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

JUL 27 2004

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

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

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

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

MICHAEL JOE JACKSON,

Defendant.

No. 1133603

PLAINTIFF'S BRIEF REPLY  
TO DEFENDANT'S OPPOSITION  
TO OUR MOTION TO QUASH  
SUPOENAS FOR JANET  
VENTURA, WILLIAM  
DICKERMAN AND STAN J.  
KATZ; MEMORANDUM OF  
POINTS AND AUTHORITIES;  
DECLARATION OF GERALD  
McC. FRANKLIN

(Code Civ. Proc., § 1987.1; Pen.  
Code, § 1330)

DATE: July 27, 2004  
TIME: 8:30 a.m.  
DEPT: TBA (Melville)

~~UNDER SEAL~~

Introduction:

This is Plaintiff's brief Response to defendant's Opposition to Plaintiff's motion to  
quash certain subpoenas in this case.

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I

DEFENDANT WOULD NOT NECESSARILY PREVAIL IN HIS PENDING MOTION TO SUPPRESS EVIDENCE MERELY BECAUSE MR. MILLER MAY HAVE BEEN EMPLOYED BY ATTORNEY GERAGOS, WHETHER OR NOT THE SEARCHING OFFICERS KNEW OF HIS EMPLOYMENT STATUS BEFORE THE SEARCH WAS UNDERTAKEN OR LEARNED OF IT IN THE COURSE OF THE SEARCH ITSELF

Defendant apparently has persuaded himself that a warranted search of a private investigator's office is "an invasion of the defense camp" and therefore unlawful and unconstitutional for that reason alone.

Given the number of warranted searches that have been upheld even for the search of lawyers' offices, defendant will want to reexamine the premise of his argument. The question in each case is whether probable cause existed for the complained-of search - and whether statutory procedures for the search of offices of certain professionals (private investigators not among them) were complied with.

II

FOR PURPOSES OF THIS MOTION, THE PHRASE "DISTANCE BE LESS THAN 150 MILES FROM HIS OR HER PLACE OF RESIDENCE TO THE PLACE OF TRIAL" IN PENAL CODE § 1330 SHOULD BE GIVEN THE SAME CONSTRUCTION GIVEN BY THE COURT OF APPEAL TO THE PHRASE "AT A DISTANCE GREATER THAN 20 MILES FROM HIS OR HER RESIDENCE" IN FORMER CCP § 203

In *People v. Adams* (1987) 196 Cal.App.3d 201, the Court of Appeal considered, inter alia, the defendant's challenge to the jury panel that convicted him, first raised in his motion to quash the panel in the trial court on the ground that the panel proffered him was underrepresentative of Blacks. At that time, Code of Civil Procedure section 203 provided, in relevant part, "In addition, in the County of Los Angeles no juror shall be required to serve at a distance greater than 20 miles from his or her residence." The court administrator for the Los Angeles Superior Court, testified that his office interpreted section 203 "based upon mileage

1 actually traveled by jurors driving to the courthouse.” (*Id.*, p. 203.) Defendant’s expert witness  
2 testified “that the Black population in census tracts within a 20-mile ‘radius’ to the San  
3 Fernando courthouse, ‘as the crow flies,’ is 8.8 percent.” “Appellant contends that if the 20-  
4 mile distance in Code of Civil Procedure section 203 were interpreted as a radius, as the crow  
5 flies, then appellant made a prima facie showing that the jury panel at the San Fernando  
6 courthouse was not a fair cross-section of the community . . . .” (*Id.*, pp. 203-204.)

7 The Court of Appeal rejected his argument on that construction of section 203.

8 The trouble is that appellant offers no reason (other than it leads to a  
9 statistical result he prefers in this case) why section 203 should be  
10 interpreted in this manner. Code of Civil Procedure section 203 does  
11 not use the term “radius.” It states: “. . . In counties with more than one  
12 court location, the rules shall reasonably minimize the *distance traveled*  
13 by jurors. In addition, in the County of Los Angeles no juror shall be  
14 required to serve at a distance greater than 20 miles from his or her  
15 residence. (Italics added.) Jurors do not travel to court as the crow flies.  
16 By its own language, section 203 concerns itself with the distance  
17 *traveled* by jurors, not necessarily a hypothetical radius imposed on a  
18 map without regard to topography or urban driving conditions.  
19 Furthermore, Code of Civil Procedure section 196 provides that jurors  
20 “shall be reimbursed for mileage at the rate of fifteen cents (\$0.14) per  
21 mile *for each mile actually traveled* in attending court as a juror, in  
22 going only.” (Italics added.) The court administrator’s interpretation of  
23 the 20-mile limit as actual driving distance is reasonable in light of the  
24 statutory scheme, and appellant’s interpretation is not.

25 (*Id.*, 196 Cal.App.3d 201, 204.)

26 As it happens, there is no statutory provision for reimbursing a witness in a criminal  
27 case for the miles he travels to (or to and- from) court, apart from Penal Code section 1329,  
28 subdivision (a)’s provision for a “reasonable sum” for the “necessary expenses” of such a  
witness in addition to a \$12 per diem fee.

Penal Code section 1330, like Code of Civil Procedure section 203, measures the  
distance traveled to court by a witness “from his or her [place of] residence” if obedience to an  
uncensored subpoena (like a jury summons) must be obeyed. “In construing a statute, unless a

1 contrary intent appears [citations], the court presumes that the Legislature intended that similar  
2 phrases be accorded the same meaning [citation], particularly if the terms have been construed  
3 by judicial decision. [Citations.]” (*People v. Wells* (1996) 12 Cal.4th 979, 985.)

4 In our respectful submission, *People v. Adams, supra*, 196 Cal.App.3d 201 governs  
5 the proper construction of Penal Code section 1330.

6 Penal Code section 1330 provides that a witness is “not obliged” to obey an  
7 unendorsed subpoena that purports to require his attendance in a court of another county that is  
8 more than 150 miles from his residence. Attorney Dickerman’s office may be within 150 miles  
9 of the Santa Maria courthouse, but his residence is not.

10 Defendant suggests that “If for Some Reason, the Court Finds it Necessary to  
11 Endorse the Subpoenas, Good Cause Appears.” (Response 6:2-3.)

12 Perhaps so. But the Court may not endorse an unendorsed subpoena after it has  
13 been served. Defendant will need to have a new subpoena, properly endorsed, issue for the  
14 witness.

### 15 III

#### 16 THERE ARE NO NON-STATUTORY GROUNDS FOR 17 SUPPRESSING EVIDENCE IN A CRIMINAL CASE

18 Defendant reads *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703 as authority  
19 for his argument that evidence may be suppressed for a perceived violation of the defendant’s  
20 due process rights.

21 If defendant thinks so, he misreads *Laff*. That case held that a trial court has an  
22 obligation to consider and determine claims that materials seized pursuant to a search warrant  
23 are protected by either the attorney-client privilege or the core work-product “privilege” “and  
24 thus should not be inspected by or disclosed to law enforcement authorities” (*id.*, p. 720), and  
25 that it has “inherent authority to appoint a special master” to assist it in determining the merits  
26 of such a claim (*id.*, p. 735). Seized evidence may be withheld from the government if it is  
27 found to come within one or both of those privileges.

28 That is the holding in *Laff*, and *Laff*’s holding may not be transmuted into a holding

1 that non-privileged evidence may be *suppressed* simply because it was obtained in obedience to  
2 a warranted search from what defendant is pleased to call the "defense camp."

3 CONCLUSION

4 Defendant's several arguments appear to be premised on a misunderstanding of the  
5 applicable law. To the extent they are mistaken, they should not avail him.

6 DATED: July 27, 2004

7 Respectfully submitted,

8 THOMAS W. SNEDDON, JR.  
9 District Attorney

10 By:   
11 Gerald McC. Franklin, Senior Deputy

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 July 27, 2004, I served the within PLAINTIFF'S BRIEF REPLY TO DEFENDANT'S OPPOSITION TO OUR MOTION TO QUASH CERTAIN SUBPOENAS on Defendant, by THOMAS A. MESEREAU, JR., STEVE COCHRAN, ROBERT SANGER, and BRIAN OXMAN by personally serving a true copy thereof to each of them in the courtroom in which defendant's matter is pending.

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

Executed at Santa Maria, California on this 27th day of July, 2004.

Gerald McC. Franklin