

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY  
County of Santa Barbara  
2 By: RONALD J. ZONEN (State Bar No. 85094)  
Senior Deputy District Attorney  
3 GORDON AUCHINCLOSS (State Bar No. 150251)  
Senior Deputy District Attorney  
4 GERALD McC. FRANKLIN (State Bar No. 40171)  
Senior Deputy District Attorney  
5 1112 Santa Barbara Street  
Santa Barbara, CA 93101  
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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

OCT 01 2004

GARY M. BLAIR, Executive Officer

BY Carrie L. Wagner  
CARRIE L. WAGNER, Deputy Clerk

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

11  
12 THE PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 v.

15  
16 MICHAEL JOE JACKSON,

17 Defendant.

No. 1133603

~~FILED~~  
REDACTED

PLAINTIFF'S NOTICE OF  
MOTION AND *SANCHEZ*  
MOTION FOR ORDER  
DIRECTING DEFENDANT TO  
LODGE INCULPATORY  
EVIDENCE WITH THE COURT;  
DECLARATION OF GERALD  
McC. FRANKLIN;  
MEMORANDUM OF POINTS  
AND AUTHORITIES

18 DATE: October 14, 2004

19 TIME: 8:30 a.m.

20 DEPT: TBA (Melville)

21 ~~UNDER SEAL~~

22 TO: MICHAEL JOE JACKSON, AND TO THOMAS A. MESEREAU, STEVE  
23 COCHRAN, and ROBERT SANGER, HIS ATTORNEYS OF RECORD:

24 PLEASE TAKE NOTICE that on October 14, 2004, at 8:30 a.m. or as soon thereafter  
25 as the matter may be heard, in Department SM 2, Plaintiff will, and hereby does, move the  
26 Court for its order directing defendant's counsel to lodge with the Court all inculpatory physical  
27 evidence presently in their possession and which may come into their possession.

28 This motion will be based on this notice, the accompanying Memorandum of Points

1 and Authorities, such argument as may be presented at the hearing, and the records and  
2 pleadings on file in this matter.

3 DATED: October 1, 2004

4 Respectfully submitted,

5 THOMAS W. SNEDDON, JR.  
6 District Attorney

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8 By:

  
9 Gerald McC. Franklin, Senior Deputy

10 Attorneys for Plaintiff  
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DECLARATION OF GERALD McC. FRANKLIN

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3 I, Gerald McC. Franklin, say:

4 1. I am a lawyer admitted to practice in the State of California. I am a Senior Deputy  
5 of the District Attorney of Santa Barbara County. I am one of the lawyers of record for the  
6 People, Plaintiff in this action.

7 2. This motion for an order of the Court directing defense counsel to lodge with the  
8 court all inculpatory physical evidence relevant to the pending charges is based in part on the  
9 decisional law that holds it is the duty of counsel to do so even without being asked, on the fact

10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED] that other items of inculpatory evidence currently rest in the custody of present  
13 defense counsel but have not been tendered to the court.

14 3. I am certain the defense has possession of relevant and potentially inculpatory  
15 evidence which they have not tendered to the court. For instance, the defense offered a partial  
16 transcript of the Bradley Miller's tape-recorded interview of the Doe family in evidence as  
17 Exhibit 52 at the hearing on September 16, 2004 of their motion to suppress the evidence seized  
18 from Mr. Miller's office. The tape cassette seized in the search of Mr. Miller's office, from  
19 which the transcript was derived, was logged as "Item 818" on the Sheriff's Property Form dated  
20 November 18, 2003. A CD of the entire contents of that tape cassette was discovered to the  
21 defense on August 31, 2004. But the partial transcript tendered by the defense purports to have  
22 been "Prepared August 11, 2004," and the last three pages of that transcript (pages 18 through  
23 20) contain the concluding portion of the interview not heard on the original tape seized from  
24 Mr. Miller's office. The conclusion that the defense obtained a more complete version of the  
25 interview some time ago and kept that fact to themselves is inescapable.

26 4. I am informed that substantial personal property of the Doe family was removed  
27 from their apartment in East Los Angeles by Bradley Miller and taken to a storage facility, and  
28 that [REDACTED]

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[REDACTED]

5. I am informed by the evidence received in the grand jury proceeding that

[REDACTED]

I believe from that evidence that

may still exist in the custody of Defendant's

representatives.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct, except as to matters stated upon my information and belief, and as to such matters I believe it to be true. I execute this declaration at Santa Barbara, California on October 1, 2004.



GERALD McC. FRANKLIN

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 A. The Sanchez Decision

3 In *People v. Sanchez* (1994) 24 Cal.App.4th 1012, the Court of Appeal decided “this  
4 novel question: if a defendant’s lawyer delivers inculpatory writings to the trial court, under seal,  
5 may the trial court furnish those writings to the prosecutor without violating either the  
6 defendant’s privilege against self-incrimination or the reciprocal discovery statutes (Pen. Code,  
7 §§ 1054-1054.7)? Our answer is yes.” (*Id.*, p. 1015; fn. omitted.)

8 The Court of Appeal based its conclusion on several premises which are relevant to  
9 this motion:

10 In *People v. Lee* (1970) 3 Cal.App.3d 514, 526, the court stated it  
11 was “an abuse of a lawyer’s professional responsibility knowingly to  
12 take possession of and secrete the instrumentalities of a crime.” Its  
13 discussion made clear the responsibility extended to other physical  
14 evidence. (*Ibid.*) Defense counsel could withhold the physical evidence  
15 for a reasonable time to examine it but then “should, as an officer of the  
16 court, on his own motion turn the same over to the prosecution.” (*Ibid.*)

17 Our Supreme Court extended this responsibility in *People v.*  
18 *Meredith* (1981) 29 Cal.3d 682. In *Meredith* the victim was robbed and  
19 murdered. One of the defendants (Scott) told his lawyer he took “the  
20 victim’s wallet, divided the money with Meredith, attempted to burn the  
21 wallet, and finally put it in the trash can.” (*Id.* at p. 686.) The lawyer  
22 had his investigator retrieve the wallet from the trash can. “Counsel  
23 examined the wallet and then turned it over to the police.” (*Ibid.*) The  
24 admissibility of the wallet was not in dispute but the testimony of the  
25 investigator who retrieved it was contested. Defendant (Scott) claimed  
26 the attorney-client privilege prevented the prosecution from calling the  
27 investigator and eliciting the *location* of the retrieved wallet.

28 Justice Tobriner, writing for a unanimous court, held “that whenever  
defense counsel removes or alters evidence, the statutory privilege does  
not bar revelation of the original location or condition of the evidence  
. . . .” (29 Cal.3d at p. 695.)

Justice Tobriner also referred to an attorney’s responsibility when  
given evidence not by his client but third parties. He stated, “Two  
decisions, *People v. Lee* (1970) 3 Cal.App.3d 514 and *Morrell v. State*

1 (Alaska 1978) 575 P.2d 1200, held that an attorney must not only turn  
2 over evidence given him by *third parties*, but also testify as to the source  
3 of that evidence. Both decisions emphasized that the attorney-client  
4 privilege was inapplicable because the third party was not acting as an  
5 agent of the attorney or the client.” (29 Cal.3d at p. 693, fn. 5, original  
6 italics.)

7 In *People v. Superior Court (Fairbank)* (1987) 192 Cal.App.3d 32  
8 the prosecutor learned from defendant’s intercepted jail letter to another  
9 inmate that defendant’s lawyer had possession of the murder weapons.  
10 When the trial court refused to order defense counsel to deliver them to  
11 the prosecutor, the prosecutor petitioned for a writ of mandate. In  
12 issuing the writ the court stated, “If counsel . . . chooses to . . . possess  
13 . . . physical evidence pertaining to the crime, counsel must immediately  
14 inform the court of the action.” (*Id.* at pp. 39-40.) The court also noted  
15 this “legal obligation[] should be self-executing and no motion by the  
16 prosecution or order by the court should be required to enforce [it].”  
17 (*Id.* at p. 39.)

#### 18 B. The Implications Of Sanchez

19 Quite plainly, the rule reiterated in *Sanchez* is independent of the limited discovery  
20 obligation imposed on a defendant by Penal Code section 1054.3. (The *Sanchez* court noted that  
21 the prosecutor’s motion in that case was not “a ‘discovery’ motion to which the reciprocal  
22 discovery statutes applied.” 24 Cal.App.4th 1012, at p. 1026.) The *Sanchez* rule applies both to  
23 physical evidence that is inculpatory per se (e.g., contraband, and instrumentalities or fruits of a  
24 crime such as weapons, holdup notes, pay-owe sheets, stolen jewelry, etc.) and to tangible  
25 evidence that is inculpatory in the circumstances of the pending case (e.g., [REDACTED]

26 [REDACTED]  
27 2003), and to intangible evidence (e.g., the location of the victim’s wallet when it was seized by  
28 a defense investigator – *People v. Meredith*, discussed in *Sanchez*).

29 Much of the evidence obtained by search warrant in this case would come within  
30 *Sanchez*’s rule had it been overlooked by the searching officers and then delivered to defense  
31 counsel by defendant himself or one of his employees. For instance, [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 and so forth.  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]

10 There is reason to believe that physical  
11 [REDACTED]  
12 [REDACTED]

13 [REDACTED] may be in the possession of defense counsel or  
14 their agents. The testimony received by the grand jury in this matter established that [REDACTED]  
15 [REDACTED]  
16 [REDACTED]

17 C. The Court Should Determine Whether Given Evidence  
18 Is Inculpatory Or Exculpatory When Considered In  
19 Light Of Count One Of The Indictment

20 Whether a given item of property is inculpatory or exculpatory may depend on the  
21 inference the viewer is asked to draw from it when considered in the light of other evidence. In  
22 turn, the accuracy of that judgment may depend on the particular bias of the viewer.

23 In our respectful submission, we believe the Court is best positioned to make that  
24 judgment, and to that end it should direct defense counsel to lodge with the Court any evidence  
25 under the control of the Defendant that comes fairly within the following parameters:

26 -- All video and audio recordings of each and every member of the Doc family,  
27 including but not limited to:

28 --- [REDACTED]

1 [REDACTED]  
2 -- -- All [REDACTED] involving members of the  
3 Doe family or persons named as coconspirators in the indictment;

4 -- -- Recordings of the Bradley Miller interview of the Doe family, including all  
5 unedited and edited versions of this recording;

6 -- All agreements or contracts executed by any member of the Doe family, [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 -- All photographs and video or audio recordings [REDACTED]  
10 [REDACTED]

11 -- All video or audio recordings of named coconspirators, relating to the Doe family or any  
12 of its members;

13 -- All writings of known coconspirators relating to the Doe family and of its members;

14 -- All writings and audio or video recordings of the defendant that inculcates the  
15 defendant;

16 -- Any and all documentation or real evidence [REDACTED]  
17 [REDACTED]

18 -- All written or recorded statements made by every employee of Michael Jackson that  
19 tends to incriminate Michael Jackson with respect to the allegations set forth in the indictment;

20 -- All correspondence written to any member of the Doe family by Michael Jackson,  
21 [REDACTED]  
22 [REDACTED];

23 -- Any correspondence written by any member of the Doe family to Michael Jackson;

24 -- The [REDACTED]  
25 [REDACTED]  
26 [REDACTED];

27 -- Checks, receipts and all other records for moving [REDACTED]  
28 [REDACTED]



1  
2 -- Checks, receipts or records regarding [REDACTED]

3  
4 [REDACTED]  
5 -- Checks, receipts or records regarding expenses incurred by Michael Jackson or any of  
6 the named coconspirators for lodging, meals, necessities or gifts provided to the Doc family.

7 -- [REDACTED]  
8 [REDACTED]  
9 -- All photographs, recordings, records, writings and other documents which record or  
10 refer to [REDACTED]

11 DATED: October 1, 2004

12 Respectfully submitted,

13 THOMAS W. SNEDDON, JR., District Attorney

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15 By:         *GF*          
16 Gerald McC. Franklin, Senior Deputy

17 Attorneys for Plaintiff  
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PROOF OF SERVICE

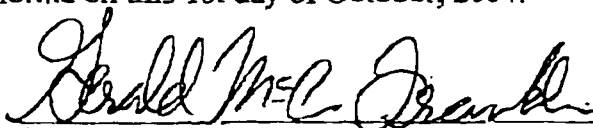
STATE OF CALIFORNIA }  
COUNTY OF SANTA BARBARA } SS

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 October 1, 2004, I served the within PLAINTIFF'S *SANCHEZ* MOTION FOR ORDER DIRECTING DEFENDANT TO LODGE INCULPATORY EVIDENCE WITH THE COURT, etc. 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 1st day of October, 2004.

  
Gerald McC. Franklin

SERVICE LIST

1  
2 THOMAS A. MESEREAU, JR.  
3 Collins, Mesereau, Reddock & Yu, LLP  
4 1875 Century Park East, No. 700  
5 Los Angeles, CA 90067  
6 FAX: [CONFIDENTIAL]

7 Attorney for Defendant Michael Jackson

8 STEVE COCHRAN, ESQ.  
9 Katten, Muchin, Zavis & Rosenman, Lawyers  
10 2029 Century Park East, Suite 2600  
11 Los Angeles, CA 90067-3012  
12 FAX: (310) 712-8455

13 Co-counsel for Defendant

14 ROBERT SANGER, ESQ.  
15 Sanger & Swysen, Lawyers  
16 233 E. Carrillo Street, Suite C  
17 Santa Barbara, CA 93001  
18 FAX: (805) 963-7311

19 Co-counsel for Defendant  
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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 PLAINTIFF'S NOTICE OF MOTION AND SANCHEZ MOTION FOR ORDER DIRECTING DEFENDANT TO LODGE INCULPATORY EVIDENCE WITH COURT; DECLARATION OF GERALD McC. FRANKLIN; MEMORANDUM OF POINTS AND AUTHORITIES 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

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(i), 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.

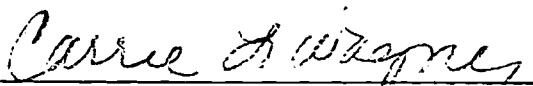
PERSONAL SERVICE

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