

NOV 01 2004

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

1 **COLLINS, MESEREAU, REDDOCK & YU**
2 Thomas A. Mesereau, Jr., State Bar Number 091182
3 Susan C. Yu, State Bar Number 195640
4 1875 Century Park East, 7th Floor
5 Los Angeles, CA 90067
6 Tel.: (310) 284-3120, Fax: (310) 284-3133

7 **SANGER & SWYSEN**
8 Robert M. Sanger, State Bar Number 058214
9 233 East Carrillo Street, Suite C
10 Santa Barbara, CA 93101
11 Tel.: (805) 962-4887, Fax: (805) 963-7311

12 **OXMAN & JAROSCAK**
13 Brian Oxman, State Bar Number 072172
14 14126 East Rosecrans
15 Santa Fe Springs, CA 90670
16 Tel.: (562) 921-5058, Fax: (562) 921-2298

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

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

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

21 THE PEOPLE OF THE STATE OF CALIFORNIA,

22 Plaintiffs,

23 vs.

24 MICHAEL JOSEPH JACKSON,

25 Defendant.

Case No. 1133603

IN CAMERA DECLARATION OF ROBERT M. SANGER REGARDING DISCOVERY

UNDER SEAL AND IN CAMERA

Honorable Rodney S. Melville
Date: November 4, 2004
Time: 8:30 am
Dept: SM 8

26 **DECLARATION OF ROBERT M. SANGER**

27 I, Robert M. Sanger, declare:

- 28 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

1 Jackson.

- 2 2. Present counsel for Mr. Jackson have made every effort to obtain a complete file from
3 prior counsel. As of the time the files were turned over by prior counsel, they turned over
4 no tapes whatsoever other than what had been received from the District Attorney in
5 discovery. Specifically, the two tapes (the Bradley Miller interview of the Arvizo family
6 a copy of which was seized in the Miller search as item 818, and the Janet Arvizo-Frank
7 Cascio telephone conversation, a copy of which was also seized in the Miller search as
8 817 were not contained in the materials provided.
- 9 3. Prior counsel began litigating over the return of certain tapes which had been seized by
10 law enforcement from the offices of Bradley Miller, including tapes 817 and 818. He
11 filed a motion in January 2003 before the arraignment on the complaint and before the
12 undersigned became involved in the case.
- 13 4. It was the belief of the undersigned that prior counsel had obtained copies of these tapes
14 from the Court, the Sheriff or District Attorney for the purpose of litigating the attorney-
15 client privilege.
- 16 5. Present counsel, including the undersigned and Mr. Cochran, who remained on the case
17 until recently, were never given access to any tapes or copies thereof while prior counsel
18 was on the case.
- 19 6. When the undersigned and new counsel obtained the files from prior counsel, we received
20 for the first time all of the tapes that were turned over in discovery.
- 21 7. We eventually did a complete inventory of the tapes (as well as the voluminous other
22 discovery) for the purpose of making sure that the District Attorney had complied with
23 discovery.
- 24 8. During our inventory of tapes (concurrently with the inventory of search warrants,
25 affidavits and returns and other forms of discovery) we determined that we could not
26 verify that we had been sent copies of tape 818 and some other tapes in the official
27 discovery. Hence, we demanded them.
- 28

1 9. The District Attorney did not provide tape 818 until August 31, 2003.

2 10. In between our demand for and receipt of 818 and other tapes from the District Attorney,
3 we were informed by prior counsel's office that one of the associates had transferred the
4 material which was subject to court review on to his hard drive which included the
5 subject matter of tapes 817 and 818. We received a CD containing the contents of tapes
6 817 and 818 on June 9, 2004. We assumed that the material was identical to that which
7 was the subject of the litigation and that it had been obtained either from the Court, the
8 Sheriff or the District Attorney for the purpose of litigating the motion.

9 11. We offered into evidence a transcript of the electronic version we had received from the
10 associate of prior counsel and it was received in evidence by stipulation with the District
11 Attorney. The District Attorney did not challenge the authenticity, completeness or
12 foundation of this transcript.

13 12. On or about October 1, 2004, the District Attorney filed the so-called *Sanchez* motion,
14 claiming that the "original" of the tape seized as 818 did not have the last page and a half
15 of the digital copy we received from the associate's hard drive.¹

16 13. We immediately responded to the motion and once again demanded that prior counsel
17 turn over everything that they had in their possession.

18 14. Prior counsel is in a high profile capital case in Northern California and is understandably
19 pre-occupied with that important matter, nevertheless, he asked his office to look for the
20 source of the electronic versions of 818 and, again, anything else he might have.

21 15. On October 18, 2004, one of the defense investigators, Scott Ross, a licensed private
22 investigator retained by the current defense lawyers, was given two audio cassette tapes
23 by a staff employee of prior counsel.

24 16. No explanation was given as to the source or nature of these tapes, and prior counsel
25

26 ¹We are still not sure that there is any difference between the original 818 and the tape we
27 have now received. The Court, in its Decision of August 14, 2004, also makes reference to the
28 second advisement of Miller at the end of the tape, which the prosecution now claims is missing.
Therefore, it is likely that the prosecution mis-copied the original and cut off the last portion.

1 himself has been unavailable due to the fact that he is still engaged in the capital trial.

2 17. Mr. Ross has retained these source tapes and has locked them in his evidence locker for
3 chain of custody purposes.

4 18. As soon as the tapes were copied, the undersigned delivered them to the District Attorney
5 by hand on October 27, 2004.

6 19. One tape appears to be the same as the electronic version of 818 and the discovery copy
7 of 818 provided to the defense by the prosecution except that the discovery copy of 818
8 provided by the District Attorney seems to lack the last page and a half of the narrative.

9 20. The other tape appears to be an exact copy of tape 817 which was seized from Bradley
10 Miller's office and booked into Sheriff's evidence under that number and appears to be a
11 telephone conversation between Janet Arvizo and Frank Cascio.

12 21. Within the last two days the undersigned became aware of one other CD, a copy of which
13 is being sent to the undersigned via Federal Express as this document is being prepared.
14 The "original" of said CD will be retained by the defense investigator and will be made
15 available to the prosecution for inspection on the same basis as the tapes referred to
16 above. We will provide a copy of the CD to the prosecution as soon as it is received.

17 22. Although prior counsel has indicated that he does not have anything else, there may be
18 one other set of documents which may still be in the possession of prior counsel. We are
19 still attempting to recover them. Although prior counsel has repeatedly stated he has
20 given present counsel everything, Mr. Mesereau will meet with him again as soon as the
21 capital case is completed which may be this week.

22 23. Those documents, if they exist, may or may not come within the duty of defense counsel
23 to disclose. However, if they exist and once we obtain them, we intend to provide a copy
24 to the prosecution and make the originals available for inspection, just as we have with
25 the tapes referred to above.

26 24. There has been no showing that the confidential files of Bradley Miller relating to his
27 investigation in this case or the confidential files of prior counsel are not subject to the
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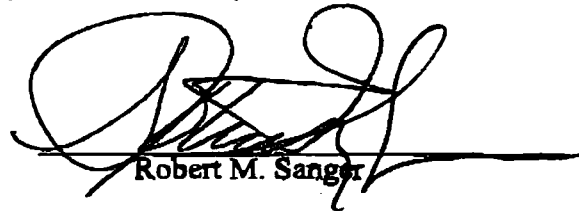
1 attorney-client privilege. As attorney-client privileged and work product materials are
2 turned over to present counsel by former counsel, we are obligated to assert the attorney-
3 client privilege on behalf of the holder of the privilege, Mr. Michael Jackson.

4 25. The Court has before it for ruling the attorney-client privilege and work product issues
5 with regard to the items seized from the Miller and Tavasci offices, and unless and until
6 the Court rules that those documents are not privileged, we do not have a duty to turn
7 over copies of said documents or similar documents which may have been included in
8 prior counsel's materials.

9 26. The undersigned has made diligent efforts to determine if any current or former members
10 of the defense team have anything else in their possession or control that even may
11 remotely come within the scope of real evidence or items discussed in *Sanchez*.

12 27. Other than those items disclosed above we are not aware of anything else that even
13 remotely comes within the scope of real evidence or items discussed in *Sanchez*.

14 I declare under the penalty of perjury under the laws of the State of California that the foregoing
15 is true and correct this 1ST day of November, 2004, at Santa Barbara, California.

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