

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Omar Figueroa, Esq. #196650 506 Broadway San Francisco, CA 94133-4507	TELEPHONE NO.: 415/986-5591	FOR COURT USE ONLY ENDORSED FILED MUNICIPAL COURT NORTHERN BRANCH SEP 2 2004 PEGGY THOMPSON, Court Admin. By <u><i>[Signature]</i></u> Deputy
ATTORNEY FOR (Named): JOHN PERRY BARLOW		
Insert name of court, judicial district or branch court, if any, and post office and street address: Superior Court of California County of San Mateo 1050 Mission Road South San Francisco, CA 94080		
Title of case: The People of the State of California v. John Perry Barlow		CASE NUMBER: NM 333376
SUBPENA (CRIMINAL OR JUVENILE) <div style="text-align: center;">CRIMINAL</div> <input checked="" type="checkbox"/> DUCES TECUM		

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (NAME):
 The appropriate custodian of records for Covenant Aviation Security

1. **YOU ARE ORDERED TO APPEAR AS A WITNESS** in this action at the date, time, and place shown in the box below **UNLESS** you make a special agreement with the person named in item 3:

a. Date: September 9, 2004	Time: 2:00 p.m.	<input checked="" type="checkbox"/> Dept.: TBD	<input type="checkbox"/> Div.:	<input type="checkbox"/> Room:
b. Address: Superior Court of California-County of San Mateo 1050 Mission Road, South San Francisco, CA 94080				

2. AND YOU ARE
- a. ordered to appear in person.
 - b. not required to appear in person if you produce the records described in the accompanying affidavit and a completed declaration of custodian of records in compliance with Evidence Code sections 1560, 1561, 1562, and 1271. (1) Place a copy of the records in an envelope (or other wrapper). Enclose your original declaration with the records. Seal them. (2) Attach a copy of this subpoena to the envelope or write on the envelope the case name and number, your name and date, time, and place from item 1 (the box above). (3) Place this first envelope in an outer envelope, seal it, and mail it to the clerk of the court at the address in item 1. (4) Mail a copy of your declaration to the attorney or party shown at the top of this form.
 - c. ordered to appear in person and to produce the records described in the accompanying affidavit. The **personal attendance** of the custodian or other qualified witness and the production of the original records **is required** by this subpoena. The procedure authorized by subdivision (b) of section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena.
 - d. ordered to make the **original** business records described in the accompanying affidavit available for inspection at your business address by the attorney's representative and to permit **copying** at your business address under reasonable normal business hours. conditions during normal business hours.
3. **IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:**
- a. Name: Omar Figueroa, Esq.
 - b. Telephone number: 415-986-5591
4. **WITNESS FEES:** You may be entitled to witness fees, mileage, or both, in the discretion of the court. Contact the person named in item 3 **AFTER** your appearance.

DISOBEDIENCE OF THIS SUBPENA MAY BE PUNISHED BY A FINE, IMPRISONMENT, OR BOTH. A WARRANT MAY ISSUE FOR YOUR ARREST IF YOU FAIL TO APPEAR.

FOR COURT USE ONLY	Date: <u>9-1-04</u>	<div style="text-align: center;"> (SIGNATURE OF PERSON ISSUING SUBPENA) </div> <hr style="border: 0.5px dotted black;"/> <div style="text-align: center;"> Omar Figueroa (TYPE OR PRINT NAME) </div> <hr style="border: 0.5px dotted black;"/> <div style="text-align: center;"> Attorney for Defendant (TITLE) </div>
(See reverse for proof of service)		

September 1, 2004

Covenant Aviation Security
245 South Spruce Ave.
South SF, CA 94080
(650) 821-2300

RE: **People v. John Barlow**, San Mateo County Superior Court
No. NM 333376

Dear Custodian of Records:

I represent John Barlow, who is a defendant in a criminal action in San Mateo County, California. To prepare a defense, it will be necessary to provide the court with true, legible, durable copies of the appropriate records detailing:

- 1) All reports, memorandums, accounts, briefs, communications, messages, notes, reviews, or records pertaining to the search of Mr. Barlow's luggage, and or his case.
- 2) All training manuals, handbooks, instructions, or memorandums pertaining to protocols or procedures for performing baggage searches.
- 3) All documents detailing the time of the initial search of Mr. Barlow's luggage.
- 4) All audio and/or video recordings, as well as any recordings taken of the x-ray images of Mr. Barlow's luggage taken before, during, and/or after the search of Mr. Barlow's luggage on September 15, 2003.

We hereby write to advise you of a *subpoena duces tecum* for documents under your control, namely records pertaining to the above mentioned procedures and/or events.

Rather than requiring you to personally attend a hearing and testify, the California Evidence Code allows you to comply with this subpoena to make your appearance in court optional.

Following is a summary of what is required by the relevant portions of the California Evidence Code sections 1560, 1561, 1562, which specify how the records must be sent.

1. Make a true, legible, and durable copy of the records described in the subpoena, ***including the actual work orders and/or documents describing road conditions;***
2. Sign and date the enclosed Affidavit of Custodian of Records;
3. Place the records and Affidavit in an envelope and seal the envelope securely.
4. On the outside of the envelope write...
 - A. The title and name of the case (People v. Barlow;
Case #NM 333376)
 - B. Name of Witness (the authorized custodian of records)
5. Place this sealed envelope containing the documents and affidavit in another envelope and address to:

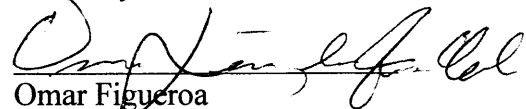
Superior Court of California County of San Mateo
1050 Mission Road
South San Francisco, CA 94080

ATTENTION: Subpoenaed Records for Case #NM333376

6. Please send the packet to the court.

I would also appreciate it if you would kindly make an additional copy of the subpoenaed records and send them to my office; though, this is option. If you have any questions regarding the subpoena or the case, please do not hesitate to contact me. Your assistance is highly appreciated.

Sincerely,


Omar Figueroa
Attorney for John Barlow

OMAR FIGUEROA
506 Broadway
San Francisco, CA 94133
Telephone: 415/986-5591
Facsimile: 415/421-1331

ENDORSED FILED

**MUNICIPAL COURT
NORTHERN BRANCH**

SEP 2 2004

PEGGY THOMPSON, Court Admin.

By *[Signature]* Deputy

1 OMAR FIGUEROA #196650
2 506 Broadway
3 San Francisco, CA 94133
4 Telephone: 415/986-5591
5 Facsimile: 415/421-1331

6 Attorney for Defendant
7 JOHN BARLOW

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN MATEO

10 PEOPLE OF THE STATE OF CALIFORNIA, NO. NM 333376

11 Plaintiff,

DECLARATION OF COUNSEL
IN SUPPORT OF SUBPOENA
DUCES TECUM

12 v.

13 JOHN BARLOW,

14 Defendant.

15
16 _____ /
17 Defendant JOHN BARLOW hereby requests production of the
18 following:

- 19 1) A true, legible, and durable copy of all complaints,
20 disciplinary actions, or punitive procedures filed against
21 Covenant Security employees: Sandra Ramos, Kenneth Lewis,
22 and Donald Pyle.
- 23 2) A true, legible, and durable copy of all reports,
24 memorandums, accounts, briefs, communications, messages,
25 notes, reviews, or records pertaining to the search of Mr.
26 Barlow's luggage, and or his case.
- 27 3) A true, legible, and durable copy of all training manuals
28 or memorandums pertaining to protocols or procedures for
performing baggage searches.
- 4) A true, legible, and durable copy of any document detailing
the time of the initial search of Mr. Barlow's luggage.

1 Please send this material, via personal delivery or certified
2 U.S. Mail, to:

3 Criminal Division-Clerk's Office
4 Superior Court of California
5 County of San Mateo
6 1050 Mission Rd.
7 South San Francisco, CA 94080

8 Phone: (650) 877-5773

9 **DECLARATION OF COUNSEL**

10 I, OMAR FIGUEROA, declare:

11 I am an attorney licensed to practice in the State of
12 California and I am counsel of record for defendant John Barlow in
13 this matter.

14 Mr. Barlow is presently facing criminal charges in San Mateo
15 County arising out of the search of his luggage at San Francisco
16 Airport. Specifically, he has been charged with five misdemeanor
17 violations including: three counts of violating Health & Safety
18 Code Sections 11377(A), one count of violating Business and
19 Profession Code 4140, and one count of violating Health and Safety
20 Code §11357(B) on or about September 15, 2003, at the San Francisco
21 Airport.

22 Mr. Barlow intends to present evidence establishing that the
23 initial search of his luggage was illegally intrusive, as beyond
24 the purview of a security search. Code of Federal Regulations
25 §1544.203(a) requires that every aircraft operator create a
26 "security program to prevent or deter the carriage of any
27 unauthorized explosive or incendiary onboard aircraft in checked
28 baggage." CFR §1544.203(a) Furthermore, subsection (c) of the same
statute clarifies that its purpose is to "ensure that all checked

1 baggage is inspected for explosives and incendiaries before loading
2 it on its aircraft." CFR §1544.203(c)

3 In this case, the search extended beyond a search for
4 undeclared firearms and incendiary devices. Because the scope of
5 this search exceeded the federal mandate, the search was
6 unreasonable and in flagrant violation of the United States
7 Constitution. For this reason the training manuals, instruction
8 books, and other evidence requested are material and necessary to
9 establish either that 1) there was a pattern and practice of
10 conducting unreasonable searches of checked baggage, or 2) there is
11 no policy instructing baggage screeners on the lawful scope of a
12 baggage search, and such screeners have boundless discretion in
13 conducting these searches. The complaint is attached as Exhibit A,
14 and the Police Reports are attached as Exhibit B.

15 16 Summary of Facts

17 According to police reports, on September 15, 2003 at about
18 6:55 a.m. Officer Wurdinger responded to a dispatch request from
19 TSA-Covenant Security at the San Francisco Airport. (Exhibit B
20 pg.2) The time of arrest is listed as 7:30 a.m. on the San Mateo
21 County Arrest Report/Booking Sheet (Exhibit B pg.7), but is listed
22 as 7:45 a.m. on Officer Wurdinger's San Francisco Police-Airport
23 Bureau report. (Exhibit B pg.3) The documents subpoenaed may be
24 able to shed light on this material issue.

25 Officer Wurdinger reports receiving information from TSA-
26 Covenant Security that they had searched Mr. Barlow's luggage and
27 found a small amount of possible marijuana, and other potential
28 contraband. (Exhibit B pg.2) However, the filed police report

1 omits information regarding the fact that Mr. Barlow's bag was
2 illegally searched beyond the permissible scope allowed for
3 security purposes.

4 During screening, a Covenant Security guard searched Mr.
5 Barlow's luggage beyond the legal scope of airport security
6 inspections. This can be seen from Officer Wurdinger's report. It
7 states that "As S/Barlow's bag came through, Ramos saw wires and
8 batteries in the X-ray that appeared suspicious to her. She opened
9 the bag and began to search it. Inside **she found that the**
10 **batteries and wires were not threats, but as she searched she saw**
11 **what appeared to be marijuana and other possible contraband."**

12 (Exhibit B pg.2) This clearly illustrates that Covenant Security
13 employee Sandra Ramos was no longer investigating a potential
14 danger, but was in fact searching the luggage without cause.

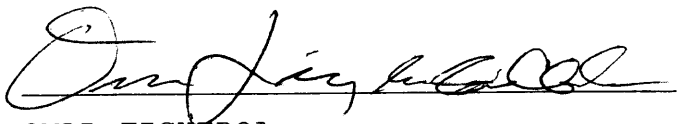
15 Although the police report would lead one to believe
16 otherwise, the alleged contraband was **not found through visual**
17 **detection.** The contraband was found in the bottom of an Ibuprofen
18 bottle, after luggage screener Ramos emptied out all of the
19 Ibuprofen. The Ibuprofen bottle was never mentioned as being
20 suspected as a potential bomb when Sandra Ramos chose to search the
21 bag. This demonstrates the severe degree to which this search went
22 beyond the stated purpose of a security search. As such, it is
23 clear that the scope of this initial search was illegal and
24 unjustified, since it was unrelated to security concerns.

25 The police officers handling this case omitted all
26 information regarding the illegal, over-intrusive search by TSA-
27 Covenant Security employees from the police report. Officer
28 Wurdinger omitted any mention of where and under what circumstances

1 the contraband was found in order to hide evidence of an illegal
2 search and seizure. Similarly, the other officers who participated
3 in the arrest excluded this evidence by neglecting to file police
4 reports. This improper police procedure necessitates that
5 defendant be provided with true and accurate information regarding
6 the initial search.
7

8 For this reason the training manuals, instruction books, and
9 other evidence requested are material and necessary to establish
10 that either: 1) there was a pattern and practice of conducting
11 unreasonable searches of checked baggage, or 2) there is no policy
12 instructing baggage screeners on the lawful scope of a baggage
13 search, and such screeners have boundless discretion in conducting
14 these searches.
15

16 I declare under penalty of perjury that the foregoing is true
17 and correct, and that this declaration is executed on August 31,
18 2004, at San Francisco, California.
19

20 

21 OMAR FIGUEROA
22 Attorney for Defendant
23 JOHN BARLOW
24

25
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27
28

AFFIDAVIT OF CUSTODIAN OF RECORDS
(Evidence Code §1561)

The undersigned declares as follows:

1. I am the duly authorized custodian of records for Covenant Aviation Security, and as such have authority to certify said records;
2. The copy of records enclosed herewith is a true copy of all records described in the Subpoena Duces Tecum;
3. These records were prepared and/or obtained by personnel of this office in the ordinary course of business at or near the time of the act, condition, or event;
4. The enclosed records are true, legible, and durable copies of: all reports, memorandums, accounts, briefs, communications, messages, notes, reviews, or records pertaining to the search of Mr. Barlow's luggage, and or his case; all training manuals, handbooks, instructions, or memorandums pertaining to protocols or procedures for performing baggage searches; all documents detailing the time of the initial search of Mr. Barlow's luggage; all audio and/or video recordings, as well as any recordings taken of the x-ray images of Mr. Barlow's luggage taken before, during, and/or after the search of Mr. Barlow's luggage on September 15, 2003.
5. These records were created and/or obtained by Covenant Aviation Security, and/or office staff during the time frame from September 15, 2000 through the present.

I declare under penalty of perjury as provided for by the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this _____ day of _____ (month), 2004,
at _____ (city), _____ (state).

CUSTODIAN OF RECORDS

SHORT TITLE: <p style="text-align: center; margin: 0;">PEOPLE v. BARLOW</p>	CASE NUMBER: <p style="text-align: center; margin: 0;">NM 333376</p>
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PROOF OF SERVICE OF SUBPENA

ENDORSED FILED

1. I served this Subpena Subpena Duces Tecum and supporting affidavit by personal service on the person served as follows:

MUNICIPAL COURT
NORTHERN BRANCH

SEP 2 2004

a. Person served (name): Audrey Dean

b. Address where served: 245 S. Spruce SSF

By PEGGY THOMPSON, Court Admin.
[Signature]
Deputy

c. Date of delivery: 9-2-04

d. Time of delivery: 12:50

2. I received this subpena for service on (date):

3. **NON-SERVICE RETURN OF SUBPENA**

a. After due search, careful inquiry, and diligent attempts at the dwelling house or usual place of abode or usual place of business, I have been unable to make personal delivery of this Subpena Subpena Duces Tecum in this county on the following persons (specify):

b. Reason:

- | | |
|---|---|
| <p>(1) <input type="checkbox"/> Unknown at address.</p> <p>(2) <input type="checkbox"/> Moved, forwarding address unknown.</p> <p>(3) <input type="checkbox"/> No such address.</p> | <p>(4) <input type="checkbox"/> Out-of-county address.</p> <p>(5) <input type="checkbox"/> Unable to serve by hearing date.</p> <p>(6) <input type="checkbox"/> Other reasons (explanation required):</p> |
|---|---|

4. Person serving:

- a. Not a registered California process server.
- b. California sheriff, marshal, or constable.
- c. Registered California process server.
- d. Employee or independent contractor of a registered California process server.

- e. Exempt from registration under Bus. & Prof. Code section 22350(b).
- f. Name, address, and telephone number and, if applicable, county of registration and number:

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

(For California sheriff, marshal, or constable use only)
I certify that the foregoing is true and correct.

Date: 9-2-04

[Signature]
(SIGNATURE)

Date: _____

(SIGNATURE)