

APR 28 2005

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BY *Carrie L. Wagner*  
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8 **MICHAEL JOSEPH JACKSON**

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

12 THE PEOPLE OF THE STATE OF ) Case No. 1133603  
13 CALIFORNIA, )  
14 Plaintiffs, ) MOTION TO STRIKE THE TESTIMONY OF  
15 vs. ) DEBBIE ROWE  
16 ) DATE: April 28, 2005  
MICHAEL JOSEPH JACKSON, ) TIME: 8:30  
17 Defendant. ) DEPT: SM-8  
18 )  
19 )  
20 )

21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 The Court should strike the testimony of Debbie Rowe. The evidence was found to be  
23 admissible pursuant to 1101(b) based on a proffer of the foundational facts under Evidence Code  
24 Section 402. Ms. Rowe's direct testimony contradicts that proffer. Therefore, Ms. Rowe's  
25 testimony should be stricken.

26 The Court admitted Ms. Rowe's testimony based on the proffer that Debbie Rowe would  
27 testify that: (1) her interview was rehearsed and that she was given over 100 scripted questions in  
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MOTION TO STRIKE THE TESTIMONY OF DEBBIE ROWE

1 advance; and (2) that her children were "used as pawns" to coerce her into participating in the  
2 interview. These representations<sup>1</sup> have been directly contradicted by the testimony of Ms. Rowe.  
3 The prosecution has failed to meet their offer of proof, and, therefore, the Court should strike Ms.  
4 Rowe's testimony.

5 Several specific representations made by the prosecution to cause this Court to admit the  
6 evidence did not pan out. In fact, they are denied by Ms. Rowe in her sworn testimony. The  
7 prosecution stated that Ms. Rowe would say she "told Mr. Konitzer that she would do it if  
8 Jackson himself agreed." (Motion, page 3.) In fact, Ms. Rowe testified that she participated  
9 voluntarily because she was glad to help Mr. Jackson. The prosecution proffered that Ms. Rowe  
10 would say she "was given over 100 scripted questions for the up-coming interview." (Ibid.) The  
11 prosecution claimed that "Ian Drew rehearsed the questions with her." (Ibid.) The prosecution  
12 stated that the interview was "highly scripted." (RT 7351:14-16.) Ms. Rowe testified that she  
13 did not rehearse the interview and that it was done "cold." The prosecution informed the Court  
14 that Ms. Rowe would state that Mr. Schaffel "told Ms. Rowe that if she did the interview she  
15 would be allowed to visit with her children." (Ibid.) In fact, Ms. Rowe testified that she  
16 voluntarily participated and that no direct promises were made. The prosecution claimed that  
17 Ms. Rowe would say that "the children were used as pawns to compel their mother's  
18 participation in the filmed interview and to ensure an enthusiastic response from her." (Motion,  
19 pages 3-4)

20 The defense informed the Court that it did not believe the proffer could be met.  
21 Furthermore, the defense emphasized that the admission of Ms. Rowe's testimony would entail  
22 hours of cross-examination and rebuttal evidence, including contradictory recorded statements in  
23 taped interviews and taped telephone conversations. In fact, the witness herself, under oath, fails  
24 to make the claims the prosecution said she would.

25 The prosecution has failed to meet its proffer of foundational facts pursuant to Evidence  
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27 <sup>1</sup> Defense counsel has repeatedly objected to the lack of declarations and reports in  
28 support of other prosecution motions to admit testimony pursuant to Sections 1101(b) and 1108.

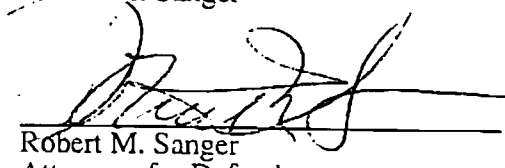
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Code Section 402. Therefore, the Court should strike Ms. Rowe's testimony.

Dated: April 28, 2005

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By: 

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