

1 COLLINS, MESEREAU, REDDOCK & YU
2 Thomas A. Mescreau, Jr., State Bar Number 091182
3 Susan C. Yu, State Bar Number 195640
4 1875 Century Park East, 7th Floor
5 Los Angeles, CA 90067
6 Telephone: (310) 284-3120
7 Facsimile: (310) 284-3133

8 KATTEN MUCHIN ZAVIS ROSENMAN
9 Steve Cochran, State Bar Number 105541
10 Stacey McKee Knight, State Bar Number 181027
11 2029 Century Park East
12 Suite 2600
13 Los Angeles, California 90067-3012
14 Telephone: (310) 788-4455
15 Facsimile: (310) 712-8455

16 SANGER & SWYSEN
17 Attorneys at Law
18 Robert M. Sanger, State Bar No. 058214
19 233 East Carrillo Street, Suite C
20 Santa Barbara, CA 93101
21 Telephone: (805) 962-4887
22 Facsimile: (805) 963-7311

23 Attorneys for Defendant MICHAEL JOSEPH JACKSON

24 SUPERIOR COURT OF THE STATE OF CALIFORNIA
25 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

26 THE PEOPLE OF THE STATE OF
27 CALIFORNIA,

28 Plaintiffs,

29 vs.

30 MICHAEL JOSEPH JACKSON,

31 Defendant.

32 Case No. 1133603

33 TABLE OF CONTENTS AND TABLE OF
34 AUTHORITIES TO THE NOTICE OF
35 MOTION AND MOTION TO SET ASIDE
36 THE INDICTMENT (Penal Code § 995);
37 MEMORANDUM OF POINTS AND
38 AUTHORITIES

39 ~~FILED UNDER SEAL~~

40 Honorable Rodney S. Melville

41 Date: July 9, 2004
42 Time: 8:30 am.
43 Dept: SM 2

44 TABLE OF CONTENTS AND TABLE OF AUTHORITIES TO THE NOTICE OF MOTION
45 AND MOTION TO SET ASIDE THE INDICTMENT
46 (Penal Code § 995)

REDACTED

COPY

FILED

SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

JUL 06 2004

GARY M. BLAIR, Executive Officer

By *Carrie L. Wagner*

CARRIE L. WAGNER, Deputy Clerk

TABLE OF CONTENTS

1 INTRODUCTION 4

2 PROCEDURAL SUMMARY 6

3 THE SO-CALLED FACTS PRESENTED TO THE GRAND JURY 6

4 A. BACKGROUND 6

5 B. THE FIRST VISIT TO NEVERLAND 9

6 C. THE BASHIR TAPING, 13

7 D. ALLEGED THREATS. 25

8 E. THE ALLEGED INCIDENTS OF LEWD CONDUCT 43

9 F. THE INVESTIGATION CONDUCTED BY LOS ANGELES COUNTY 52

0 G. 62

1 H. 65

2 I. ALLEGATIONS OF MISCONDUCT AND 72

3 J. MR. JACKSON'S SUPPOSED TIES TO AN ALLEGED CONSPIRACY 77

4 K. INVESTIGATION BY SANTA BARBARA COUNTY 82

5 L. THE PERFUNCTORY PRESENTATION OF DEFENSE MATERIAL 87

6 PROVIDED TO THE PROSECUTION

7 ARGUMENT 88

8 I. THE GRAND JURY PROCESS IS DESIGNED TO PROTECT THE ACCUSED 88

9 FROM UNWARRANTED PROSECUTION

0 II. THE TRIAL COURT THAT MUST DETERMINE UNDER PENAL CODE 89

1 SECTION 995 WHETHER OR NOT THE GRAND JURY ABUSED ITS POWER

2 IN RETURNING THE INDICTMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III. THE ADMISSIBLE EVIDENCE IS INSUFFICIENT TO ESTABLISH A STRONG SUSPICION OF THE ELEMENTS NECESSARY TO SHOW MR. JACKSON WAS PART OF A CONSPIRACY 91

A. Proof of Intent to Agree or Conspire 92

B. Proof of Specific Intent to Commit Specific Crimes 92

IV. MERE ASSOCIATION WITH THE PERPETRATOR OF A CRIME IS NOT SUFFICIENT EVIDENCE TO ESTABLISH PARTICIPATION IN A CRIMINAL CONSPIRACY 24

V. THE EVIDENCE THAT ALLEGEDLY TIES MR. JACKSON TO A CRIMINAL CONSPIRACY IS INADMISSIBLE OVER OBJECTION AT TRIAL 96

A. "An Indictment Based Solely On Hearsay Or Otherwise Incompetent Evidence Is Unauthorized And Must Be Set Aside On A Motion Under Penal Code Section 995." (*People v. Backus* (1979) 23 Cal. 3d 360, 387.) 96

B. The Overt Acts, Listed In The Indictment, Are Not Supported By The Admissible Evidence. 97

C. Once The Inadmissible Evidence Is Properly Excised, There Is Nothing That Connects Mr. Jackson To The Overt Acts Or To The Conspiracy Itself. 100

VI. MANY OF THE OVERT ACTS THAT MR. JACKSON IS ALLEGED TO HAVE PARTICIPATED IN PERSONALLY DO NOT HAVE ANY RATIONAL CONNECTION TO A CONSPIRACY TO COMMIT CHILD ABDUCTION, FALSE IMPRISONMENT AND EXTORTION 101

VII. THE INDICTMENT MUST BE SET ASIDE BECAUSE THE DISTRICT ATTORNEY PRESENTED THE GRAND JURY WITH SO MUCH INCOMPETENT AND IRRELEVANT EVIDENCE THAT IT WOULD BE UNREASONABLE TO EXPECT THAT THE GRAND JURY COULD LIMIT ITS CONSIDERATION TO THE ADMISSIBLE, RELEVANT EVIDENCE 102

A. The Prosecution Presented The Grand Jury With A Tremendous Amount Of Inadmissible And Irrelevant Evidence. 102

B. The Appearance Of Bias In And Of Itself, Requires That The Entire Indictment Be Set Aside. 121

C. The Individual Instances Of Misconduct Discussed Above Are Enough To Require That The Indictment Be Set Aside and, When Taken As A Whole, The Cumulative Effect is Overwhelming. 121

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VIII. SHOULD THE COURT GRANT MR. JACKSON'S CONCURRENTLY FILED MOTION TO TRAVERSE, QUASH, AND SUPPRESS IS GRANTED, MR. JACKSON MUST RECEIVE A NEW DETERMINATION OF PROBABLE CAUSE WITH THE ILLEGALLY OBTAINED EVIDENCE EXCISED FROM THE EVIDENCE PRESENTED TO THE GRAND JURY 122

IX. MR. JACKSON WAS DENIED HIS RIGHTS TO DUE PROCESS AND A FAIR GRAND JURY PROCEEDING DUE TO IMPROPRIETTES IN GRAND JURY PROCEDURE 122

X. THE INDICTMENT MUST BE SET ASIDE BECAUSE THE PROSECUTOR MISSTATED THE LAW OF CONSPIRACY WHEN INSTRUCTING THE GRAND JURORS AND THE MISSTATEMENT OF LAW CAUSED THE GRAND JURY TO RETURN AN INDICTMENT ON LESS THAN REASONABLE OR PROBABLE CAUSE 123

 A. The Prosecution Misstated The Law Regarding The Required Elements Of Conspiracy. 124

 B. The Misstatement Of Law Was Prejudicial Because The Grand Jury Was Not In A Position To Correct The District Attorney's Misstatement Of Law. 125

 C. The Trial Judge Cannot Correct Instructional Error By Attempting To Make Its Own Determination Of Sufficiency Of The Evidence. 125

XI. CONCLUSION 126

APPENDIX A 127

TABLE OF AUTHORITIES

1

2 United States Supreme Court Cases

3 *Krulwitch v. United States* (1949) 336 U.S. 440 94

4 California Supreme Court Cases

5 *Cummiskey v. Superior Court* (1992) 3 Cal. 4th 1018 88, 123

6 *Garabedian v. Superior Court* (1963) 59 Cal. 2d 124 90

7 *Greenberg v. Superior Court* (1942) 19 Cal. 2d 319 88

8 *In re Tyler* (1884) 64 Cal. 434 102

9 *Johnson v. Superior Court* (1975) 15 Cal. 3d 248 88, 90, 101, 122, 125

10 *People v. Aranda* (1965) 63 Cal.2d 518 103

11 *People v. Bachtus* (1979) 23 Cal. 3d 360 88, 92, 96, 102, 122

12 *People v. Eubanks* (1996) 14 Cal. 4th 580 121

13 *People v. Hill* (1998) 17 Cal. 4th 800 107

14 *People v. Horn* (1974) 12 Cal.3d 290 92, 124

15 *People v. Morante* (1999) Cal. 4th 403 124

16 *People v. Morris* (1988) 46 Cal.3d 1 89, 90

17 *People v. Swain* (1996) 12 Cal. 4th 593 124

18 *People v Valenti* (1957) 49 Cal 2d 199 97

19 *Union Const. Co. V. Western Union Tel. Co.* (1912) 163 Cal. 298 98

20 *Williams v. Superior Court* (1969) 71 Cal.2d. 1144 123

21 California Appellate Courts

22 *Dong Haw v. Superior Court* (1947) 81 Cal.App.2d 153 94

23 *Birt v. Superior Court* (1973) 34 Cal.App. 3d 934 90, 101

24 *People v. Boehm* (1969) 270 Cal.App. 2d 13 89

25 *People v. Byars* (1961) Cal.App. 2d 794 97

26 *People v. Fisk* (1975) 50 Cal.App.3d 64 123

27 *People v. Gnass* (2002) 101 Cal.App. 4th 1271 123, 125, 126

1	<i>People v. Horace</i> (1954) 127 Cal.App. 2d 366	98
2	<i>People v. Manson</i> (1976) 61 Cal.App. 3d 102	94
3	<i>People v. Samarjian</i> (1966) 240 Cal.App.2d 13	94
4	<i>People v. Sherwin</i> (2000) 82 Cal.App. 4 th 1404	122
5	<i>People v. Superior Court (Mouchaourab)</i> (2000) 78 Cal.App. 4 th 403	124
6	<i>People v. Villa</i> (1957) 156 Cal.App. 2d 128	94
7	<u>California Statutes</u>	
8	California Evidence Code Section 1152	72
9	California Evidence Code Section 1360	105
10	CALJIC 6.10	91
11	CALJIC 6.18	94
12	CALJIC 9.70	92
13	CALJIC 14.70	93
14	CALJIC 16.135	93
15	Penal Code Section 939.6	89, 91, 97
16	Penal Code Section 995	96
17	Penal Code Section 182	6
18	Penal Code Section 222	6
19	Penal Code Section 288 (a)	6
20	Penal Code Section 664	6
21	Penal Code Section 939.8	123
22		
23		
24		
25		
26		
27		
28		

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 July 1, 2004, I served the foregoing document TABLE OF CONTENTS AND TABLE OF AUTHORITIES TO THE MOTION TO SET ASIDE THE INDICTMENT(Penal Code § 995); MEMORANDUM OF POINTS AND AUTHORITIES 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
1105 Santa Barbara Street
Santa Barbara, CA 93101
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.

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

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

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

Executed July 1, 2004, at Santa Barbara, California.


Bobette J. Tryon

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA:

I am a citizen of the United States of America and a resident of the county aforesaid. I am employed by the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action. My business address is 312-H East Cook Street, Santa Maria, California.

On JULY 6, 20 04, I served a copy of the attached TABLE OF CONTENTS AND TABLE OF AUTHORITIES TO THE NOTICE OF MOTION AND MOTION TO SET ASIDE THE INDICTMENT (PENAL CODE § 995); MEMORANDUM OF POINTS AND AUTHORITIES – REDACTED VERSION addressed as follows:

THOMAS W. SNEDDON, DISTRICT ATTORNEY
DISTRICT ATTORNEY'S OFFICE
1105 SANTA BARBARA STREET
SANTA BARBARA, CA 93101

THOMAS A. MESEREAU, JR.
COLLINS, MESEREAU, REDDOCK & YU, LLP
1875 CENTURY PARK EAST, 7TH FLOOR
LOS ANGELES, CA 90067

X FAX

By faxing true copies thereof to the receiving fax numbers of: 805-568-2398 (DISTRICT ATTORNEY); 310-861-1007 (THOMAS A. MESEREAU, JR). Said transmission was reported complete and without error. Pursuant to California Rules of Court 2005(i), a transmission report was properly issued by the transmitting facsimile machine and is attached hereto.

___ MAIL

By placing true copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States Postal Service mail box in the City of Santa Maria, County of Santa Barbara, addressed as above. That there is delivery service by the United States Postal Service at the place so addressed or that there is a regular communication by mail between the place of mailing and the place so addressed.

___ PERSONAL SERVICE

By leaving a true copy thereof at their office with their clerk therein or the person having charge thereof.

___ EXPRESS MAIL

By depositing such envelope in a post office, mailbox, subpost office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with express mail postage paid.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 6TH day of JULY, 20 04, at Santa Maria, California.

Carrie L. Wagner
CARRIE L. WAGNER