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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION**

15 THE PEOPLE OF THE STATE OF)
16 CALIFORNIA,)

17 Plaintiffs,)

18 vs.)

19 MICHAEL JOSEPH JACKSON,)

20 Defendant.)
21)
22)
23)

) Case No. 1133603

) **OPPOSITION TO DISTRICT**
) **ATTORNEY'S MOTION IN LIMINE TO**
) **EXCLUDE TESTIMONY OF WITNESSES**

) ~~UNDER SEAL~~

) Honorable Rodney S. Melville

) Date: TBA

) Time: 9:30 a.m.

) Dept.: 8

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **INTRODUCTION**

26 The prosecution asks this Court to "exclude the testimony of all witnesses for which

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28 **OPPOSITION TO DISTRICT ATTORNEY'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF**
WITNESSES

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

FEB 15 2005

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

1 statement have not been provided unless defendant can establish outside the presence of the jury
2 that such witnesses have personal knowledge of facts relevant to this case.” (Motion, page 1.)

3 Defense counsel has complied with, and will continue to comply with, the Evidence
4 Code. An order preemptively limiting Mr. Jackson’s ability to call witnesses on his behalf would
5 deprive Mr. Jackson of his federal and state constitutional rights to a fair trial, due process of
6 law, and equal protection pursuant to the Fifth, Sixth, and Fourteenth Amendments to the United
7 States Constitution and Article 1, Sections 7, 15 and 24 of the California Constitution.

8 **ARGUMENT**

9 **I.**

10 **DEFENSE COUNSEL WILL COMPLY WITH THE EVIDENCE CODE**

11 Mr. Jackson has the right to call witnesses on his behalf pursuant to the Sixth and
12 Fourteenth Amendments to the United States Constitution and Article 1, Section 15 of the
13 California Constitution. We agree that Evidence Code Section 702 states that “the testimony of a
14 witness concerning a particular matter is inadmissible unless he has personal knowledge of the
15 matter.” Defense counsel intends to call witnesses who have personal knowledge regarding the
16 subject matter of their testimony and to present evidence that otherwise complies with the code.

17 Witness lists are for the convenience of the Court and for the purpose of letting the
18 prospective jurors know who might be called as a witness.. We proceeded in good faith to
19 provide a list of such persons. We have also provided statements of witnesses we intend to call
20 to the extent that the statements of the witnesses were not already included in prosecution
21 discovery or other defense discovery. We have done our best to provide the statements as soon
22 as we formed an intent to call the witnesses. Often this is within a day or two of the defense
23 interview of the witness.

24 In addition, investigation continues and new witnesses are located or old witnesses are
25 determined to have relevant evidence. This is particularly true in this case where the government
26 itself did not provide statements of their witnesses in a timely manner. In any criminal case, the
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28 OPPOSITION TO DISTRICT ATTORNEY’S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF
WITNESSES

1 defense cannot predict precisely what the prosecution intends to do in its case in chief. Here, the
2 prosecution has made remarkable decisions and it was not possible to predict many of them.

3 Some entire subject matters were disclosed so late as to make it impossible to determine
4 who we would intend to call in defense. For example, the massive 1993 matter was provided in
5 discovery only in September of 2004, and the specific witnesses were not disclosed until
6 December 6, 2004 and January 10, 2005. The defense had no idea of what from this mass of
7 material would be addressed by the government. It was a shock to see that the government
8 intends to call all of the plaintiffs from the *Abdool* case. These plaintiffs were thoroughly
9 discredited in their civil case and Judge Canter found that they had lied repeatedly throughout the
10 proceedings. Nevertheless, since the government has indicated an intent to call them the defense
11 must locate and re-interview all of the witnesses from that trial. That is still a work in progress
12 and will result in more witnesses which will be promptly disclosed when they are interviewed
13 and when we form an intent to call them.

14 As another example, the prosecution came up with expert names but no statements of the
15 experts for such subjects as Battered Women Syndrome and Child Abuse Accommodation
16 Syndrome in their December 6, 2004 list and again on their January 10, 2005 list. Obviously, the
17 defense could not anticipate this and is currently seeking witnesses both as to the facts and as to
18 the expert opinions. Again, the statements of these defense witnesses will be turned over as soon
19 as the defense forms the intent to call them. We understand the need to do this as soon as
20 practicable and will do so

21 The test for any witness will be whether or not the statement of the witness was disclosed
22 in a timely fashion after the defense formed the intent to call the witness. The listing of the
23 witness as a potential witness on the list provided to the court is not dispositive since we cannot
24 form the intent to call a potential witness until we have received his or her statement, had a
25 chance to reflect on it and actually formed the intent to call him or her.

28 OPPOSITION TO DISTRICT ATTORNEY'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF
WITNESSES

1 II.

2 CONCLUSION

3 For the above stated reasons, the Court should deny the District Attorney's motion.

4 Dated: February 15, 2005

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12 By: 

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14 Attorneys for Defendant
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OPPOSITION TO DISTRICT ATTORNEY'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF
WITNESSES

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 301 East Cook Street, Suite A, Santa Maria, California 93454.

On February 15, 2005, I served the foregoing document: **OPPOSITION TO DISTRICT ATTORNEY'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF WITNESSES** on the interested parties in this action by depositing a true copy thereof as follows:

Tom Sneddon
Gerald Franklin
Ron Zonen
Gordon Auchincloss
District Attorney
1112 Santa Barbara Street
Santa Barbara, CA 93101
805-568-2398

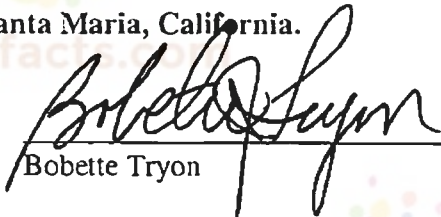
 BY U.S. MAIL - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid 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.

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

 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.

Executed February 15, 2005, at Santa Maria, California.


Bobette Tryon