

FEB 11 2005

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

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  
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Senior Deputy District Attorney  
5 1105 Santa Barbara Street  
Santa Barbara, CA 93101

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

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12  
13 THE PEOPLE OF THE STATE OF CALIFORNIA,

14 Plaintiff,

15 vs.

16 MICHAEL JOE JACKSON,

17 Defendant.

No. 1133603

MOTION IN LIMINE TO  
EXCLUDE TESTIMONY OF  
WITNESSES  
(Evidence Code § 702)

DATE: ~~February 22, 2004~~  
TIME: ~~8:30 AM~~  
DEPT.: ~~SM2 (Melville)~~

~~PROPOSED~~ REDACTED

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21 **INTRODUCTION**

22 Defendant has provided the People with a list of 454 witnesses. (See Exhibit One)  
23 To date, defendant has provided discovery of statements of only 64 witnesses. The  
24 People therefore move under Evidence Code section 702 to exclude the testimony of all  
25 witnesses for which statements have not been provided unless defendant can establish  
26 outside the presence of the jury that such witnesses have **personal knowledge** of facts  
27 relevant to this case.

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## ARGUMENT WITH POINTS AND AUTHORITIES

Evidence Code section 702 states in pertinent part:

...the testimony of a witness concerning a particular matter is inadmissible unless he has personal knowledge of the matter. Against the objection of a party, such personal knowledge must be shown before the witness may testify concerning the matter." (emphasis added)

Evidence Code section 403 provides specific procedures requiring a party to satisfy the court that a given witness has sufficient personal knowledge to testify *before the evidence is presented to the jury*. Section 403 states in pertinent part:

(a) The proponent of the proffered evidence has the burden of producing evidence as to the existence of the preliminary fact, and the proffered evidence is inadmissible unless the court finds that there is evidence sufficient to sustain a finding of the existence of the preliminary fact, when:

(1) The relevance of the proffered evidence depends on the existence of the preliminary fact;

(2) The preliminary fact is the personal knowledge of a witness concerning the subject matter of his testimony;

While Section 403(b) gives the court latitude to admit testimony of a witness subject to proof of personal knowledge and cautionary instruction, this paragraph still provides for a satisfactory proffer of the testimony of the witness. Thus far defendant has provided absolutely no information regarding what, if any, competent relevant testimony these 390 witnesses will offer.

### CONCLUSION

The defense has provided the People with an unheard of list of witness full of unheard of witnesses. They have provided no reports or proffer of any kind concerning the testimony of over three hundred witnesses. The People therefore move the court to

1 other satisfactory proffer establishing the required preliminary fact question of personal  
2 knowledgc.

3  
4 DATED: February 11, 2004

5 Respectfully submitted,

6 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY

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8 BY:   
9 GORDON AUCHINCLOSS  
Deputy District Attorney

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2 **PROOF OF SERVICE**

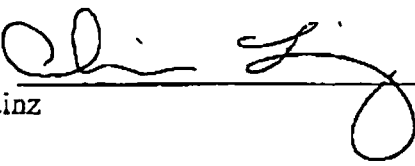
3  
4 STATE OF CALIFORNIA )  
5 ) SS  
6 COUNTY OF SANTA BARBARA )

7 I am a citizen of the United States and a resident of the County aforesaid; I am over the  
8 age of eighteen years and I am not a party to the within-entitled action. My business address is:  
9 District Attorney's Office; Courthouse; 1112 Santa Barbara Street, Santa Barbara, California  
10 93101.

11 On February 11, 2005, I served the within MOTION IN LIMINE TO EXCLUDE  
12 TESTIMONY OF WITNESSES on Defendant, by serving THOMAS A. MESEREAU, JR.,  
13 ROBERT SANGER, and BRIAN OXMAN by personally delivering a true copy thereof to Mr.  
14 Sanger's office in Santa Barbara, by transmitting a facsimile copy thereof to Attorney Mesereau,  
15 and by causing a true copy thereof to be mailed to Mr. Mesereau, first class postage prepaid, at  
16 the addresses shown on the attached Service List.

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

18 Executed at Santa Barbara, California on this 11th day of February, 2005.

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**SERVICE LIST**

THOMAS A. MESEREAU, JR., ESQ.  
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1875 Century Park East, No. 700  
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Co-counsel for Defendant

BRIAN OXMAN, ESQ.  
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14126 E. Rosecrans Blvd.,  
Santa Fe Springs, CA 90670

Co-counsel for Defendant

**EXHIBITS REDACTED**