

1 **COLLINS, MESEREAU, REDDOCK & YU**
Thomas A. Mesereau, Jr., State Bar Number 091182
2 Susan C. Yu, State Bar Number 195640
1875 Century Park East, 7th Floor
3 Los Angeles, CA 90067
Tel.: (310) 284-3120, Fax: (310) 284-3133

4 **SANGER & SWYSEN**
5 Robert M. Sanger, State Bar Number 058214
233 East Carrillo Street, Suite C
6 Santa Barbara, CA 93101
Tel.: (805) 962-4887, Fax: (805) 963-7311

7 **OXMAN & JAROSCAK**
8 Brian Oxman, State Bar Number 072172
14126 East Rosecrans
9 Santa Fe Springs, CA 90670
Tel.: (562) 921-5058, Fax: (562) 921-2298

10 Attorneys for Defendant
11 **MICHAEL JOSEPH JACKSON**

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

JAN 21 2005

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

*Unsealed pursuant
to 6/16/05 court
order

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

14 THE PEOPLE OF THE STATE OF)
15 CALIFORNIA,)

16 Plaintiffs,)

17 vs.)

18 MICHAEL JOSEPH JACKSON,)

19 Defendant.)

Case No. 1133603

OPPOSITION TO DISTRICT
ATTORNEY'S MOTION RE: ADMISSION
OF EXPERT TESTIMONY ON
"BATTERED WOMEN'S SYNDROME"

~~UNDER SEAL~~

Honorable Rodney S. Melville

Date: January 28, 2005

Time: 9:30 a.m.

Dept.: 8

20 MEMORANDUM OF POINTS AND AUTHORITIES

21 INTRODUCTION

22 The prosecution asks this Court to allow a yet to be named expert testify regarding

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OPPOSITION TO DISTRICT ATTORNEY'S MOTION RE: ADMISSION OF EXPERT TESTIMONY ON
"BATTERED WOMEN'S SYNDROME"

1 Battered Women's Syndrome (BWS). The prosecution has failed to establish the relevance of
2 BWS expert testimony to this case. The District Attorney presents an argument, in summary
3 form, that Janet Arvizo was the victim of a violent spouse. This does not provide the Court with
4 adequate information to make a determination as to whether or not Janet Arvizo was ever
5 actually abused, let alone, that she suffered from a pattern of abuse that would produce BWS.

6 The admission of such testimony threatens to deprive Mr. Jackson of his federal and state
7 constitutional rights to a fair trial, due process of law, and right to a reliable verdict and sentence
8 pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States
9 Constitution and Article 1, Sections 7, 15, 17 and 24 of the California Constitution.

10 **ARGUMENT**

11 **I.**

12 **IT IS PREMATURE TO RULE ON THIS MOTION BECAUSE THE PROSECUTION**
13 **HAS FAILED TO PRESENT FACTS TO THE COURT THAT WOULD JUSTIFY THE**
14 **INTRODUCTION OF BATTERED WOMEN'S SYNDROME TESTIMONY**

15 It is premature for the Court to be deciding these issues. It is not possible for the defense
16 to adequately oppose this motion, because the prosecution has not provided the statements of the
17 proposed witnesses, except in summary fashion, by way of argument. Defense counsel does not
18 know the name of the prosecution's expert. Defense counsel does not know what the
19 prosecution's experts will say.

20 The prosecution have not presented evidence that would lay a foundation for the
21 admission for this type of testimony. They have not adequately shown that Janet Arvizo was a
22 battered woman or behaving in any way that was consistent with a battered woman. The
23 prosecution's motion explains how BWS testimony would bolster the testimony of Janet Arvizo,
24 but they have not established that her behavior was consistent with being a battered woman.

25 Evidence Code Section 1107 (b) states the requirements for the introduction of BWS
26 testimony: "The foundation shall be sufficient for admission of this expert testimony if the
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1 proponent of the evidence establishes its relevancy and the proper qualifications of the expert
2 witness.” Here, the prosecution has not yet named its expert, let alone demonstrated to the Court
3 that the expert is qualified. The prosecution has also failed to lay the necessary foundation to
4 establish the relevancy of this type of testimony in a conspiracy/child molestation case.

5 Instead of acknowledging that Janet Arvizo is not a credible witness and dismissing the
6 case, the prosecution seeks to bring in “experts” and distractions with the hope that the jury will
7 believe Mr. Jackson to be guilty in the absence of actual proof.

8 **II.**

9 **CONCLUSION**

10 For the above stated reasons, Mr. Jackson objects to the introduction of BWS testimony
11 by a yet to be named expert.

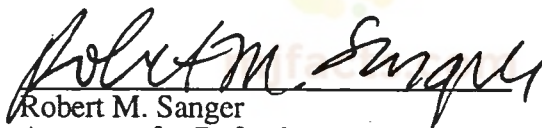
12 Dated: January 21, 2005

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19 Brian Oxman

20 By:

21 
22 Robert M. Sanger
23 Attorneys for Defendant
24 MICHAEL JOSEPH JACKSON

PROOF OF SERVICE

I, the undersigned declare:

I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 233 East Carrillo Street, Suite C, Santa Barbara, California, 93101.

On January 21, 2005, I served the foregoing documents on the interested parties in this action by depositing a true copy thereof as follows: EXPARTE APPLICATION FOR AN ORDER THAT NOTICE OF MOTION FOR AN ORDER THAT OPPOSITION TO DA MOTION RE ADMISSION OF EXPERT TESTIMONY ON BATTERED WOMENS SYNDROME and OPPOSITION TO DA MOTION RE ADMISSION OF EXPERT TESTIMONY ON BATTERED WOMENS SYNDROME and REDACTED VERSION on the interested parties in this action by depositing a true copy thereof as follows:

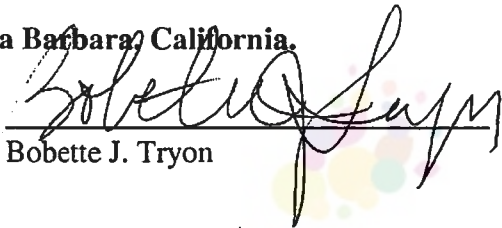
Tom Sneddon
Gerald Franklin
Ron Zonen
Gordon Auchincloss
District Attorney
1112 Santa Barbara Street
Santa Barbara, CA 93101
805-568-2398

 BY U.S. MAIL - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid and deposited during the ordinary course of business. Service made pursuant to this paragraph, upon motion of a party, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit.

 X **BY FACSIMILE** - I caused the above-referenced document(s) to be transmitted via facsimile to the interested parties

 X **STATE** - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed January 18, 2005, at Santa Barbara, California.



Bobette J. Tryon