

OCT 26 2004

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  
4 GERALD McC. FRANKLIN (State Bar No. 40171)  
Senior Deputy District Attorney  
5 1112 Santa Barbara Street  
Santa Barbara, CA 93101  
6 Telephone: (805) 568-2300  
FAX: (805) 568-2398  
7

\* unsealed  
pursuant to  
Waller's 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,

No. 1133603

PLAINTIFF'S RESPONSE TO  
DEFENDANT'S MOTION TO  
RECONSIDER ORDER  
DENYING BAIL REDUCTION

14 v.  
15  
16 MICHAEL JOE JACKSON,

Defendant.

DATE: November 4, 2004  
TIME: 8:30 a.m.  
DEPT: SM 2 (Melville)

~~FILED UNDER SEAL~~

18  
19  
20 The People respectfully offer this Response to Defendant's "Motion To Reconsider  
21 Order Denying Bail Reduction," etc.

22 I  
23 PRESUMPTION OF GUILT  
24 WHEN ASSESSING BAIL

25 Defendant argues that

26 It is not appropriate to assume the charges in the indictment are  
27 true for the purpose of reviewing the amount of bail. The principle  
28 that the Court must assume guilt in order to determine bail evolved  
from a clear misreading of case law. Unfortunately, this misreading

1 has been perpetuated by Witkin. (Witkin & Epstein, California  
2 Criminal Law 2008, pages 2368-1369 [sic] (2d. Ed. (1989).)

3 This fallacy evolved from a results-oriented reading of *Ex Parte*  
4 *Duncan* (1879) 53 Cal. 410, in which the California Supreme Court  
5 notes that a habeas review of a trial court bail setting is based by an  
6 assumption of guilt standard. (*Id.* at 411.) The Court contrasts that  
7 standard with the trial court standard that would have been appropriate  
8 "had the proceedings to let him to bail been originally before us . . . ."  
9 (*Ibid.*)

10 The third edition of Mr. Witkin's work, whatever it said, is outdated. And, as it  
11 happens, it is Defendant, not Mr. Witkin, who misread *Ex parte Duncan* (1879) 53 Cal. 410.

12 The relevant language of *Ex parte Duncan, supra*, belies Defendant's reading of it:

13 As observed at the argument, we must assume *in this proceeding*  
14 *that the petitioner is guilty of the ten distinct felonies* of which he is  
15 indicted. We must assume his guilt, though when he shall be tried it  
16 may be made to appear that he is wholly innocent of all the charges.

17 We said in *Ex parte Ryan* [(1872)] 44 Cal. 558 that "except for the  
18 purpose of a fair and impartial trial before a petit jury, the presumption  
19 of guilt arises against the prisoner upon the finding of an indictment  
20 against him," and this must be taken to be the settled rule.

21 . . . .

22 The question is not whether we would have exacted so great a sum  
23 in the first instance had the proceedings to let him to bail been  
24 originally before us; in other words, the inquiry is not whether a mere  
25 difference of opinion may have been developed between this Court  
26 and the Municipal Criminal Court as to the amount of bail to be  
27 exacted in the case. We are not to assume in this case the functions of  
28 the Court committing the prisoner, or substitute our own for its  
judgment in fixing the amount of bail. Before we are authorized to  
interfere the bail demanded must be, (as was said in *Ryan's Case*) "*per*  
*se* unreasonably great and clearly disproportionate to the offense  
involved," etc.

(53 Cal. 410, at 411; emphasis the court's.)

1 The unfortunate Mr. Duncan again sought reduction of his bail by petition for  
2 habeas corpus following two mistrials on the several counts of embezzlement for which he had  
3 been indicted, and a justice of the Supreme Court again denied the petition: "Upon a former  
4 occasion, (January term, 1879) the prisoner applied to the Supreme Court for an order reducing  
5 the amount of his bail, and the application was, upon consideration of all the justices, refused.  
6 (*Ex parte Duncan*, 53 Cal.410.) Unless the circumstances now disclosed make a case  
7 materially different from the case then made to appear, I should be disinclined to depart from  
8 what was then determined." (*Ex parte Duncan* (1879) 54 Cal. 75, at p. 78.)

9 To rehearse what we think is obvious from the foregoing, when it comes to the  
10 setting of bail post-indictment the "presumption of guilt" rule articulated by the Supreme Court  
11 applies to trial courts and reviewing courts alike. The Supreme Court simply was taking care  
12 to point out that as a reviewing court, it could not supplant the trial court in the exercise of the  
13 latter's duty to fix the bail it deemed appropriate in light of the indictment.

14 The current edition of California Criminal Law states:

15 (2) *Assumption of Guilt.* In considering the seriousness of an offense  
16 after an indictment or information, the courts assume that the defendant is  
17 guilty. (*In re Horiuchi* [(1930) 105 Cal.App. 714]; *Ex parte Ruef* [(1908)]  
18 7 C.A. 752; cf. *Ex parte Duncan* (1879) 54 C. 75, 79 [fact that two trial  
19 jurors disagreed was not enough to overcome judge's discretion in refusing  
to reduce bail].)

20 (4 Witkin & Epstein, Cal. Criminal Law (3d. ed. 2000) Pretrial Proceedings, § 88, p. 287.)

21 II.

22 **DEFENDANT'S INTENT, OR LACK THEREOF, TO GO**  
23 **TO BRAZIL BEFORE HE WAS A SUSPECT IN A CHILD**  
24 **MOLEST INVESTIGATION IS IRRELEVANT TO**  
25 **THE ISSUE OF PROPER BAIL.**

26 There is no question but that efforts had been made by Defendant's employees and  
27 agents to whisk the Doc family out of California to Brazil. Defendant's co-conspirators  
28 obtained passports and visas, moved the family's possession, closed down their apartment,

1 paid off their rent, withdrew the children from school and lied about their ultimate destination.

2 It is not relevant that prior to Defendant learning he was under investigation for  
3 child molestation he did or did not intend to join the Does in Brazil. What is relevant is that he  
4 had the means and desire to move an entire family across the globe and keep them there as  
5 long as he desired. If he is able and willing to move an uncooperative family more than six  
6 thousand miles to hide them from inquiring reporters and investigators, then surely he can  
7 move himself to a safe haven to hide himself.

8 A search of Defendant's home on November 18, 2003 retrieved a personal calendar  
9 that showed he had scheduled a trip to Africa later that month. We were also told by his  
10 lawyers that he was scheduled to be in England some months after that. Defendant generally  
11 travels by private jet and is easily capable of moving himself long distances on short notice.

### 12 III

#### 13 EVIDENCE OF PRIOR ACCUSATIONS AGAINST 14 DEFENDANT FOR THE SAME OFFENSE IS 15 RELEVANT TO A DETERMINATION OF BAIL

16 Defendant states that it is inappropriate for the court to consider prior allegations  
17 against the defendant which did not result in an indictment or conviction. Defendant points out  
18 that two separate grand juries (Los Angeles and Santa Barbara Counties) failed to return  
19 indictments. That is certainly true. What Defendant neglects to mention is that criminal  
20 proceedings were aborted when Defendant paid the 13-year-old accuser some \$20 million,  
21 whereupon the victim's attorney announced that the victim would not be participating in any  
22 additional proceeding.

23 Evidence of prior uncharged acts of child molestation is relevant and admissible in  
24 a child molestation trial to show a predisposition to commit that type of offense. (Evid. Code,  
25 § 1108.) Such evidence is also relevant at the time of sentencing as a matter in aggravation.  
26 Defendant publicly acknowledged, recently, paying undisclosed sums on two occasions several  
27 years ago to quietly resolve "certain false allegations that he had harmed children." In  
28 determining the appropriate bail in this matter, the Court certainly may consider that Defendant

1 himself will consider the impact on his trial and sentencing if either or both of those  
2 individuals, or others, testify to his prior acts of molestation.

3 IV

4 DEFENDANT WEALTH IS AN APPROPRIATE SUBJECT  
5 FOR CONSIDERATION OF INCREASED BAIL

6 "The greater the probability of conviction the greater the inducement to a defendant  
7 to become a fugitive from justice. The petitioner shows by his affidavit that he is a man of  
8 means, and now engaged in improving his holding in San Francisco. How much he is worth  
9 does not appear, but the greater the amount of his wealth the more readily he could give a large  
10 bail, and the more readily he could flee to some country where perhaps he could live in  
11 comfort on his possessions." (*Ex Parte Ruef* (1908) 7 Cal App 750, 753.)

12 In the documentary "Living with Michael Jackson" later aired on national and  
13 international television, Defendant told his interviewer, Marlin Basbir, that he is a  
14 "billionaire." His lead counsel recently acknowledged that the millions paid to the two  
15 claimants in 1993 was a pittance compared to what he would have lost if he became embroiled  
16 in litigation of the charges. Michael Jackson appears to be a very wealthy man. The bail as  
17 currently set is not excessive.

18 DATED: October 25, 2004

19 Respectfully submitted,

20 THOMAS W. SNEDDON, JR.  
21 District Attorney

22 By:   
23 Ronald J. Zonen, Senior Deputy

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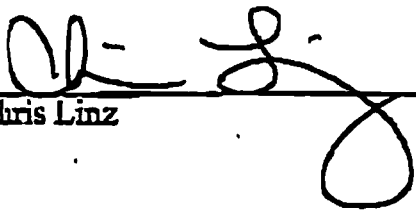
**PROOF OF SERVICE**

STATE OF CALIFORNIA                )  
COUNTY OF SANTA BARBARA      ) SS

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and I am not a party to the within-entitled action. My business address is: District Attorney's Office, Courthouse; 1105 Santa Barbara Street, Santa Barbara, California 93101.

On October 25, 2004, I served the within **PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO RECONSIDER ORDER DENYING BAIL REDUCTION** on Defendant, by **THOMAS A. MESEREAU, JR. and ROBERT SANGER**, by personally delivering a true copy thereof to Mr. Sanger's office in Santa Barbara, by transmitting a facsimile copy thereof to Attorney Mesereau, and by causing a true copy thereof to be mailed to Mr. Mesereau, first class postage prepaid, at the addresses shown on the attached Service List.

I declare under penalty of perjury that the foregoing is true and correct.  
Executed at Santa Barbara, California on this 25th day of October, 2004.

  
Chris Linz

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**SERVICE LIST**

**THOMAS A. MESEREAU, JR.**  
Collins, Mescreau, Reddock & Yu, LLP  
1875 Century Park East, No. 700  
Los Angeles, CA 90067  
FAX: (310) 284-3122  
Attorney for Defendant Michael Jackson

**ROBERT SANGER, ESQ.**  
Sanger & Swysen, Lawyers  
233 E. Carrillo Street, Suite C  
Santa Barbara, CA 93001  
FAX: (805) 963-7311  
Co-counsel for Defendant