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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

JAN 24 2005

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

** Unsealed pursuant
to 6/16/05 Court
order*

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

12 THE PEOPLE OF THE STATE OF CALIFORNIA,
13 Plaintiff,

14 v

16 MICHAEL JOE JACKSON,

18 Defendant.

No. 1133603

PLAINTIFF'S RESPONSE TO
DEFENDANT'S IN LIMINE
MOTION TO PRECLUDE
REFERENCE TO HIS
COLLECTION OF SEXUALLY
EXPLICIT MATERIALS AS
"PORNOGRAPHY"

DATE: January 28, 2005
TIME: 9:30 a.m.
DEPT: TBA (Melville)

UNDER SEAL

21 A. Introduction

22 In his "Motion in Limine to Preclude Reference to Materials as Pornographic,"
23 Defendant moves for an order prohibiting the prosecutors and all witnesses "from making any
24 references in the presence of jurors or prospective jurors that any books, magazines,
25 photographs, and computer generated images of disrobed women and men . . . as
26 'pornographic,' 'obscene,' or any similar term."

27 The asserted ground for his motion is that the words "obscenity" and
28 "pornographic" convey "legal conclusion[s] contrary to fact" and would tend to "create an

1 improper inference that the materials, books and photographs in question[] are somehow
2 unlawful contraband that fall within statutory definitions of illegal 'pornography.'"

3 **B. Response**

4 "Obscene matter" is defined by Penal Code section 311, subdivision (a) as ""matter,
5 taken as a whole, that to the average person, applying contemporary statewide standards,
6 appeals to the prurient interest, that is, taken as a whole, depicts or describes sexual conduct in
7 a patently offensive way, and that, taken as a whole, lacks serious literary, artistic, political, or
8 scientific value."

9 Personal possession of "obscene" material in the privacy of onc's home is not a
10 crime. (*Stanley v. Georgia* (1969) 394 U.S. 557 [89 S.Ct. 1243, 22 L.Ed.2d 542].)

11 "Pornography" is not separately defined in the Penal Code. Webster's Dictionary
12 defines it as "a portrayal of erotic behavior designed to cause sexual excitement." (Webster's
13 3d New Internat. Dict. (1981) p. 1767.)

14 Some of the material seized from defendant's residence comes within the definition
15 of "obscene matter" in Penal Code section 311, subdivision (a). Much of the material that
16 concerns plaintiff regards as relevant in this prosecution is "erotic" material. All of it is
17 relevant in this case to the extent it was made available to the Arvizo children, and to the extent
18 it may reasonably be viewed by the trier of fact as material used by defendant to awaken or
19 heighten the sexual interest of young boys, and to the extent it evidences defendant's
20 "attraction to young boys" (*People v. Memro* (1995) 11 Cal.4th 786, 864-865).

21 Defendant does not suggest what other words might be used to refer to his
22 collection without incurring objection. We do not mean to be critical: the range of terms that
23 accurately describe the material and, at the same time, are not too perjorative is, given the focus
24 of that collection, quite limited. If "dirty books" and "smut" – the labels that immediately
25 spring to mind – seem rather more subjective than descriptive, "sexually explicit material" and
26 "erotica" surely will suffice.

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28 ////

1 CONCLUSION

2 The Court has had an opportunity to examine the magazines, books, photographs
3 and video material seized by the investigators in this case. The People will, of course, abide
4 with whatever limitations the Court sees fit to impose on our reference to the sexually explicit
5 material seized from Neverland Ranch.

6 DATED: January 24, 2005

7 Respectfully submitted,

8 THOMAS W. SNEDDON, JR.
9 District Attorney

10 By: 
11 Gerald McC. Franklin, Senior Deputy

12 Attorneys for Plaintiff
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3 **PROOF OF SERVICE**

4 STATE OF CALIFORNIA
5 COUNTY OF SANTA BARBARA } SS

6 I am a citizen of the United States and a resident of the County aforesaid; I am over
7 the age of eighteen years and I am not a party to the within-entitled action. My business
8 address is: District Attorney's Office; Courthouse; 1112 Santa Barbara Street, Santa Barbara,
9 California 93101.

10 On January 24, 2005, I served the within PLAINTIFF'S RESPONSE TO
11 DEFENDANT'S IN LIMINE MOTION TO PRECLUDE REFERENCE TO HIS
12 COLLECTION OF SEXUALLY EXPLICIT MATERIAL AS "PORNOGRAPHY" on
13 Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER and BRIAN OXMAN, by
14 delivering a true copy to Attorney Sanger's officer and causing a true copy to be transmitted to
15 Mr. Mesereau at the facsimile number given us by counsel, and then causing that copy to be
16 mailed to Mr. Mesereau at the address shown on the Service List.

17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed at Santa Barbara, California on this 24th day of January, 2005.

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21 Gerald McC. Franklin

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SERVICE LIST

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