

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

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

JAN 10 2005

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

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

11 THE PEOPLE OF THE STATE OF CALIFORNIA,

12 Plaintiff,

13 v.

14 MICHAEL JOE JACKSON,

15 Defendant.

No. 1133603

PLAINTIFF'S OPPOSITION TO  
DEFENDANT'S MOTION THAT  
THE HEARING OF PLAINTIFF'S  
"EVIDENCE CODE § 1108"  
MOTION BE HELD IN CAMERA

DATE: January 12, 2005  
TIME: 8:30 a.m.  
DEPT: SM 2 (Melville)

~~FILED UNDER SEAL~~

16 Defendant moves for an order that the pending motion by Plaintiff for the admission  
17 of certain evidence pursuant to Evidence Code section 1108, and all further pretrial hearings  
18 on the admissibility of evidence, be heard in chambers rather than in open court. An in camera  
19 proceeding is required, he alleges, to preserve "the overriding interests of Mr. Jackson's rights  
20 to due process and a fair trial" under the applicable constitutional guarantees. (Motion 2:11-  
21 14.)

22 Plaintiff opposes the motion, with respect to the pending Section 1108 motion and  
23 considered as a blanket request to exclude the public from all further hearings in which  
24 evidentiary matters may be discussed.  
25

26 OPPOSITION TO DEFENDANT'S REQUEST THAT EVIDENTIARY MOTIONS BE HEARD IN CAMERA  
27  
28

1 Defendant notes, with no apparent sense of irony, that "The media coverage in this  
2 case is unprecedented and it is certain that anything said in open court will be broadcast to any  
3 of the already summoned potential jurors who read the newspapers, watch television, listen to  
4 the radio or visit news or entertainment websites." (Motion 4:23-26.)

5 That has been true even before the indictment was filed in this case. Even so, there  
6 was no hint of concern by defense counsel that in-court argument by them in support of their  
7 earlier motions to suppress evidence, recuse the district attorney and, notably, to have certain  
8 prosecution witnesses ordered to undergo psychiatric evaluation, might prejudice the  
9 objectivity of members of the jury pool.

10 The announced defense position in this case is that Michael Jackson is factually  
11 innocent, that the prosecutor knows he is innocent, and is prosecuting him solely for reasons of  
12 personal malice and spite. Defense counsel articulate that belief in arguing one side or the  
13 other of just about every contested motion in this case. Lead counsel has been especially  
14 generous in his references to prejudicial matter that will never be part of the evidence  
15 presented at trial.

16 If defense counsel are aware that the People as well as the defendant have a right to  
17 due process (*Stein v. New York* (1952) 346 U.S. 156, 197; Cal. Const., art. I, § 29; *Department*  
18 *of Corrections v. Superior Court (Ayala)* (1988) 199 Cal.App.3d 1087, 1092) and a fair trial  
19 before an impartial jury (*People v. Willis* (2002) 27 Cal.4th 811, 813-814; *Millsap v. Superior*  
20 *Court* (1999) 70 Cal.App.4th 196, 204), they have kept their appreciation of that fact to  
21 themselves.

22 The pending Evidence Code section 1108 motion will be argued for the prosecution  
23 by a lawyer who (a) is acutely concerned that the right of both parties to a fair-minded and  
24 impartial jury not be prejudiced by references to evidence not yet made public and (b) is well  
25 able to articulate the legal issues framed by the pending motion and the opposition to it with  
26 discretion.

27 Defendant's Opposition to the pending motion challenges neither the presumption  
28 that certain "other offense" evidence is admissible under Evidence Code section 1108, or the

1 demonstrated pertinence of the evidence proffered in this case. The only substantive  
2 opposition articulated by defendant to the pending motion is their stated, quite conclusory  
3 belief that the proposed evidence is "inherently incredible" and that the witnesses in question  
4 all have a motive to lie.

5 With exceptions not shown by the defense to be relevant here, the assessment of  
6 credibility is the jury's function. There is no need, then, for either side to discuss the  
7 particulars of the section 1108 evidence proposed in the pending motion.

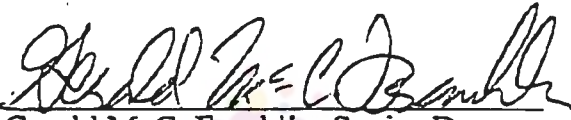
8 CONCLUSION

9 If a given evidentiary motion cannot fairly be argued without discussing its factual  
10 particulars, plaintiff will join with defendant in a request that the motion be heard in camera.  
11 This is not such a motion. It should be argued in open court.

12 DATED: January 10, 2005

13 Respectfully submitted,

14 THOMAS W. SNEDDON, JR.  
15 District Attorney

16 By:   
17 Gerald McC. Franklin, Senior Deputy

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; 1112 Santa Barbara Street, Santa Barbara, California 93101.

On January 10, 2005, I served the within PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION THAT THE HEARING OF PLAINTIFF'S "EVIDENCE CODE § 1108" MOTION BE HELD IN CAMERA on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER, and BRIAN OXMAN by personally delivering a true copy thereof to Mr. Sanger's office in Santa Barbara, by transmitting a facsimile copy thereof to Attorney Mescreau, and by causing a true copy thereof to be mailed to Mr. Mescreau, 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 10th day of January, 2005.

*Gerald McC. Franklin*  
Gerald McC. Franklin



SERVICE LIST

1  
2  
3 THOMAS A. MESEREAU, JR.  
4 Collins, Mesereau, Reddock & Yu, LLP  
5 1875 Century Park East, No. 700  
6 Los Angeles, CA 90067  
7 FAX: (310) 284-3122  
8 Attorney for Defendant Michael Jackson

9  
10 ROBERT SANGER, ESQ.  
11 Sanger & Swysen, Lawyers  
12 233 E. Carrillo Street, Suite C  
13 Santa Barbara, CA 93001  
14 FAX: (805) 963-7311  
15 Co-counsel for Defendant

16  
17 BRIAN OXMAN, ESQ.  
18 Oxman & Jaroscak, Lawyers  
19 14126 E. Rosecrans Blvd.,  
20 Santa Fe Springs, CA 90670  
21 Co-counsel for Defendant