

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  
1105 Santa Barbara Street  
Santa Barbara, CA 93101  
Telephone: (805) 568-2300  
FAX: (805) 568-2398

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

JUL 23 2004

GARY M. BLAIR, Executive Officer

BY Carrie L. Wagner  
CARRIE L. WAGNER, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA BARBARA  
SANTA MARIA DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA,  
Plaintiff,

v.

MICHAEL JOE JACKSON,

Defendant.

No. 1133603

~~PROPOSED~~  
**REDACTED**  
PLAINTIFF'S OPPOSITION TO  
DEFENDANT'S MOTION TO  
SET ASIDE THE INDICTMENT  
(Pen. Code, § 995)

DATE: July 9, 2004  
TIME: 8:30 a.m.  
DEPT: 9 (Melville)

~~UNDER SEAL~~

Introduction

Defendant has moved, pursuant to Penal Code section 995, for an order setting aside the indictment in this matter. This is Plaintiff's response.

Procedural Summary

Defendant's "Procedural Summary" is adopted by Plaintiff

Summary of the Evidence

Defendant's summary of the evidence (Motion 6-88), under the argumentative heading, "The So-Called Facts Presented to the Grand Jury," is reasonably complete and thoughtfully organized. It is adopted by Plaintiff, with such additions and corrections as are appropriate in the discussion which follows.

1 Defendant's Issues

2 1. "The admissible evidence is insufficient to establish a strong suspicion of the  
3 elements necessary to show Mr. Jackson was part of a conspiracy." (Motion 91-94)

4 2. The evidence demonstrated merely defendant's association with his alleged co-  
5 conspirators, not his knowing and intentional participation in a conspiracy. (Motion 94-96.)

6 3. "The evidence . . . that allegedly links Mr. Jackson to a supposed conspiracy . . .  
7 was not admissible at trial over objection of counsel." (Motion 96-101.)

8 4. "Many of the overt acts that Mr. Jackson is alleged to have participated in  
9 personally do not have any rational connection to a conspiracy to commit child abduction, false  
10 imprisonment and extortion." (Motion 101-102.)

11 5. "The district attorney presented the Grand Jury with so much incompetent and  
12 irrelevant evidence that it would be unreasonable to expect that the Grand Jury could limit its  
13 consideration to the admissible, relevant evidence." (Motion 102-121.)

14 6. "Mr. Jackson was denied his rights to due process and a fair grand jury  
15 proceeding due to improprieties in grand jury procedure." (Motion 122-123.)

16 7. "The prosecutor misstated the law of conspiracy when instructing the grand jurors  
17 and the misstatement of law cause the grand jury to return an indictment on less than  
18 reasonable or probable cause." (Motion 123-126.)

19 Plaintiff will address those issues, except Issue 6, in turn. (Defendant's argument  
20 that "IX Mr. Jackson Was Denied His Right To Due Process And A Fair Grand Jury  
21 Proceeding Due To Improprieties In Grand Jury Procedure," Motion 122-123, is not so much a  
22 substantive argument as a foot in the door. He states he "will be seeking other relief regarding  
23 the unfairness of the proceeding and the effect of the District Attorney failing to provide  
24 exculpatory evidence." We cannot address an argument that has not yet been made, but only  
25 hinted at.)

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28 ////

I  
STANDARD ON REVIEW

Penal Code section 995 declares, in pertinent part, that “(a) . . . the indictment . . . shall be set aside by the court in which the defendant is arraigned, upon his or her motion . . . (1) . . . (A) Where it is not found, endorsed, and presented as prescribed in this Code. (B) That the defendant has been indicted without reasonable or probable cause.”

In considering a motion to dismiss under Penal Code section 995, the superior court sits as a reviewing court [citation], and it is the grand jury that is the factfinder. In a section 995 proceeding, the trial court may set aside the indictment only if the grand jury acted “without reasonable or probable cause.” In the course of that determination, “[e]very legitimate inference that may be drawn from the evidence must be drawn in favor of the [indictment].” (*People v. Hill* (1971) 3 Cal.3d 992, 996.) “[A]n indictment will not be set aside if there is some rational ground for assuming the probability that an offense has been committed and the accused is guilty of it, . . .” [Citation.] (*People v. Pic'l* (1982) 31 Cal.3d 731, 737.) (Accord, *People v. Hillhouse* (2003) 109 Cal.App.4th 1612, 1622-1623 [motion to set aside information].)

Penal Code section 995 permits an attack upon an indictment only on two grounds: “Where it is not found, endorsed, and presented as prescribed in this code,” or “that the defendant has been indicted without reasonable or probable cause.” With one exception – viz, where, in some way, the proceedings denied the defendant due process (*People v. Backus* (1979) 23 Cal.3d 360, 392-393) – the court may not set aside an indictment on any grounds other than the two named in section 995. (See *People v. Van Randall* (1956) 140 Cal.App.2d 771, 774.)

See *People v. Superior Court (Jurado)* (1992) 4 Cal.App.4th 1217: “[A]n indictment or information should be set aside only where there is a total absence of evidence to support a necessary element of the offense charged. [Citations.]” (*Id.*, p. 1226.) “[W]e reiterate we are not reviewing the sufficiency of evidence to support a jury verdict. Rather, we are only deciding if there is some evidence to support the alleged special circumstance allegation.” (*Id.* p. 1227.)



II

THE EVIDENCE IS MORE THAN SUFFICIENT TO  
ESTABLISH A STRONG SUSPICION THAT DEFENDANT  
WAS PART OF A CONSPIRACY

A. Defendant's Argument, Summarized

Defendant argues that "The admissible evidence is insufficient to establish a strong suspicion of the elements necessary to show Mr. Jackson was part of a conspiracy." (Motion 91-94.) "There is simply no evidence that Mr. Jackson had the specific intent to agree or conspire with anyone about anything." (*Id.*, 92:8-10.) And, "the grand jury was not presented with admissible evidence that established Mr. Jackson had the specific intent to commit the particular crimes that are alleged as the object of the conspiracy." (*Id.*, 92:18-20.)

The People respectfully disagree.

B. Evidence Of Defendant's Intent To Conspire

Martin Bashir's documentary "Living with Michael Jackson" aired in the United Kingdom a few days before it was broadcast nationwide in the United States on February 6, 2003. Even before the program first aired, public relations professionals with knowledge of its content perceived the documentary would be a public relations disaster for Michael Jackson.

[REDACTED]

[REDACTED]

<sup>1</sup> Defendant devotes three full pages (Motion 97:14 – 100:22) to the argument that there was no sufficient foundation for [REDACTED] testimony that it was Michael Jackson – possessor of what surely is one of the most recognizable voices in America – with whom she spoke on the telephone before flying to Miami at his request and spending two days there in his company.

There is real desperation in that argument.



1 [REDACTED]  
2 [REDACTED]  
3 C. Evidence Of Defendant's Specific Intent To Commit Specific Crimes

4 Defendant does not claim the alleged crimes were not committed. Nor does he deny  
5 that the people who committed them worked together in a way that necessarily implied a  
6 preexisting plan, scheme and design. He simply argues that "the grand jury was not presented  
7 with admissible evidence that established Mr. Jackson had the specific intent to commit the  
8 particular crimes that are alleged as the object of the conspiracy." (Motion 92:18-20.)

9 Each of the three crimes alleged as the objects of the conspiracy charged in Count  
10 One of the indictment were committed in furtherance of Michael Jackson's evident and  
11 personal concern to minimize the damage he brought upon himself by his ill-considered  
12 involvement of [REDACTED] with him in the portions of "Living with Michael Jackson"  
13 filmed at Neverland Ranch.

1 [REDACTED]  
2 The charged offenses were committed in furtherance of that overarching  
3 agreement, and (the Grand Jury reasonably inferred) were each the consequence of a specific  
4 agreement by defendant and his henchmen between February 1st and March 31, 2003 to  
5 commit those crimes in furtherance of defendant's intense desire to salvage his reputation and  
6 preserve his earning ability.

7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 Defendant had the most to lose from the fallout of "Living with Michael Jackson."  
16 The Grand Jury could reasonably infer from the evidence of the well-coordinated activities of  
17 his associate and hirelings in February and March, 2003 that they acted for his benefit and at  
18 his direction.



1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED] The Grand Jury could reasonably infer that when defendant's identified  
5 associates took coordinated action for his benefit to mitigate the fallout from the Bashir  
6 documentary, particularly with respect to the [REDACTED] family members, it was with defendant's  
7 knowledge and at his direction.

8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED] One criminal act begat another, and another.  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]

25 "The act of one conspirator pursuant to or in furtherance of the common design of  
26 the conspiracy is the act of all conspirators" (CALJIC 6.11, in part), and defendant's vicarious  
27 liability for the acts of his co-conspirators extends to reasonably foreseeable crimes carried out  
28 to fulfill the criminal objective. (*People v. Croy* (1985) 41 Cal.3d 1, 12, fn. 5.)



III

DEFENDANT WAS NOT MERELY "ASSOCIATED" WITH THE THUGS WHO CARRIED OUT THE TARGET CRIMES. HE EMPLOYED MANY OF THEM, INSPIRED THEM ALL AND WAS OBSERVED TO SUPERVISE SOME OF THEIR EFFORTS ON HIS BEHALF

Defendant argues that the evidence demonstrated merely defendant's association with his alleged co-conspirators, not his knowing and intentional participation in a conspiracy. (Motion 94-96.)

Conspiracies are rarely hatched in public, and direct evidence of their formation is seldom available. An intent to agree to commit a crime, like other elements of the inchoate crime of conspiracy, "may . . . "be inferred from the conduct, relationship, interests, and activities of the alleged conspirators before and during the alleged conspiracy. [Citations.]" (*People v. Rodriguez* (1994) 8 Cal.4th 1060, 1135, quoting *People v. Cooks* (1983) 141 Cal.App.3d 224, 211." (*People v. Herrera* (2000) 83 Cal.App.4th 46, 64.)

In this case, the agreement itself is to be inferred from the participation of the named conspirators (defendant among them) in their coordinated efforts to keep the family away from public attention even before the February 6, 2003 broadcast of Martin Bashir's "Living with Michael Jackson" across the United States. It may be inferred from their efforts to for whatever help it might lend to lessening the public relations disaster the broadcast of Bashir's documentary had become.

The evidence demonstrates prompt, coordinated action by those most intimately associated with defendant in his business and professional life to mitigate the public relations catastrophe that had befallen him. Defendant helped initiate those efforts himself.

Who, if not defendant, authorized and quarterbacked the team effort on his behalf?

[REDACTED]

The Grand Jury was justified in inferring that defendant played an active if discreet role in the effort to isolate the [REDACTED] family and secure the cooperation of its members.

#### IV

THE EVIDENCE UPON WHICH THE GRAND JURY RELIED  
IN FINDING PROBABLE CAUSE TO INDICT DEFENDANT  
ON THE CHARGES AGAINST HIM WAS, IN SUFFICIENT  
PART, ADMISSIBLE AGAINST HIM AT TRIAL

Defendant argues that "The evidence presented to the grand jury that allegedly links Mr. Jackson to a supposed criminal conspiracy to commit child abduction, false imprisonment and extortion is was [sic] not admissible at trial over the objection of counsel." (Motion 96:16-18.) He focuses on the overt act allegations, and argues "The Overt Acts, Listed In The Indictment, Are Not Supported By The Admissible Evidence." (*Id.*, 97:14-15.)

The Grand Jury considered 12 days of testimony and nearly 130 exhibits in finding *at least one* of the 24 alleged overt acts was committed in furtherance of the conspiracy.

[REDACTED]

Out of an abundance of caution, the People set out each alleged overt act, followed by a brief summary of the evidence that supports that act. All but Overt Act No. 16 is



1 supported by testimonial or documentary evidence, or by both testimony and documents.

2 OVERT ACT NUMBER 1

3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 Evidence

10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]

24 OVERT ACT NUMBER 2

25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]



1 Evidence

2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]

17 OVERT ACT NUMBER 3

18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]

25 Evidence

26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

[REDACTED]

OVERT ACT NUMBER 4

[REDACTED]



1 [REDACTED]  
2 OVERT ACT NUMBER 5  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 Evidence  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 OVERT ACT NUMBER 6  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]



[REDACTED]

Evidence

[REDACTED]

OVERT ACT NUMBER 7

[REDACTED]

Evidence

[REDACTED]

OVERT ACT NUMBER 8

[REDACTED]

Evidence

[REDACTED]

[REDACTED]

OVERT ACT NUMBER 9

[REDACTED]

Evidence

[REDACTED]

OVERT ACT NUMBER 10

[REDACTED]

Evidence

[REDACTED]

OVERT ACT NUMBER 11

[REDACTED]



[REDACTED]

Evidence

[REDACTED]

OVERT ACT NUMBER 12

[REDACTED]

Evidence

[REDACTED]



[REDACTED]

OVERT ACT NUMBER 13

[REDACTED]

Evidence

[REDACTED]

OVERT ACT NUMBER 14

[REDACTED]

[REDACTED]

Evidence

[REDACTED]

OVERT ACT NUMBER 15

[REDACTED]

Evidence

[REDACTED]



1 OVERT ACT NUMBER 16

2 [REDACTED]  
3 [REDACTED]  
4 Evidence

5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 OVERT ACT NUMBER 17

13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 Evidence

17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 OVERT ACT NUMBER 18

25 [REDACTED]  
26 [REDACTED]  
27 Evidence



[REDACTED]

OVERT ACT NUMBER 19

[REDACTED]

Evidence

[REDACTED]

OVERT ACT NUMBER 20

[REDACTED]

Evidence

[REDACTED]

OVERT ACT NUMBER 21

[REDACTED]



Evidence

[REDACTED]

OVERT ACT NUMBER 22

[REDACTED]

Evidence

[REDACTED]



1 [REDACTED]  
2 [REDACTED]  
3\* OVERT ACT NUMBER 23  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 Evidence  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
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19 [REDACTED]  
20 [REDACTED]  
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22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]



[REDACTED]

OVERT ACT NUMBER 24

[REDACTED]

Evidence

[REDACTED]



1 OVERT ACT NUMBER 25

2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]

5 Evidence

6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
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11 [REDACTED]  
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13 [REDACTED]  
14 [REDACTED]

15 OVERT ACT NUMBER 26

16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

26 Evidence

27 [REDACTED]  
28 [REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

OVERT ACT NUMBER 27

[REDACTED]

Evidence

[REDACTED]



[REDACTED]

OVERT ACT NUMBER 28

[REDACTED]

Evidence

[REDACTED]

[REDACTED]

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8 V  
9 EACH OF THE OVERT ACTS HAS A DIRECT CONNECTION  
10 TO THE CONSPIRACY ALLEGED IN COUNT ONE  
11

12 The stated object of the conspiracy to commit false imprisonment, child abduction  
13 and extortion alleged in count one was to *unlawfully control, withhold, isolate, conceal, entice,*  
14 *and threaten,* [REDACTED] and her children. Each of the 24 alleged overt acts was done in  
15 furtherance of the criminal objectives of this conspiracy.

16 Defendant asserts that overt acts nos. 1, 2, 3, 4, 19, 20, 21, 22 and 26 do not have a  
17 rational connection to the alleged conspiracy. Since defendant makes no challenge to the  
18 remaining overt acts, it is assumed that defendant concedes the remaining 15 overt acts do have  
19 a rational connection to the conspiracy. Because only one overt act is necessary to preserve the  
20 integrity of count one, defendant's censure does not impact the legitimacy of the indictment.

21 It is evident that defendant misunderstands the essential purpose of this conspiracy.  
22 Every overt act alleged in count one evinces an overall scheme to manipulate and control the  
23 [REDACTED] family which enabled defendant to falsely imprison the family, separate the children  
24 from their mother and defraud them [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]



1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED] were all designed to entice and  
7 seduce the [REDACTED] children, both for the purpose of separating the children from their mother  
8 and to manipulate and control the children in a manner which would then control [REDACTED].  
9 It was this control that allowed defendant to falsely imprison the family, abduct the children  
10 from their mother and extort property from the [REDACTED] family.

11 VI

12 IF SOME "INCOMPETENT AND IRRELEVANT  
13 EVIDENCE" WAS PUT BEFORE THE GRAND  
14 JURY IN THE COURSE OF A 12-DAY HEARING,  
15 IT DID NOT PREVENT THE GRAND JURY FROM  
16 FAIRLY CONSIDERING THE ADMISSIBLE  
17 EVIDENCE IN FINDING THE INDICTMENT

18 A. Introduction

19 In the bold-cap caption for his Argument VII, defendant argues that "The  
20 Indictment Must Be Set Aside Because The District Attorney Presented The Grand Jury With  
21 So Much Incompetent And Irrelevant Evidence That It Would Be Unreasonable To Expect  
22 That The Grand Jury Could Limit Its Consideration To The Admissible, Relevant Evidence."  
23 (Motion 102:7-11.) He offers several specifications in support of that charge, which will be  
24 considered in turn.

25 B. The Amount of "Inadmissible and Irrelevant Evidence"

26 Under the subheading "A. The Prosecution Presented The Grand Jury With A  
27 Tremendous Amount Of Inadmissible And Irrelevant Evidence." (Motion 102:12 - 103:4)  
28 Defendant refers the court to "a selection of evidence which would not be admissible over  
objection at trial," which he attached as Appendix A to his motion.

1 One may assume that defendant culled all the "inadmissible and irrelevant  
2 evidence" he deemed worth mentioning when he assembled his Appendix A [REDACTED]  
3 [REDACTED]  
4

5 Plaintiff respectfully attaches as Appendix A to this Opposition our analysis of  
6 defendant's Appendix A.

7 C. The Evidence Of [REDACTED]

8 Under subheading "B. Poisoning the Well with the [REDACTED]  
9 (sic; Motion 103:6), defendant complains bitterly about evidence that it was not only the  
10 prosecutor's obligation to put before the grand jury, but evidence that, for the most part, he  
11 insisted the prosecutor provide that body.

12 It is no mystery what defendant will urge as a defense when this matter comes to  
13 trial. [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]

27 <sup>3</sup> A transcript of the King-Geragos interview was attached as an exhibit to the People's request, dated  
28 January 6, 2004, for a gag order in this matter.



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[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The binders were identified in front of the press as containing documents revealing "one hundred" items of exonerating material for presentation to the Grand Jury. Subject to some deletions (to be discussed later) the binders and their contents were turned over to the grand jurors as defense counsel requested.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

A witness's prior statement that is consistent with his testimony at trial is admissible under certain conditions when the credibility of the witness has been attacked. The statement is generally admissible, however, only to rehabilitate the witness – to support his credibility —

////

1 and not as evidence of the truth of the matter stated. (*People v. Kynette* (1940) 15 Cal.2d 731,  
2 753-754.)

3 We respectfully suggest that where the testimony of a prospective witness at a  
4 preliminary hearing or grand jury proceeding and the trial itself has been anticipated by the  
5 accused and damned on national television by him and his retained counsel in advance of the  
6 first evidentiary proceeding in the case against him, he is not well-positioned to complain that  
7 the preliminary trier of fact was acquainted with evidence corroborating the truth of the  
8 complaining witnesses against him.

9 C. The Allegation That [REDACTED] Testimony Was Prejudicial  
10 To The Grand Jury

11 Defendant complains that [REDACTED] references to him as "the Devil," and her  
12 belief that his money is "the Devil's money" ("devil" capitalized in defendant's motion for  
13 effect) must be considered in context. [REDACTED] was asked if she intended to sue the  
14 defendant. Her answer was candid and to the point: "I don't want the devil's money."

15 [REDACTED] trusted Michael Jackson. She allowed her children to stay with him.  
16 She believed he wanted to help her. [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 Under the circumstances, "devil" seems rather tame. In any event, it obviously was  
21 a spontaneous characterization by an understandably upset witness, and it could not have  
22 created undue prejudice in a grand jury composed of individuals of normal intelligence,  
23 maturity and sensibilities. The grand jury in this case must be deemed to have understood how  
24 a woman who had discovered her children had been abused would be angry at the abuser. It is  
25 not likely that use of the word "devil" would have had any inappropriate effect upon this grand  
26 jury.  
27 [REDACTED]  
28 [REDACTED]



.com  
 mjfacts.com



1 Defendant advances no authority for the proposition that the uncorroborated  
2 testimony of a single witness on such a matter is, per se, inadmissible. The contrary is true: a  
3 jury may give uncorroborated testimony whatever weight it thinks that evidence deserves.  
4 Such testimony if believed is sufficient for the proof of a fact. (See CALJIC No. 2.27.)  
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1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]

12 D. The District Attorney Did Not "Run The Grand Jury"

13 Defendant claims the District Attorney "ran the grand jury" by dictating when the  
14 grand jury would take breaks. While the prosecutors did suggest break times throughout the  
15 proceedings, the notion that this in some way influenced the grand jury proceedings is nothing  
16 short of ridiculous. Contrary to defendant's assertion, the grand jury was frequently asked  
17 when and if they wanted to take breaks (see RT 39:25-28; 330:12-21; 398:4-7; 487:21-23; 558:  
18 27-28; 987:10-15; 1251:5-6; 1322:4-7; 1189:24-27). The record reflects that the prosecutors  
19 were at all times courteous and considerate to the members of the grand jury, the foreperson  
20 and its secretary.

21 Next, defendant complains, ironically, that the district attorney did not ask a  
22 question regarding [REDACTED]

23 [REDACTED]. This question would have elicited an incriminating response that could have  
24 constituted inadmissible character evidence. The prosecutor properly did not ask questions  
25 concerning defendant's illegal conduct with other children *to the benefit of the defendant*.

26 E. The Grand Jury Was Not Under The Control Of The Lead Detective

27 Contrary to defendant's assertions, the grand jury was never sequestered for their  
28 safety. The grand jury was convened at a special location to preserve the secrecy of the

1 proceedings from the prying eyes of the media. "[T]he right and duty of the grand jury  
2 proceedings to conduct their investigations, deliberations and voting in secret, which were won  
3 and established in England, are substantially the same for modern California grand jurors."  
4 (*McClatchy Newspapers v. Superior Court* (1988) 4 Cal.3d 1162, 1173.) The Sheriff's  
5 Department, in cooperation with the Santa Barbara Superior Court, took special care to  
6 preserve the secrecy of grand jury in this unusual high publicity case.

7 Contrary to defendant's assertion, Santa Barbara Sheriff's Captain Don Patterson was  
8 in charge of the security for the grand jurors, *not* the lead detective. Lieutenant Jeff Klapakis'  
9 peripheral involvement in security of witnesses and the grand jury in no way affected the grand  
10 jury's independent evaluation in this case, and the record is bereft of any evidence to the  
11 contrary.

#### 12 F. Presentation Of Defense Exculpatory Evidence

13 As noted, on April 2, 2004 Attorney Ben Brafman presented twenty identical black  
14 binders of exonerating materials to the prosecution to be presented to the grand jury. The  
15 cover letter will be found in the binder the defense deposited with the Court. In the letter the  
16 defense requested that the grand jury be given the information of one hundred separate matters  
17 of exonerating evidence supported by sixty one separate exhibits, mostly segments of law  
18 enforcement investigative reports.

19 On April 5, 2004 District Attorney Tom Sneddon wrote Attorney Geragos and  
20 indicated we were willing to submit the binders to the jury subject to clarification on 11 of the  
21 100 items of exoneration. (See Exhibit A, attached.) Of those 11 items, Mr. Sneddon indicated  
22 that the prosecution would submit 10 if the defense wished us to do so upon further reflection,  
23 but that he did not think it would serve defendant's interests. The eleventh item (No.21 in the  
24 binder) was unsupported by documentation and the prosecution concluded it would not submit  
25 that item to the grand jury.

26 The defense responded with a letter from Steve Cockran on April 8th, and finally a  
27 letter from Mark Geragos on April 19th. (Both are attached, as Exhibits Nos. B and C.)

28 Although the defense is critical of the prosecution's "perfunctory" presentation of



1 their binder in their statement of facts they do not include a discussion in the argument section  
2 of their brief of what was redacted, why it was redacted, or whether it was done so with the  
3 concurrence of the defense given the ongoing negotiations. In the absence of any argument  
4 from the defense that any particular item of exonerating evidence, or combination of items, was  
5 withheld from the grand jury without their agreement and to the detriment of the defendant, we  
6 must assume the defense has waived the issue.

7 VII

8 THE WRITTEN INSTRUCTION ON THE ELEMENTS  
9 OF THE CRIME OF CONSPIRACY WAS INCOMPLETE,  
10 BUT THE OMITTED ELEMENT WAS DISCUSSED BY  
11 THE PROSECUTOR IN THE COURSE OF HIS  
12 SUMMATION. NO CONFUSION WAS LIKELY  
13 AND HENCE, NO PREJUDICE FLOWED FROM IT

14 Defendant argues, "Mr. Auchincloss failed to instruct the grand jury that a  
15 conviction of conspiracy requires not only the specific intent to commit an offense, but also the  
16 *specific intent to agree or conspire*. (Motion 124:4-5; his emphasis.)

17 Mr. Auchincloss failed to instruct the jury that a conviction for  
18 conspiracy requires proof that the defendant and another person had  
19 the specific intent to agree or conspire to commit an offense. Mr.  
20 Jackson was prejudiced because the grand jury never considered an  
21 essential element of conspiracy when determining that a strong  
22 suspicion of conspiracy existed. The grand jury returned the  
23 indictment on less than reasonable or probable cause because they  
24 were never instructed to consider this essential element. (Motion  
25 124:27 – 125:5.)

26 Actually, Mr. Zonen read the instructions to the Grand Jury. (See RT 1751 – 1770).  
27 Mr. Auchincloss' role in the argument was to summarize and discuss the evidence in support of  
28 Count One (the conspiracy count), in the course of which he discussed portions of the  
instructions that earlier had been read to the Grand Jury by Mr. Zonen.

29 The conspiracy instruction Mr. Zonen read to the Grand Jury informed it, in part,  
30 that "A conspiracy is an agreement entered into between two or more persons with the specific

1 intent to agree to commit a particular crime or crime , followed by an overt act committed in  
2 this state by one or more of the parties for the purpose of accomplishing the object of the  
3 agreement.” (RT 1751:10-15; emphasis added.)

4 The articulated premise of defendant’s argument is, therefore, mistaken.

5 As the court will note, that particular conspiracy instruction was nevertheless  
6 deficient, in that the phrase “**and with the further specific intent to commit [those] crimes**”  
7 which should have followed the emphasized phrase (see CALJIC 6.10) was inadvertently  
8 deleted.

9 But Mr. Zonen further instructed the grand jury that “A member of a conspiracy is  
10 not only liable for the particular crime that to his knowledge he and his confederates agree[d] to  
11 and did commit, but is also liable for the natural and probable consequences of any crime or  
12 act of a co-conspirator, including the co-conspirator’s commission of another crime to further  
13 the object of the conspiracy to commit the agreed-upon crimes, even though that additional  
14 crime or act was not intended as a part of the agreed upon objective, and even though he was  
15 not present at the time of the commission of that crime or act.” (CALJIC 6.11; RT 1752:18-  
16 28.)

17 And Mr. Auchincloss, in his argument, noted that “basically a conspiracy is simply  
18 an agreement among two or more people to commit a crime, intentionally commit that crime,  
19 with an overt act done in furtherance or in the direction of that agreement.” (RT 1823:1-5;  
20 emphasis added.)

21 There’s only three elements . . . An agreement to commit a crime.

22 Two or more people. Very simple term or element. Specific intent to  
23 commit that crime. There has to be an intent among those two people  
24 or more, to commit the crime that is the object of the conspiracy. (RT  
25 1823:6-16; emphasis added.)

26 Mr. Auchincloss argued that the evidence proved that the three target crimes  
27 actually were committed, and that fact was evidence of the conspirators’ intent to commit those  
28 crimes. He asked rhetorically “Why did we put on all this evidence? To provide you with the



1 circumstantial evidence you need so that you can make the reasonable inferences that are  
2 necessary to determine two things. That an agreement occurred, and what was their intent.  
3 That's the beauty of this case. Because many conspiracies we don't have completed offenses.  
4 Here we have an abundance of completed offenses. And you can look at those completed  
5 offenses and say, 'Of course that was their intent. That's what they went out and did.' (RT  
6 1832:4-14; emphasis added..)

7 Instructional error in the course of a grand jury proceeding, the purpose of which is  
8 to determine if there is probable cause to believe the charged crime was committed, is not as  
9 serious a problem as it is in a criminal trial, in which each element of the charged offense must  
10 be proved beyond a reasonable doubt and the jury receives the applicable law from the judge.

11 Penal Code section 995 permits an attack upon an indictment only on two grounds:  
12 "Where it is not found, endorsed, and presented as prescribed in this code," or "that the  
13 defendant has been indicted without reasonable or probable cause." With one exception – viz.  
14 where, in some way, the proceedings denied the defendant due process (*People v. Backus*  
15 (1979) 23 Cal.3d 360, 392-393 — the court may not set aside an indictment on any grounds  
16 other than the two named in section 995. (In *Backus*, the court concluded "the nature and  
17 extent of the inadmissible evidence was not such that it may have compromised the  
18 independence of the grand jury and contributed to the decision to indict." *Id.*, at p. 393. And  
19 see *People v. Van Randall* (1956) 140 Cal.App.2d 771, 774.)

20 Instructional error does not warrant setting aside an indictment unless the court  
21 concludes that the defective instruction was "likely to have caused the grand jury to return an  
22 indictment on less than reasonable or probable cause. (*Cummiskey*, *supra*, 3 Cal.4th at p. 1022,  
23 fn. 1.)" (*People v. Gnass* (2002) 101 Cal.App.4th 1271, 1313.)

24 Here, the grand jury was informed that an element of the conspiracy count is a  
25 specific intent by the conspirators to commit the crime or crimes they had agreed to commit,  
26 albeit not by the first of the written instructions concerning the elements of conspiracy. (Again,  
27 see RT 1823.) This, then, is not a case like *Gnass*, in which the grand jury "knew nothing"  
28 about a part of the law (the mental state necessary for a criminal conflict of interest under

1 Government Code section 1097) that was central to an informed decision whether Gnass had  
2 violated section 1090.

3 The grand jury had evidence before it that the agreed-upon crimes were, in fact,  
4 committed by one or more of the conspirators. Two of those crimes (child abduction and  
5 extortion) are specific intent crimes. It simply is not reasonable to suppose that defendant, as  
6 one of the conspirators, specifically intended to agree to commit those crimes but may not  
7 have specifically intended that he and/or his co-conspirators commit the very crimes they had  
8 agreed to commit and that were then committed. This court may "consider the instructional  
9 error along with the evidence and the manner in which the prosecutor conducted the  
10 proceedings, to determine whether the grand jury found the indictment on something less than  
11 reasonable or probable cause." (*Gnass, supra*, 101 Cal.App.4th at p. 1314.)  
12

### 13 CONCLUSION

14 The admissible evidence put before the grand jury amply established a "strong  
15 suspicion" that defendant conspired with others (most of them, [REDACTED]  
16 [REDACTED]) to commit the target crimes of false imprisonment, child abduction and extortion, and  
17 specifically intended that those crimes be committed. The flawed jury instruction did not  
18 mislead the grand jury in its finding that defendant intended to conspire and to commit the  
19 target crimes. Defendant does not challenge the evidence in support of Counts Two through  
20 Ten. His motion to set aside the indictment should be denied.

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22 ////

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28 ////



1 DATED: July 6, 2004

2 Respectfully submitted,

3 THOMAS W. SNEDDON, JR.  
4 District Attorney

5 By: \_\_\_\_\_  
6 Gerald McC. Franklin, Senior Deputy

7 \_\_\_\_\_  
8 Ronald Zonen, Senior Deputy

9 \_\_\_\_\_  
10 J. Gordon Auchincloss, Senior Deputy

11 \_\_\_\_\_  
12 Margaret O'Malley, Deputy