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10 Attorneys for Defendant  
11 **MICHAEL JOSEPH JACKSON**

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

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16 **THE PEOPLE OF THE STATE OF CALIFORNIA,**

17 Plaintiffs,

18 vs.

19  
20 **MICHAEL JOSEPH JACKSON,**

21 Defendant.

) Case No. 1133603

) **MOTION FOR AN ORDER THAT THE**  
) **DISTRICT ATTORNEY NOT BE**  
) **ALLOWED TO TELL THE JURY THAT HE**  
) **REPRESENTS "THE PEOPLE" IN A**  
) **MANNER THAT IMPLIES THAT HE**  
) **REPRESENTS THE JURY AGAINST THE**  
) **DEFENDANT, AND THAT THE DOE**  
) **FAMILY BE REFERRED TO BY THEIR**  
) **NAMES, AND AS THE "COMPLAINING**  
) **WITNESSES," AND NOT THE "VICTIMS"**

22 ) ~~UNDER SEAL~~

23 ) Honorable Rodney S. Melville

24 ) Date: January 28, 2005

25 ) Time: 9:30 am

26 ) Dept: SM 8

27 **MOTION FOR AN ORDER THAT THE DISTRICT ATTORNEY NOT BE ALLOWED TO TELL THE JURY**  
28 **THAT HE REPRESENTS "THE PEOPLE" IN A MANNER THAT IMPLIES THAT HE REPRESENTS THE**  
**JURY AGAINST THE DEFENDANT, AND THAT THE DOE FAMILY BE REFERRED TO BY THEIR**  
**NAMES, AND AS THE "COMPLAINING WITNESSES," AND NOT THE "VICTIMS"**

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

JAN 14 2005

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

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE DISTRICT  
2 ATTORNEY OF THE COUNTY OF SANTA BARBARA, TOM SNEDDON, AND DEPUTY  
3 DISTRICT ATTORNEYS GERALD FRANKLIN, RON ZONEN AND GORDON  
4 AUCHINCLOSS:

5 PLEASE TAKE NOTICE that, on January 28, 2005, at <sup>9</sup>8:30 a.m., or as soon thereafter as  
6 the matter may be heard, Mr. Jackson will move, and hereby does move, for an order that the  
7 District Attorney not be allowed to tell the jury that he represents "the People" in a manner that  
8 implies that he represents the jurors against the defendant, and that the Doe family be referred to  
9 by their names, and as the "Complaining Witnesses," and not "the Victims." Mr. Jackson's  
10 request applies to the reading of the Indictment to the jurors; jury instructions; voir dire, opening  
11 statements, questions, trial testimony and argument; and any and all other instances in which the  
12 prosecution and its client are called by name, or any instance in which a reference is made to the  
13 Doe family or any individual member of the Doe family or any other alleged complaining  
14 witness. This motion is based on the federal and state constitutional rights to a fair trial, due  
15 process of law, and right to a reliable verdict and sentence pursuant to the Fifth, Sixth, Eighth,  
16 and Fourteenth Amendments to the United States Constitution and Article 1, Sections 7, 15, 17  
17 and 24 of the California Constitution.

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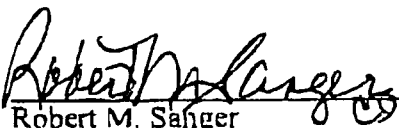
This motion is based on this motion, the memorandum of points and authorities attached hereto, the records, pleadings and papers herein, and such other and further matters as may be submitted to the Court.

Dated: January 14, 2005

Respectfully submitted,  
COLLINS, MESEREAU, REDDOCK & YU  
Thomas A. Mesereau, Jr.  
Susan C. Yu

SANGER & SWYSEN  
Robert M. Sanger

OXMAN & JAROSCAK  
Brian Oxman

By:   
Robert M. Sanger  
Attorneys for Defendant  
MICHAEL JOSEPH JACKSON

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MOTION FOR AN ORDER THAT THE DISTRICT ATTORNEY NOT BE ALLOWED TO TELL THE JURY THAT HE REPRESENTS "THE PEOPLE" IN A MANNER THAT IMPLIES THAT HE REPRESENTS THE JURY AGAINST THE DEFENDANT, AND THAT THE DOE FAMILY BE REFERRED TO BY THEIR NAMES, AND AS THE "COMPLAINING WITNESSES," AND NOT THE "VICTIMS"

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I.

3 **IT IS MISCONDUCT FOR THE DISTRICT ATTORNEY STATE THAT HE**  
4 **REPRESENTS "THE PEOPLE" IN A MANNER THAT IMPLIES THAT HE**  
5 **REPRESENTS THE JURORS AGAINST THE DEFENDANT**

6 The prosecutor in this case has announced that it is correct to tell the jury that he  
7 represents the people of the state of California. Gordon Auchincloss has gone so far as to  
8 suggest that the defense must refer to the prosecution as "the People." Mr. Auchincloss said:

9 We're tired of calling us the government, they know better than that. It is  
10 appropriate and just and actually correct that the defense should refer to the  
11 People by their proper name.  
(December 20, 2004 transcript.)

12 First, Mr. Auchincloss' position is absurd. The prosecution is the government and, in  
13 fact, a representative of the executive branch of the government. No offense should be taken  
14 whatsoever by reference to the prosecution as the government.

15 Second, in federal court, where the undersigned practices as well, the Assistant United  
16 States Attorneys refer to themselves as "the Government." The federal District Court Judges,  
17 Magistrate Judges, Federal Defenders and United States Probation Officers, and private defense  
18 counsel all refer to the prosecution as the government.

19 Third, the defense is free to refer to the prosecution as the government, the prosecution,  
20 or the district attorney. These are proper and respectful terms which accurately refer to the  
21 identity and role of the prosecution as party litigant and plaintiff in this case.

22 Fourth, it is misconduct for the prosecution to suggest that he is an advocate for the  
23 people and imply to the jurors -- who are supposed to be impartial fact-finders -- that they are in  
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**JURY AGAINST THE DEFENDANT, AND THAT THE DOE FAMILY BE REFERRED TO BY THEIR**  
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1 fact aligned with the prosecutor against the defendant.<sup>1</sup> It is, of course, misconduct to suggest  
2 such a notion. As the California Supreme Court stated in *People v. Eubanks* (1996) 14 Cal.4th  
3 580, 589-590<sup>2</sup>, the role and interest of the prosecution in a criminal case is obviously not that of  
4 the jury and the phrase "the People" includes the defendant:

5           The nature of the impartiality required of the public prosecutor follows  
6 from the prosecutor's role as representative of the People as a body, rather than as  
7 individuals. "The prosecutor speaks not solely for the victim, or the police, or  
8 those who support them, but for all the People. That body of 'The People'  
9 includes the defendant and his family and those who care about him. It also  
10 includes the vast majority of citizens who know nothing about a particular case,  
11 but who give over to the prosecutor the authority to seek a just result in their  
12 name." (Corrigan, On Prosecutorial Ethics (1986) 13 Hastings Const.L.Q. 537,  
13 538-539.) Thus the district attorney is expected to exercise his or her  
14 discretionary functions in the interests of the People at large, and not under the  
15 influence or control of an interested individual. (*People v. Superior Court*  
16 (*Greer*), supra, 19 Cal. 3d at p. 267.)

17           Unlike the adversary role of the prosecutor, the domain of the judge and the jury is true  
18 disinterest and objectivity in a criminal case. (*Eubanks, supra*, 14 Cal.4th 580, 590.) To suggest  
19 to jurors that the prosecutor's role and interest and the jury's role and interest are one and the  
20 same is a distortion of the constitutional role each must play and undermines the defendant's  
21 federal and state constitutional rights to a fair trial, due process of law, and right to a reliable  
22 verdict and sentence pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the  
23 United States Constitution and Article 1, Sections 7, 15, 17 and 24 of the California Constitution.

24           As a matter of strategy, identifying the prosecution with "the People" is effective. Were

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25           <sup>1</sup> This is not an argument that any reference to "the People," as in the charging  
26 document, instructions, etc., is a per se violation. (See *People v. Black* (2003) 114 Cal.App.4th  
27 830, rejecting such an argument.) This motion narrowly focuses on the prosecutor's improper  
28 usage of the phrase to make it appear to the that the District Attorney and the jury are on one side  
with the defendant on the other.

29           <sup>2</sup> Even though the arguments here are not precluded by *People v. Black, supra*. That  
30 case is of dubious authority and to the extent *Black* is inconsistent with *People v. Eubanks*, stare  
31 decisis requires this Court to follow the California Supreme Court's decision in *Eubanks* rather  
32 than that of the Court of Appeal in *Black*.

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33           MOTION FOR AN ORDER THAT THE DISTRICT ATTORNEY NOT BE ALLOWED TO TELL THE JURY  
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36 NAMES, AND AS THE "COMPLAINING WITNESSES," AND NOT THE "VICTIMS"

1 this not the case, Deputy District Attorney Auchincloss would not have tried to force this  
2 designation on the defense. However, it is a fundamental fact of human nature that group  
3 identification is an effective means of altering individual opinions.<sup>3</sup> Calling the prosecution "the  
4 People" pulls the jury into identification with the "group" and stigmatizes the accused as not  
5 belonging to the group. It becomes the jury and the prosecution versus the defendant.

6 The prosecutors represent one of two parties to a criminal lawsuit. They litigate as  
7 plaintiffs against criminal defendants on behalf of the executive branch of government. It is the  
8 jury's duty, as representatives of all of the people of the community, to listen impartially to the  
9 evidence presented by the prosecution and then to decide whether a defendant is guilty beyond a  
10 reasonable doubt. The contention that "the People" have charged a defendant with a crime and  
11 "the People" are prosecuting him or her necessarily implies that the people of the community  
12 should not presume that the defendant is innocent prior to hearing the evidence. The blurring of  
13 this distinction violates the defendant's right to a fair jury trial by his or her peers by undermining  
14 the presumption of innocence.

## 15 II.

### 16 THE COMPLAINING WITNESSES SHOULD BE ADDRESSED BY THEIR NAMES 17 AND NOT BY CONCLUSORY AND ARGUMENTATIVE LABELS WHICH ASSUME 18 FACTS NOT IN EVIDENCE AND UNDERMINE THE PRESUMPTION OF 19 INNOCENCE

20 The issue for the jury to decide at trial is whether the complaining witnesses are "victims"  
21 (the District Attorney's theory), or whether the complaining witnesses are lying and/or mistaken  
22 (the defense theory). The prosecution, court personnel and the State's witnesses should not be  
23 allowed to characterize the complaining witnesses as "victims," before the jury has had a chance  
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25 <sup>3</sup> One need only consider how allegiance to a particular football team can affect the  
26 rational opinions of the fans.

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1 to decide the ultimate question as to whether they are victims.

2 The characterization of the complaining witnesses as "victims" before the jury has made  
3 a determination as to guilt is contrary to common sense. The characterization of the complaining  
4 witnesses as "victims" is argumentative and undermines the presumption that the defendant is  
5 innocent by sending a message to the jury that the complaining witnesses version of events is the  
6 correct version of events. As such, it violates the defendants rights to a fair trial, due process of  
7 law, and right to a reliable verdict and sentence pursuant to the Fifth, Sixth, Eighth, and  
8 Fourteenth Amendments to the United States Constitution and Article 1, Sections 7, 15, 17 and  
9 24 of the California Constitution.

10 This is not a case where the only issue is identity and the complaining witnesses are  
11 victims regardless of the identity of the perpetrator. Here, the jury is being asked to decide  
12 whether or not the events alleged by the complaining witnesses occurred at all.

13 In *People v. Sanchez* (1989) 208 Cal.App.3d 721, 739-740, the court rejected an appellate  
14 claim of constitutionally ineffective assistance of counsel for failure to assert this position at trial.  
15 The holding in that case was limited to its facts. The Court pointed out that there were fewer  
16 mentions of the term "victim" by the prosecutor than by defense counsel, and because the  
17 mentions were largely restricted to comments in voir dire. However, even though the issue was  
18 not squarely before the court on appeal, the court stated that the use by the prosecutor was  
19 "possibly objectionable," but that there was no prejudice based on the facts of that case. Here,  
20 Mr. Jackson is not asking a court to overturn a jury verdict. He is simply requesting in advance  
21 that, at all stages of trial, witnesses in this case be addressed and referred to by their proper  
22 names. If they are not being referred to by name, then the non-argumentative term "complaining  
23 witness" should be used.

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III.

CONCLUSION

Therefore, based on the reasons set forth above, Mr. Jackson respectfully requests that the Court issue an order that, at all stages of trial, the District Attorney not be allowed to tell the jury that he represents "the People" in a manner that implies that he represents the jurors against the defendant, and that the Doe family, or any other complaining witnesses, be referred to by their names and as "complaining witnesses," rather than as "the Victims."

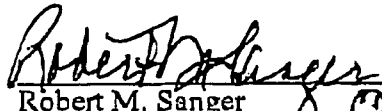
Dated: January 14, 2004

COLLINS, MESEREAU, REDDOCK & YU  
Thomas A. Mesereau, Jr.  
Susan C. Yu

SANGER & SWYSEN  
Robert M. Sanger

OXMAN & JAROSCAK  
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By:

  
Robert M. Sanger  
Attorneys for Defendant  
MICHAEL JOSEPH JACKSON

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MOTION FOR AN ORDER THAT THE DISTRICT ATTORNEY NOT BE ALLOWED TO TELL THE JURY THAT HE REPRESENTS "THE PEOPLE" IN A MANNER THAT IMPLIES THAT HE REPRESENTS THE JURY AGAINST THE DEFENDANT, AND THAT THE DOE FAMILY BE REFERRED TO BY THEIR NAMES, AND AS THE "COMPLAINING WITNESSES," AND NOT THE "VICTIMS"



**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 January 14, 2005, I served the foregoing documents on the interested parties in this action by depositing a true copy thereof as follows: MOTION FOR AN ORDER THAT THE DISTRICT ATTORNEY NOT BE ALLOWED TO TELL THE JURY THAT HE REPRESENTS "THE PEOPLE" IN A MANNER THAT IMPLIES THAT HE REPRESENTS THE JURY AGAINST THE DEFENDANT, AND THAT THE DOE FAMILY BE REFERRED TO BY THEIR NAMES, AND AS THE "COMPLAINING WITNESSES," AND NOT THE "VICTIMS" on the following:

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

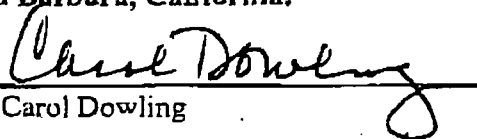
       **BY U.S. MAIL** - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid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

       **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 January 14, 2005, at Santa Barbara, California.

  
Carol Dowling