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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF SANTA BARBARA
17 SANTA MARIA DIVISION

18 THE PEOPLE OF THE STATE OF CALIFORNIA,)
19 Plaintiff,)
20 vs.)
21 MICHAEL JOSEPH JACKSON)
22 Defendant.)

CASE NO. 1133603

MR. JACKSON'S MOTION IN LIMINE
TO PRECLUDE PSYCHOLOGIST
KATZ'S USE OF ULTIMATE FACTS
AND CONCLUSIONS

23 TIME: None Set
DATE: None Set
PLACE: Department SM-2

24
25 **A. Introduction.**

26 Mr. Michael Jackson submits this Memorandum in support of his Motion in Limine to Preclude
27 Psychologist Katz's Use of Ultimate Facts and Conclusions. Mr. Jackson requests the court make the
28 following orders in limine:

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

MAR 24 2005

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

1 (1) An order precluding plaintiff's expert witness, Psychologist Katz, from referencing and
2 utilizing ultimate facts and legal conclusions as to the credibility, believability, or truthfulness of the
3 complaining witnesses or evidence presented in this case, and prohibiting plaintiff's attorneys and
4 witnesses from making references in the presence of jurors to such ultimate facts and conclusions;

5 (2) An order requiring the attorneys for plaintiff to instruct their witnesses of the court's
6 exclusionary order on this motion; or in the alternative,

7 (3) An order requiring the plaintiffs, prior to making any reference, comment, or assertions
8 concerning believability, credibility, truthfulness, or any similar term, to approach the bench and make an
9 offer of proof to the court so that the court, prior to any presentation to the jury of the above-referenced
10 evidence, can make a preliminary determination of the relevancy, admissibility, and foundation thereof.

11 Mr. Jackson's Motion is based on the following grounds:

12 (1) Plaintiff has previously presented the testimony of Psychologist Katz to the Grand Jury as to
13 credibility, believability, and that the complaining witnesses were truthful and their claims should be
14 believed. Use of such legal conclusions which go to the ultimate fact of whether the witness is telling the
15 truth are reserved for determination by the trier of fact and not the expert witness. Such conclusions about
16 materials involved in this case are improper legal conclusions contrary to fact, and not only lack probative
17 value, but also any probative value is outweighed by its prejudicial effect;

18 (2) These orders are necessary to insure Mr. Jackson will be accorded a fair trial and the trial record
19 of this case will not be tainted with reversible error to Mr. Jackson through use of legal conclusions,
20 opinions as to ultimate facts, and prejudicial terminology lacking foundation.¹¹

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24 ¹¹ Allowing these materials into evidence would result in a violation of Mr. Jackson's right to a fair trial,
25 due process of law, a fair and impartial jury, and violate the constitutional guarantees of the 4th, 5th, 6th,
26 and 14th Amendments to the United States Constitution and the California Constitution. Plaintiff is
27 offering these items only because of the public nature of these proceedings and Mr. Jackson's notoriety.
28 The effort to inflame the jury deprives Mr. Jackson of equal protection of the laws and the privileges and
immunities guaranteed others. Many of these items have not been provided in discovery, and plaintiff's
effort to introduce them will deprive Mr. Jackson of the right to adequately prepare for trial, along with
destroying his rights to a fair trial.

1 **B. Psychologist Katz' Testimony Before the Grand Jury is Inadmissible at Trial and**
2 **Prejudicial Error.**

3 **1. A psychologist may not testify to ultimate facts or witness credibility.**

4 The prosecution seeks to admit the expert testimony of Dr. Stanley Katz, a psychologist. When he
5 testified before the Grand Jury, Psychologist Katz made repeated inadmissible assertions that the
6 complaining witnesses were credible. Those claims constituted reversible and prejudicial error. People v.
7 Espinoza, 95 Cal. App. 4th 1287, 1312 (2002)(expert may not express an opinion as to the credibility of a
8 victim of a sex crime).

9 Mr. Jackson expects the testimony of Psychologist Katz to mirror his testimony to the Grand Jury.
10 On March 29, 2004, Psychologist Katz testified to the Grand Jury about "my finding that there was a
11 reasonable suspicion that something had occurred that was in the category of child abuse to Gavin and
12 Star." (RT 101:21-24). Such expression of his belief of the truth of the claim is both inadmissible and
13 prejudicial. People v. Coddington, 23 Cal. 4th 529., 582 (2002). An expert may not give a opinion on the
14 ultimate question of whether a witness is telling the truth. People v. Ainsworth, 45 Cal. 3d 984, 1012
15 (1988).

16 Psychologist Katz repeatedly provided inadmissible Grand Jury testimony as follows:

17 "I found that – that both boys were fairly consistent. The consistency that I would expect in credible
18 reports." (RT 100:19-21:)

19 "[T]he psychiatrist may not testify to the ultimate question of whether the witness is telling the truth
20 on a particular occasion." People v. Ainsworth, 45 Cal. 3d 984, 1012 (1988). People v. Castro, 30 Cal. App.
21 4th 390, 396 (1994). A party may not present evidence on the ultimate fact of his mental state such as
22 truthfulness. People v. Coddington, 23 Cal. 4th 529, 582 (2002). An expert's opinion may not embrace the
23 ultimate issue to be decided by the trier of fact. Evidence Code section 805; 1 B. Jefferson, California
24 Evidence Benchbook, sec. 29.60, at 620 (3d ed. 2004).

25 Deputy District Attorney Zonen improperly argued Psychologist Katz' conclusions of "credibility"
26 before the Grand Jury by making improper arguments that Psychologist Katz found the complaining
27 witness's statements "credible." Mr. Zonen argued:
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1 "There was enough information that Dr. Katz had received at that point that he believed he
2 was under an obligation as a mandatory reporter to contact Child Protective Services in Los Angeles
3 or the police. A mandatory reporter is a category for certain professionals who, if they receive
4 information, credible information, where they believe that the potential of child sexual abuse takes
5 place, they're obligated to report it. And psychologists are on that list. (RT 36:18-26)(emphasis
6 added).

7 Reversible error occurred here because it was repeatedly asserted before this Grand Jury that
8 Psychologist Katz found the reports credible, that he believed that the potential of child abuse had taken
9 place, and he had a reasonable suspicion child abuse had occurred. This evidence was inadmissible before
10 the Grand Jury and remains inadmissible at trial and extraordinarily prejudicial to Mr. Jackson. The cases
11 are clear that such conclusions are to be made by the trier of fact, the jury in this case, and that such
12 testimony by an expert is blatantly inadmissible.

13 **2. The prosecution improperly argued to this Court that Psychologist Katz was**
14 **presented to the Grand Jury to establish "credibility."**

15 Mr. Jackson believes the prosecution will offer the same testimony by Psychologist Katz with the
16 specific purpose of opining on truth and credibility. The testimony was improper before the Grand Jury and
17 is still improper and prejudicial at trial. The prosecution stated in its Opposition to Motion to Set Aside
18 Indictment:

19 "Dr. Katz' testimony concerning his discussions with Gavin and Star corroborated the
20 youngsters' own testimony. Plainly, anticipatory corroboration was not inappropriate in the
21 circumstances, considering the defense's attack on the boys' credibility in their demand that the
22 prosecution present to the grand jury what it regarded as exculpatory' evidence." (Plaintiff's
23 Opposition 37:17-20).

24 Not only did Psychologist Katz render an inappropriate opinion concerning credibility, but the
25 express purpose of his presentation to the Grand Jury, according to the prosecution, was deliberately
26 designed to render an opinion about "credibility." The prosecution inexplicably and wrongly believes it has
27 the right to present corroborating evidence to establish "credibility" by an expert witness who renders a
28 prejudicial opinion on ultimate fact. People v. Ainsworth, 45 Cal. 3d 984, 1012 (1988)("the psychiatrist

1 may not testify to the ultimate question of whether the witness is telling the truth on a particular
2 occasion."). The Prosecution argued to the Grand Jury Psychologist Katz found a "credible" complaint of
3 child abuse, and the prosecution continues to make the same improper, prejudicial, and reversible error
4 argument to this court. People v. Espinoza, 95 Cal. App. 4th 1287, 1312 (2002). The use of such ultimate
5 facts and conclusions by an expert witness must be precluded and excluded.

6 **C. The Court Should Prohibit Plaintiff's Experts's Use of the Improper Legal Conclusion.**

7 The application of the terms believability, credibility, or truthfulness of complaining witnesses or to
8 the materials involved in this case by an expert witness is an improper legal conclusion. Legal conclusions
9 should be disregarded. Krug v. Meeham, 109 Cal. App. 2d 274, 276-77 (1952); Chacksfield v. L.A.
10 County Flood Control Dist., 245 Cal. App. 2d 193, 195 (1966). Legal conclusions are not evidence.
11 Solovij v. Gourley, 87 Cal. App. 4th 1229, 1233 (2001). Legal conclusions provide no evidentiary value
12 and cannot substitute for facts which are deemed to be real evidence. August v. Department of Motor
13 Vehicles, 264 Cal. App. 2d 52, 62 n. 3 (1968). Legal conclusions are not properly placed before the jury
14 and should be excluded from evidence. Downer v. Bramet, 152 Cal. App. 3d 837, 8941 (1984).

15 The use of the such terms by an expert witness are conclusions of ultimate fact, and plaintiff's
16 efforts to use these legal conclusions are improper. The intent of the offering, and subliminal effect upon
17 the jury, is to suggest that if a psychologist, qualified by the court to be an expert, believes in the credibility
18 of the complaining witness, then the complaining witness must be telling the truth. The court should not
19 permit plaintiff's efforts to confuse and fool the jury with legal conclusions contrary to fact, law, and
20 admissibility of evidence. The court should prohibit plaintiff's Psychologist Katz from utilizing ultimate
21 facts and legal conclusions in his testimony.

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1 D. Conclusion.

2 For the foregoing reasons, Mr. Michael Jackson requests his Motion in Limine to Preclude
3 Psychologist Katz's Use of Ultimate Facts and Conclusions be granted.

4 DATED: March 23, 2005

Respectfully submitted,

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11 By: 

12 for R. Brian Oxman
13 Attorneys for defendant
14 Mr. Michael Jackson

