-20.)

6 Q: You said that you were going on TV because you were a sole practitioner  
7 and you needed all the publicity you could get.

8 A: That's an absolute lie sir.

9 (RT: 737:13-16.)

10 Q: I intimidated him into an answer?

11 A: Pardon me?

12 Q: I intimidated him into an answer?

13 A: Are we arguing? Is --

14 Q: I'm asking you a question. Do you feel I intimidated him into an answer?

15 (RT: 713:17-22.)

16 The prosecution used the same tactics with [REDACTED]'s client, [REDACTED].  
17 Mr. Sneddon ridiculed [REDACTED] for not answering the question precisely as he  
18 wanted:

19 Q: Then before that [REDACTED] had talked to Michael Jackson on the phone a  
20 few times, correct?

21 A: Yeah. He requested to -- for us to come up for several parties.

22 Q: That's not the question, [REDACTED]. This is going to be a long afternoon  
23 unless you listen to what I have to say and answer my questions.

24 A: Yes, sir.

25 Q: I'm not trying to tell you what to say.

26 A: I apologize.

27 Q: Just listen to what I am saying.

28 (RT: 673:14-28.)

29 In an attempt to coerce [REDACTED] to testify in the manner he wanted, Mr.  
30 Sneddon purported to summarize the testimony of his children. The clear import was  
31 that if [REDACTED] testified differently he would be calling his children liars.

32 Q: Would it surprise you that both of your children, [REDACTED], have  
33 testified that [REDACTED]?

34 A: Yeah. That would really disturb me.

1 Q: And would it disturb you also that they told very specifically about  
events that happened [REDACTED]?

2 A: Wow. No. That would really disturb me, because they never spent the  
night when I was going up there with them.

3 (RT: 676:18-677:1.)

4 Q: Is that what [REDACTED] told you said happened?

5 A: Yeah.

6 Q: Would it surprise you that we have a transcript of that proceeding where  
she says absolutely that [REDACTED]?

7 A: Oh, man. Did she?

8 Q: Yes, she did. And the judge said she believed her.

9 A: Poor thing.

10 (RT: 696:15-24.)

11 Mr. Sneddon further tried to sully the jurors' opinion of [REDACTED] by labeling  
12 him a "[REDACTED]"

13 Q: [REDACTED], during -- you were at some point in time charged with a  
14 [REDACTED] incident for [REDACTED]  
correct?

15 A: Yeah, correct. I pleaded -- yeah. I was charged with that.

16 Q: I'll get to what you did. I'll give you a fair chance to say what you want  
to say about it, okay.

17 (RT: 677:27-678:5.)

18 Mr. Sneddon did not follow through on his promise, he did not give [REDACTED]  
19 any chance, let alone one that was fair. Instead, he persisted with this highly  
20 prejudicial line of questions.

21 Q: Did you strike her?

22 A: No. Of course not. I never [REDACTED].

23 Q: You've never [REDACTED]

24 A: No.

25 Q: All right, So that's what your photo's all about? [REDACTED]

26 [REDACTED] Did you give that photo to your attorney, [REDACTED]?

27 A: When I wanted to introduce it in my criminal case [REDACTED] --

28 Q: The question was, did you give that photograph to your attorney. Mr.  
Halpern?

29 (RT: 679:14-25.)

30 Q: Did you produce him -- listen to the question again. Did you produce --  
[REDACTED] listen to me now. I'm not trying to be unfair.

31 A: No. I did not give him any [REDACTED]

32 Q: Okay. You did not give him any [REDACTED]

33 A: Not that I recall. No.

34 (RT: 682:2-7.)

1 In discussing a letter that ██████████ believed somebody associated with the  
2 District Attorney's office wrote interfering with the child custody proceedings, Mr.  
3 Sneddon badgered ██████████:

4 Q: Well, actually, ██████████, I've never written a letter concerning your  
5 family.

A: It says from the Santa Barbara Courthouse.

6 Q: Yeah. It doesn't say my name on it, though, does it?

A: Since you're involved in the case, I assumed - -

7 Q: Does it say my name on it? Have you read the letter?

A: I didn't get through the letter

8 Q: Did you read the letter?

A: No, I didn't get to read it.

9 Q: So you don't have any idea what the letter says, do you?

A: I'm not arguing with you.

10 Q: All right. So - - so before you say things, you ought to stop and think  
11 about it as to what was really in the letter, okay. Now - -

A: I'm not upset, it's just - - you know.

12 Q: It's okay. But I'm just telling you, let's just answer the question.

13 (RT: 686:18-687:9; 687:15-20.)

14 Mr. Sneddon continued his efforts to bully and discredit ██████████

15 Q: you mean the ██████████

16 A: No. ██████████ You don't understand. ██████████

17 Q: Okay. Now, you didn't answer my question. So I'm going to ask it  
18 again. We'll just stay here 'til you answer it, okay. It's a simple  
question. I'm going to get an answer.

19 (RT: 689:3-11.)

20 Mr. Sneddon improperly characterized the Los Angeles District Attorney's  
21 opinion of evidence ██████████ submitted in the family law matter.

22 A: Yes. I presented it to the District Attorney in L.A.

23 Q: And the DA wasn't impressed by it?

A: No. ██████████ said she posed for it. She was there acting. And I also had  
24 another picture of her coming at me with a stick with different clothes.  
And he asked her, "Well, the same day?" And she said "Yes." Not on  
25 the stand. And she said, "Yes. We were acting." And he said, "Why are  
you wearing two different clothes?" And she said, "Well, I changed."

26 (RT: 679:25-680:6.)

27

28

1 The District Attorney asked a series of argumentative questions, lacking in  
2 foundation, to attempt to convince the Grand Jury that [REDACTED] had sold photos to  
3 the tabloids.

4 Q: You gave those photos to [REDACTED]?

A: Yes, sir.

5 Q: And those photos -- were you responsible for selling them to [REDACTED]?

A: No. I didn't sell any photos.

6 Q: Did you authorize them to be sold to [REDACTED]?

A: No. I did not.

7 Q: Do you have any idea how [REDACTED] got them?

A: I have no idea. [REDACTED] says it was given by a family friend or family  
8 acquaintance or --

9 Q: And when [REDACTED] put it in the paper they blacked everything out and  
just showed her [REDACTED], isn't that correct?

A: I seen it once, you know. And I pretty much stayed away from  
10 everything because it's pretty upsetting.

11 Q: [REDACTED], the question was, [REDACTED] took the picture and they  
blacked everything out and simply showed her [REDACTED], correct?

A: I don't remember.

12 Q: Did you authorize your attorney, [REDACTED], to sell those photographs  
to [REDACTED]?

13 (RT: 680:7-28.)

14  
15 Mr. Sneddon attempted to embarrass [REDACTED] for missing work,

16 Q: You missed a lot of work, right?

A: I did.

17 (RT: 692:5-6.)

18 The District Attorney questioned [REDACTED]'s attorney's ethics, teased him and  
19 discouraged [REDACTED] from speaking with his counsel.

20 Q: You can talk to your attorney if it's in the course of something he needs  
21 to represent you about. But your attorney, whose coming in next, I'll  
take care of the next part of it, cannot disclose it to anybody.

A: So forget it. I won't talk to him about nothing. Can't trust him--

22 Q: Maybe you can tell him how I was so mean--

23 A: You weren't mean. I just -- it's ongoing for three years, sir. And, you  
24 know, [REDACTED]

(RT: 699:5-16.)

25 The prosecutor's examination of [REDACTED] was also improper. The  
26 prosecution asked him to speculate about matters of which he had no personal  
27 knowledge and asked him improper questions about Mr. Jackson's business and  
28

1 personal relationships that lacked foundation. Representative examples of questions  
2 asked of [REDACTED] that would not be admissible over objection at trial are not  
3 limited to, but include the following:

4 Q: Okay. That's an example, just so you know, that's an example of an  
answer to a question I didn't ask, okay.

5 A: Well, I feel like I need to explain myself instead of saying yes or no  
sometimes.

6 Q: Well, but that's -- let me interrupt you. As the attorney in the case I am  
allowed to control the examination.

7  
8 (RT: 516:10-17.)

9 Q: Okay. And if you lie -- tell a lie to a tabloid about Michael Jackson,  
wouldn't you be at risk for a major lawsuit?

10  
11 (RT: 518:3-5.)

12 A: I'd heard, you know. I'd heard. Like I say, I don't know how.

13 (RT: 530:19-20.)

14 Q: How did you know he had tax documents that he needed to have access  
to?

15 A: Because he told me. He told me. I said, "Are you worried about your  
house getting searched?" you know.

16  
17 (RT: 546:8-12.)

18 Q: And did they specifically tell you that you could get in trouble for  
obstruction of justice?

19 A: They actually mentioned that when they arrived to my apartment. So,  
they said that was part of the reason they were at my apartment.

20 Q: Did they tell you that?

21 A: Did they tell me that I could get in trouble for obstruction of justice?

22 Q: Yes.

A: If I -- if I had done anything wrong. I don't know.

23 Q: I'm just asking you a question.

A: I don't know.

24 Q: Did they tell you you could get in trouble for obstruction of justice if you  
tampered with witnesses or evidence, or anything of that nature?

A: Yeah. They warned me of that.

25 Q: All right. And did you tell them that there were documents that you had  
concealed for [REDACTED] in a safe deposit box under your name? Did  
you tell them that?

26 A: I told them.

27 (RT: 548:5-26.)

28



1 At the conclusion of ██████████'s testimony he was admonished by the  
2 foreperson. (RT: 556:18-557:3.) ██████████ asked if he could consult with an  
3 attorney or speak with the attorneys for Mr. Jackson. (RT: 557:5-7.) Mr.  
4 Auchincloss told ██████████ that it would be illegal to discuss the substance of his  
5 testimony. (RT 557:8-9.) Mr. Sneddon asked ██████████ if anyone had contacted  
6 him regarding his testimony before the grand jury. (RT: 557:13-17.) ██████████  
7 informed Mr. Sneddon that he talked to defense investigator Eric Mason and that Mr.  
8 Mason wanted to further talk with him. (RT: 557:18-558:4.) ██████████ stated  
9 that Mr. Mason wanted to go to lunch with him and Mr. Sneddon responded, "I bet he  
10 does."<sup>2/</sup> (RT: 558:2-5.) ██████████ inquired if it would be illegal for him to make a  
11 statement that "MJ is innocent." (RT: 558:16-17.) Mr. Sneddon replied "You violate  
12 the gag order. Yes, you do." (RT: 558:18-19.)

### 13 3. The District Attorney Allowed Witnesses to Prejudice the Grand 14 Jury.

15 The District Attorney permitted ██████████ to make improper and prejudicial  
16 speeches without even attempting to limit the testimony to admissible evidence. For  
17 instance, the District Attorneys allowed ██████████ to call Mr. Jackson "the Devil."  
18 The prosecutor stated that "[p]erhaps the biggest and most vicious accusation is the  
19 one that you have made this all up." She stated that she didn't want to take "the  
20 devil's money." The prosecutor asked if she was "clear about that." In response, she  
21 replied that Mr. Jackson is "the Devil." The prosecutor made no effort to stop or limit  
22 the harmful impact of this so-called testimony. (RT: 1152:20-27.)

23  
24 <sup>2/</sup> Similarly, the prosecution attempted to disparage the defense function by  
25 suggesting that Mr. Mason's role as defense counsel's investigator was improper  
26 and illegal. ██████████ testified that Mr. Mason wanted to "debrief" him.  
27 Absent foundation, the prosecution defined Mr. Mason's intention without any  
28 foundation as "want[ing] to talk to you about what your testimony was in front  
of the Grand Jury." (RT: 589:19-590:6.) This tactic was apparently successful  
in convincing the grand jury that it was inappropriate for Mr. Mason to have  
contact with witnesses because it prompted grand jurors to submit questions to  
witnesses concerning their contacts with him. (RT: 668:22-669:14.)

1 Furthermore, [REDACTED] remarked that "this room is filled with good, honest,  
2 decent people, because my children have communicated that to me." (RT: 1016:1-7.)  
3 The District Attorney stood by while [REDACTED] prejudiced the grand jury with wild  
4 tales of "killers" and secret conversations in "code" despite a total lack of support for  
5 this version of events by other witnesses, including her own family. (RT: 1133:15-  
6 19; 1139:20-23; 1148:20-25.)

7 **4. The District Attorney Elicited Leading and Suggestive Testimony**

8 The District Attorney attempted to control the testimony elicited by asking  
9 leading and suggestive questions. If a witness did not answer in the manner the  
10 prosecutors wished, they would endeavor to make the desired inference with the  
11 question, irrespective of the answer.

12 For instance, although [REDACTED], the investigating social worker  
13 for the LACPS, testified that she did not find the [REDACTED] friendly behavior unusual,  
14 the prosecutor again asked if "given the circumstance of the allegations, it didn't  
15 strike you that their behavior was just a little bit unusual." The answer was again  
16 "No." (RT: 751:2-16.)

17 The prosecution repeated this style when it asked [REDACTED] three  
18 times in a row whether she thought [REDACTED] statement that when she stayed at  
19 Neverland she was usually up walking around the house all night long sounded  
20 "strange." The answer each time the prosecution asked the question was "No." (RT:  
21 758:5-759:5.)

22 Without any basis, the prosecution criticized [REDACTED] for failing to  
23 pick up on the [REDACTED] "suspicious behavior."

24 Q: And after taking down some - - making some observations about how he  
25 looked healthy and well cared for, et cetera, again, the first questions  
asked was, "What is your relationship with Michael Jackson?" Correct?

26 A: Yes.

26 Q: What was his answer?

27 A: "[REDACTED] He's been there for me."

27 Q: The first sentence, first response after the questions is [REDACTED]

28 A: [REDACTED]

28 A: Uh-huh.

1 Q: That didn't raise a suspicion in your mind that that is exactly what the  
2 mother just said in response to this very same question?  
A: No. An considering everything else that he said about him, no, it didn't.

3 (RT: 759:25-760:13.)

4 Q: So in each instance when they are asked their relationship, in each  
5 instance all four of them begin with the statement, [REDACTED]  
A: Yes.  
6 Q: That doesn't send any alarms off to you that this may have been prepared  
7 or scripted for them?  
A: No. Not with everything else they added that was different.

8 (RT: 766:1-8.)

9 Through a series of vague, leading questions posed to [REDACTED] Mr.  
10 Jackson's [REDACTED] the prosecution tried to create the inference that Mr.  
11 Jackson lead the alleged conspiracy.

12 Q: Let's just finish up by talking a little bit about how things ran around the  
13 ranch, and Mr. Jackson's role in the ranch. Who made the decisions  
A: Ultimately Mr. Jackson would call the shots.  
14 Q: Was he what you'd called a hands on person, or just sort of a delegator?  
A: He was a delegator.  
15 Q: So he'd just say, "I want this done," and you get it done?  
A: Right.

16  
17 (RT: 585:3-13.)

18 Similarly, the prosecutor used [REDACTED]'s general opinion concerning the  
19 types of things about which Mr. Jackson is aware, to try to establish he knew clothing  
20 was purchased for the [REDACTED]

21 Q: With regard to this rebuttal, the - - or this film that you took the kids to  
22 buy clothes for.  
A: Uh - huh.  
23 Q: Again, would that be the kind of thing that Mr. Jackson would know  
A: Yes.

24  
25 (RT: 586:6-11.)

26 The prosecution turned a blind eye to the rules of evidence and basic courtroom  
27 conduct to present one-sided, highly inflammatory and sensational evidence  
28 guaranteed to result in an indictment. No seasoned prosecutor would exhibit such

1 blatant disregard for the law unless motivated by his or her own personal interests (or  
2 those of their boss).

3       **D. THE FORMER SHERIFF GRANTS A TELEVISED INTERVIEW**  
4           **CONCERNING THE 1994 INVESTIGATION**

5       It is public information that Jim Thomas was the sheriff in Santa Barbara  
6 County during 1993-1994 investigation concerning allegations [REDACTED]  
7 [REDACTED]. He worked in tandem with Mr. Sneddon. Mr. Thomas, now retired, gave  
8 an interview that aired on national television on September 3, 2004. Mr. Thomas  
9 spoke at length about the content of witness statements during the 1993-1994 inquiry.  
10 Among other things, Mr. Thomas asserted opinions about the credibility of  
11 allegations against Mr. Jackson, represented that criminal charges were not filed due  
12 to settlement of the civil litigation and expressed disappointment that the complainant  
13 chose not to pursue prosecution of Mr. Jackson. (A transcript containing statements  
14 by Mr. Thomas is attached hereto as Exh. I to Cochran's Decl. ¶ 17.)

15       This is not the first time Mr. Thomas has leaked under seal information. On  
16 February 14, 2004, Mr. Thomas reportedly disclosed information to the press that is  
17 uniquely available to the Sheriff's Department. Mr. Thomas stated that [REDACTED]  
18 [REDACTED] was seized during the search of Mr. Jackson's home. Mr. Thomas explained  
19 the item was taken for forensic examination to determine the presence of semen. That  
20 information was under seal at the time and was not public information before Mr.  
21 Thomas's remarks. (An internet copy of excerpts from that article is attached hereto  
22 as Exh. J to Cochran Decl. ¶ 18.)

23       In March of this year, the prosecution opted to convene a grand jury to indict  
24 Mr. Jackson in lieu of a preliminary hearing. On April 21, 2004, defense counsel  
25 received a courtesy call from the District Attorney concerning the issuance of an  
26 indictment. Within two hours of that call, Barry Bortnick, a reporter currently with  
27 the New York Post and formerly with the Santa Barbara News Press, contacted  
28 co-counsel Robert Sanger, asking for confirmation that an indictment was issued by

1 the grand jury. Mr. Bortnick told Mr. Sanger that Jim Thomas said that an indictment  
2 was handed down. Mr. Sanger refused comment. Mr. Bortnick wrote an article  
3 published in the New York Post naming Jim Thomas as a source confirming the  
4 indictment. He refers to Mr. Thomas as a "close confidante" of Mr. Sneddon. (A  
5 copy of excerpts from that article is attached hereto as Exh. K to Cochran Decl. ¶ 19.)

6 Mr. Thomas also appeared on another news program on April 21, 2004. He  
7 reconfirmed the existence of an indictment. Mr. Thomas also revealed that "boys"  
8 from the 1993-94 investigation were not among the witnesses that testified before the  
9 grand jury in this case. Mr. Thomas explained the prosecution's strategy for declining  
10 to call these boys as witnesses. (A copy of pertinent portions of that interview is  
11 attached hereto as Exh. L to Cochran Decl.)

12 More recently, Mr. Thomas has participated in numerous television shows and  
13 has been quoted in the print media, expressing his opinion of Mr. Jackson's guilt  
14 based on his alleged information from Sheriff's reports and on law enforcement  
15 sources. Any fair interpretation of Mr. Thomas' role in this case is that he is the  
16 unofficial spokesperson for Tom Sneddon. He has appeared to put the district  
17 Attorney's spin on event and to be an apologist for the less fortunate of Mr. Sneddon's  
18 antics.

#### 19 IV. THE LAW ON RECUSAL

20 Penal Code section 1424 (hereinafter, "Section 1424") codifies the defendant's  
21 right to have a district attorney recused when the district attorney has a conflict of  
22 interest that makes it unlikely that the defendant will receive a fair trial. Cal. Pen.  
23 Code § 1424(a)(1).) The California Supreme Court has interpreted Section 1424 to  
24 require a two pronged analysis: (1) a conflict of interest must exist and; (2) the  
25 conflict must be "so grave as to render it unlikely that [the] defendant will receive fair  
26 treatment during all portions of the criminal proceedings." People v. Griffin, 33 Cal.  
27 App. 4<sup>th</sup> 536, 569 (2003) (citations omitted).

28

1 A conflict arises "whenever the circumstances of a case evidence a reasonable  
2 possibility that the District Attorneys' office may not exercise its discretionary  
3 function in an evenhanded manner." Id. at 592; People v. Conner, 34 Cal.3d 141, 148  
4 (1983). "The prosecutorial discretion goes beyond the decision of what charges to  
5 file and the trial itself; it extends to all portions of the proceedings." People v.  
6 Eubanks, 14 Cal. 4th 580, 593 (1996), opn. mod. 14 Cal.4th 1282D (1997). There is  
7 a reasonable possibility that the prosecutor will not exercise his or her discretionary  
8 function in an evenhanded manner where:

9 in the course of his official duties [the prosecutor] acquires  
10 a conflicting 'personal interest,' or 'emotional stake' in the  
11 case [ ], or where there is "intense personal involvement" in  
12 his public duties [ ], or where there is "personal, as opposed  
13 to purely professional ... involvement," or "the prosecutor is  
14 improperly utilizing the criminal proceedings as a vehicle to  
15 aid" his personal or fiduciary interests [ ].<sup>3/</sup>

16 People v. Superior Court, (Martin) 98 Cal. App. 3d 515 (1979) (*quoting* People v.  
17 Greer, 19 Cal. 3d 255, 267, n. 8, 269, 270 (1977).) "A public prosecutor must not be  
18 in a position of 'attempting at once to serve two masters,' the People at large and a  
19 private person or entity with its own particular interests in the prosecution." People  
20 v. Choi, 80 Cal. App. 4<sup>th</sup> 476, 483 (2000) (district attorney's belief the defendant was  
21 responsible for the death of a personal friend created an actual conflict).

22 Under the second prong of Section 1424, recusal is warranted where the  
23 prosecutor's conflict "renders it unlikely that defendant will receive fair treatment  
24

25 <sup>3/</sup> Although the Greer/Martin standard for determining whether recusal is proper  
26 due to a conflict of interest has been superceded by statute (*see* People v. Conner,  
27 *supra*, 34 Cal. 3d at 147), the California Supreme Court has applied the  
28 Greer/Martin reasoning when determining whether there a conflict of interest  
exists. *See, e.g.* People v. Griffin, *supra*, 33 Cal. App. 4<sup>th</sup> at 768-69; People v.  
Eubanks, *supra*, 14 Cal. 4th at 591-592, 595; People v. Hambarian, *supra*, 27 Cal.  
4th 826, 833 (2002).

1 during all portions of the criminal proceedings." People v. Conner, supra, 34 Cal. 3d  
2 at 148. This discretion extends,  
3 over the entire course of the criminal proceedings, from the  
4 investigation and gathering of evidence, through the  
5 decisions of whom to charge and what charges to bring, to  
6 the numeric choices at trial to access, oppose, or challenge  
7 judicial rulings.

8 People v. Hambarian, supra, 27 Cal. 4th at 840.

9 When deciding whether the prosecutor's conflict warrants recusal, the court  
10 must consider "the entire complex of facts" when making this assessment. Id. at 834.  
11 The decision to prosecute a weak case is one such factor. Id. at 844. Recusal may  
12 also be proper where the District Attorney is a witness. People v Conner, supra, 80  
13 Cal. App. 4<sup>th</sup> at 148.

14 Here, the record establishes that Mr. Sneddon's emotional investment in  
15 prosecuting Mr. Jackson, conflicts with his role as an impartial public prosecutor. As  
16 discussed below, this conflict is so grave that there exists a reasonable possibility that  
17 Mr. Sneddon cannot exercise the discretionary functions of his office in an  
18 evenhanded manner.

19 **1. Mr. Sneddon's Vendetta With Mr. Jackson Spans A Decade.**

20 The prosecution has committed resources and manpower to prosecuting this  
21 matter that compare only to Mr. Sneddon's first attempt to prosecute down Mr.  
22 Jackson. Mr. Sneddon personally traveled out of the country to try to recruit victims.  
23 Prosecutors in two counties interviewed over 100 witnesses but could not file  
24 charges.

25 The 1993-94 investigation was widely publicized. When the case unraveled,  
26 Mr. Sneddon drew sharp criticism. Mr. Sneddon did not hide his anger that he was  
27 not able to charge Mr. Jackson. This failure fuels Mr. Sneddon's zealousness in this  
28 matter.

1           2.     **Mr. Sneddon's Exposed His Zeal by Abandoning His Position As An**  
2                   **Impartial Prosecutor to Assume the Role of Investigator.**

3           In an unprecedented move, Mr. Sneddon volunteered to complete critical parts  
4 of the investigation on his own. He interviewed the complaining witness' mother  
5 without an investigator present. He did not record the interview, which was standard  
6 practice in the investigation. Indeed, his own investigators conceded: 1) they have  
7 never worked a case when a District Attorney conducted his/her own investigation;  
8 and 2) they could have sent an investigator to accompany Mr. Sneddon. There is no  
9 legitimate explanation for Mr. Sneddon's deviation from standard investigating  
10 practice to thrust himself into the process.

11           3.     **Mr. Sneddon's Personal Animosity For Mr. Jackson Was**  
12                   **Transparent in the Press Conference.**

13           Mr. Sneddon's smug demeanor at the November 19, 2003 press conference  
14 revealed his personal bias. His jocular behavior contrasted starkly with the serious  
15 charges he announced. He demonstrated an inexcusable disregard for Mr. Jackson's  
16 due process rights and the judicial system he is obligated to uphold. He  
17 acknowledged as much in his subsequently apology, chastising himself for not  
18 "knowing better." He made it clear he cannot treat Mr. Jackson in an even-handed  
19 manner.

20           4.     **The District Attorney's Conduct Before the Grand Jury, Alone,**  
21                   **Warrants Recusal.**

22           In the Grand Jury proceedings, the District Attorney's office exposed its  
23 overzealous prosecution of Mr. Jackson. Prosecutorial bias is even more dangerous  
24 in the secret nature of a grand jury proceeding. The person accused must rely on the  
25 prosecutors' willingness to follow the rules to protect him. Here, unfortunately, the  
26 prosecutors not only wilfully violated the rules of evidence and grand jury decorum  
27 but also encouraged witnesses to try to persuade the jurors with impassioned and  
28 prejudicial remarks.



1 The District Attorney called many witnesses whose testimony would not have  
2 been allowed over objection at trial. The District Attorney eliminated any chance that  
3 the grand jury could limit its consideration to admissible and relevant evidence when  
4 he chose to call Larry Feldman and Stan Katz as witnesses on the first day of  
5 testimony. Both witnesses proceeded to testify to a large amount of incompetent and  
6 irrelevant evidence that poisoned the entire proceeding with highly inflammatory and  
7 prejudicial testimony that was inadmissible over objection. These types of questions  
8 and answers violated Mr. Jackson's right to due process from the moment the grand  
9 jury began to hear testimony and guaranteed that the grand jury would not be able to  
10 function as an independent body with the obligation to protect citizens from  
11 unfounded allegations.

12 As argued above, Mr. Sneddon and his deputies conducted themselves in a  
13 manner that would never have been allowed over the objection of defense counsel at  
14 trial in front of any judge. The prosecution bullied witnesses and gave its own  
15 unsworn testimony to rebut the sworn testimony of witnesses. During this formative  
16 period in the relationship of the prosecutor to the grand jurors, Mr. Sneddon made it  
17 clear that he was to be personally believed and that the witnesses were not. His  
18 behavior was outrageous. These witnesses included [REDACTED]  
19 [REDACTED] Mr. Sneddon was confrontational and hostile with [REDACTED]  
20 [REDACTED] from the start. He resorted to personal attacks and outrageous tactics in an  
21 attempt to discredit their testimony. The bulk of "evidence" presented through these  
22 witnesses was wholly irrelevant to the proceedings and served no purpose other than  
23 to place inflammatory and prejudicial material in front of the grand jury, distracting  
24 them from their role as an independent body charged with the responsibility to protect  
25 citizens from unfounded obligations.

26 It is almost incomprehensible that an experienced prosecutor would get into a  
27 personal argument with a witness and, without being sworn, "testify" to his version of  
28 events contrary to that of the witness. Not only would this not be admissible over

1 objection at trial, but would have resulted in a mistrial had it occurred in the presence  
2 of a judge and trial jury.

3         Given the non-adversarial nature of a grand jury proceeding, it is even more  
4 imperative that prosecutors resist the temptation to engage in rude or intemperate  
5 behavior when their own witnesses are answering questions in a manner that  
6 displeases them. This type of behavior not only demeans the office of the District  
7 Attorney, but in a grand jury setting, makes it impossible for grand jurors to remain  
8 impartial and perform their duty as an independent body. In short, Mr. Sneddon  
9 transferred his personal bias to the grand jury, thus irreparably tainting the entire  
10 process.

11           **5.     The District Attorney Has Allowed The Former Sheriff To Leak**  
12           **Information Known Only To The Sheriff's Department Simply By**  
13           **Claiming He Is No Longer The Prosecution's Agent**

14         Someone from the Sheriff's Department and/or the district attorneys' office has  
15 leaking to Mr. Thomas information subject to this Court's protective order. Mr.  
16 Sneddon is aware of these leaks, and could put a stop to them. He has done nothing,  
17 but reap the benefits from them. Mr. Thomas is informed of sensitive information  
18 relating to items seized during the search of Mr. Jackson's ranch and forensic  
19 examination. Mr. Thomas was informed about the issuance of an indictment and  
20 promptly passed it along to the media.

21         The 1993-1994 investigation of Mr. Jackson was a project in which immense  
22 resources were invested by police and prosecutors in Santa Barbara and Los Angeles  
23 Counties. Searches were conducted pursuant to warrants. Numerous witnesses were  
24 called to testify before grand juries that were convened by both counties. Police and  
25 prosecutors interviewed well over a hundred witnesses. The grand juries did not find  
26 cause to allege that Mr. Jackson did anything wrong and the prosecutors did not file  
27 criminal charges. In this case and in the media, however, innuendo from the prior  
28

1 investigation persists. So-called facts from those proceedings have been cited in this  
2 case to justify searches and the amount of bail.

3 Mr. Sneddon and the District Attorneys' office has set idly by while Mr.  
4 Thomas leaks only information favorable to the prosecution's case. These leaks have  
5 destroyed Mr. Jackson's right to a fair trial. If Mr. Sneddon were acting as a  
6 prosecutor for the public and not his own personal motives, he would have taken  
7 action to preserve Mr. Jackson's right to a fair trial.

8 **B. The Evidence of Prosecutorial Bias Establishes a Likelihood That**  
9 **Jackson Will Not Obtain a Fair Trial And, Therefore, the Entire**  
10 **Office of the Santa Barbara District Attorney Must Be Recused**

11 When the District Attorney's bias is so far reaching as to infect the entire  
12 office, the Court must order recusal of the entire office. See People v. Choi, 80 Cal.  
13 App. 4<sup>th</sup> 476, 483 (2000) (upholding recusal of entire office based upon trial court's  
14 recognition of the "potential bias that might result from the fact that deputies are  
15 hired, evaluated and promoted by the district attorney"); People v. Lepe, 164 Cal.  
16 App. 3d 685, 689 (1985) (court affirmed recusal order disqualifying entire district  
17 attorney's office on ground that factors that require recusal of district attorney could  
18 influence deputies who serve at his will).

19 In Choi, the defendant was accused of shooting a victim. Less than a mile  
20 away and a few minutes before the shooting, an attorney and close personal friend of  
21 the District Attorney was also shot and killed. Although circumstantial evidence  
22 linked the defendant to the first shooting, no charges were filed. The defendant  
23 moved to recuse the District Attorney and the entire office based upon the District  
24 Attorney's close friendship with the murdered attorney and statements he made to the  
25 press concerning a connection between the two shootings. The trial court recused the  
26 entire office because it "could not be so sanitized . . . such [as] to assume that the  
27 deputy who prosecutes the case from which his boss is recused would not be  
28

1 influenced by the very considerations that bar the District Attorney himself from  
2 participation in the case.” 80 Cal. App. 4<sup>th</sup> at 480.

3 The Lepe Court explained the need for complete recusal where the conflict is  
4 held by the District Attorney:

5 As the deputies are hired by [the District Attorney],  
6 evaluated by [the District Attorney], promoted by [the  
7 District Attorney] and fired by [the District Attorney], we  
8 cannot say the office can be sanitized such to assume the  
9 deputy who prosecutes the case will not be influenced by  
10 the considerations that bar [the District Attorney] himself  
11 from participation in the case.

12 Id. at 689; see Conner, supra, 34 Cal. 3d at 148-49 (recusing entire office based on  
13 conflict of one deputy because small size of felony division readily leads to  
14 conclusion that “commendable camaraderie” exists among the 25 attorneys that  
15 would similarly prejudice all against the defendant).

16 Here, the size of the District Attorneys office, alone, compels a complete  
17 recusal of the office. There are roughly 20 deputies that try felony cases in the  
18 District Attorneys office. Recusal of Mr. Sneddon and even the deputies currently  
19 assigned is insufficient to cure the prejudice and guarantee Mr. Jackson his right to a  
20 fair trial. Mr. Sneddon is the actual District Attorney. This Court can safely assume  
21 that he has considerable influence, if not direct responsibility, for hiring, evaluating,  
22 promoting and firing all deputies. Mr. Sneddon has a vendetta against Mr. Jackson  
23 that dates back 10 years. It is simply unrealistic to believe his conflict of interest does  
24 not extend to every deputy under his reign. Mr. Sneddon’s personal conflict has  
25 spoiled the District Attorney’s entire office. Therefore, the drastic remedy of recusing  
26 the entire District Attorney’s Office under Section 1424 is warranted.

27 V. CONCLUSION

28

1 Mr. Sneddon's bias compels recusal of him and his entire office. No other  
2 remedy will give Mr. Jackson a chance at a fair trial.

3  
4 DATED: October 4, 2004

Respectfully submitted,

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

7 Steve Cochran  
8 Stacey McKee Knight  
KATTEN MUCHIN ZAVIS ROSENMAN

9 Robert M. Sanger  
SANGER & SWYSEN

10 Brian Oxman  
11 OXMAN & JAROSCAK

12  
13 By: Steve Cochran  
14 Steve Cochran  
15 Attorneys for Defendant  
16 MICHAEL J. JACKSON  
17  
18  
19  
20  
21  
22  
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1 Mr. Jackson. The grand juries in Los Angeles and Santa Barbara did not indict Mr.  
2 Jackson. Criminal charges were not filed by prosecutors in either jurisdiction. Civil  
3 litigation involving the same allegations was settled.

4 7. On February 6, 2003, the program "Living With Michael Jackson" filmed  
5 by Martin Bashir aired in Britain. In one segment, Mr. Jackson was interviewed [REDACTED]  
6 [REDACTED]. He told Mr. Bashir about his struggle with cancer and  
7 visits to Neverland Ranch. He recalled one occasion when Mr. Jackson allowed [REDACTED]  
8 to sleep in the bed while Mr. Jackson slept in a sleeping bag on the floor. Mr. Bashir  
9 twisted what had actually been said and questioned Mr. Jackson about "sharing his  
10 bed" with minor children, giving the mis-impression that Mr. Jackson had slept in the  
11 same bed with [REDACTED]. A true and correct copy of excerpts of the February 6,  
12 2003 Bashir program are on a dvd enclosed herewith as Exhibit A.

13 8. As a result of this segment, the District Attorney received complaints  
14 from Carole Lieberman, a psychologist, and Gloria Allred, a Los Angeles attorney,  
15 who wanted him to initiate an investigation into Mr Jackson based upon the Bashir  
16 program. A true and correct copy of the March 31, 2003 Article, *Is The System*  
17 *Failing To Protect Children* from the Gloria Allred website that was published in the  
18 Los Angeles Daily Journal is attached hereto as Exhibit B. A true and correct copy of  
19 the February 10, 2003 Suspected Child Abuse Report based on the referral of Dr.  
20 Lieberman is attached hereto as Exhibit C.

21 9. These complaints caused the LACPS to send investigators to interview  
22 the [REDACTED] about their interaction with Mr. Jackson. The interview took place on  
23 February 20, 2003. Each of the [REDACTED] denied any wrongdoing by Mr. Jackson.  
24 Quite the opposite, [REDACTED] praised Mr. Jackson for his support during [REDACTED]  
25 struggle with cancer and for the generosity shown to their family. The LACPS  
26 concluded that the none of the [REDACTED] children was at risk of harm and closed the  
27 investigation.

28

1           10. The Santa Barbara Sheriff's department also opened an investigation into  
2 suspected child sexual abuse. In March 2003, Santa Barbara County Sheriff's  
3 Detective Terry Flaa interviewed LACPS about its investigation of the [REDACTED]  
4 Detective Flaa determined in April 2003 that the elements of criminal activity were not  
5 met and no further action was required. A true and correct copy of the April 16, 2003  
6 Sheriff's Department Report prepared by Detective Flaa is attached hereto as Exhibit  
7 D.

8           11. A new investigation began in June 2003 into allegations that Mr. Jackson  
9 molested [REDACTED]. Mr. Sneddon personally conducted part of this investigation.  
10 On November 8, 2003, Mr. Sneddon traveled alone from Santa Barbara to Beverly  
11 Hills to obtain a description of the offices he believed were occupied by private  
12 investigator Bradley G. Miller. Lieutenant Klapakis, the lead investigator, admitted he  
13 could have easily assigned an investigator to investigate Mr. Miller's office, meet with  
14 [REDACTED] and retrieve the items of evidence. Mr. Sneddon insisted, though that he  
15 would make the trip outside the jurisdiction. He did not request an investigator.

16           12. When Mr. Sneddon arrived at the Beverly Boulevard address in Beverly  
17 Hills, he canvassed the building, photographed the outside of the office and attempted  
18 to verify Mr. Miller's address in a public telephone book. He then returned to the  
19 building to take an additional picture of the building. When he finished, he met [REDACTED]  
20 [REDACTED] at the Federal Building in Westwood to give her the applications for victim  
21 compensation she requested. He brought along a photo array and asked her to identify  
22 individuals under investigation. She apparently did so. Mr. Sneddon did not record  
23 his interview with [REDACTED]. He gathered evidence, a CD disk and jacket, [REDACTED]  
24 [REDACTED] and put those items in the trunk of his car. Mr. Sneddon prepared a  
25 memorandum concerning his investigation and his role as a chain of custody witness  
26 and delivered the evidence to the investigators. A true and correct copy of Mr.  
27 Sneddon's November 10, 2003 report concerning his investigation of Bradley Miller's  
28 office and meeting with [REDACTED] is attached hereto as Exhibit E.



1           13. I attended the hearings on defense counsel's Motion to Suppress, Part I  
2 and was present for the testimony of District Attorney Sneddon, Lieutenant Klapakis  
3 and Officer Robel. At this hearing Mr. Sneddon testified and denied doing any  
4 investigation, describing his conduct as "discussions" or "ministerial." During the  
5 hearings on this motion, the Lead Investigator, Lieutenant Klapakis, testified and  
6 conceded, however, that Mr. Sneddon had engaged in investigative activities and is a  
7 chain of custody witness. Lieutenant Klapakis also testified that he could have easily  
8 assigned an investigator to investigate Mr. Miller's office, meet with Ms. [REDACTED] and  
9 retrieve the items of evidence. Officer Robel testified he has have never participated  
10 in an investigation where the district attorney has taken this type of action. Officer  
11 Robel admitted that he was not aware of any investigation in which the District  
12 Attorney of the County had engaged in such behavior.

13           14. On November 19, 2003, Mr. Sneddon and Sheriff Jim Anderson called a  
14 televised press conference to announce the arrest warrant for Mr. Jackson. Despite the  
15 seriousness of the alleged charges against Mr. Jackson, Mr. Sneddon appeared jovial  
16 throughout the press conference. Mr. Sneddon welcomed the reporters to Santa  
17 Barbara by joking "I hope that you all stay long and spend lots of money because we  
18 need your sales tax to support our offices." He bantered with reporters and drew  
19 chuckles as he poked fun at Mr. Jackson and his music. He smiled and smirked  
20 throughout the conference. A true and correct copy of the November 19, 2003 press  
21 conference is on a dvd enclosed herewith as Exhibit F.

22           15. Mr. Sneddon drew immediate criticism for his demeanor and the levity of  
23 the press conference. He acknowledged his poor judgment in a televised interview on  
24 CNN News, admitting that "he should have known better." A true and correct copy of  
25 November 26, 2003 Presstelegram.com Article, *Prosecutor apologizes for joking at*  
26 *Jackson news conference* is attached hereto as Exhibit G.

27  
28

1           16. Rather than proceed with a preliminary hearing, the District Attorney  
2 decided to convene a Grand Jury. A true and correct copy of excerpts from the Grand  
3 Jury Proceedings are attached hereto as Exhibit H.

4           17. Jim Thomas was the sheriff in Santa Barbara County during 1993-1994  
5 investigation concerning allegations asserted [REDACTED]. He worked in  
6 tandem with Mr. Sneddon. Mr. Thomas, now retired, gave an interview that aired on  
7 national television on September 3, 2004. Mr. Thomas spoke at length about the  
8 content of witness statements during the 1993-1994 inquiry. Among other things, Mr.  
9 Thomas asserted opinions about the credibility of allegations against Mr. Jackson,  
10 represented that criminal charges were not filed due to settlement of the civil litigation  
11 and expressed disappointment that the complainant chose not to pursue prosecution of  
12 Mr. Jackson. A transcript containing statements by Mr. Thomas is attached hereto as  
13 Exhibit I.

14           18. This is not the first time Mr. Thomas has leaked under seal information.  
15 On February 14, 2004, Mr. Thomas reportedly disclosed information to the press that  
16 is uniquely available to the Sheriff's Department. Mr. Thomas stated that part of a  
17 mattress was seized during the search of Mr. Jackson's home. Mr. Thomas explained  
18 the item was taken for forensic examination to determine the presence of semen. That  
19 information was under seal at the time and was not public information before Mr.  
20 Thomas's remarks. An internet copy of excerpts from that article is attached hereto as  
21 Exhibit I.

22           19. In March of this year, the prosecution opted to convene a grand jury to  
23 indict Mr. Jackson in lieu of a preliminary hearing. On April 21, 2004, defense  
24 counsel received a courtesy call from the District Attorney concerning the issuance of  
25 an indictment. Within two hours of that call, Barry Bortnick, a reporter currently with  
26 the New York Post and formerly with the Santa Barbara News Press, contacted  
27 co-counsel Robert Sanger, asking for confirmation that an indictment was issued by  
28 the grand jury. Mr. Bortnick told Mr. Sanger that Jim Thomas said that an indictment

1 was handed down. Mr. Sanger refused comment. Mr. Bortnick wrote an article  
2 published in the New York Post naming Jim Thomas as a source confirming the  
3 indictment. He refers to Mr. Thomas as a "close confidante" of Mr. Sneddon. A copy  
4 of excerpts from that article is attached hereto as Exhibit K.

5 20. Mr. Thomas also appeared on another news program on April 21, 2004.  
6 He reconfirmed the existence of an indictment. Mr. Thomas also revealed that "boys"  
7 from the 1993-94 investigation were not among the witnesses that testified before the  
8 grand jury in this case. Mr. Thomas explained the prosecution's strategy for declining  
9 to call these boys as witnesses. A copy of pertinent portions of that interview is  
10 attached hereto as Exhibit L.

11 I declare under penalty of perjury that he foregoing is true and correct.

12 Executed this 4th day of October, 2004 at Los Angeles, California.

13  
14   
15 \_\_\_\_\_  
16 Steve Cochran  
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PROOF OF SERVICE BY MAIL

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action, and my business address is Katten Muchin Zavis Rosenman (the "business"), 2029 Century Park East, Suite 2600, Los Angeles, California 90067.

( ) I am readily familiar with the business's practice for collection and processing of correspondence for mailing with the United States Postal Service; such correspondence would be deposited with the United States Postal Service the same day of deposit in the ordinary course of business.

( ) (By Personal Service) I delivered such envelope by hand to the addressee(s) as indicated above.

(X ) By Facsimile Machine, I caused the above-referenced document(s) to be transmitted to the persons listed below:

On October 4, 2004, I served the foregoing documents described as NOTICE OF MOTION AND MOTION FOR RECUSAL OF SANTA BARBARA COUNTY DISTRICT ATTORNEY'S OFFICE PURSUANT TO PENAL CODE SECTION 1424; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF COUNSEL on the interested parties in this action as follows:

(Motion w/o exhibits via Facsimile/Motion w/exhibits via Federal Express)

Thomas W. Sneddon, Jr.

District Attorney of Santa Barbara

1105 Santa Barbara Street

Santa Barbara, CA 93101

Fax: 805-568-2398

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct

Executed on October 4, 2004, at Los Angeles, California.

  
Marsha Davis

PROOF OF SERVICE BY MAIL

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action, and my business address is Worldwide Network, Inc., 1533 Wilshire Blvd., Los Angeles, CA 90017.

( ) I am readily familiar with the business's practice for collection and processing of correspondence for mailing with the United States Postal Service; such correspondence would be deposited with the United States Postal Service the same day of deposit in the ordinary course of business.

(X ) (By Personal Service) I delivered such envelope by hand to the addressee(s) as indicated above.

( ) By Facsimile Machine, I caused the above-referenced document(s) to be transmitted to the persons listed below:

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(via Personal service)  
Attorney General  
300 North Los Angeles  
Los Angeles, CA 90012

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct

Executed on October 4, 2004, at Los Angeles, California.

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

**EXHIBITS A THROUGH L**

**REDACTED**

PROOF OF SERVICE  
1013A(1)(3), 1013(c) CCP

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA:

I am a citizen of the United States of America and a resident of the county aforesaid. I am employed by the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action. My business address is 312-H East Cook Street, Santa Maria, California.

On OCTOBER 7, 20 04, I served a copy of the attached ORDER FOR RELEASE OF REDACTED DOCUMENTS (DEFENDANT'S MOTION FOR RECUSAL OF SANTA BARBARA COUNTY DISTRICT ATTORNEY'S OFFICE) addressed as follows:

THOMAS W. SNEDDON, DISTRICT ATTORNEY  
DISTRICT ATTORNEY'S OFFICE  
1105 SANTA BARBARA STREET  
SANTA BARBARA, CA 93101

THOMAS A. MESEREAU, JR.  
COLLINS, MESEREAU, REDDOCK & YU, LLP  
1875 CENTURY PARK EAST, 7<sup>TH</sup> FLOOR  
LOS ANGELES, CA 90067

X FAX

By faxing true copies thereof to the receiving fax numbers of: 805-568-2398 (DISTRICT ATTORNEY); 310-861-1007 (THOMAS A. MESEREAU, JR). Said transmission was reported complete and without error. Pursuant to California Rules of Court 2005(j), a transmission report was properly issued by the transmitting facsimile machine and is attached hereto.

\_\_\_ MAIL

By placing true copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States Postal Service mail box in the City of Santa Maria, County of Santa Barbara, addressed as above. That there is delivery service by the United States Postal Service at the place so addressed or that there is a regular communication by mail between the place of mailing and the place so addressed.

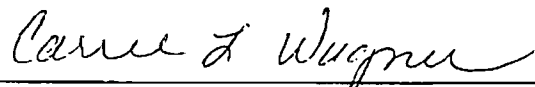
\_\_\_ PERSONAL SERVICE

By leaving a true copy thereof at their office with their clerk therein or the person having charge thereof.

\_\_\_ EXPRESS MAIL

By depositing such envelope in a post office, mailbox, sub-post office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with express mail postage paid.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 7<sup>TH</sup> day of OCTOBER, 20 04, at Santa Maria, California.



CARRIE L. WAGNER