

JAN 26 2005

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

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

MICHAEL JACKSON,

Defendant.

) Case No.: 1133603

) Order for Release of Redacted Documents

) [Opposition to District Attorney's Motion in
) Limine re Evidence Code 402 Issues]

The redacted form of the Opposition to District Attorney's Motion in Limine re Evidence Code 402 Issues attached to this order shall be released and placed in the public file. The court finds that there is more material in the motion that should be redacted than that contained in the proposed redacted version. The unredacted originals shall be maintained conditionally under seal pending the hearing on January 28, 2005.

Dated: January 26, 2005

Rodney S. Melville
RODNEY S. MELVILLE
Judge of the Superior Court

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

14 REDACTED

15 THE PEOPLE OF THE STATE OF)
16 CALIFORNIA,)

17 Plaintiffs,)

18 vs.)

19 MICHAEL JOSEPH JACKSON,)

20 Defendant.)

Case No. 1133603

OPPOSITION TO DISTRICT
ATTORNEY'S MOTION IN LIMINE RE:
EVIDENCE CODE SECTION 402 ISSUES

~~UNDER SEAL~~

Honorable Rodney S. Melville

Date: January 28, 2005

Time: 9:30 a.m.

Dept.: 8

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28 OPPOSITION TO DISTRICT ATTORNEY'S MOTION IN LIMINE RE: EVIDENCE CODE SECTION 402
ISSUES

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 ARGUMENT

3 I.

4 THERE IS NO AUTHORITY TO SUPPORT THE POSITION THAT THE
5 PROSECUTION MUST BE REFERRED TO AS "THE PEOPLE"

6 This issue was briefed in Mr. Jackson's MOTION FOR AN ORDER THAT THE
7 DISTRICT ATTORNEY NOT BE ALLOWED TO TELL THE JURY THAT HE
8 REPRESENTS "THE PEOPLE" IN A MANNER THAT IMPLIES THAT HE REPRESENTS
9 THE JURY AGAINST THE DEFENDANT, AND THAT THE DOE FAMILY BE REFERRED
10 TO BY THEIR NAMES, AND AS THE "COMPLAINING WITNESSES," AND NOT THE
11 "VICTIMS," which is incorporated here as if set forth in full at this point. However, Mr.
12 Auchincloss persists in misreading *People v. Black* (2003) 114 Cal.App.4th 830 and the statutes.
13 The code says that a criminal action shall be brought in the name of the people and by their
14 authority. However, it does not say that the prosecutor bringing the action has to be called "The
15 People." Nor does the *Black* case say that. It says that the defendant in that case failed to show
16 that statutes mandating that criminal prosecutions be conducted "in the name of the people" were
17 unconstitutional on their face or as they applied to that case. The fact that the defense calls the
18 prosecutor, "the Prosecutor" or, in the federal tradition, "the Government" is not a sign of
19 disrespect. To the contrary, it is respectful and accurate.¹

20 This is a lawsuit with very important consequences. There are two sides. The outcome
21 should be dictated by the nature and quality of the evidence, not by manipulation of the jurors.
22 As argued by the defense motion, the effort to try to cause the jury to identify with "the People"

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24 ¹ One is tempted to say that, if a prosecutor does not like being referred to as a
25 prosecutor or "the government," he should probably not work for the prosecutor's office or the
26 government. In the 31 years experience of the undersigned, most career prosecutors do not take
27 offense at either and, in fact, take pride in their role. A prosecutor, perhaps based on his
background, may not like to be regarded merely as a prosecutor or an employee of the
government, but he is.

1 and exclude the defendant is trickery, not law.

2 To allow the manipulation would violate Mr. Jackson's federal and state constitutional
3 rights to a fair trial, due process of law, and right to a reliable verdict and sentence pursuant to
4 the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and
5 Article I, Sections 7, 15, 17 and 24 of the California Constitution.

6 II.

7 MR. JACKSON'S SIXTH AMENDMENT RIGHT TO CONFRONT AND CROSS-
8 EXAMINE WITNESSES AGAINST HIM INCLUDES THE USE OF PROPER
9 IMPEACHMENT MATERIAL

10 The prosecutors seek to require that the defense seek "leave of the court" to "attack the
11 credibility of the prosecution's witnesses." (Motion, page 2) In the introduction, they say they
12 are limiting their request to "character evidence or other extraneous or collateral evidence." (Id.)
13 However, in the body of the motion, they make it clear that they want the court to order that their
14 witnesses' credibility not be attacked at all. (See Motion, pages 3-5.)

15 In fact, the types of evidence they list are proper impeachment and directly refute alleged
16 factual contentions made by the witnesses themselves.

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

1 be as significant if she had not bragged of her lack of sophistication. For instance, had she said,
2 "I stand up for my rights," [REDACTED] the fact that she
3 consulted numerous lawyers would not, in itself, be as probative.

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 [REDACTED]
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[REDACTED]

Regarding the claim that defense counsel have to present all evidence of a lack of credibility of the complaining witnesses to the court before impeaching them turns the process on its head. First, defense counsel are allowed to cross-examine by way of anything for which there is a good faith belief. Second, defense counsel do not have to give the government a preview all of our impeachment evidence before the prosecution puts on witnesses who may lie. Third, defense counsel are well aware of the rules of evidence and know what is likely to be admitted. Defense counsel have substantial, admissible and solid evidence to establish that [REDACTED]

1 [REDACTED]
2 Regrettably, the prosecution does not subject its own evidence to the same scrutiny they
3 seek to subject ours. If they did they would not be prosecuting Michael Jackson. We can only
4 conclude that it is the fact that Michael Jackson is a celebrity - or some other extraneous factor -
5 that would cause them to proceed to trial with the kind of impeachable witnesses they have here.
6 One example will suffice. Mr. Auchincloss, in an effort to gloss over the failures of his
7 witnesses says that [REDACTED]

8 [REDACTED] This court should remember that
9 disingenuous gloss the next time Mr. Auchincloss or one of his fellow Deputy District Attorneys
10 comes to court prosecuting someone for one tenth of what Mrs. [REDACTED] perpetrated. But, it is not
11 just the [REDACTED] it is the fact that it occurred during the very
12 times she claims that she was being kidnapped by Michael Jackson.

13 III.

14 THE PROSECUTION'S CONCERN REGARDING AD HOMINEM ATTACKS IS
15 UNFOUNDED

16 The District Attorney claims that "[t]he defense has engaged in gratuitous vilification of
17 the District Attorney and the prosecution team at every opportunity."¹ (Motion, page 5.) The
18 prosecution misses the point entirely. The case cited by the District Attorney, which quoted from
19 Saturday Night Live, is not in dispute. Counsel should not resort to name calling and the defense
20 has no intention of doing so - a lesson that Mr. Auchincloss may have missed while, for instance,
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24 ¹ Lying is not merely a pejorative term. The defense has disclosed to the prosecution
25 irrefutable evidence of [REDACTED]

26 ¹ Note that the prosecution calls themselves "the Prosecution" in the heading of this very
27 argument notwithstanding Mr. Auchincloss' protestations earlier.

1 referring to the "theatrical rancor of the defense." (Motion, page 6.)

2 The prosecution's motion demonstrates a misunderstanding of the definition of an ad
3 hominem attack. An ad hominem argument is an attack on an opponent's character rather than a
4 response to the contentions made. If defense counsel takes a position that the search of Mr.
5 Jackson's home constitutes a "police raid," it is an interpretation of facts. If, on the other hand,
6 the prosecution characterizes the arguments of defense counsel as "frantic bleating," it is an ad
7 hominem attack.⁵

8 It is entirely proper for defense counsel to take issue with the motivations of the
9 prosecution, in light of the facts of the case. The fact is that Mr. Sneddon did get personally
10 involved in this case. He went to a defense investigator's office and took pictures. He personally
11 interviewed [REDACTED] and showed her key photographs. He took possession of evidence. He
12 arranged for Mrs. [REDACTED] to obtain money. He interviewed her without an officer present. This
13 was in addition to him personally going to Mr. Jackson's residence on at least four occasions to
14 conduct searches, to traveling to Australia to try to get a witness to testify against Mr. Jackson, to
15 holding press conferences and making inappropriate remarks, to having a standing request on his
16 website for people to testify against Mr. Jackson.

17 Mr. Sneddon made himself a witness - particularly as to what [REDACTED] said and did
18 at the interview with her. It was a key interview because, [REDACTED]
19 [REDACTED] He is subject to
20 being impeached for bias, just like anyone else.

21 In this case, law enforcement has recorded virtually every interview whether it was

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23 ⁴ Mr. Auchincloss praises himself for being diligent in using the entire month set aside
24 by the court for in limine hearings by filing his barebones composite motion for hearing on the
last possible day of the month. One wonders if he expects that no one will figure that out.

25 ⁵ Mr. Auchincloss has repeatedly made ad hominem attacks to belittle Mr. Jackson and
26 defense counsel in open court and in his pleadings. For example, Mr. Auchincloss compared
27 the arguments of defense counsel to the cry of an anxious goat or sheep, in open court on
December 20, 2004, when he described the words of defense counsel as "frantic bleating." That
is an ad hominem attack.

1 significant or not. They have hundreds of interviews recorded on audiotape, CD and DVD. They
2 are extremely careful to claim to have preserved statements of every witness. For instance, they
3 recorded interviews with people like [REDACTED], [REDACTED], and [REDACTED].
4 These people were not material witnesses in any sense, but they wanted to portray the image of
5 being thorough and above board. It is inconceivable that any proper law enforcement officer in
6 this case, following these procedures, would think that it is appropriate to interview the key
7 complaining witness, at a key stage in the development of her testimony, without: (a) having an
8 investigator present; (b) writing a report as to what she said; and (c) tape recording or
9 videotaping the meeting. Mr. Sneddon did none of these things.

10 Most remarkably, however, Mr. Auchincloss threatens the defense in the second full
11 paragraph on page 6. He says, in essence, that, if we attempt to impeach Mr. Sneddon or if we
12 even comment on the prosecution's motivation, he will release "everything [Mr. Sneddon] knows
13 about this defendant." There are three answers to this:

14 First, we will be renewing our motion to recuse the District Attorney. Clearly, the
15 personal bias has extended from Mr. Sneddon to his deputy, Mr. Auchincloss. Mr. Auchincloss'
16 response to legitimate concerns of the defense - is Mr. Sneddon biased and, whether or not he is
17 biased, how can a prosecution overlook so much evidence - is to attempt to extort the defense
18 into withdrawing such legitimate evidence from the jury. Mr. Auchincloss' litany of things he
19 will do so that "[t]he defense does not want to go there" are clearly inadmissible and bullying.
20 The undersigned is aware that the defense made a motion to recuse which was denied, however,
21 it would be malpractice to not renew the motion based on this clear evidence of vindictive
22 behavior by one of Mr. Sneddon's deputies.

23 Second, if Mr. Sneddon takes the stand, we are entitled to impeach him based on bias and
24 attitude toward the proceedings under 780 of the Evidence Code, just like any other witness. He
25 knew better than to insert himself into a critical interview with a critical witness. That witness is
26 now so thoroughly impeached herself, that his interview and his interaction is all the more
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1 important to both sides of the case. [REDACTED] testified that he was not aware of any other
2 situation in which the District Attorney of the County, himself, conduct himself as Mr. Sneddon
3 did on this occasion. Mr. Sneddon cannot now claim "Kings X" when it comes to the same
4 cross-examination that any police officer would have to respond to. Mr. Sneddon chose to do
5 this and that is the consequence.

6 Third, whether or not Mr. Sneddon testifies, it is entirely proper for the defense to argue
7 at the conclusion of the case that the prosecution ignored obvious evidence that their prize
8 witnesses were lying. There is absolutely nothing wrong with pointing out that this is a case
9 against a major celebrity and that, were he an ordinary person, the prosecution would not be so
10 blinded. We do not have to preview our argument but to be met with the uncontrolled threats of
11 Mr. Auchincloss is totally inappropriate. He makes the threat that, if we defend on the grounds
12 that his boss (or any of the prosecutors) pursued this case for the wrong reasons, he will unleash a
13 parade of inadmissible and salacious hearsay. He is wrong and woefully so.

14 IV.

15 TO RESTRICT THE DEFENSE WOULD RESULT IN THE DENIAL OF MR.
16 JACKSON'S RIGHTS TO A FAIR TRIAL, DUE PROCESS OF LAW, AND A
17 RELIABLE VERDICT AND SENTENCE PURSUANT TO THE FIFTH, SIXTH,
18 EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES
19 CONSTITUTION AND ARTICLE I, SECTIONS 7, 15, 17 AND 24 OF THE
20 CALIFORNIA CONSTITUTION

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v.

CONCLUSION

For the above stated reasons, the Court should not grant the District Attorney's motion.

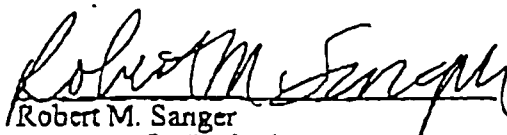
Dated: January 21, 2005

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

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 21, 2005, I served the foregoing documents on the interested parties in this action by depositing a true copy thereof as follows: **EXPARTE APPLICATION FOR AN ORDER THAT NOTICE OF MOTION FOR AN ORDER THAT OPPOSITION TO DAS MOTION IN LIMINE RE EVIDENCE CODE SECTION 402 and OPPOSITION TO DAS MOTION IN LIMINE RE EVIDENCE CODE SECTION 402 and REDACTED VERSION** on the interested parties in this action by depositing a true copy thereof as follows:

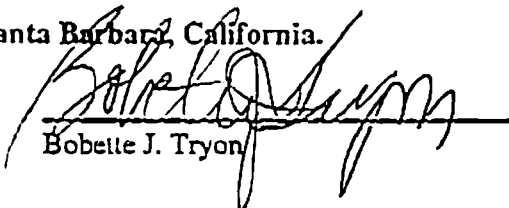
Tom Sneddon
Gerald Franklin
Ron Zonen
Gordon Auchincloss
District Attorney
1112 Santa Barbara Street
Santa Barbara, CA 93101
805-568-2398

 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

 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 21, 2005, 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 JANUARY 27, 2005, I served a copy of the attached ORDER FOR RELEASE OF REDACTED DOCUMENTS (OPPOSITION TO DISTRICT ATTORNEY'S MOTION IN LIMINE RE EVIDENCE CODE 402 ISSUES) addressed as follows:

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

THOMAS W. SNEDDON, JR.
DISTRICT ATTORNEY'S OFFICE
1112 SANTA BARBARA STREET
SANTA BARBARA, CA 93101

X FAX

By faxing true copies thereof to the receiving fax numbers of: (805) 456-0699 (Thomas Mesereau, Jr.); (805) 568-2398 (Thomas Sneddon). Said transmission was reported complete and without error. Pursuant to California Rules of Court 2005(1), 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 the person having charge thereof or by hand delivery to the above mentioned parties.

 EXPRESS MAIL

By depositing such envelope in a post office, mailbox, sub-post 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 27TH day of JANUARY, 2005, at Santa Maria, California.



CARRIE L. WAGNER