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

13 THE PEOPLE OF THE STATE OF
CALIFORNIA,

14 Plaintiffs,

15 vs.

17 MICHAEL JOSEPH JACKSON,

18 Defendant.

) Case No. 1133603

)
) RESPONSE TO DISTRICT ATTORNEY'S
) TRIAL BRIEF RE: ADMISSIBLE EVIDENCE
) OF RELEVANT CHARACTER TRAIT

) Honorable Rodney S. Melville

) Date: TBD

) Time: 8:30 am

) Dept: SM 8

21
22 MEMORANDUM OF POINTS AND AUTHORITIES

23 I.

24 THE 1108 REBUTTAL WITNESSES WERE NOT CALLED TO GIVE REPUTATION

25 OR OPINION TESTIMONY

26 The government's case was remarkable in that the majority of its 1108 witnesses

27
28 RESPONSE TO DISTRICT ATTORNEY'S TRIAL BRIEF RE: ADMISSIBLE EVIDENCE OF RELEVANT
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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

MAY - 9 2005

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

1 ORIGINAL

1 consisted of third parties who testified that they witnessed acts of molestations rather than the
2 testimony of the alleged victims. Now that the actual alleged victims and their families are
3 testifying that they were not molested, the government is seeking to misrepresent this testimony
4 as traditional opinion or reputation evidence, in an effort to gain a tactical advantage. The Court
5 should recognize the inherent unfairness of this position and prohibit the government from
6 asking "have you heard" questions as long as the testimony on direct does not include traditional
7 opinion or reputation testimony.

8 Knowing that Wade Robson, Brett Barnes, and Macaulay Culkin have consistently denied
9 having been molested by Mr. Jackson, the District Attorney nevertheless introduced testimony of
10 disgruntled former employees and paid tabloid informants who testified that they watched Mr.
11 Jackson molest those same boys. The purpose of this testimony, pursuant to Section 1108, was
12 to allege a propensity for committing lewd acts with children. Mr. Jackson has the right to
13 defend himself against this alleged propensity evidence. It should come as no surprise to the
14 prosecution that Mr. Robson, Mr. Barnes, Mr. Culkin, and their respective families, were called
15 as witnesses to rebut the false testimony of the government's less than credible witnesses.¹

16 The Court should consider that the supposed opinion and reputation testimony of the
17 1108 rebuttal witnesses is in response to the prosecution's cross-examination questions. The
18 prosecution attempted to impugn the integrity of their parents on the grounds that they "should
19 have known." The prosecution attempted to impeach the alleged victims by suggesting that they
20 should have known better. The prosecution asked about the alleged victims and their families'
21 trust of Mr. Jackson. In response to these questions the witnesses remained steadfast in their
22 position that no wrong-doing had occurred and explained that they did, in fact, trust Mr. Jackson.
23 This is not opinion or reputation evidence and it did not open the door to opinion or reputation

24
25 ¹ If the District Attorney wanted to avoid claims that his witnesses committed perjury
26 perhaps he should have not called witnesses like Adrian McManus and Ralph Chacon who were
27 found, by another judge in this court, to have perjured themselves in their lawsuit against Mr.
28 Jackson. The Honorable Judge Canter did not "take it lightly" when he found that they lied in
his court.

1 cross-examination. It is simply evidence that Mr. Jackson did not commit lewd acts with the
2 witnesses, and, therefore, that he does not have the propensity to do so.

3 It would be illogical to allow 1108 evidence and then either not allow a defense or only
4 allow a defense on the condition that character evidence be allowed to come in. The
5 prosecution's interpretation of 1108 is just that.

6 II.

7 CONCLUSION

8 For the reasons stated above, the Court should restrict the prosecution from asking
9 character questions on cross-examination unless reputation and opinion testimony is offered on
10 direct examination.

11 Dated: May 9, 2005

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