

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

JUN 6 1 2005

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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

17 **THE PEOPLE OF THE STATE OF CALIFORNIA,**

18 Plaintiffs,

19 vs.

20 **MICHAEL JOSEPH JACKSON,**

21 Defendant.

) Case No. 1133603

) SUPPLEMENTAL REQUEST FOR JURY INSTRUCTIONS

) Honorable Rodney S. Melville

) Date: TBD

) Time: 8:30 a.m.

) Dept.: 8

22 **TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

23 In addition to the jury instructions requested by the defense in MR. JACKSON'S PROPOSED
24 JURY INSTRUCTIONS, previously filed with this Court, the Defendant respectfully requests that the
25 Court give the attached further instructions:

26 SPECIAL NUMBER 3: Instruction that Jury Must Agree on Particular Acts of Child Molest

27 SPECIAL NUMBER 4: Instruction Regarding Prior Offense Evidence

28 SPECIAL NUMBER 5: Instruction Regarding "Living with Michael Jackson" and Outtakes

- 1 SPECIAL NUMBER 6: Instruction Regarding Video of Law Enforcement Interview of Gavin Arvizo
2 SPECIAL NUMBER 7: Instruction Regarding Janet Arvizo Taking the Fifth
3 SPECIAL NUMBER 8: Instruction Regarding Welfare Fraud and Perjury
4 SPECIAL NUMBER 9: Instruction Regarding Prosecutorial Immunity Granted to Cynthia Montgomery
5 SPECIAL NUMBER 10: Instruction Regarding Attorney-Client Privilege
6 SPECIAL NUMBER 11: Instruction Regarding Witnesses Talking to One Another


7 Dated: May 31, 2005

8 Respectfully submitted,

9 COLLINS, MESEREAU, REDDOCK & YU
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Susan C. Yu

11 SANGER & SWYSEN
12 Robert M. Sanger
Stephen K. Dunkle

13
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15 
16 Robert M. Sanger
17 Attorneys for Defendant
18 MICHAEL JOSEPH JACKSON

SPECIAL JURY INSTRUCTION NUMBER 3

1
2 Mr. Jackson is charged with four individual counts of committing lewd acts with a child. In
3 order to find Mr. Jackson guilty of any single count of committing lewd acts, the government must prove
4 the facts relating to each element of that the particular count occurred beyond a reasonable doubt. In
5 other words, if the jury cannot unanimously agree that a particular set of facts as alleged in a particular
6 count has been proved beyond a reasonable doubt, Mr. Jackson is entitled to a verdict of not guilty. (See
7 *Blakely v. Washington* (2004) 124 S.Ct. 2531; *Aprendi v. New Jersey* 530 U.S. 466.)
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1 SPECIAL JURY INSTRUCTION NUMBER 4

2 You heard witnesses testify regarding what they allegedly saw or heard in 1993 or before. I will
3 refer to those as 'uncharged offenses' because they are not charged in this case. Before you can consider
4 evidence of any alleged uncharged offense, you must be satisfied by a preponderance of the evidence
5 that the defendant committed that offense. If you are not satisfied by a preponderance of the evidence,
6 you may not use that evidence for any purpose, and must disregard it entirely.

7 If you conclude the defendant committed an uncharged offense, you may consider that evidence
8 and weigh it together with any other evidence received during the trial to help you determine whether the
9 defendant is guilty of the charged crime. The weight and significance of the evidence are for you to
10 decide. However, if you find the defendant committed any or all of the uncharged offenses, that is not
11 sufficient, by itself, to prove he committed the charged crime. You may not find the defendant guilty
12 unless you are satisfied that each element of the charged crime has been proven beyond a reasonable
13 doubt.

14 (See *People v. James* (2000) 81 Cal.App.4th 1343, 1357 at FN. 8.)

1 SPECIAL JURY INSTRUCTION NUMBER 5

2 The prosecution introduced Exhibit ___, the "Bashir Television Show," and the defense
3 introduced Exhibit ___, the "Moslehi Outtakes." These exhibits were admitted for two purposes and you
4 are instructed to consider these exhibits only for the purposes for which they were admitted.

5 First, both of these exhibits were introduced for the limited purpose of showing what information
6 was on tape at the time. In other words, the Bashir Television Show was aired and it may, or may not,
7 have had an impact on one or more of the people who have been discussed in this trial. Similarly, the
8 Moslehi Outtakes were available to be shown and, in part, were shown as a part of the Fox television
9 show, "The Footage You Were Not Supposed to See." In this regard, for the most part, these tapes were
10 not introduced for the truth of the matter asserted. They were introduced only for the purpose of impact,
11 if any, they may have had at the time on the people who have been discussed in this trial.

12 Second, however, there are limited portions of both exhibits which may be considered by you for
13 the truth of the matters asserted. Those portions must meet two criteria: a) they are the words of Mr.
14 Jackson, himself, on either tape; and b) they are Mr. Jackson's statements which pertain in any way to
15 his relationship with children.

16 It is up to you to determine what significance, if any, such statements might have in the
17 evaluation of all of the evidence in this case.

SPECIAL JURY INSTRUCTION NUMBER 6

Exhibit ___ was introduced by the prosecution in this case. It was one of several interviews of Gavin Arvizo. The tape was introduced only for the demeanor of Gavin Arvizo and cannot be used to establish the truth of anything he or the interviewers said unless there was other testimony or evidence received in this trial as to any specific statements made during that interview. You may consider the words said for the purpose of evaluating the demeanor of Gavin Arvizo but you may not consider that they prove the truth of the matters stated.

The Court entered this ruling before the tape was allowed to be played. Therefore, counsel for Mr. Jackson was limited in their cross-examination of Detective Robel and were not allowed to question regarding inconsistent statements of Gavin Arvizo or otherwise impeach what Gavin Arvizo said on the tape.

Furthermore, a case must come to an end. Rebuttal is limited to what was presented by the defense and surrebutal would be limited to what was presented in rebuttal. The prosecution did not present any rebuttal evidence to the defense evidence regarding the inconsistencies of Gavin Arvizo's statements or impeachment of him for truthfulness. Because the tape was only offered for demeanor, the defense was not allowed to present surrebutal concerning inconsistent statements by Gavin Arvizo or otherwise impeach what Gavin Arvizo said on the tape or in his other interviews.

SPECIAL JURY INSTRUCTION NUMBER 7

Janet Arvizo was allowed by this Court to assert her rights under the Fifth Amendment to the United States Constitution regarding any questioning that may have tended to incriminate her for welfare fraud and for perjury. The Court allowed evidence to be presented regarding fraud and perjury from other witnesses, however, the defense was not allowed to cross-examine Ms. Arvizo on these subjects. Ms. Arvizo has a right to refuse to testify regarding any questions which may tend to incriminate her regarding fraud and perjury. On the other hand, a person accused in a criminal case has the right to confront and cross-examine witnesses against him which usually means that a person who asserts the Fifth Amendment as to part of his or her testimony is prevented from testifying at all.

In balancing these two rights, the Court determined that it would allow Ms. Arvizo to testify and to assert the Fifth Amendment. This had the effect of limiting the defendant's constitutional right of Confrontation. Therefore, for the purposes of this trial, you are allowed to draw an adverse inference from the refusal of Janet Arvizo to testify or be cross-examined regarding fraud and perjury.

SPECIAL JURY INSTRUCTION NUMBER 8

Evidence has been introduced regarding the commission of welfare fraud and perjury by Janet Arvizo. If true, these crimes would be felonies under the laws of California and the laws of the United States. If you believe these crimes to have been committed by her, they should be considered by you in determining her credibility and whether or not she has told the truth in these proceedings. The fact that prosecutors have failed to prosecute her for these crimes should not be considered in determining whether or not she committed them.

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SPECIAL JURY INSTRUCTION NUMBER 9

You heard the testimony of Cynthia Montgomery who was called as a witness by the prosecution. She testified on the condition that she be granted immunity. In response to this, the prosecution asked the Court to grant her immunity and the Court issued such an order. The order prevents Ms. Montgomery from being prosecuted based on any information that she gave during the course of her testimony. It does not prevent the prosecution from prosecuting her for perjury committed on the witness stand in this case. However, prosecution of this witness or any other witness who is willfully false is solely within the discretion of the prosecution.

You may consider the fact that Ms. Montgomery demanded and was granted immunity in weighing her credibility as a witness.

1 SPECIAL INSTRUCTION NUMBER 10

2 Although there was some initial confusion, the attorney client privilege as to Mr. Geragos was
3 waived only through November 18, 2003, the day of the search warrants and the arrest warrant for Mr.
4 Jackson. This was allowed because a person has the right to confidential communications with his
5 lawyer and the right for that lawyer to engage professionals to assist him or her in the preparation of the
6 client's defense. Once the adversary proceedings commence - and here, at the least, they commenced on
7 November 18, 2003 - other rules apply to the duties of lawyers for the prosecution and the defense to
8 disclose information to each other.

9 Before November 18, 2003, and specifically during the months of February and March 2003, Mr.
10 Geragos was a percipient witness to certain events. He was allowed to testify to those events and he was
11 allowed to be cross-examined regarding those events. However, what he may have learned after the
12 adversary proceedings commenced is both not relevant to these proceedings and to allow
13 cross-examination into it would violate Mr. Jackson's Constitutional right to counsel. Therefore, I
14 accepted a waiver of the attorney client privilege up to November 18, 2003 and I limited the
15 cross-examination of the prosecution to the time period before that date. You are not to consider this
16 limitation in any way in your deliberations and you are not to speculate as to anything that may have
17 occurred within the attorney client relationship after the November 18, 2003 date.

18 In addition, there was a reference by one of the witnesses called by the prosecutions, J. O'Bryan,
19 that he had requested documents and they had not been provided. You should not consider this remark
20 for any purpose. Both the prosecution and the defense have a statutory duty to deliver certain documents
21 and items of evidence to each other, however, there is no requirement that a defendant in a criminal case
22 provided documents to a prosecution witness. You must not allow any inference regarding this
23 testimony to enter into your deliberations in any way.

SPECIAL JURY INSTRUCTION NUMBER 11

The jury is advised that the parties who called witnesses had a duty to admonish those witnesses to follow the Court's rules. Those rules include a rule that witnesses not discuss their testimony with other witnesses.

You have heard evidence that certain witnesses have discussed their testimony with other witnesses both before and after taking the stand. You may consider this conduct, if you find it to have occurred, as evidence that the testimony of such witnesses has been tainted. You may give such evidence of taint such weight as you may find to be appropriate and you may find that the taint of such misconduct to be such that the testimony of said witnesses should be disregarded in its entirety unless the remaining evidence supports such testimony.