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17 Attorneys for Defendant  
18 **MICHAEL JOSEPH JACKSON**

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
20 **FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION**

21 **THE PEOPLE OF THE STATE OF**  
22 **CALIFORNIA,**

23 Plaintiffs,

24 vs.

25 **MICHAEL JOSEPH JACKSON,**

26 Defendant.

Case No. 1133603

NOTICE OF MOTION AND MOTION TO  
DISMISS FOR OUTRAGEOUS  
GOVERNMENT CONDUCT, TO  
SUPPRESS ALL EVIDENCE SEIZED  
PURSUANT TO SEARCH WARRANTS  
5192 AND 5196, AND, IN THE  
ALTERNATIVE, TO CONTINUE THE  
TRIAL

~~UNDER SEAL~~

Honorable Rodney S. Melville  
Date: December 20<sup>th</sup> 23, 2004  
Time: 8:30 am  
Dept: SM 8

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

NOTICE OF MOTION AND MOTION TO DISMISS FOR OUTRAGEOUS GOVERNMENT CONDUCT, TO  
SUPPRESS ALL EVIDENCE SEIZED PURSUANT TO SEARCH WARRANTS 5192 AND 5196, AND, IN THE  
ALTERNATIVE, TO CONTINUE THE TRIAL

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

DEC 13 2004

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

\*unsealed pursuant  
to 6/16/05 court  
order

1 AUCHINCLOSS:

2 PLEASE TAKE NOTICE that Mr. Michael Jackson hereby does, and will move on  
3 December 20, 2004, at 8:30 a.m., or as soon thereafter as counsel may be heard, in Department 8  
4 of the above-entitled court, that: (1) the case be dismissed; (2) that the materials seized pursuant  
5 to Search Warrants 5192 and 5196, including the observations of law enforcement and  
6 everything derived therefrom, be suppressed, or; (3) in the alternative, that the trial be continued;  
7 and (4) for such other relief as the Court may deem just and proper. This motion is based on: (1)  
8 the District Attorney's outrageous conduct in seeking more than 100 search warrants; (2) the  
9 District Attorney's outrageous conduct in requesting a search warrant for Mr. Jackson's home on  
10 the eve of the discovery cutoff and so close to trial; (3) the nature of the material to be seized  
11 does not raise an issue of exigency; (4) the fact that Mr. Jackson has been treated differently than  
12 any other person within the jurisdiction of this county; and (5) the District Attorney's outrageous  
13 conduct in intruding on Mr. Jackson and his family's right to privacy in his home by conducting  
14 an unnecessary raid, all in violation of Mr. Jackson's right to privacy, fair trial, due process of  
15 law, effective assistance of counsel, equal protection under the Fourth, Fifth, Sixth and  
16 Fourteenth Amendment to the United States Constitution and Article I, Sections 1, 7, 15 and 16  
17 of the California Constitution.

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1 This motion is based on this Notice of Motion, the Memorandum of Points and  
2 Authorities and the Court's papers, records and files in this case and such evidence and other  
3 matters as may be received by the Court at or after the hearing scheduled on this motion.

4 Dated: December 10, 2004

5 Respectfully submitted,

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

8 SANGER & SWYSEN  
9 Robert M. Sanger

10 OXMAN & JAROSCAK  
11 Brian Oxman

12 By: 

13 Robert M. Sanger  
14 Attorneys for Defendant  
MICHAEL JOSEPH JACKSON

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **THE CASE SHOULD BE DISMISSED FOR OUTRAGEOUS GOVERNMENT**

4 **CONDUCT AND THE EVIDENCE SEIZED SHOULD BE SUPPRESSED**

5 Serving a search warrant this close to trial constitutes outrageous government conduct  
6 and an abuse of the search warrant process. The use of a search warrant at all for this purpose  
7 was unnecessary. The District Attorney specifically sought the warrants in defiance of the  
8 express admonition by the Court.

9 **A. The District Attorney Has Abused the Government's Privilege to Apply for Search**  
10 **Warrants.**

11 The sheer number of search warrants is outrageous for a case of this sort. To date, more  
12 than 100 search warrants have been executed. The obvious explanation is that the prosecutor is  
13 going after a celebrity. The number of search warrants has exceeded those found in death penalty  
14 cases and big white collar prosecutions. While there may not be a *per se* limit on the number of  
15 search warrants that can be served in a particular case, or an absolute cutoff based on the  
16 proximity to trial in which a search warrant may be served, in this particular case they have  
17 exceeded any reasonable limitations.

18 The privilege of the government to apply for search warrants is prescribed by the Fourth  
19 Amendment to the United States Constitution. The power of the government to invade a  
20 person's home (and, in this case, body) was of the upmost concern to the founders of our nation.  
21 In 1791, when the Bill of Rights was ratified, the Fourth Amendment enshrined in the  
22 Constitution a right that the colonists had fought for in eight years of war with the British.

23 The right to be secure in a person's home was at the heart of the various declarations of  
24 rights and petitions to the King which preceded the Declaration of Independence in 1776. Even  
25 in England, prior to the American Revolution, popular resentment against government intrusion  
26 led Parliament to act against general warrants. William Pitt, a member of the House of

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1 Commons, in March 1763 said:

2 The poorest man may, in his cottage, bid defiance to all the force of the Crown. It  
3 may be frail; its roof may shake; the wind may blow through it; the storm may  
4 enter; the rain may enter; but the King of England may not enter; all his forces  
dares not cross the threshold of the ruined tenement.

5 The Constitutional Convention in Philadelphia in 1787 saw considerable opposition to its  
6 draft of the constitution because it did not contain a bill of rights. One of the most important  
7 points in the ratification debates was the need for a provision protecting the homes of citizens  
8 from government intrusion into their homes. It was this concern for the right of the individual to  
9 be left alone in his or her own home that led the Founders to draft the Fourth Amendment.

10 The United States Supreme Court and, particularly, Justices Scalia and Thomas, have  
11 shown an increased interest in understanding the historical basis for the meaning of the  
12 Constitution and its amendments. In *Crawford v. Washington* (2004) 541 U.S. 36, the Court  
13 looked to the exceptions to the hearsay rule as they existed in 1791 to understand the limitations  
14 on what has become excessive government reliance on expedient exceptions grafted on over the  
15 years which essentially frustrated the meaning of the Confrontation Clause. In *Wilson v.*  
16 *Arkansas* (1995) 514 U.S. 527, the Court, in an opinion by Justice Thomas, decided on historical  
17 grounds that the concept of knock and notice was a principle so rooted in the jurisprudence of the  
18 Fourth Amendment as to be an unwritten, but nevertheless enforceable, part of it.

19 Here, the language and the history of the Fourth Amendment both stand in opposition to  
20 the kind of government abuse demonstrated here. Neither historians nor jurists would find  
21 authority for the government to obtain over 100 warrants and invade the client's home five times  
22 in what should be a garden variety case. The idea that the prosecution could once again invade  
23 the home of Mr. Jackson on the eve of trial for matters that were properly the subject of noticed  
24 motions would offend the authors of the Constitution and the Bill of Rights.

25 This is not espionage, terrorism nor a complicated white collar case. It is not a homicide  
26 or death penalty case. Yet, the government here has expended incredible resources and, most  
27 importantly to this motion, has repeatedly invaded Mr. Jackson's right to be secure in his home.  
28 There was a search warrant in 1993 executed by the Los Angeles Police Department, there was a  
video taped inspection of his home later that year by Mr. Sneddon himself along with the Los

1 Angeles District Attorney, Santa Barbara Sheriff's Department and the Los Angeles Police  
2 Department. There was another warrant issued in 1994 to come onto the premises and conduct  
3 an intimate inspection and photographing of Mr. Jackson's body. On November 18, 2003, Mr.  
4 Sneddon himself, other members of his office and the Santa Barbara Sheriff's Department  
5 conducted a raid on Mr. Jackson's home that started in the early morning and lasted almost to  
6 midnight. At the same time, Mr. Jackson's lawyer's investigator's office was raided. Since that  
7 time, the home and office of Mr. Jackson's personal assistant was raided.

8 Now, on December 3, 2004, two months before trial, Mr. Sneddon and the Santa Barbara  
9 Sheriff conduct another early morning raid with no purpose other than to shock and intimidate  
10 Mr. Jackson and to disorient his legal team. The materials sought were not critical to the  
11 prosecution of the case and could just as well be obtained in an orderly fashion by noticed  
12 motion. Furthermore, the warrant for the search of Mr. Jackson's home was issued on November  
13 24, 2004, yet the prosecution chose to wait until December 3, 2004, to execute it. This date was  
14 not coincidentally the last business day before the discovery deadline defense counsel was  
15 required to provide its discovery and witness list. The prosecution well knew it would be an  
16 extremely busy time for the defense. They also knew this would be an optimal time to shock and  
17 demoralize Mr. Jackson and his family.

18 Historically, there is little doubt that the tactics of the District Attorney and Sheriff in this  
19 case would offend the sensibilities of the founders of our government. Intrusions, whether by the  
20 King of England or the District Attorney of Santa Barbara can always be justified in the heat of  
21 the moment. That is precisely why we have the rule of law. The rule here, under the Fourth  
22 Amendment, is that "[t]he right of the people to be secure in their persons, houses, papers, and  
23 effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall  
24 issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the  
25 place to be searched, and the persons or things to be seized." A warrant does not deprive the  
26 people of this country of their right to be secure in their homes, the requirement of a warrant

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1 simply provides what should be a strict regulation on the limited exceptions to that right. And  
2 just like the exceptions to the Confrontation Clause in *Crawford*, the exceptions cannot consume  
3 the rule.

4 Here the District Attorney has gone too far. Michael Jackson is entitled to no more, but  
5 also no less, protection than anyone else in this country. The execution of over 100 warrants in  
6 this case is an abuse of the warrant process under the Fourth Amendment. The execution of  
7 multiple warrants to invade Mr. Jackson's home without exigent circumstances and where other  
8 means were available exacerbates that abuse.

9 **B. The Proximity of the Search to the Discovery Deadline and the Trial Date is**  
10 **Outrageous.**

11 The search warrants were executed the Friday, December 3, 2004, before the Monday,  
12 December 6, 2004, reciprocal discovery deadline. It could only have been calculated to upset  
13 the defense effort to meet this difficult deadline and to force the defense to request that the Court  
14 continue the trial date.

15 Furthermore, Search Warrant 5192 was issued on November 24, 2004, and Search  
16 Warrant 5196 was issued on November 30, 2004. The District Attorney and law enforcement  
17 held off on seeking the warrants, and further delayed executing the searches, until the last  
18 possible moment before the discovery cutoff.

19 The District Attorney has presented the defense with more than 15,000 pages of discovery  
20 in the last two months. These materials include a large volume of forensic reports and  
21 documents related to the 1993-1994 investigation of Mr. Jackson. Much of this material is not  
22 new and could have been provided to defense counsel months ago. The receipt of this large  
23 amount of discovery at such a late date made complying with the Court's reciprocal discovery  
24 deadline almost impossible to begin with, and the execution of the search warrant exacerbated  
25 the problem.

26 The Court, at the hearing held on September 16, 2004, expressed its concern that the

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1 ongoing issuance of search warrants would result in the “dumping of huge quantities of material”  
2 on the defense at the last minute as we approach trial. This is precisely what has occurred.  
3 These warrants, if they were expected to result in anything, must be expected to result in the  
4 production of numerous reports and disclosure of new witnesses.

5 The Court has noted that its view on the issuance of search warrant affidavits is that it is  
6 to make a finding of probable cause, not to review the number or the timing of the search  
7 warrants. It is now appropriate, however, for the Court to consider the number and timing of the  
8 search warrant particularly in light of the trial date. At the hearing on October 14, 2004, the  
9 Court warned the District Attorney that, “. . . the investigation has to stop somewhere,” and that,  
10 “. . . at some point we need to stop gathering and start organizing and be ready for trial.” The  
11 defense also raised this issue in the moving papers regarding Search Warrant 5135 and at the  
12 September and October hearings. The District Attorney has clearly ignored the Court’s warnings  
13 and the objections of the defense. It is now up to the Court to remedy the problem.

14 The Court is obligated to assure that a person facing criminal charges is provided a fair  
15 trial, due process of law, the right to have the effective assistance of counsel, the right to equal  
16 protection and the right to privileges and immunities under the Fourth, Fifth, Sixth and  
17 Fourteenth Amendments to the United States Constitution and Article I, Sections 1, 7, 15 and 16  
18 of the California Constitution. Here, the actions of the government have interfered with those  
19 rights. The defendant has a limited right to use the cumbersome subpoena process to gather  
20 information. This is no match for the government’s power when armed with a search warrant.  
21 However, when the search warrant becomes a sword rather than a legitimate tool to obtain  
22 evidence, that awesome power of the state becomes a weapon to shock and intimidate a  
23 defendant into submission. When used at this late stage in the proceedings, it also has a  
24 deleterious effect on the ability fo counsel for Mr. Jackson to prepare for trial and to render  
25 effective assistance. Once again, Mr. Jackson is entitled to equal protection and to the same  
26 privileges and immunities as anyone else in the country.

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1 This raid came on Friday, three days before the Monday due date imposed by the Court  
2 for the reciprocal production of discovery. The timing disrupted the defense efforts in an almost  
3 calculated effort to force a request for continuance. The Court warned the District Attorney at  
4 the September 16, 2004 hearing, that it was concerned by the continuous requests for search  
5 warrants. Mr. Sneddon, himself, was dismissive to the Court saying, “[w]ell, I’m just going to  
6 do what I have to do . . . ”

7 However, it is the Court, not Mr. Sneddon, who has the ultimate say as to what  
8 constitutes an abuse of the search warrant process. It is the Court, not Mr. Sneddon, who decides  
9 when the government has gone too far. It is the Court, not Mr. Sneddon, who decides whether or  
10 not the prosecution’s behavior deprives Mr. Jackson of his constitutional rights. Here, the  
11 prosecution has gone too far and it has done so after more than fair warning by this Court.

12 **C. The Nature of the Material Was Not Exigent and Did Not Require a Search**  
13 **Warrant.**

14 Saliva is typically obtained by noticed motion to defense counsel. There is absolutely no  
15 requirement for a search warrant to obtain saliva samples. Mr. Jackson surrendered more than  
16 one year ago and there was ample time for the District Attorney to make arrangements to obtain a  
17 saliva sample prior to the eve of the discovery cutoff and without conducting a shocking raid o  
18 his home on a Friday morning. Moreover, the need for saliva at this late date suggests that the  
19 prosecution is still conducting basic forensic investigation and that defense counsel should expect  
20 to receive additional forensic discovery.

21 The need to look at blueprints and take measurements for a Computer Aided Drafting  
22 (CAD) model of the house to be used as a trial exhibit also does not involve exigent  
23 circumstances. Blueprints could have been provided by noticed motion. Defense counsel  
24 specifically stated in open court at the hearing on Search Warrant 5135 that we would be willing  
25 to provide the prosecution with additional materials upon request or to litigate the motion if  
26 necessary. There was no indication that anyone was going to move walls or change the

1 dimensions of the home.

2 Furthermore, law enforcement had gone to this residence on numerous occasions since  
3 1993. They have videotaped the residence in 1993 and as recently as November 18, 2003. They  
4 have taken still photographs. There is no possibility that anyone could change anything without  
5 them having some photographs as a comparison to determine if anything changed.

6 **D. Mr. Jackson Has Been Treated Differently in Violation of His Constitutional Rights.**

7 Mr. Jackson is entitled to be treated with no more, but also no less, respect than any other  
8 person. He has been singled out for extraordinary treatment by a prosecutor who in intent on  
9 getting a conviction by some means, in fact any means, against this celebrity. Mr. Jackson is  
10 entitled to equal protection under the law and he is entitled to the privileges and immunities of  
11 any other citizen of the United States. There is a limit to government power and it is, of course,  
12 up to the courts to enforce that limit. Without court enforcement, there simply is no limit.

13 Here, Mr. Jackson has been under investigation for 11 years. His home and person have  
14 been searched on at least five occasions. In the present case, more than 100 search warrants have  
15 been executed. Despite the fact that the prosecution has been investigating Mr. Jackson for more  
16 than a decade, and the present case for more than one year, thousands of pages of discovery has  
17 been dumped on defense counsel on the eve of trial. The District Attorney has used the power of  
18 his office in an attempt to shock and intimidate Mr. Jackson. No other person in the history of  
19 Santa Barbara has been treated this way.

20 **E. Remedies**

21 The case should be dismissed. The request for dismissal has to be taken in the context of  
22 the cumulative effect of the District Attorney's previous outrageous conduct including  
23 "regrettable" behavior in front of the grand jury, the district attorney meeting privately with  
24 witnesses, and the mountain of discovery turned over to defense counsel in the past two months.<sup>1</sup>

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26 <sup>1</sup> A motion filed concurrently herewith addresses this in the context of the entire case.

1 To seek and execute a search warrant under these circumstances, in the final moments before the  
2 discovery deadline, is truly outrageous conduct. We can only take this as an effort to shock and  
3 intimidate Mr. Jackson and his household and to force the defense to waste valuable days on the  
4 eve of the discovery cutoff. Therefore the case should be dismissed.

5 This is a lesson the prosecution did not learn when the Court advised the prosecution that  
6 it was treading on thin ice. Mr. Sneddon made a bold comment to the Court that he would  
7 continue to get search warrants in spite of the Court's warning. The Court made it clear that at  
8 some point the investigation had to end and trial preparation had to begin. Now, on the eve of  
9 trial, the prosecution has executed another search warrant at Mr. Jackson's home that is not based  
10 on any new evidence of criminal activity and that seeks evidence that could have been obtained  
11 more than one year ago, during the November 18, 2003 search of Mr. Jackson's home.

12 The only proper remedy, as extreme as it may be, is for this Court to tell the government  
13 that they have gone too far and that the case must be dismissed. If the Court were to deny that  
14 motion, at the very least, the Court should grant a motion suppressing the evidence obtained and  
15 anything derived therefrom. This will place the burden on the prosecution to demonstrate that  
16 any evidence to be offered at the trial is free of the taint of this unlawful intrusion. It is  
17 particularly important in light of the fact that these matters were discussed in open court with Mr.  
18 Sneddon with his deputies present, as well as law enforcement. At the September 16, 2004  
19 hearing, Mr. Sneddon demonstrated an openly defiant attitude towards the Court's warning that  
20 investigation through the search warrant process must end at some point.

21 Defense counsel is hesitant to request a continuance. First, the undersigned listened when  
22 the Court said that it did not want to hear discussion of a continuance<sup>2</sup>. The Court has made it  
23 clear that it is extremely set in starting trial on January 31, 2005. However, the District  
24 Attorney's last minute tactic, so clearly designed to shock and intimidate the defendant, his

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25 <sup>2</sup> This should be considered in conjunction with the Motion to Continue filed  
26 concurrently herewith.



1 family and staff, and so clearly designed to interfere with the defense preparation for discovery  
2 disclosure and for trial, that it leaves us no choice but to request a continuance of the trial date if  
3 the Court were to refuse to grant the relief referred to above.

4 Our reluctance to request a continuance is also based on the fact that the defendant has a  
5 right to see this case brought to trial in a reasonable period of time. The prosecution appears not  
6 to be ready for trial and not to be ready to make a full disclosure of discovery since they are still  
7 obtaining a sample for DNA analysis and a CAD trial exhibit. They may be hoping that we will  
8 request a continuance as a result of this late search. That may have been motivation for them to  
9 request a search warrant that was so unnecessary. The defense is reluctant to, in essence, give the  
10 District Attorney what he wanted, by requesting a continuance. However, if the request to  
11 dismiss is denied and the Court does not take other strong action the defense is left with no  
12 choice but to ask for continuance.

## 13 II.

### 14 CONCLUSION

15 For the reasons stated above, Mr. Jackson requests that the Court dismiss the case,  
16 suppress the materials seized, or, in the alternative, that the Court continue the date of trial.

17  
18 Dated: December 10, 2004

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

20 SANGER & SWYSEN  
Robert M. Sanger

22 OXMAN & JAROSCAK  
Brian Oxman

24 By: 

Robert M. Sanger  
Attorneys for Defendant  
MICHAEL JOSEPH JACKSON

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**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 December 10, 2004, I served the foregoing documents on the interested parties in this action by depositing a true copy thereof as follows:

**NOTICE OF MOTION TO DISMISS FOR OUTRAGEOUS GOVERNMENT CONDUCT TO  
SUPPRESS ALL EVIDENCE SEIZED PURSUANT TO SW 5192 AND 5196**

Tom Sneddon  
Gerald Franklin  
Ron Zonen  
Gordon Auchincloss  
District Attorney  
1105 Santa Barbara Street  
Santa Barbara, CA 93101  
805-568-2398

☐ **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 HAND** - I caused the document to be hand delivered to the interested parties at the address above. **TO THE SANTA BARBARA DISTRICT ATTORNEY ONLY**

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

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

Executed December 10, 2004, at Santa Barbara, California.

  
Bobette J. Tryon