THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY
County of Santa Barbara
By: RONALD J. ZONEN (State Bar No. 85094)
Senior Deputy District Attorney
GORDON AUCHINCLOSS (State Bar No. 150251)
Senior Deputy District Attorney
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Senior Deputy District Attorney
1105 Santa Barbara Street
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SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA BARBARA

MAY 2 4 2004

GARY M. BLAIR, Executive Officer
BY CANAL & Wagner
CARRIE L. WAGNER, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SANTA BARBARA SANTA MARIA DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA.

Plaintiff,

VS.

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MICHAEL JOE JACKSON.

Telephone: (805) 568-2300

FAX: (805) 568-2398

Defendant.

No. 1133603
RESPONSE TO
DEFENDANT'S MOTION TO
COMPEL DISCOVERY;
DECLARATION OF
GORDON AUCHINCLOSS

Date: May 28, 2004 Time: 8:30 AM Dept.: 9 (Melville)

INTRODUCTION

The scope of the investigation in this case is extraordinary and there is little doubt that investigation will continue through trial. To date, the People have provided defendant with over 1000 pages of Sheriff's Reports including documentary evidence and over 50 audio and video tapes. Sheriff's reports are generated when any particular aspect of the investigation is completed. Because reports are not prepared contemporaneously with each portion of the investigation and because each report must then be drafted, word processed, reviewed, redrafted into its final form, provided to the prosecution and then

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report is inevitable. Audio and video recordings of interviews are generally forwarded to the prosecution only when the report accompanying any recording is completed.

The People have promptly provided discovery to defendant as soon as it becomes available and are in complete compliance with its obligations under *Brady v. Maryland* (1963) 373 U.S. 667 and the rules for discovery in criminal cases pursuant to Penal Code § 1054 et seq.

THE PEOPLES RESPONSE

Penal Code § 1054 provides in pertinent part:

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This chapter shall be interpreted to give effect to all of the following purposes....

(b) To save court time by requiring that discovery be conducted informally between and among the parties before judicial enforcement is requested.

The first notice provided to the People that the informal discovery process had reached a critical impasse requiring the courts intervention came in the form of defendant's motion to compel discovery. The People promptly contacted the defense to assure them that the People are complying with the letter and the spirit of Penal Code §1054 ct seq. and its obligations under *Brady*. At the People's prompting, a conference call involving Senior Deputy District Attorneys Gordon Auchineloss and Gerald Franklin for the People and Thomas A. Mesereau, Jr., Susan C. Yu, Steve Cochran and Robert Sanger for the defense was held on Friday, May 21, 2004 in the hope that any remaining discovery issues could be resolved informally.

During this call, the People directly addressed each concern expressed by the defense and corrected the misperception that the prosecution is "controlling" discovery. An update on the status of new reports and audio tapes was provided and the defense was notified of reports which would be ready for pickup the following week.

Regarding defendant's request for the viewing of physical evidence in possession of the Santa Barbara Sheriff's Department, the People informed the defense that these materials are available for inspection now and the investigating agency has been notified to arrange a meeting with the defense at the earliest convenience of all concerned. The People would not agree with the unusual defense request that the Sheriff's Department relinquish unsupervised custody and control of physical evidence to the defense and their investigators during its viewing.

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During the conference call, the defense could not provide the People with a single discovery issue the People have been unresponsive to. The People repeatedly assured the defense that they would assiduously observe all obligations concerning discovery and make further good faith attempts to resolve any future discovery issues between the parties. The People suggested the defense take their discovery motion off-calendar until such time that a concrete issue arises that cannot be resolved informally. The defense responded by saying that the defendant's interests would best be served by having the court monitor discovery. Whether that is true or not, the very purpose of Penal Code §1054 is ignored when a party fails to observe its obligation to make every effort to resolve discovery issues informally.

CONCLUSION

The People take their obligations under Penal Code §1054 and Brady very seriously and are in full compliance with these rules. The defendant's motion is premature and disregards the obligation of the defense to endeavor to resolve discovery issues informally.

Notwithstanding this failing, should the court wish to make an order for general compliance under Penal Code §1054.1 the People will offer no opposition. However, it should be noted that, to date, the People have requested discovery from the defense pursuant to Penal Code §1054.3 and received none. As such, it is just and appropriate that any order for discovery issued by the court be reciprocal.

DATED: May 24, 2004 Respectfully submitted, THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY PROON AUCHINCLOSS Ħ

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DECLARATION OF GORDON AUCHINCLOSS

I. Gordon Auchincloss do hereby declare:

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

On May 18, 2004 I called the office of one of the attorneys for defendant Steve Cochran and left messages for him to return my call. Mr. Cochran returned my call on May 19, 2004 and I discussed with him the issue of discovery in this case. Mr. Cochran informed me that he would like to include his colleagues in the discussion and a conference call was arranged for May 21, 2004 at 11:00 AM.

On May 21, 2004 at 11:00 AM I participated in a conference call involving, Thomas A. Mesereau, Jr., Susan C. Yu, Steve Cochran and Robert Sanger for the defense and Gerald Franklin for the People. I explained the reason why discovery has been produced in several installments and I gave a timetable for known future discovery. I further explained that the defense may view the physical property in this case whenever they can arrange to do so. I did not agree with Mr. Sanger's request that the defense be given unsupervised custody of physical evidence during its viewing. I repeatedly assured the defense that the prosecution will continue to honor its obligations under *Brady* and Penal Code §1054 et seq. and that I would personally work with the defense to resolve any discovery issues that may arise.

Finally, I asked the defense to provide me with any and all concerns they presently have regarding discovery so that I could help resolve them without the necessity of judicial intervention. No further complaints or concerns were forthcoming. I suggested that the defense take their motion off-calendar until such time that judicial intervention becomes a necessity. The defense posited that it was in their client's best interests to have the court monitor discovery now.

PROPLE'S RESPONSE TO DEPENDANT'S MOTION TO COMPEL DISCOVERY

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

Executed this 24th day of May, 2004, at Santa Barbara, California.

Godon Auchineloss

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PROOF OF SERVICE

STATE OF CALIFORNIA) SS COUNTY OF SANTA BARBARA)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and I am not a party to the within-entitled action. My business address is: District Attorney's Office; Courthouse: 1105 Santa Barbara Street, Santa Barbara, California 93101.

On May 24, 2004, I served the within PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO COMPEL DISCOVERY on Defendant, by THOMAS A. MESEREAU, JR., STEVE COCHRAN, and ROBERT SANGER, by faxing a true copy to counsel at the facsimile number shown with the address of each on the attached Service List, and then by causing to be mailed a true copy to each counsel at that address.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Santa Barbara, California on this 24th day of May, 2004.

Rosemary Migli

SERVICE LIST

THOMAS A. MESEREAU, JR. Collins, Mesereau, Reddock & Yu. LLP 1875 Century Park East, No. 700 Los Angeles, CA 90067 FAX: (310) 284-3122

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Attorney for Defendant Michael Jackson

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