

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

APR 20 2005

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

21 **THE PEOPLE OF THE STATE OF**  
22 **CALIFORNIA,**

23 Plaintiffs,

24 vs.

25 **MICHAEL JOSEPH JACKSON,**

26 Defendant.

) Case No. 1133603

)  
) **MR. JACKSON'S RESPONSE TO DISTRICT**  
) **ATTORNEY'S MEMORANDUM RE: THE**  
) **ADMISSIBILITY OF CERTAIN**  
) **TESTIMONY OF SEVERAL OF**  
) **DEFENDANT'S PROPOSED WITNESSES**

)  
) **DATE: TBA**  
) **TIME: TBA**  
) **DEPT: SM-8**

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 ARGUMENT

3 I.

4 MR. JACKSON IS ENTITLED TO REBUT ALLEGED PRIOR OFFENSE EVIDENCE  
5 WITH THE TESTIMONY OF WITNESSES WHO HAVE OBSERVED MR. JACKSON  
6 INTERACT WITH CHILDREN AND NEVER SEEN ANY IMPROPER BEHAVIOR

7 The government's argument that defense counsel should not be allowed to ask certain  
8 defense witnesses about the fact that they never witnessed Mr. Jackson behave improperly with  
9 children is without merit. As demonstrated below, the case law in California is clear that a  
10 defendant may introduce testimony of witnesses, who have personally observed the defendant  
11 interact with children for the purpose of showing that the defendant is not given to lewd acts with  
12 children.

13 The prosecution has special leave of court to offer propensity evidence under Evidence  
14 Code Section 1108. The Court certainly did not expect that Mr. Jackson would be barred from  
15 offering evidence to oppose such evidence. Evidence Code Section 1108 evidence already has a  
16 potential for unfairness. To disallow a defense to it would make such evidence not only unfair  
17 but invincible.

18 The testimony of lay witnesses that a defendant charged with lewd conduct is not a  
19 "sexual deviant," based on witnesses' observations of the defendant's conduct with children, is  
20 the proper subject of lay opinion testimony and is relevant to the charge of child molestation.  
21 (*People v. McAlpin* (1991) 53 Cal.3d 1289, 1309-1310.) A defendant may introduce evidence of  
22 specific instances of his good conduct under similar circumstances, as well as opinion evidence  
23 and reputation evidence, to rebut the government's evidence, when government introduces  
24 evidence of defendant's commission of another sexual offense. (*People v. Callahan* (1999) 74  
25 Cal.App.4th 356.)

26 The government's "negative evidence" argument, regarding the testimony of witnesses  
27 that they did not see molestation, has been distinguished from this type of case by the California  
28

1 Supreme Court. The Court in *McAlpin* and stated that:

2 The proffered testimony is thus distinguishable from the hypothetical suggested  
3 by the trial court, viz., "it's like saying, well, this defendant is charged with  
4 robbing a bank and I have a witness who saw him walk past a bank a week before  
5 without robbing it."

6 (*People v. McAlpin* (1991) 53 Cal.3d 1289, 1309 Fn. 14.)

7 The government concedes that the witnesses are present and former employees, as well as  
8 people who do work at Neverland "on a regular basis." (Memorandum, page 1.) The witnesses  
9 are not people who happened to observe Mr. Jackson on a few isolated occasions. These are  
10 precisely the types of witnesses who are in a position to testify to personal observations regarding  
11 Mr. Jackson's interaction with children.

12 II.

13 CONCLUSION

14 The case law allows this type of testimony and it should be admitted to ensure that Mr.  
15 Jackson is not deprived of his Fifth, Sixth and Fourteenth Amendment rights to due process and a  
16 fair trial.


17 Dated: April 20, 2005

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