- 1	
1 2 3 4 5 6 7	THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY County of Santa Barbara By: RONALD J. ZONEN (State Bar No. 85094) Senior Deputy District Attorney GORDON AUCHINCLOSS (State Bar No. 150251) Senior Deputy District Attorney GERALD McC. FRANKLIN (State Bar No. 40171) Senior Deputy District Attorney 1112 Santa Barbara Street Santa Barbara, CA 93101 Telephone: (805) 568-2300 FAX: (805) 568-2398
8	SUPERIOR COURT OF THE STATE OF CALIFORNIA S
9	FOR THE COUNTY OF SANTA BARBARA
10	SANTA MARIA DIVISION
11	MACON REDACTED VERSION
12	THE PEOPLE OF THE STATE OF CALIFORNIA, No. 1133603
13	PLAINTIFF'S REQUEST TO Plaintiff, ADMIT SEIZED EVIDENCE OF EROTIC MATERIALS TO
15) DEMONSTRATE DEFENDANT'S v.) INTENT, PLAN, SCHEME AND MOTIVE
16 17 18	MICHAEL JOE JACKSON, Defendant. Defendant. Defendant. Defendant. Defendant. Defendant.
19	-FILED UNDERSEAL
20	
21	The People seek to introduce numerous books,
22	videos, and magazines seized on November 13, 2003, from the defendant's master bedroom
23	suite at Neverland Valley Ranch, the video arcade and from a room adjoining the defendant's
24	private office in a security building. The People also seek to admit three hard-cover books and
25	two photographs seized from defendant's bedroom at Neverland Ranch by the Los Angeles
26	Police Department in August, 1993.
27	1111
28	
٠	

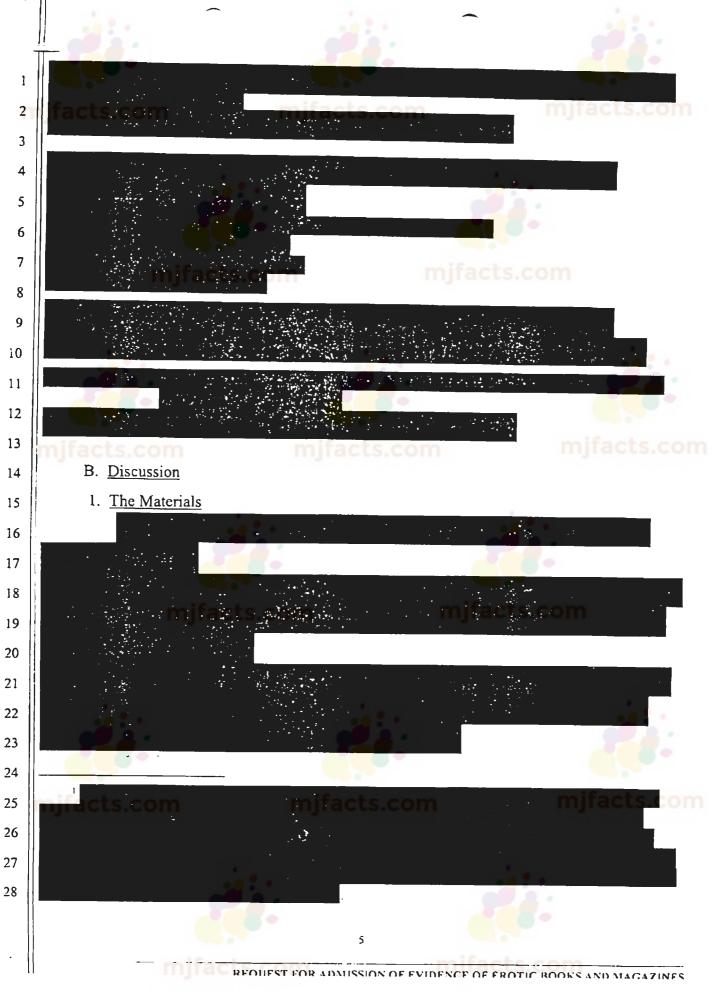
A. Items To Be Introduced

Specifically, the People seek to introduce the following items:

From the search of defendant's bedroom in 1993, the following unnumbered items:







2. The Relevance Of The Materials

Article 1, section 18 of the California Constitution declares that all relevant evidence is admissible in criminal prosecutions unless its admission is specifically precluded by overriding statutory or constitutional provisions. In assessing the relevancy of a particular item of evidence, a trier of fact must start with the premise that the evidence must have a "... tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. (Evid.Code, § 210.)

The listed materials are admissible and relevant as circumstantial evidence on the issues of defendant's intent, motive and method

3. Defendant's Specific Intent Is In Issue

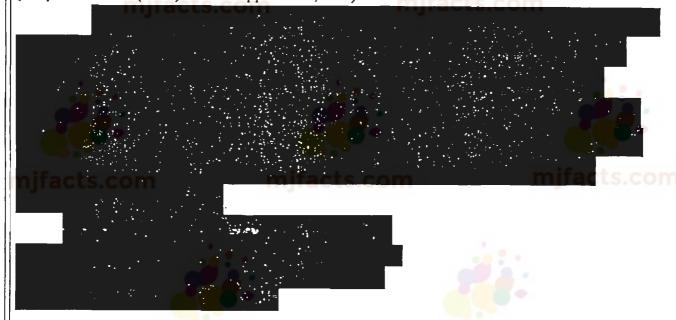
"A 'plea of not guilty puts in issue every material allegation of the accusatory pleading' (Pen. Code, § 1019), and when a specific kind or particular type of mental state or intent is a part of the corpus delicti of the crime charged, the not guilty plea puts in issue the existence of that state of mind. [Citation.]" (People v. Gentry (1968) 257 Cal.App.2d 607, 610.) In the prosecution of an alleged violation of Penal Code section 288, one of the elements that must be proved is that "The touching was done with the specific intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of [the accused] or the child." (CALJIC 10.42, in pertinent part; see People v. Maquez (1994) 28 Cal.App.4th 1315, 1322.)

When defendant pled not guilty to the offenses alleged in Counts Two through Six of the pending indictment, he placed "in issue" whether he acted with the lewd and lascivious intent which must be shown to demonstrate a violation of Penal Code section 288. (See People v. Memro (1995) 11 Cal.4th 786, 864: "Defendant's intent to violate section 288 was put at issue when he pleaded not guilty to the crimes charged. [Citations.]")

4. Evidence Of Defendant's Intent And Method

The intention with which an act is committed is ordinarily a question of fact for the trier of fact and may be inferred from the surrounding circumstances. (People v. Darling

(1989) 210 Cal.App.3d 910, 913.) It may be inferred from the accused's prior conduct demonstrating a particular state of mind (Evid. Code, § 1101, subd. (b).) That prior conduct need not be a crime to be admissible under Evidence Code section 1101. (People v. Willis-Watkins (1979) 99 Cal.App.3d 451, 456 and fn. 1.) "[E]vidence Code section 1101's recognition of the admissibility of certain evidence to prove such things as 'preparation,' 'plan,' and 'identity' is not limited . . . to 'uncharged offenses,' but embraces also 'other acts.'" (People v. Harris (1978) 85 Cal.App.3d 954, 958.)





In People v. Memro, supra, 11 Cal.4th 786, the court reviewed the conviction and death sentence in a capital homicide prosecution in which the defendant was charged with felony murder based upon a killing during the commission of a lewd act with a 7-year-old boy.

² See *People v. Giani* (1956) 145 Cal.App.2d 539, which addressed and correctly rejected the false "concept that if a man belongs to the larger group (homosexual) he is predisposed to commit the particular offense [of molestation of a boy]." (*Id.*, at pp. 545-546.)

The Supreme Court approved the admission of that sexually explicit material on the issue of the defendant's intent:

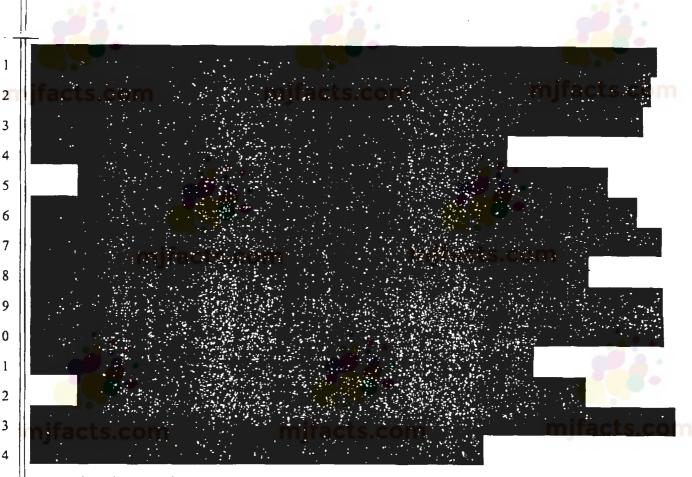
We have examined the magazines and photographs in question. They contain sexually explicit stories, photographs and drawings of males ranging in age from pre-pubescent to young adult. Some of the photographs are of similar character. Others depict youths in a manner that is not sexually suggestive. [¶]

[¶] ... Although not all were sexually explicit in the abstract, the photographs, presented in the context of the defendant's possession of them, yield evidence from which the jury could infer that he had a sexual attraction to young boys and intended to act on that attraction."

(Id., pp. 864-865.)

In the case at bar, the evidence listed above is admissible pursuant to Evidence Code section 1101, subdivision (b) for precisely the same reason similar evidence was admitted in Memro's prosecution.





6. Evidence of "Preparation" and "Plan"

The relevance of the listed materials in this prosecution extends beyond the issue of the defendant's intent.

A plan or scheme need not be particularly distinctive to warrant admissibility of evidence of that scheme to show that the defendant acted pursuant to that plan in committing the charged offenses. (People v. Kraft (2000) 23 Cal.4th 978, 1031-1032.)



In analogous situations, courts have routinely admitted evidence of the possession of burglary instruments as circumstantial evidence of an individual's intent to commit the crime of burglary. (People v. Darling, supra, 210 Cal.App.3d 910, at page 913 [possession of screwdriver]; People v. Wilson (1965) 238 Cal.App.2d 447, 463 [plastic strips found in defendant's pocket could be used to slip locks on doors and were "reasonably adapted to the performance of the entry which is in fact effected"]; People v. Gibson (1949) 94 Cal.App.2d 468, 471 [defendant found in alley with ladder, a bag of tools and a rope; that evidence admissible to establish his burglarious intent even if he was interrupted before achieving his objective].)

In Darling, supra, 210 Cal.App.3d 910, appellant argued that his possession of a screwdriver was evidence of a "character trait" and so should have been excluded pursuant to Evidence Code section 1101. In response, the court noted "that even character evidence may be admissible on the issues of intent, preparation and plan." (210 Cal.App.3d at p. 914, n. 2, citing People v. Rodriguez (1986) 212 Cal.3d 730, 757.)

Nor, as *Darling* also points out, is it necessary to show that the tools or instruments found in the defendant's possession actually were used in the commission of the charged crime itself to be admissible. (*People v. Darling, supra*, 210 Cal.App.3d at 914.)

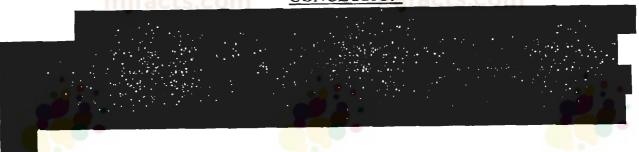
7. Evidence of Motive

Juries considering the guilt or innocence of a defendant charged with a criminal offense are routinely instructed in the words of CALJIC 2.51:

Motive is not an element of the crime charged and need not be shown. However, you may consider motive or lack of motive as a circumstance in this case. Presence of motive may tend to establish the defendant is guilty. Absence of motive may tend to show the defendant is not guilty.

like the evidence of the defendant's gang membership considered in People v. Williams (1997) 16 Cal.4th 153, is relevant and material to prove the defendant's motive. (See also People v. Conrad (1973) 31 Cal.App.3d, 308 - portions of a tape recording of one of the defendant's statements in which he stated that he was a narcotic addict and was getting money to support his habit by stealing, hustling and dealing dope was admissible on the issue of motive.)

CONCLUSION



DATED: January 18, 2005

Respectfully submitted,

THOMAS W. SNEDDON, JR.

mifacts.com

District Attorney

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF SANTA BARBARA

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; 1112 Santa Barbara Street, Santa Barbara, California 93101.

On January 18, 2005, I served the within PLAINTIFF'S REQUEST TO ADMIT SEIZED EVIDENCE OF EROTIC MATERIALS TO DEMONSTRATE DEFENDANT'S INTENT, PLAN, SCHEME AND MOTIVE 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, by transmitting a facsimile copy thereof to Attorney Mesereau, and by causing a true copy thereof to be mailed to Mr. Mesereau, first class postage prepaid, at the addresses shown on the attached Service List.

> I declare under penalty of perjury that the foregoing is true and correct. Executed at Santa Barbara, California on this 18 day of January, 2005.

SERVICE LIST THOMAS A. MESEREAU, JR. Collins, Mesereau, Reddock & Yu, LLP 1875 Century Park East, No. 700 Los Angeles, CA 90067 FAX: [CONFIDENTIAL] Attorney for Defendant Michael Jackson ROBERT SANGER, ESQ. Sanger & Swysen, Lawyers 233 E. Carrillo Street, Suite C Santa Barbara, CA 93001 FAX: (805) 963-7311 Co-counsel for Defendant BRIAN OXMAN, ESQ. Oxman & Jaroscak, Lawyers 14126 E. Rosecrans Blvd., Santa Fe Springs, CA 90670 Co-counsel for Defendant

952:10 SO +S nst