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

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

22 THE PEOPLE OF THE STATE OF  
23 CALIFORNIA,

24 Plaintiffs,

25 vs.

26 MICHAEL JOSEPH JACKSON,

27 Defendant.

Case No. 1133603

NOTICE OF MOTION AND MOTION TO  
CONTINUE TRIAL; PENAL CODE §  
1050(b); MEMORANDUM OF POINTS  
AND AUTHORITIES; DECLARATION OF  
ROBERT M. SANGER

~~UNDER SEAL~~

Honorable Rodney S. Melville  
Date: December 20, 2004  
Time: 8:30 a.m.  
Dept: SM 8

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

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

DEC 10 2004

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

\* unsealed pursuant  
to 11/6/05 court  
order -

- 1 impossible because:
- 2 a. The District Attorney has dumped more than 14,000 pages of discovery on the
  - 3 defense in the last two months and it is impossible for defense counsel to evaluate
  - 4 this material in time for the trial date;
  - 5 b. The prosecution has provided the defense with a witness list that is defective and
  - 6 it is not possible for the defense to prepare for a January 31, 2005 trial given these
  - 7 defects;
  - 8 c. The prosecution's newly announced battered women's syndrome defense of Janet
  - 9 Arvizo requires the defense to spend its time and resources investigating the
  - 10 prosecution's four experts, as well as preparing our own experts for trial;
  - 11 d. Despite the Court's warnings that at some point the gathering of information must
  - 12 cease and organizing for trial must begin, the prosecution continues to request and
  - 13 execute search warrants, making it impossible for Mr. Jackson's counsel to
  - 14 prepare in time for the current trial date;
  - 15 e. The District Attorney's witness list includes the names of witnesses from the
  - 16 *Abdool v. Jackson* civil case. Defense counsel must evaluate more than 25
  - 17 bankers boxes of material related to that case in order to prepare to cross-examine
  - 18 these witnesses. This can not be done before January 31, 2005;
  - 19 f. Mr. Jackson has not yet received the transcripts of the grand jury selection process
  - 20 and the notes between the grand jurors and the prosecution. This information is
  - 21 necessary to evaluate whether the District Attorney complied with the holding of
  - 22 *Johnson v. Superior Court* (1975) 15 Cal. 3d 248 and to determine whether a fair
  - 23 cross-section challenge to the grand jury venire is warranted;
  - 24 g. There is still a significant amount of discovery that has not been provided to
  - 25 defense counsel;
  - 26 h. There is also a matter which counsel may wish to address in camera and we will
  - 27 make that request if it appears appropriate.

1 This motion is brought pursuant to Penal Code section 1050(b). This motion is based on  
2 this notice of motion, the attached memorandum of points and authorities, the declaration of  
3 Robert M. Sanger, the file and record and any other information presented prior to a ruling  
4 hereon.

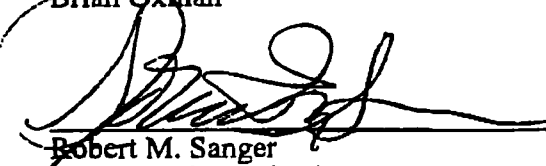
5 Dated: December 10, 2004

6 Respectfully submitted,

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

10 SANGER & SWYSEN  
11 Robert M. Sanger

12 OXMAN & JAROSCAK  
13 Brian Oxman

14 By:   
15 Robert M. Sanger  
16 Attorneys for Defendant  
17 MICHAEL JOSEPH JACKSON  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I.

3 **INTRODUCTION**

4 Mr. Jackson is reluctant to request a continuance. The Court has stated that it is  
5 committed to starting trial on January 31, 2005. Mr. Jackson is therefore hesitant to raise the  
6 issue and would not but for the recent conduct of the prosecution in this case.

7 Mr. Jackson is also reluctant to seek a continuance because it appears that the prosecution  
8 is not prepared. The timing of the search warrants served on December 3, 2004, and December  
9 4, 2004, suggests that the prosecution may be hoping that the defense will request a continuance  
10 as a result of these late searches. That may have been motivation for them to request search  
11 warrants that were so unnecessary. The defense is hesitant to, in essence, give the District  
12 Attorney what he wanted, by requesting a continuance. However, given the facts articulated  
13 below, it has become clear that a continuance is necessary to protect Mr. Jackson's right to a fair  
14 trial.<sup>1</sup>

15 **II.**  
**BACKGROUND**

16 The prosecution commenced these proceedings in mid November 2003, with the  
17 execution of several search warrants, including one at Mr. Jackson's home, and an arrest warrant  
18 alleging violation of Penal Code § 288(a), lewd conduct with a minor. A complaint was filed on  
19 December 18, 2003, asserting seven counts under § 288(a) and two counts of giving alcohol to a  
20 minor, in violation of Penal Code § 222. (Declaration of Robert M. Sanger.)

21 A series of hearings occurred in early 2004 that included discussion about the schedule  
22 for a preliminary hearing. In March of 2004, the prosecution chose to convene a grand jury to  
23 seek an indictment instead of a preliminary hearing. Grand jury proceedings ensued and an  
24 indictment was filed on April 21, 2004. (Declaration of Robert M. Sanger.)

25 The indictment alleges an elaborate conspiracy among Mr. Jackson and five named, but  
26

---

27 <sup>1</sup>In addition, another matter has arisen which may be the subject of an in camera hearing.  
28

1 unindicted persons to commit child abduction, false imprisonment and extortion. Twenty-eight  
2 acts in supposed furtherance of the conspiracy are listed. The indictment also imagines four  
3 counts of lewd conduct, one count of attempt and four counts of giving alcohol to a minor. The  
4 new allegations in the indictment expand the number of witnesses to over one hundred. Many of  
5 these witnesses reside out of state and some of them live outside the United States. (Declaration  
6 of Robert M. Sanger.)

7 In anticipation of arraignment on the indictment, Mr. Jackson relieved certain lawyers and  
8 brought in new lead counsel. Arraignment on the indictment occurred on April 30, 2004, at  
9 which Mr. Jackson announced pleas of not guilty. At the next hearing on May 28, 2004, this  
10 Court, *sua sponte*, set a trial date of September 13, 2004. (Declaration of Robert M. Sanger.)

11 On July 27, 2004, upon a finding of good cause, the Court granted Mr. Jackson's motion  
12 to continue the trial date and set January 31, 2005 as the new trial date. (Declaration of Robert  
13 M. Sanger.)

### 14 III.

#### 15 SALIENT FACTS

##### 16 A. THE VOLUME OF RECENT DISCOVERY

17 At the September 16, 2004, hearing, the Court expressed its concern that the prosecution  
18 was going "to dump huge quantities" of discovery on the defense as trial approaches. Despite the  
19 Court's warning, this is exactly what has occurred.

20 At the September 16, 2004, hearing, Mr. Sneddon stated that the defense had been  
21 provided with more than 4,000 pages of discovery. At the October 14, 2004 hearing, Mr.  
22 Sneddon announced that the prosecution had provided the defense with more than 8,000 pages of  
23 discovery. Less than two months later, that number is now more than 22,000 pages.  
24 Additionally, the prosecution has provided defense counsel with dozens with audio recordings  
25 and forensic data on compact discs and DVDs. (Declaration of Robert M. Sanger.)

##### 26 B. THE DISTRICT ATTORNEY'S DEFECTIVE WITNESS LIST

27 The Court ordered the prosecution and defense to exchange reciprocal discovery with  
28 each other on December 6, 2004, pursuant to section 1054 of the Penal Code. The Court also

1 ordered the production of a witness list on that date. The prosecution provided a list of 164  
2 "names," some of which were not names at all. The list was defective in ways that have severely  
3 prejudiced the defense.

4 The prosecution's witness list does not include addresses, nor does it include, with one  
5 single exception, what the potential subject matter is of the witnesses. This is exacerbated by  
6 five inexplicable and unforgivable facts. (Declaration of Robert M. Sanger.)

7 First, despite over a year and a half to prepare this case, the prosecution's witness list  
8 contains names of people who do not exist. For instance, number 65, Susan Hansen Hiephuyn,  
9 does not exist. Neither does number 110, Du Ross O'Brien. (Declaration of Robert M. Sanger.)

10 After spending a tremendous number of hours of staff time and investigating these two  
11 alleged people, the defense has now concluded that these are not names of actual individuals.  
12 We challenge the prosecution to come forward to explain who these witnesses are supposed to  
13 be. The cost and expense of this kind of unnecessary investigation is overwhelming, particularly,  
14 as it comes during this specific time during which the defense is preparing for trial. (Declaration  
15 of Robert M. Sanger.)

16 Second, the list contains the names of alleged witnesses which names we now believe  
17 have been badly misspelled. For instance, Dr. Lee Ming Ho and Ronald LaGault appear to be  
18 incorrectly spelled. It was easier to guess the identities of some of these witnesses compared to  
19 others. Suffice to say, it has taken the effort of several lawyers and staff people over several days  
20 to determine to whom the prosecution was referring. Some, such as "Alexander Montique,"  
21 who's name the prosecution followed with "(sp)," have still not been identified. (Declaration of  
22 Robert M. Sanger.)

23 Third, the prosecution has submitted ambiguous references, such as number 46,  
24 "Entertain Management Expert." The reference to an "Entertain Management Expert" is of little  
25 use, since there is no indication of what the subject matter of such an expert's testimony would  
26 be, let alone the qualifications or identity of such an expert. Once the identity of such an expert  
27 is disclosed, the defense will have to determine what the subject matter of that person's

1 testimony would be, investigate the qualifications of that person, and consult our own expert.

2 (Declaration of Robert M. Sanger.)

3 Fourth, the prosecution lists as number 41, "DOJ Experts." Such a reference is  
4 impossible to decipher, since the prosecution has listed a number of actual DOJ experts.  
5 Defendant has no idea as to what the subject matter of such unlisted DOJ experts will be, let  
6 alone their qualifications and proposed testimony. The same preparation will be required for  
7 these experts if they are ever properly disclosed. (Declaration of Robert M. Sanger.)

8 Fifth, there are a number of purported witnesses who are listed for whom there have been  
9 no statements provided. In addition to the alleged battered women's syndrome experts referred  
10 to below, there are a number of other experts for whom absolutely no witness statements, reports,  
11 or any other information was furnished. Again, numerous attorneys and staff have investigated  
12 over the last several days and we believe that we have at least an idea of who most of the people  
13 on the list are. However, we truly have no idea as to why some of them would be called in this  
14 case. (Declaration of Robert M. Sanger.)

15 **C. THE PROSECUTION'S NEWLY ANNOUNCED BATTERED WOMEN'S**  
16 **SYNDROME DEFENSE OF JANET ARVIZO**

17 The prosecution, on their witness list, list four people who appear to be Battered  
18 Women's Syndrome experts. There are no reports providing the statements of these witnesses.  
19 Therefore, they have failed to comply with the court's orders and with Penal Code Section 1054.  
20 Furthermore, we cannot tell, from disclosure of Karla Fischer, Nancy Lemon, Mindy Mechanic  
21 and Gail Pendleton who we learned through our own investigation are purported Battered  
22 Women's Syndrome experts, what their purpose is in calling these witnesses. It is impossible to  
23 determine whether the prosecution plans on calling these witnesses because they are so worried  
24 about Janet Arvizo's improbable testimony and bizarre behavior, whether they are trying to  
25 corner the market on BWS experts, or whether the prosecution is still attempting to determine  
26 which experts will testify at trial. (Declaration of Robert M. Sanger.)

27 Regardless of the purpose of listing the four experts, the point of the court's discovery  
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1 order was to allow the parties to prepare for trial. The defense is now required to speculate as to  
2 why such a witness might be called and to thoroughly investigate the four witnesses in an attempt  
3 to meet whatever testimony may be offered. The defense must also attempt to find a Battered  
4 Women's Syndrome expert who has not been placed on the prosecution's witness list. That in  
5 itself is a significant challenge. And then the defense, through consultation with the witness, will  
6 have to determine whether we are prepared to call such witness at trial. (Declaration of Robert  
7 M. Sanger.)

8 **D. THE PROSECUTION'S CONTINUOUS USE OF THE SEARCH WARRANT**  
9 **PROCESS**

10 This matter is more fully briefed in the motion filed concurrently herewith. The fact the  
11 District Attorney has abused the search warrant procedure with its predictable effect on Mr.  
12 Jackson and his lawyers warrants a continuance.

13 **E. *ABDOOL V. JACKSON***

14 The District Attorney's witness list indicates that witnesses from the *Abdool v. Jackson*  
15 civil case will be called at trial. The Abdool trial involved a significant number of witnesses and  
16 spanned several months. The plaintiffs not only lost the trial but were found by the court to have  
17 lied giving rise to approximately \$60,000 in sanctions against them. Defense counsel must  
18 evaluate more than 25 bankers boxes of material related to that case in order to prepare to cross-  
19 examine and impeach these witnesses. (Declaration of Robert M. Sanger.)

20 **F. GRAND JURY SELECTION TRANSCRIPTS AND GRAND JUROR NOTES TO**  
21 **DISTRICT ATTORNEY**

22 Defense counsel has not been provided with a copy of the grand jury selection transcripts  
23 or the notes between the grand jurors and the District Attorney. The court reporter has indicated  
24 that she is in the process of preparing the transcripts of the grand jury selection process and that  
25 she will advise counsel when the transcripts are ready. As of today's date, the defense has been  
26 unable to obtain the notes and has been informed by the Jury Commissioner's staff that they are  
27 in the process of attempting to obtain the order from the Court that authorizes them to release the  
28



1 notes. It will not be possible to file the substantive motions on these issues for hearing the week  
2 of December 20, 2004, as previously intended. These motions will have to be heard in January,  
3 2005, because it is not possible for counsel to prepare motions regarding the grand jury venire  
4 and the Johnson with enough notice for the hearings the week of December 20, 2004.

5 (Declaration of Robert M. Sanger.)

6 **G. DISCOVERY NOT PROVIDED TO DEFENSE COUNSEL**

7 The prosecution has failed to provide defense counsel with significant discovery,  
8 including statements of witnesses and police reports. This issue is further briefed in a motion to  
9 be filed, however, there are several key items of discovery that are particularly relevant to this  
10 motion. (Declaration of Robert M. Sanger.)

11 The District Attorney has just taken a DNA sample and are apparently seeking to do DNA  
12 comparisons. They have had possession of DNA samples for over a year since November 18,  
13 2003. The prosecution could have done this a year ago. Instead they have waited until the close  
14 of discovery. If and when we receive the reports we will have to hire experts, do our own  
15 comparison, and conduct further investigation. It is not possible to do this in time for a January  
16 31, 2005 trial date. (Declaration of Robert M. Sanger.)

17 The government's computer analysis was provided to us late. This material, related to  
18 computers seized in November of 2003. The government's computer analysis and reports were  
19 completed in February, March and April 2004. The complete forensic report should have been  
20 turned over to the defense no later than April 2004.2004. Instead, the reports consisting of  
21 hundreds of pages were submitted to the defense in October, 2004. The defense is significantly  
22 behind the curve of attempting to obtain our own expert analysis in order to evaluate the  
23 hundreds pages in their reports and voluminous materials on the actual computer hard drives.  
24 (Declaration of Robert M. Sanger.)

25 Furthermore, it is apparent from the most recent search warrants, that the government  
26 intends to create Computer Aided Drafting (CAD) models of Mr. Jackson's residence for  
27 presentation at trial. The government has confiscated the blueprints of Mr. Jackson's residence.

1 If and when the government provides the defense with discovery related to the CAD models, the  
2 defense will not be able to evaluate whether it is accurate without hiring its own expert to  
3 evaluate the CAD and to take its own measurements and do its own exhibit. (Declaration of  
4 Robert M. Sanger.)

5 There is reason to believe that the prosecution intends to call one or more purported  
6 experts on pedophilia. The District Attorney, however, has not submitted reports as to what the  
7 expert or experts are going to say. When and if those statements are submitted to defense  
8 counsel, we will need to hire our own expert, investigate the prosecution's expert(s), and conduct  
9 further investigation in order to adequately prepare for trial. (Declaration of Robert M. Sanger.)

10 We know from the witness list that the prosecution intends to offer Evidence Code  
11 Section 1108 evidence. The defense will vigorously oppose this in a Section 402 motion.  
12 However, the defense is not in a position to oppose such evidence since we have not been  
13 provided with statements. In at least one instance, such a witness was interviewed in September  
14 or October of 2004, and we still do not have a report of such an interview, let alone the statement  
15 of the witness or any basis to know whether the witness would properly qualify under Section  
16 1108. (Declaration of Robert M. Sanger.)

#### 17 IV.

#### 18 THE APPLICABLE LAW

19 The trial court is authorized to continue the trial upon a showing of good cause. (Cal.  
20 Pen. Code § 1050(b).) The court has vast discretion in these matters, with the pertinent inquiry  
21 being whether a continuance is in the interest of justice under the totality of circumstances.  
22 *People v. Snow*, 30 Cal. 4th 43, 70, 132 Cal. Rptr. 2d 271 (2003).

23 Naturally, the defense must be provided ample time to reasonably prepare for trial.  
24 (*People v. Fontana*, 139 Cal. App. 3d 326, 333, 188 Cal. Rptr. 612 (1982).) This is a fact-based  
25 inquiry focusing on the nature of the case, the status of discovery, the age of the litigation and the  
26 occurrence of prior continuances. The failure to provide the defense adequate time to prepare in  
27 light of the conduct of the District Attorney would violate the rights to a fair trial, due process,

1 equal protection, privileges and immunities and effective assistance of counsel under the 4<sup>th</sup>, 5<sup>th</sup>,  
2 6<sup>th</sup>, and 14<sup>th</sup> Amendments to the United States Constitution and relevant provisions of the  
3 California Constitution.

4 V.

5 **A CONTINUANCE IS NECESSARY FOR ADEQUATE TRIAL PREPARATION**

6 The massive volume of discovery recently provided, the prosecution's defective witness  
7 list, the prosecution's newly announced battered women's syndrome defense of Janet Arvizo,  
8 the prosecution's continuous use of the search warrant process, the prosecution's intent to  
9 introduce testimony related to the *Abdool v. Jackson* case, the fact that Mr. Jackson has not yet  
10 received the transcripts of the grand jury selection process and the notes between the grand jurors  
11 and the prosecution, the significant amount of discovery, including statements of experts and  
12 forensic reports, that has not yet been provided to defense counsel, and a matter which may be  
13 addressed *in camera*, render a January 31<sup>st</sup> trial unrealistic.

14 It is unfair and unnecessary to push this matter to trial before the defense has had the  
15 same type of time and access to relevant material as the prosecution. That type of access has yet  
16 to occur and is still being worked out by the parties with the benefit of guidance from this Court.  
17 Mr. Jackson is entitled to no more, but no less, protection than any other person accused by the  
18 government. He and his counsel have to have the right to adequately prepare for trial so he can  
19 have a fair trial, due process, and the effective assistance of counsel. He should not have less  
20 protection than be deprived of the privileges and immunities of any other person in this country  
21 or state who stands accused.

22 VI.

23 **CONCLUSION**

24 Therefore, based on the reasons set forth above, unfortunately, we are forced into a  
25 position of requesting a continuance. It is unfortunate because the court has asked counsel to  
26 avoid such a request. However, the request is necessitated by the conduct of the prosecution  
27 itself. It is also unfortunate because the request appears to be based on the fact that the  
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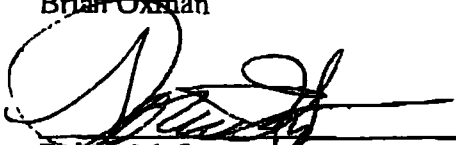
1 prosecution itself is not prepared. However, given the significance of the case, we have no  
2 choice but to accommodate them by requesting a continuance. A continuance in the area of 6  
3 weeks is indispensable. That time is necessary to protect Mr. Jackson's rights to assistance of  
4 counsel and a fair trial.

5 Dated: December 10, 2004

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

7 SANGER & SWYSEN  
Robert M. Sanger

9 OXMAN & JAROSCAK  
Brian Oxman

10  
11 By:   
12 Robert M. Sanger  
13 Attorneys for Defendant  
14 MICHAEL JOSEPH JACKSON  
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**DECLARATION OF ROBERT M. SANGER**

I, Robert M. Sanger, declare as follows:

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 Jackson.
2. The prosecution commenced these proceedings in mid November 2003, with the execution of several search warrants, including one at Mr. Jackson's home, and an arrest warrant alleging violation of Penal Code § 288(a), lewd conduct with a minor. A complaint was filed on December 18, 2003, asserting seven counts under § 288(a) and two counts of giving alcohol to a minor, in violation of Penal Code § 222.
3. A series of hearings occurred in early 2004 that included discussion about the schedule for a preliminary hearing. In March of 2004, the prosecution chose to convene a grand jury to seek an indictment instead of a preliminary hearing. Grand jury proceedings ensued and an indictment was filed on April 21, 2004.
4. The indictment alleges an elaborate conspiracy among Mr. Jackson and five named, but unindicted persons to commit child abduction, false imprisonment and extortion. Twenty-eight acts in supposed furtherance of the conspiracy are listed. The indictment also imagines four counts of lewd conduct, one count of attempt and four counts of giving alcohol to a minor. The new allegations in the indictment expand the number of witnesses to over one hundred. Many of these witnesses reside out of state and some of them live outside the United States.
5. In anticipation of arraignment on the indictment, Mr. Jackson relieved certain lawyers and brought in new lead counsel. Arraignment on the indictment occurred on April 30, 2004, at which Mr. Jackson announced pleas of not guilty. At the next hearing on May 28, 2004, this Court, *sua sponte*, set a trial date of September 13, 2004.
6. On July 27, 2004, upon a finding of good cause, the Court granted Mr. Jackson's motion to continue the trial date and set January 31, 2005 as the new trial date.

- 1 7. At the September 16, 2004 hearing, Mr. Sneddon stated that the defense had been  
2 provided with more than 4,000 pages of discovery. At the October 14, 2004 hearing, Mr.  
3 Sneddon announced that the prosecution had provided the defense with more than 8,000  
4 pages of discovery. Less than two months later, that number is now more than 22,000  
5 pages. Additionally, the prosecution has provided defense counsel with dozens with  
6 audio recordings and forensic data on compact discs and DVDs.
- 7 8. The prosecution's witness list does not include addresses, nor does it include, with one  
8 single exception, what the potential subject matter is of the witnesses. This is  
9 exacerbated by five inexplicable and unforgivable facts.
- 10 9. Despite over a year and a half to prepare this case, the prosecution's witness list contains  
11 names of people who do not exist. For instance, number 65, Susan Hansen Hiephuyn,  
12 does not exist. Neither does number 110, Du Ross O'Brien.
- 13 10. After spending a tremendous number of hours of staff time and investigating these two  
14 alleged people, the defense has now concluded that these are not names of actual  
15 individuals. We challenge the prosecution to come forward to explain who these  
16 witnesses are supposed to be. The cost and expense of this kind of unnecessary  
17 investigation is overwhelming, particularly, as it comes during this specific time during  
18 which we are preparing for trial.
- 19 11. The list contains the names of alleged witnesses, who's names we now believe have been  
20 badly misspelled. For instance, Dr. Lee Ming Ho and Ronald LaGault appear to be  
21 incorrectly spelled. It was easier to guess the identities of some of these witnesses  
22 compared to others. Suffice to say, it has taken the effort of several lawyers and staff  
23 people to determine who the prosecution was referring to. Some, such as Alexander  
24 Montique, who's name the prosecution followed with "(sp)," have still not been  
25 identified.
- 26 12. The prosecution has submitted ambiguous references such as number 46, "Entertain  
27 Management Expert." The reference to an "Entertain Management Expert" is of little use,  
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1 since there is no indication of what the subject matter of such an expert's testimony  
2 would be, let alone the qualifications or identity of such an expert. Once the identity of  
3 such an expert is disclosed, the defense will have to determine what the subject matter of  
4 that person's testimony would be, investigate the qualifications of that person, and  
5 consult our own expert.

6 13. The prosecution lists as number 41, "DOJ Experts." Such a reference is impossible to  
7 decipher, since the prosecution has listed a number of actual DOJ experts. Defendant has  
8 no idea as to what the subject matter as to what unlisted DOJ experts will be, let alone  
9 their qualifications and proposed testimony. The same preparation will be required for  
10 these experts if they are ever properly disclosed.

11 14. There are a number of purported witnesses who are listed for whom there have been no  
12 statements provided. In addition to the alleged battered women's syndrome experts  
13 referred to below, there are a number of other experts for whom absolutely no witness  
14 statements, reports, or any other information was furnished. Again, numerous attorneys  
15 and staff have investigated over the last several days and we believe that we have at least  
16 an idea of who most of the people on the list are. However, we truly have no idea as to  
17 why some of them would be called in this case.

18 15. The prosecution, on their witness list, list four people who appear to be Battered  
19 Women's Syndrome (BWS) experts. There are no reports providing the statements of  
20 these witnesses. Therefore, they have failed to comply with the court's orders and with  
21 Penal Code Section 1054. Furthermore, we cannot tell, from disclosure of these four  
22 people, who we learned through our own investigation are purported BWS experts, what  
23 their purpose is in calling these four expert witnesses. It is impossible to determine  
24 whether the prosecution plans on calling these witnesses because they are so worried  
25 about Janet Arvizo's improbable testimony and bizarre behavior, whether they are trying  
26 to corner the market on BWS experts, or whether the prosecution is still attempting to  
27 determine which experts will testify at trial.

1 16. Regardless of the purpose of the testimony of the four experts, the point of the court's  
2 discovery order was to allow the parties to prepare for trial. The defense is now required  
3 to speculate as to why such a witness might be called and to thoroughly investigate four  
4 witnesses in an attempt to meet whatever testimony may be offered. The defense must  
5 also attempt to find a BWS expert who has not been placed on the prosecution's witness  
6 list. That in itself is a significant challenge. And then the defense, through consultation  
7 with the witness, will have to determine whether we are prepared to call such witness at  
8 trial.

9 17. Mr. Jackson is filing a pleading regarding the District Attorney's continuous use of the  
10 search warrant process concurrently herewith.

11 18. The District Attorney's witness list indicates that witnesses from the *Abdool v. Jackson*  
12 civil case will be called at trial. The Abdool trial involved a significant number of  
13 witnesses and spanned several months. Defense counsel must evaluate more than 25  
14 bankers boxes of material related to that case in order to prepare to cross-examine and  
15 impeach these witnesses.

16 19. Defense counsel has not been provided with a copy of the grand jury selection transcripts  
17 or the notes between the grand jurors and the District Attorney. The court reporter has  
18 indicated that she is in the process of preparing the transcripts of the grand jury selection  
19 process and that she will let us know when the transcripts are ready. As of today's date,  
20 we have been unable to obtain the notes and have been informed by the Jury  
21 Commissioner's staff that they are in the process of attempting to obtain an order from  
22 the Court that authorizes them to release the notes. If the date is not continued these  
23 motions must be heard the week of January 10, 2005, because it is not possible for  
24 counsel to prepare motions regarding the grand jury venire and the notes with enough  
25 notice for the hearings the week of December 20, 2004.

26 20. The prosecution has failed to provide defense counsel with significant discovery,  
27 including statements of witnesses and police reports. This issue is further briefed in a  
28



1 motion to be filed, however, there are several key items of discovery that are particularly  
2 relevant to this motion.

3 21. The District Attorney has just taken a DNA sample and are apparently seeking to do DNA  
4 comparisons, even though they have had possession of DNA samples for over a year.  
5 The prosecution could have done this a year ago. Instead they have waited until the close  
6 of discovery. If and when we receive the reports we will have to hire experts, do our own  
7 comparison, and conduct further investigation. It is not possible to do this in time for a  
8 January 31, 2005 trial date.

9 22. The government's computer analysis was provided to us late. This material, related to  
10 computers seized in November of 2003, could have been provided to defense counsel as  
11 early as February, March or April of 2004, the dates on the computer forensic reports.  
12 Instead, the reports were submitted to us as late as October, 2004. We are significantly  
13 behind the curve of attempting to obtain our own expert analysis in order to evaluate the  
14 hundreds pages in their reports.

15 23. Furthermore, it is apparent from the most recent search warrants, that the government  
16 intends to create Computer Aided Drafting (CAD) models of Mr. Jackson's residence for  
17 presentation at trial. The government has confiscated the blueprints of Mr. Jackson's  
18 residence. If and when the government provides the defense with discovery related to the  
19 CAD models, we will not be able to evaluate whether it is accurate without hiring our  
20 own expert to evaluate the CAD and to take our own measurements and do our own  
21 exhibit.

22 24. There is reason to believe that the prosecution intends to call one or more purported  
23 experts on pedophilia. The District Attorney, however, has not submitted reports as to  
24 what the expert or experts are going to say. When and if those statements are submitted  
25 to defense counsel, we will need to hire our own expert, investigate the prosecutions  
26 expert(s), and conduct further investigation in order to adequately prepare for trial.

27 25. We know from the witness list that the prosecution intends to offer Evidence Code  
28

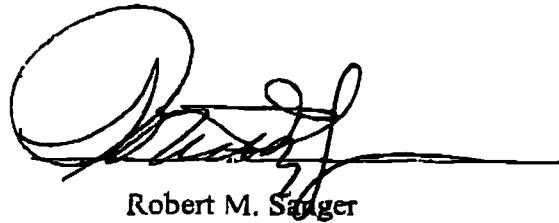
1 Section 1108 evidence that we will vigorously oppose in a Section 402 motion.

2 However, the defense is not in a position to oppose such evidence since we have not been  
3 provided with statements. In at least one instance, such a witness was interviewed in  
4 September or October of 2004, and we still do not have a report of such an interview, let  
5 alone the statement of the witness or any basis to know whether the witness would  
6 properly qualify under Section 1108.

7 26. A continuance in the area of 6 weeks is indispensable. That time is necessary to protect  
8 Mr. Jackson's rights to assistance of counsel and a fair trial.

9 I declare under the penalty of perjury under the laws of the State of California that the  
10 foregoing is true and correct this 10<sup>th</sup> day of December, 2004, at Santa Barbara, California.

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Robert M. Sanger

**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 document **MOTION TO CONTINUE TRIAL; PENAL CODE SECTION 1050(B) BE FILED UNDER SEAL** on the interested parties in this action by depositing a true copy thereof as follows:

**Tom Sneddon  
Gerry Franklin  
Ron Zonen  
Gordon Auchinclos  
1115 Santa Barbara St  
Santa Barbara, CA 93101  
Fax 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.

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

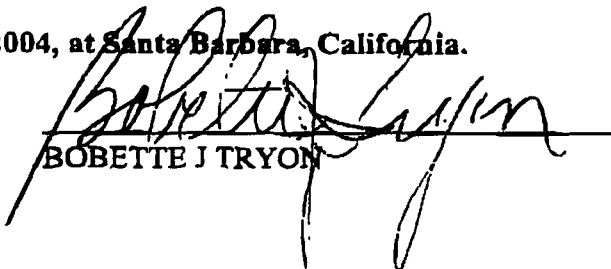
  ANX  

**BY HAND** - I caused the document to be hand delivered to the interested parties at the address above.

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

       **FEDERAL** - I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

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

  
BOBETTE J TRYON