

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY  
County of Santa Barbara  
2 By: RONALD J. ZONEN (State Bar No. 85094)  
Senior Deputy District Attorney  
3 GORDON AUCHINCLOSS (State Bar No. 150251)  
Senior Deputy District Attorney  
4 GERALD McC. FRANKLIN (State Bar No. 40171)  
Senior Deputy District Attorney  
5 1112 Santa Barbara Street  
Santa Barbara, CA 93101  
6 Telephone: (805) 568-2300  
FAX: (805) 568-2398  
7

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

JAN 10 2005

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

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

11 ~~PROPOSED~~ REDACTED VERSION

12 THE PEOPLE OF THE STATE OF CALIFORNIA, )

No. 1133603

13 Plaintiff. )

PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR  
ORDER ALLOWING USE OF  
EXPERT TESTIMONY ON  
THE SUBJECT OF CHILD  
ABUSE TRAUMA;  
MEMORANDUM OF POINTS  
AND AUTHORITIES

14 v.

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16  
17 MICHAEL JOE JACKSON,

18 Defendant. )

DATE: January 12, 2005  
TIME: 8:30 a.m.  
DEPT: SM 2 (Melville)

19 FILED UNDER SEAL  
20

21 TO: DEFENDANT MICHAEL JOE JACKSON, AND TO THOMAS  
22 MESEREAU, JR. ROBERT SANGER AND R. BRIAN OXMAN, HIS COUNSEL OF  
23 RECORD:

24 PLEASE TAKE NOTICE that on January 12, 2005, at 8:30 a.m. or as soon  
25 thereafter as the matter may be heard, the People will move the Court for its order authorizing  
26 Plaintiff to put before the trial jury expert testimony concerning "child sexual abuse  
27 accommodation syndrome" (CSAAS).

28 The motion will be based on this Notice and the accompanying Memorandum of

1 Points and Authorities.

2 DATED: January 10, 2004

3 Respectfully submitted,

4 THOMAS W. SNEEDON, JR., DISTRICT ATTORNEY  
5 County of Santa Barbara

6 By: Ronald J. Zonen by Gerold M.E.C.  
7 Ronald J. Zonen, Senior Deputy Franklin

8 Attorneys for Plaintiff  
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MEMORANDUM OF POINTS AND AUTHORITIES

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3 **A. INTRODUCTION:**

4 The People will seek to introduce expert testimony to explain the behavior of  
5 children who have been molested. The experts, [REDACTED]  
6 and [REDACTED], will testify that there are many misconceptions about how children  
7 react to having been molested, among them that children will immediately disclose the  
8 molestation to their closest relative, that children will disclose without hesitation all that  
9 occurred and that children who were molested will not have feelings of love or affection for  
10 those who molested them. [REDACTED] will testify to the consequences of the "grooming  
11 process," the process by which children accept as normal the reality of their own molestation  
12 and how it affects their behavior thereafter.

13 **B. STATEMENT OF FACTS:**

14 [REDACTED] met the defendant in 2001 [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 [REDACTED]  
28 [REDACTED]

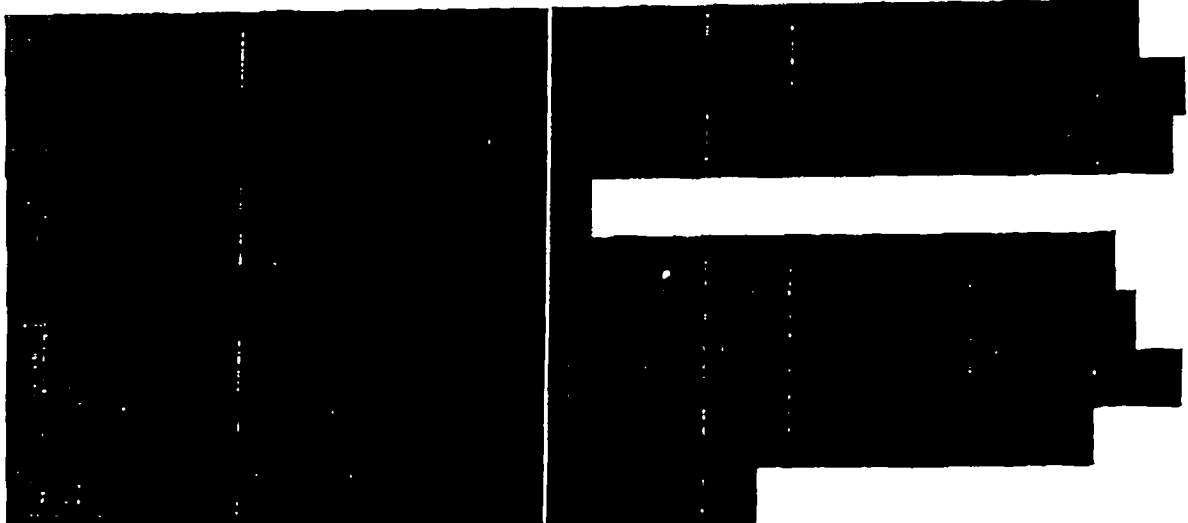


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C. Argument

**EXPERT TESTIMONY ADDRESSING ISSUES OF  
"CHILD ABUSE TRAUMA"<sup>1</sup> IS PROPERLY ADMISSIBLE  
AT TRIAL DURING THE PEOPLE'S CASE-IN-CHIEF**

As in cases involving Rape Trauma Syndrome evidence, "Child Abuse Trauma" and "Child Sexual Abuse Accommodation Syndrome" experts are widely used to disabuse jurors of common myths and misconceptions in child sexual assault cases. Because the court-

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<sup>1</sup> A word about terminology: CALJIC 10.64 and the relevant decisional law refer to the "child sexual abuse accommodation syndrome," or "CSAAS." Some experts in the field limit application of the term CSAAS to discussions of victims of "intrafamilial" child sexual abuse - i.e., sexual abuse of a child by a family member, a close relative or one who is treated as a member of child's immediate family. Those experts use the more encompassing term "Child Abuse Trauma" to describe the complex of symptoms demonstrated by a child sexually abused by a person in whom trust may have been reposed but whose connection to a victim's immediate family was not necessarily that of a live-in relative. The distinction apparently is without a legal difference: a number of the reported decisions have approved the admission of "CSAAS" evidence in cases where the defendant's relationship to the victim was merely a trusting acquaintanceship, if that. (See, e.g., *People v. Bowker* (1988) 203 Cal.App.3d 385 [victim a neighbor's child]; *Seering v. Dept. Soc. Svcs.* (1987) 194 Cal.App.3d 298 [day-care provider]; *People v. Patino* (1994) 26 Cal.4th 1737 [near neighbor]; *People v. McAlpin* (1991) 53 Cal.3d 1289 [dating relationship with victim's mother]; *People v. Harlan* (1990) 222 Cal.App.3d 439 [baby-sitter pervert]; *People v. Yovanov* (1999) 69 Cal.App.4th 392 [boyfriend of victim's mother]; *People v. Stoll* (1989) 49 Cal.App.3d 1136 [inter alia, boyfriend of victim's mother].)

1 approved guidelines and accompanying jury instructions would ensure that the jurors would  
2 properly apply any Child Abuse Trauma testimony, such testimony is admissible to dispel any  
3 misconceptions involved in the instant case.

4 Expert testimony is admissible at trial as long as the testimony will be of assistance  
5 to the trier of fact and is reliable. (Evid. Code, § 801; *People v. Bowker* (1988) 203  
6 Cal.App.3d 385, 390.) In California, the *Kelly-Frye* analysis is commonly used to determine  
7 the admissibility of new scientific methods of proof. (*People v. Bowker, supra*, 203  
8 Cal.App.3d at 390, citing *People v. Kelly* (1976) 17 Cal.3d 24 and *Frye v. United States* (D.C.  
9 Cir.1923) 293 Fed. 1013.) In the early 1980's prosecutors began presenting evidence of "Rape  
10 Trauma Syndrome" to show that the fact that a victim suffered from the syndrome proved that  
11 she must have been raped. In 1984 the California Supreme Court held that "[u]nlike  
12 fingerprints, blood tests, lie detector tests, voiceprints or the battered child syndrome, rape  
13 trauma syndrome was not devised to determine the 'truth' or 'accuracy' of a particular past  
14 event - i.e., whether, in fact, a rape in the legal sense occurred -- but rather was developed by  
15 professional rape counselors as a therapeutic tool . . ." (*People v. Bledsoe* (1984) 36 Cal.3d  
16 236, 249-250.) In part because it is an "umbrella concept" designed for a different purpose  
17 than the battered child syndrome, Rape Trauma Syndrome does not satisfy the *Kelly-Frye*  
18 requirements and is not admissible in trial to prove that a witness was raped. (*Id.* at pp. 250-  
19 251.) But the Supreme Court "hasten[ed] to add that nothing in this opinion is intended to  
20 imply that evidence of the emotional psychological trauma that a complaining witness suffers  
21 after an alleged rape is inadmissible in a rape prosecution." (*Id.*, p. 251.) Though evidence of  
22 Rape Trauma Syndrome cannot be used to prove that a rape occurred, it may be used "to rebut  
23 misconceptions about the presumed behavior of rape victims." (*People v. Bledsoe, supra*, 36  
24 Cal.3d at p. 248; *People v. Bowker, supra*, 203 Cal.App.3d 385 at p. 391, citing *Bledsoe.*)

25 Decisional law concerning admissibility of Child Sexual Assault Accommodation  
26 Syndrome evidence built on the decisions concerning the admission of Rape Trauma Syndrome  
27 evidence. Like Rape Trauma Syndrome, CSAAS was developed as a therapeutic tool. (*People*  
28 *v. Bowker, supra*, 203 Cal.App.3d at p. 390.) Because CSAAS evidence, like Rape Trauma



1 Syndrome evidence, does not satisfy the *Kelly-Frye* standard, the law precludes an expert from  
2 testifying that, based on CSAAS, a particular victim's report is credible and he or she has in  
3 fact been molested. *Id.* But, as long as the CSAAS testimony is directed to dispel common  
4 myths or misconceptions surrounding a child's sexual assault, it is admissible. (*Id.* at 393-94;  
5 see also *People v. Patino* (1994) 26 Cal.App.4th 1737 [holding that the introduction of CSAAS  
6 testimony to disabuse a jury of "misconceptions it might hold about how a child reacts to a  
7 molestation" violates neither the confrontation clause nor a defendant's due process rights; *id.*  
8 at p. 1744].)

9 Over the years the courts have developed guidelines to insure that child abuse  
10 trauma evidence is used appropriately. CSAAS testimony must be addressed to a specific myth  
11 or misconception presented by the evidence. (*People v. Housley* (1992) 6 Cal.App.4th 947.  
12 955; *People v. Patino, supra*, 26 Cal.App.4th at 1745.) "Such expert testimony is needed to  
13 disabuse jurors of commonly held misconceptions about child sexual abuse, and to explain the  
14 emotional antecedents of abused children's seemingly self-impeaching behavior. The great  
15 majority of courts approve such expert rebuttal testimony." (Myers et al., *Expert Testimony in*  
16 *Child Sexual Abuse Litigation* (1989) 68 Neb. L.Rev. 1, 89, cited and quoted in *People v.*  
17 *McAlpin, supra*, 53 Cal.3d 1289, 1301.)

18 Identifying a myth or misconception does not require the prosecution to expressly  
19 state on the record the evidence that is inconsistent with molestation. (*People v. Patino, supra*,  
20 26 Cal.App.4th at 1744.) "It is sufficient if the victim's credibility is placed in issue due to  
21 paradoxical behavior, including a delay in reporting a molestation." (*Id.* at pp.1744-45.)  
22 CSAAS testimony may be introduced to show why the victim acted as she did and explain her  
23 state of mind. (*Id.* at p.1746.) Because it would be natural for a jury to wonder why a  
24 molestation was not immediately reported or why a victim returned to an assailant's home after  
25 an initial molest, the People may introduce CSAAS evidence during their case in chief, "if an  
26 issue has been raised as to the victim's credibility." (*Id.* at 1745.)

27 In *People v. McAlpin, supra*, 53 Cal.3d. 1289, the prosecution sought to introduce  
28 expert testimony to explain the behavior of the victim's mother in not disclosing knowledge

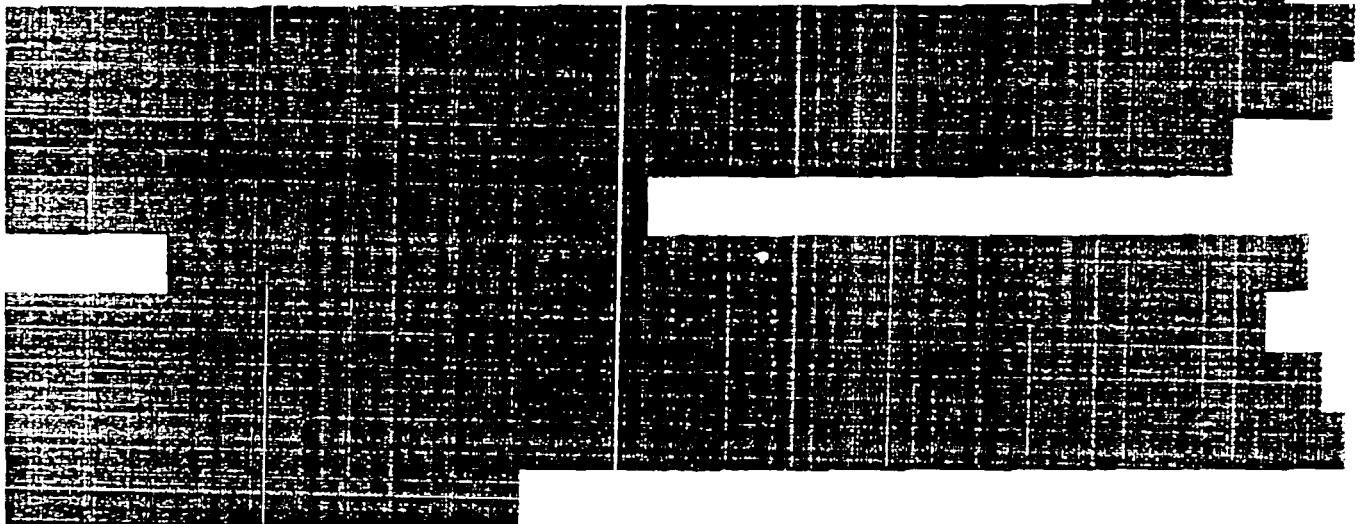
1 "Such expert testimony is needed to disabuse jurors of commonly held  
2 misconceptions about child sexual abuse, and to explain the emotional  
3 antecedents of abused children's seemingly self-impeaching behavior.  
4 [¶] The great majority of courts approve such expert rebuttal testimony."  
5 (Myers et al., *Expert Testimony in Child Sexual Abuse Litigation* (1989)  
6 68 Neb. L. Rev. 1, 89, fn. omitted . . . )

7 (*People v. McAlpin, supra* at pp. 1300-1301.)

8 When child abuse trauma testimony is admitted, the court must sua sponte instruct  
9 the jury that "(1) such evidence is admissible solely for the purpose of showing the victim's  
10 reactions, as demonstrated by the evidence are not inconsistent with having been molested; and  
11 (2) the expert's testimony is not intended and should not be used to determine whether the  
12 victim's molestation claim is true." (*People v. Housley, supra*, 6 Cal.App.4th 947, at p. 959 )

13 Although CALJIC 10.64 provides an appropriate instruction, even when courts  
14 have failed to adequately instruct the jury regarding the proper use of CSAAS testimony, that  
15 error has been held harmless. (*Ibid.*)

16 The evidence of Child Abuse Trauma is necessary in this case to



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25 An expert in Child Abuse Trauma will be able to explain how the grooming process  
26 allows a child to be victimized with his own cooperation. The compliant victim is the  
27 offender's creation. It is the result of considerable effort to gain the child's trust, cooperation,  
28 confidence and belief that the offender's behavior is normal, acceptable and even enjoyable.





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THOMAS A. MESEREAU, JR.  
Collins, Mesereau, Reddock & Yu, LLP  
1875 Century Park East, No. 700  
Los Angeles, CA 90067  
FAX: (310) 284-3122  
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