

OCT 19 2004

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

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 1105 Santa Barbara Street
Santa Barbara, CA 93101
6 Telephone: (805) 568-2300
FAX: (805) 568-2398
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SANTA BARBARA**
10 **SANTA MARIA DIVISION**

11
12 THE PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 vs.

15 MICHAEL JOE JACKSON,

16 Defendant.

No. 1153603

NOTICE OF MOTION FOR
DISCOVERY
(PC 1054 et seq.)

DATE: November 5, 2004
TIME: 8:30 p.m.
DEPT.: TBA (Judge Melville)

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18 *UNDER SEAL*

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20 TO THE DEFENDANT, AND THE CLERK OF THE ABOVE-ENTITLED
COURT:

21 PLEASE TAKE NOTICE that at the above date and time, the People will move
22 the court to order the defense to immediately disclose to the People the following items:

23 1. The name and address of all persons, other than the defendant, whom the
24 defense reasonably anticipates it is likely to call as a witness at the trial, if such
25 information is known or is reasonably accessible.
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1 2. All written or recorded statements and reports including handwritten notes
2 of statements of persons whom the defense reasonably anticipates it is likely to call as a
3 witness at the trial, including copies of documents or handwritten notes of witnesses and
4 experts, including raw written notes from interviews by investigators or attorneys, but not
5 including attorney work product, impressions, opinions, or conclusions.

6 3. Similar statements and reports to those mentioned under item 2 that relate
7 to an interview of "prosecution witnesses" immediately upon defense counsel
8 determining an intent to call the defense investigator as a witness to impeach the witness.

9 4. Copies of results and all of the raw data from any psychological or
10 psychiatric test administered to defendant for the trial.

11 5. The results of all physical or mental examinations, scientific tests,
12 experiments, or comparisons which the defense reasonably anticipates it is likely to offer
13 as evidence at the trial.

14 6. All tangible or physical evidence which the defense reasonably anticipates
15 it is likely to offer into evidence at the trial.

16 The People have provided the defense with hundreds of photographs, cassette
17 tapes and CD ROMS and more than 12,000 pages of discovery. Numerous informal
18 requests have been made for reciprocal prosecution discovery pursuant to Penal Code
19 section 1054.5(b) and to date, the defense has provided nothing. The People request that
20 any order issued be a continuing order that the defense be required to immediately
21 disclose this information as soon as it becomes discoverable under Penal Code section
22 1054.3.

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2 DATE: October 19, 2004

3 Respectfully submitted,

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5 THOMAS W. SNEDDON, JR., District Attorney

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7 By: 

8 Gordon Auchincloss
9 Senior Deputy District Attorney

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11 ARGUMENT WITH
12 POINTS AND AUTHORITIES

13 "The purpose of Penal Code Section 1054 et seq. is to promote ascertainment of
14 truth by liberal discovery rules that allow parties to obtain information in order to prepare
15 their cases and reduce the chance of surprise at trial. Reciprocal discovery is intended to
16 protect the public interest in a full and truthful disclosure of critical facts, to promote the
17 People's interest in preventing a last minute defense, and to reduce the risk of judgments
18 based on incomplete testimony." (*Woods v. Superior Court* (1994) 25 Cal.App.4th 178.)

19 Pursuant to Penal Code section 1054.3, the legislature has required the defense to
20 disclose the following to the prosecuting attorney:

21
22 (a) The names and addresses of persons, other than the defendant, he or she
23 intends to call as witnesses at trial, together with any relevant written or recorded
24 statements of those persons, or reports of the statements of those persons,
25 including any reports or statements of experts made in connection with the case,
26 and including the results of physical or mental examinations, scientific tests,
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1 experiments, or comparisons which the defendant intends to offer into evidence at
2 the trial.

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4 (b) Any real evidence which the defendant intends to offer into evidence at the
5 trial.

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7 In *Izazaga v. Superior Court* (1991) 54 C3d 356, at 376, note 11, the Supreme
8 Court stated that the defense must disclose all witnesses it reasonably anticipates it is
9 likely to call.

10 In *Hines v. Superior Court* (1993) 20 Cal.App.4th 1818, the Court of Appeal
11 upheld a trial court order to the defendant to provide the following expert witness
12 discovery:

13 "Reports or statements of any expert that counsel reasonably
14 anticipates calling as a witness ... include[ing] all written
15 documentation, including handwritten notes, of the findings of
16 said expert upon any examination done by said expert intended
17 to moralize the findings of said examination."
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19 In *Thompson v. Superior Court* (1997) 53 Cal.App.4th 480, the court upheld discovery
20 to the prosecution of raw written notes from interviews by the defense investigator or
21 attorneys, with defense witnesses who might testify at trial, but to not include work product,
22 impressions, opinions or conclusions about the witness.

23 The defense also has a duty to disclose the address of its witnesses. In the case of *In re*
24 *Littlefield* (1995) 5 Cal.4th 122, the defendant was charged with misdemeanor drunk driving.
25 Prosecution discovery was granted but the defense indicated that they did not have the address
26 of a particular named defense witness. The defense had deliberately not asked the witness for
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1 her address so that the prosecutor could not contact the witness. The trial court ordered the
2 defense to contact the witness by telephone, obtain her address, and provide it to the
3 prosecution or, alternatively, to produce the witness in court in order to afford the prosecution
4 an opportunity to interview her prior to trial. The court stated that the defense must provide
5 the prosecution with the name and addresses of prospective defense witnesses to the extent
6 that the information is known to, or reasonably accessible, to the defense.

7 In this case, it is unknown whether the defense will offer any type of psychiatric defense.
8 If so, the prosecution is entitled to the defendant's responses to standardized tests. In *Woods*
9 *v. Superior Court* (1994) 25 Cal.App.4th 178, the defendant, charged with serious sex
10 offenses, was examined by a psychologist at the request of the defense attorney. Various
11 psychological tests were given. The court upheld the disclosure of the raw data, given the fact
12 that the expert witness had been already identified.

13 To date, the prosecution has provided the defense with 12,425 pages of documents and
14 reports, 193 CD ROMS, 112 audio cassettes, 78 video cassettes and over 200 photographs.
15 The defense has provided the prosecution with nothing. Informal discovery has been
16 requested on numerous occasions with the last request occurring on October 18, 2004. At
17 that time, counsel for the defense, Robert Sanger, reiterated that the defense has no duty to
18 provide discovery until 30 days before trial. Apart from saying the defense follow the law
19 and would meet and confer with the prosecution, Mr Sanger would not provide any
20 information regarding defense discovery.

21 Penal Code § 1054.7 compels both parties to make disclosure "at least 30 days prior to
22 the trial." At the hearing on August 8th 2004, defense counsel Robert Sanger represented to
23 the court that the case of *People v. Mouchaureb* (2000) 78 Cal.App.4th 403, stands for the
24 proposition that Penal Code 1054 does not require reciprocal discovery until 30 days
25 before trial. Remarkably, no such discussion can be found in *Mouchaureb* and the law on
26 this subject is opposite. The defense's misunderstanding of this issue is also apparent in
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1 their *Opposition to the Prosecution's Sanchez Motion* where they state that the
2 obligations of Section 1054 only "accrues 30 days prior to trial."

3 The case of *Sandeff v. Superior Court* (1993) 18 Cal.App.4th 672, provides that the
4 words "at least" indicates a legislative intent that the 30-day period be a bare minimum.
5 Therefore, reciprocal defense discovery may be properly ordered more than 30 days before
6 trial and is "particularly appropriate in cases where the prosecution is providing enormous
7 amounts of discovery and the defense is not reciprocating" (*Id.* at p. 678.)

8 The relevant duties of the defense to provide discovery are identical to those of the
9 People and demonstrate the "manifest intent" of the electorate to create a reciprocal
10 system of obligations" (*People v. Tillis* (1998) 18 Cal.4th 284, 293.) In complying with
11 these obligations good faith should be exercised and gamesmanship avoided. (*Id.* at p.
12 293.)

13 This case was filed almost one year ago. Since that time, defendant has hired six
14 different law firms and employed at least ten attorneys plus investigators to work on his
15 behalf. To represent at this late date that he has not identified a single witness or piece of
16 evidence he intends to introduce at trial is simply not believable.

17 The court has set a discovery schedule and ordered both sides to complete the informal
18 discovery process on or before November 5th 2004. In making no effort to comply with
19 reciprocal discovery, the defense is not respecting the court's order and is violating it's legal
20 duties under Penal Code §1054 et seq.. For all of these reasons, the People respectfully
21 request that the motion for prosecution discovery be granted and that the court issue an order
22 for the defense to immediately comply with the rules of reciprocal discovery under Penal
23 Code §1054.3.

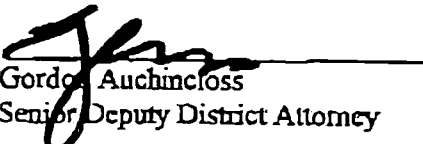
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1 DATED: October 19, 2004

2 Respectfully submitted,

3 THOMAS W. SNEDDON, JR., District Attorney

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6 By:


7 Gordon Auchincloss
8 Senior Deputy District Attorney

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DECLARATION OF GORDON AUCHINCLOSS

I. Gordon Auchincloss, say:

- 1) I am a Senior Deputy District Attorney employed by the County of Santa Barbara. I am one of the prosecutors assigned to the case of The People of the State of California v. Michael Joe Jackson (SBSC# 1133603).
- 2) During the past four months I have made numerous informal requests for discovery from defense counsel Robert Sanger and Steve Cochran and each time have been told the defense has no discovery to provide.
- 3) On October 18, 2004 I spoke with defense counsel, Robert Sanger who told me that the defense has no duty to provide discovery until 30 days before trial. Apart from saying the defense would follow the law and would meet and confer with the prosecution, Mr. Sanger would not provide any information regarding defense discovery.

I declare under penalty of perjury that the foregoing is true and correct except as to those statements made under information and belief which I believe to be true.

Executed this 19th day of October, 2004, at Santa Barbara, California.



Gordon Auchincloss, Declarant

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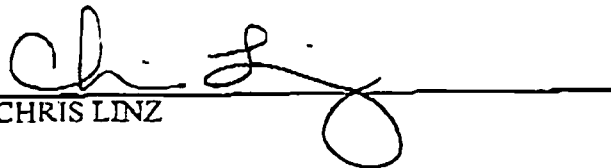
PROOF OF SERVICE

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 19, 2004, I served the within PLAINTIFF'S NOTICE OF MOTION FOR DISCOVERY on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER, and BRIAN OXMAN by personally delivering a true copy thereof to Mr. Sanger's office in Santa Barbara and then by transmitting a facsimile copy thereof to Attorney Mesereau at (310) 284-3122

I declare under penalty of perjury that the foregoing is true and correct.
Executed at Santa Barbara, California on this 19th day of October, 2004.



CHRIS LINZ