

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

4 SANGER & SWYSEN  
5 Robert M. Sanger, State Bar Number 058214  
233 East Carrillo Street, Suite C  
6 Santa Barbara, CA 93101  
Tel.: (805) 962-4887, Fax: (805) 963-7311

7 OXMAN & JAROSCAK  
8 Brian Oxman, State Bar Number 072172  
14126 East Rosecrans  
9 Santa Fe Springs, CA 90670  
Tel.: (562) 921-5058, Fax: (562) 921-2298

10 Attorneys for Defendant  
11 MICHAEL JOSEPH JACKSON

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION  
14

15 THE PEOPLE OF THE STATE OF )  
16 CALIFORNIA, )

17 Plaintiffs, )

18 vs. )

19 MICHAEL JOSEPH JACKSON, )

20 Defendant. )  
21 )  
22 )  
23 )

Case No. 1133603

) MOTION TO PROHIBIT TESTIMONY  
) BASED ON FAILURE TO COMPLY WITH  
) PENAL CODE SECTION 1054.7;  
) DECLARATION OF COUNSEL

) Honorable Rodney S. Melville  
) Date: TBA  
) Time: 8:30 am  
) Dept: SM 8

24 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE DISTRICT  
25 ATTORNEY OF THE COUNTY OF SANTA BARBARA, TOM SNEDDON, AND DEPUTY  
26 DISTRICT ATTORNEYS GERALD FRANKLIN, RON ZONEN, GORDON AUCHINCLOSS  
27

28 MOTION TO PROHIBIT TESTIMONY BASED ON FAILURE TO COMPLY WITH PENAL  
CODE SECTION 1054.7

**FILED**  
SUPERIOR COURT of CALIFORNIA  
COUNTY of SANTA BARBARA

APR - 5 2005

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

1 AND MAG NICOLA:

2 Please take notice that on a date to be determined by the Court, before the Honorable Rodney  
3 Melville, defendant Michael Jackson, through his counsel, will and hereby does move to prohibit  
4 the testimony of Adrian McManus, Ralph Chacon, June Chandler, Charlie Michaels, Phillip  
5 Lamarque, Orietta Murdock, Charmayne Sternberg, and any other prior offense witness for whom  
6 discovery has not been provided, unless and until discovery is provided, and for other and further  
7 relief that the Court may deem just and proper including, but not limited to, an order requiring  
8 "immediate disclosure, contempt proceedings, delaying or prohibiting the testimony of a witness or  
9 the presentation of real evidence, continuance of the matter, or any other lawful order." (Penal Code  
10 Section 1054.5(b).) This motion is based on the grounds that: (1) the District Attorney failed to  
11 comply with Evidence Code Section 1108's requirement that prior offense evidence be disclosed to  
12 defense counsel in accordance with Penal Code Section 1054.7; and (2) the failure to disclose  
13 exculpatory evidence, pursuant to *Brady v. Maryland* (1963) 373 U.S. 83, 87, threatens to deprive  
14 Mr. Jackson of his right to confront and cross-examine witnesses under the Sixth and Fourteenth  
15 Amendment to the United States Constitution and Article 1, Section 15 of the California  
16 Constitution.

17  
18  
19  
20  
21  
22 ///

23  
24 ///

25  
26 ///

27  
28 MOTION TO PROHIBIT TESTIMONY BASED ON FAILURE TO COMPLY WITH PENAL  
CODE SECTION 1054.7

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

4 Dated: April 5, 2005

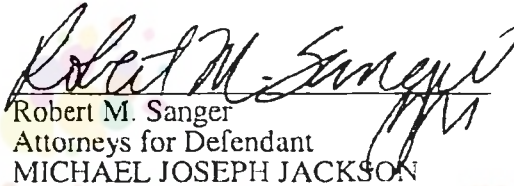
Respectfully submitted,

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

7 SANGER & SWYSEN  
8 Robert M. Sanger

9 OXMAN & JAROSCAK  
Brian Oxman

10  
11 By:

  
Robert M. Sanger  
Attorneys for Defendant  
MICHAEL JOSEPH JACKSON

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28 MOTION TO PROHIBIT TESTIMONY BASED ON FAILURE TO COMPLY WITH PENAL  
CODE SECTION 1054.7

DECLARATION OF ROBERT M. SANGER

I, Robert M. Sanger, declare:

1. I am an attorney at law duly licensed to practice law in the courts of the State of California, a partner in the law firm of Sanger & Swysen, and co-counsel for Michael Jackson.

2. The District Attorney has not provided defense counsel with any recent discovery regarding Kristofer Kallman, Adrian McManus, Ralph Chacon, June Chandler, Charlie Michaels, Phillip Lamarque, Orietta Murdock, and Charmayne Sternberg.

3. It is highly improbable that the District Attorney would call these witnesses to testify at trial without re-interviewing them and conducting new investigation.

4. This is particularly true of unsavory characters such as Phillip Lamarque, Ralph Chacon and Adrian McManus.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct this 5<sup>th</sup> of April, 2005, at Santa Barbara, California.

*Robert M. Sanger*  
Robert M. Sanger

MOTION TO PROHIBIT TESTIMONY BASED ON FAILURE TO COMPLY WITH PENAL CODE SECTION 1054.7

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 THE DISTRICT ATTORNEY HAS FAILED TO COMPLY WITH EVIDENCE CODE

4 SECTION 1108 AND PENAL CODE SECTION 1054.7

5 The District Attorney has not provided defense counsel with any recent discovery  
6 regarding alleged prior offense witnesses Kristofer Kallman, Adrian McManus, Ralph Chacon,  
7 June Chandler, Charlie Michaels, Phillip Lamarque, Orietta Murdock, and Charmayne Sternberg.  
8 It is highly improbable that the District Attorney would call these witnesses to testify at trial  
9 without re-interviewing them and conducting new investigation. This is particularly true of  
10 unsavory characters such as Phillip Lamarque, Ralph Chacon or Adrian McManus. (Declaration  
11 of Robert M. Sanger.)

12 Evidence Code Section 1108 requires the prosecution to disclose statements of witnesses  
13 in compliance with Penal Code Section 1054.7. "In an action in which evidence is to be offered  
14 under this section, the people shall disclose the evidence to the defendant, including statements  
15 of witnesses or a summary of the substance of any testimony that is expected to be offered in  
16 compliance with the provisions of Section 1054.7 of the Penal Code." (Evidence Code Section  
17 1108.)

18 Penal code Section 1054.7 requires disclosure of statements of witnesses at least 30 days  
19 prior to trial, or immediately if the information becomes known within 30 days of trial, unless  
20 good cause is shown.

21 The disclosures required under this chapter shall be made at least 30 days prior to  
22 the trial, unless good cause is shown why a disclosure should be denied, restricted,  
23 or deferred. If the material and information becomes known to, or comes into the  
24 possession of, a party within 30 days of trial, disclosure shall be made  
25 immediately, unless good cause is shown why a disclosure should be denied,  
26 restricted, or deferred. "Good cause" is limited to threats or possible danger to the  
27 safety of a victim or witness, possible loss or destruction of evidence, or possible  
28 compromise of other investigations by law enforcement.  
(Penal Code Section 1054.7.)

26 Penal Code Section 1054.5(b) authorizes the Court to "make any order necessary to

---

28 MOTION TO PROHIBIT TESTIMONY BASED ON FAILURE TO COMPLY WITH PENAL  
CODE SECTION 1054.7

1 enforce the provisions of this chapter, including, but not limited to, immediate disclosure,  
2 contempt proceedings, delaying or prohibiting the testimony of a witness or the presentation of  
3 real evidence, continuance of the matter, or any other lawful order.” “Further, the court may  
4 advise the jury of any failure or refusal to disclose and of any untimely discovery.” (Penal Code  
5 Section 1054.5(b).) “The court may prohibit the testimony of a witness pursuant to subdivision  
6 (b) only if all sanctions have been exhausted.” (Penal Code Section 1054.5(c).)

7 II.

8 DEFENSE COUNSEL IS ENTITLED TO INFORMATION REGARDING ORAL  
9 STATEMENTS OF WITNESSES, INCLUDING STATEMENTS MADE TO THE  
10 PROSECUTORS

11 Penal Code Section 1054 *et seq.* requires that the District Attorney turn over not only  
12 relevant written or recorded statements made by witnesses, whom the government intends to call  
13 at trial, but also requires the District Attorney to disclose reports of any relevant untaped oral  
14 statements of those witnesses communicated orally to counsel by third parties, such as an  
15 investigator, including oral statements made directly to counsel. (See *Roland v. Superior Court*  
16 (2004) 124 Cal.App.4th 154, holding that defense counsel must disclose oral statements of  
17 witnesses, other than the defendant, whom defense counsel intends to have testify at trial,  
18 pursuant to 1054.3; stating that the same rule applies concomitantly to the prosecution pursuant  
19 to 1054.1.) If, in fact, the prosecutors, or law enforcement, have met with these witnesses to re-  
20 interview them or to go over previous statements or testimony, defense counsel is entitled to any  
21 statements made by the witnesses during those meetings. (See *Roland v. Superior Court* (2004)  
22 124 Cal.App.4th 154.)

23 III.

24 THE PROSECUTION IS REQUIRED TO DISCLOSE ANY EXCULPATORY  
25 EVIDENCE TO DEFENSE COUNSEL

26 The United States Supreme Court held that due process requires the prosecution to  
27

28 MOTION TO PROHIBIT TESTIMONY BASED ON FAILURE TO COMPLY WITH PENAL  
CODE SECTION 1054.7

1 disclose any favorable evidence to the defense, if the evidence is material either to the guilt or  
2 punishment of the defendant. (*Brady v. Maryland* (1963) 373 U.S. 83, 87; *Giglio v. U.S.* (1972)  
3 405 U.S. 150.) Evidence is favorable if it will either help the defense or hurt the prosecution.  
4 (*People v. Coddington* (2000) 23 Cal. 4<sup>th</sup> 529, 589.)

5 The United States Supreme Court held that the duty to disclose such evidence is  
6 applicable even though there has been no request by the accused. (*Strickler v. Greene* (1999) 527  
7 U.S. 263, 278.) Negligent, as well as intentional, failure to disclose *Brady* evidence can  
8 constitute reversible error. (*United States v. Ruiz* (2002) 536 U.S. 622.)

9 Prosecutors are required to inquire about and to make available to the defense  
10 information concerning the misdemeanor misconduct of material prosecution witnesses. (*People*  
11 *v. Wheeler* (1992) 4 Cal. 4<sup>th</sup> 284.) "Misconduct involving moral turpitude may suggest a  
12 willingness to lie and this inference is not limited to conduct which resulted in a felony  
13 conviction." (*Wheeler* at 295-296) Under the California Constitution, Article 1, Section 28(d),  
14 "relevant evidence shall not be excluded in any criminal proceedings, including pretrial and post  
15 conviction motions and hearings." Proposition 115 does not limit the prosecution's duty to  
16 disclose the alleged victim's criminal convictions, pending charges, probationary status, acts of  
17 dishonesty, or false reports of sexual offenses. (*People v. Hayes* (1992) 3 Cal.App. 4<sup>th</sup> 1238,  
18 1244-1246.)

#### 19 IV.

#### 20 CONCLUSION

21 Therefore, the Court should prohibit the testimony of Adrian McManus, Ralph Chacon,  
22 June Chandler, Charlie Michaels, Phillip Lamarque, Orietta Murdock, Charmayne Sternberg, and  
23 any other prior offense witness for whom discovery has not been provided, unless and until such  
24 discovery is disclosed, and grant such other and further relief that the Court may deem just and  
25 proper including, but not limited to, an order requiring "immediate disclosure, contempt  
26 proceedings, delaying or prohibiting the testimony of a witness or the presentation of real  
27

28 MOTION TO PROHIBIT TESTIMONY BASED ON FAILURE TO COMPLY WITH PENAL  
CODE SECTION 1054.7

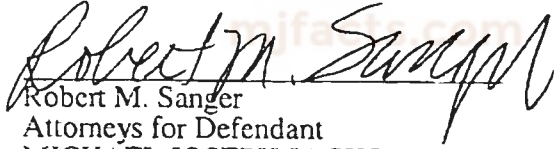
1 evidence, continuance of the matter, or any other lawful order.”

2 Dated: April 5, 2005

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

4 SANGER & SWYSEN  
Robert M. Sanger

6 OXMAN & JAROSCAK  
Brian Oxman

8 By:   
Robert M. Sanger  
Attorneys for Defendant  
MICHAEL JOSEPH JACKSON

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

---

MOTION TO PROHIBIT TESTIMONY BASED ON FAILURE TO COMPLY WITH PENAL  
CODE SECTION 1054.7



PROOF OF SERVICE

I, the undersigned declare:

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

On April 5, 2005, I served the foregoing document MOTION TO PROHIBIT TESTIMONY BASED ON FAILURE TO COMPLY WITH PENAL CODE SECTION 1054.7 on the interested parties in this action by depositing a true copy thereof as follows:

Tom Sneddon  
District Attorney  
312 East Cook Street  
Santa Maria, CA 93454

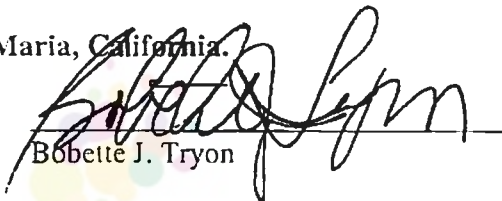
       **BY U.S. MAIL** - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid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

       **BY FACSIMILE** - I caused the above-referenced document(s) to be transmitted via facsimile to the interested parties [SEE ABOVE]

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

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

Executed April 5, 2005 at Santa Maria, California.

  
Bobette J. Tryon