

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 IN AND FOR THE COUNTY OF SANTA BARBARA  
3 SANTA MARIA BRANCH; COOK STREET DIVISION  
4 DEPARTMENT SM-2 HON. RODNEY S. MELVILLE, JUDGE

5  
6

7 THE PEOPLE OF THE STATE OF )  
8 CALIFORNIA, )  
9 Plaintiff, )  
10 -vs- ) No. 1133603  
11 MICHAEL JOE JACKSON, )  
12 Defendant. )

13  
14  
15

16 REPORTER'S TRANSCRIPT OF PROCEEDINGS

17  
18

18 FRIDAY, MARCH 18, 2005

19  
20

20 8:30 A.M.

21  
22

22 (PAGES 2709 THROUGH 2800)

23  
24  
25  
26

27 REPORTED MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304  
28 BY: Official Court Reporter 2709

1 APPEARANCES OF COUNSEL:

2

3 For Plaintiff: THOMAS W. SNEDDON, JR.,  
4 District Attorney -and-  
5 RONALD J. ZONEN, Sr. Deputy District Attorney  
6 -and- GORDON AUCHINCLOSS,  
7 Sr. Deputy District Attorney -and-  
8 MAG NICOLA, Deputy District Attorney  
9 1112 Santa Barbara Street Santa Barbara, California 93101

10  
11  
12

13 For Defendant: COLLINS, MESEREAU, REDDOCK & YU  
14 BY: THOMAS A. MESEREAU, JR., ESQ. -and-  
15 SUSAN C. YU, ESQ.

1875 Century Park East, Suite 700  
16 Los Angeles, California 90067

17 -and-

18 SANGER & SWYSEN BY: ROBERT M. SANGER, ESQ.  
19 233 East Carrillo Street, Suite C Santa Barbara, California 93101

www.mjfacts.info

20 -and-  
21 OXMAN and JAROSCAK  
22 BY: R. BRIAN OXMAN, ESQ. 14126 East Rosecrans Boulevard  
23 Santa Fe Springs, California 90670 (Not present)  
24  
25  
26  
27  
28 2710

1 Santa Maria, California  
2 Friday, March 18, 2005  
3 8:30 a.m.  
4  
5 (The following proceedings were held in  
6 open court outside the presence and hearing of the  
7 jury:)

8  
9 THE COURT: Good morning.  
10 MR. SNEDDON: Good morning.  
11 MR. MESEREAU: Good morning.  
12 THE COURT: All right. The first item on the  
13 calendar is the scheduling of a motion for admission  
14 of evidence of defendant's alleged prior sexual  
15 offenses. This was put on the calendar because the  
16 District Attorney has asked that the hearing be  
17 sooner than later, I guess.  
18 MR. SNEDDON: That's correct, Your Honor.  
19 We placed the motion on, in light of the Court's  
20 earlier decision, which we wholeheartedly agreed in,  
21 that we should have testimony before the jury  
22 establishing the offenses that were committed by the  
23 victims themselves -- on the victims themselves  
24 prior to the time of the hearing. And we believe  
25 that we have complied with what the Court wished.  
26 And I think the Court gave a perfect example of your  
27 experience of what happened to you before where  
28 promises were made and promises weren't kept. 2711

1 I believe that we have at this point  
2 established sufficient information before this Court  
3 and before this jury to now go forward with the 1108  
4 hearing. We would indicate to the Court that this  
5 would be the appropriate time.  
6 I'm not suggesting that the Court -- we  
7 recess the trial at this moment. I want to make  
8 that clear. And I think I did in my moving papers.  
9 That we intend to move forward with probably  
10 evidence through -- my guess is, if not through  
11 Thursday, probably into Friday of next week, based

www.mjfacts.info

12 on the lineup that we have. We'll finish those  
13 parts of the case that are relevant to the  
14 allegations set forth against Mr. Jackson in all  
15 counts except for Count 1.  
16 At that point, we will then be transitioning  
17 into that part of the case that deals with the  
18 conspiracy count. It seems to me that it is not  
19 only right and proper, but logical for the jury that  
20 this would be the appropriate time for us to be able  
21 to put on the 1108 evidence insofar as it relates  
22 and bears on the testimony of the credibility and  
23 the actions of the defendant in this case. And so  
24 we would request that at that point in time, that we  
25 then take up the 1108 hearings.  
26 So unless the Court has any further  
27 questions, that's why we filed the motion now.  
28 I wanted to give the Court sufficient heads-up about 2712

1 it for scheduling for the jury, as well as the fact  
2 that we'll need to bring people in from out of  
3 county, and out of state in some instances, so we  
4 need some lead time for that. And clearly that  
5 whatever decision the Court makes, we would have  
6 enough lead time for that. If we started next  
7 Friday, we could begin, and we'd be ready to begin.  
8 And if it was the following Monday -- but you get  
9 the picture. It's at the point where we finish most  
10 of the testimony relevant to the charges against Mr.  
11 Jackson on the molestation.

12 THE COURT: All right.

13 MR. SNEDDON: Do you have any other  
14 questions, Your Honor.

15 THE COURT: I do, but I want to hear from the  
16 other side first, and then I'll ask my questions.

17 MR. SNEDDON: All right. Thank you.

18 MR. SANGER: Good morning.

19 THE COURT: Good morning.

20 MR. SANGER: The timing of the motion, we  
21 want to have adequate time to have the motion heard  
22 and be prepared for it. I don't concede at this  
23 point, by any means, that there's been a showing  
24 sufficient for the Court to go ahead and make a  
25 ruling right now. And if the Court were to make a  
26 ruling right now, I think it would be to deny the  
27 1108.

28 But having said all of that, the People I 2713

1 think are saying that they feel that they're going  
2 to be in their strongest position to make their 1108  
3 motion by the end of next week, and I don't see any

4 reason why we can't schedule a date to do that.  
5 We have two issues: One is whether or not  
6 they have presented sufficient credible evidence of  
7 the sexual offense crimes. And then the second  
8 issue, which would be taken up in the actual motion,  
9 would be what kind of evidence would come in, and  
10 whether or not the kind of evidence that's proffered  
11 is going to be -- is going to have sufficient  
12 probative value to outweigh the prejudicial effect  
13 and consumption of time, and so on.  
14 Having said that, if that's the Court's  
15 understanding, I think we're talking about just  
16 picking a date now. And I don't see any problem  
17 with picking a date -- you know, a week from Monday,  
18 for instance, would seem to be a good time.

19 Do you think so.

20 MR. MESEREAU: (Nods head up and down.)

21 MR. SANGER: Thank you.

22 THE COURT: All right. Here's my question  
23 to both sides. Mr. Mesereau got me thinking about  
24 this from a request that he made earlier.

25 And the issue -- I guess the question is,  
26 should the Court hear the evidence outside the  
27 presence of the jury, or should I just hear  
28 arguments on the evidence, as represented to the 2714

1 Court that it will be, as to whether or not the 1108  
2 evidence should come in.  
3 And the thing that got me thinking about it  
4 was that Mr. Mesereau had suggested that they be  
5 allowed to put on testimony to attack, as I  
6 understood what he was saying, the credibility of  
7 the witnesses that would be called under the 1108,  
8 so that the Court could make a determination, I  
9 think, based on credibility, as to whether or not  
10 the Court would allow the witnesses to be called.  
11 And that was a unique suggestion to me,  
12 because I've had a lot of hearings under Evidence  
13 Code 401, 402, 403, preliminary fact, and I don't  
14 recall that -- I laugh because there's a lot of  
15 things I don't recall, but I don't recall ever  
16 having that evidence put in at a 402 hearing.  
17 So, having that dilemma and working on it,  
18 one of the cases that we found was Vorse v. Sarasy,  
19 S-a-r-a-s-y, "Vorse" being V-o-r-s-e, 53 Cal.App.4th  
20 998. It's a 1997 case. And it suggests that the  
21 Court is not to make credibility issue  
22 determinations. That -- you know, that my taking of  
23 evidence may not be proper on either side on this  
24 issue. It may be just that I am to decide whether  
25 or not it's admissible with an analysis of what  
26 you're offering, whether that would, in fact, be

www.mjfacts.info

27 1108, and then make the weighing under 352 for all  
28 the reasons that 352 has the Court make those -- 2715

1 weighing those issues.  
2 It's interesting that the Vorse case cites  
3 another case, People v. Jackson. No relationship.  
4 But you can pick that citation out of the Vorse  
5 case.  
6 So I'm willing to let either of you respond  
7 to that at this time.  
8 MR. SANGER: I would like to, although Mr.  
9 Sneddon's standing at the podium.  
10 MR. SNEDDON: It's our motion, that's why.  
11 I figured you'd want to. No, after me.  
12 MR. SANGER: Oh, after you. Okay. Well, as  
13 they say, "After you."  
14 THE COURT: After you. After you.  
15 MR. SNEDDON: Abbott and Costello. I hope  
16 we're not that bad.  
17 Judge, I think the simple answer to this is  
18 the Evidence Code provides your discretion to do it  
19 either way you feel comfortable with it.  
20 I think that the issue on the credibility --  
21 let me make sure I'm talking about precisely what  
22 the Court asked. In terms of whether you wanted to  
23 have a 403 hearing outside the presence of the jury  
24 that did not involve the issues of credibility -  
25 okay. --  
26 THE COURT: Right.  
27 MR. SNEDDON: -- or whether you wanted to do  
28 it on the offers of proof, I believe that the 2716

1 Evidence Code clearly provides that you have the  
2 discretion to do that whichever way you want to do  
3 it. So, that's your decision, and....  
4 But with regard to the credibility issue, I  
5 believe we cited the Jackson case to you in earlier  
6 motions. We were aware of that. And not only in  
7 connection with the 1108 hearing, but in connection  
8 with some of the other pre-trial hearings that  
9 involved witnesses' statements, that we brought that  
10 case to the Court's attention. If not that one,  
11 certainly there's another one that we did.  
12 So we were certainly aware of the fact that  
13 we believe that the credibility issues are those for  
14 the ultimate trier of fact, which is the jury.  
15 So I would say to the Court that we are  
16 prepared to accommodate the Court in either way in  
17 which you would like to do it. Obviously the most  
18 efficient would be for you simply -- and with the

www.mjfacts.info

19 ability of the defense to file, as you suggested to  
20 Mr. Mesereau I think a couple of days ago, their  
21 pro-offered -- although I don't know, since you  
22 can't weigh the credibility, what effect that could  
23 have on you. But in any case, we're prepared to do  
24 it either way that the Court wants.  
25 And I frankly think that, given the way that  
26 this case is going, that probably the best case is  
27 simply to put these people on. And we'll put them  
28 on on direct and they put them on on cross and we 2717

1 keep the trial moving in front of the jury. But, of  
2 course, as always, we'll do what the Court suggests.  
3 That would be my recommendation.

4 And I do not believe the credibility issues,  
5 as you cited the case, are something that is really  
6 an issue in the 403 hearing.

7 THE COURT: All right. Counsel. Mr. Sanger.

8 MR. SANGER: Yes, sir.

9 The case law that I'm familiar with -- and I  
10 won't claim to be specifically familiar with the  
11 Vorse case without looking it up.

12 THE COURT: Yes.

13 MR. SANGER: But just in general, it is true  
14 that the Court's ruling on a 402-, 403-type hearing  
15 for any kind of a determination, and under 1108 as  
16 well, is whether or not - there is a threshold - the  
17 threshold has been met. And the threshold doesn't  
18 involve the determination of credibility in the  
19 sense that the Court is saying, "Well, you know, I  
20 just don't really believe these witnesses, so I'm  
21 not going to let the jury hear it," and usurping the  
22 jury's function, the ultimate function. But there  
23 still is a threshold level where credibility is one  
24 of the issues that the Court is taking into account,  
25 and the Court's taking it into account under 352.  
26 For instance, let's take an example, just a  
27 hypothetical example. Let's assume that one of the  
28 witnesses, a key witness that's proffered by the 2718

1 prosecution under 1108, is a witness who is going to  
2 say that she saw various things that were  
3 circumstantial evidence of some kind of activity,  
4 and that's their main witness. Let's just assume  
5 this. I don't want to argue about the facts of this  
6 case, but let's assume that that's the case. And it  
7 turns out that that witness made several prior  
8 inconsistent statements on television and eventually  
9 in a sworn deposition.

10 It's not so much a weighing of credibility.

11 It's not usurping the function of the jury to hear  
12 that evidence. But I think the Court would want to  
13 hear that evidence, because under the three prongs  
14 of 352, number one, you're looking to see whether or  
15 not the evidence is so inflammatory that it's going  
16 to be prejudicial to the defendant such that the  
17 probative value is outweighed by the prejudicial  
18 effect.  
19 Well, you have to figure out what the  
20 probative value is going to be before you can  
21 determine whether the prejudicial effect is going to  
22 outweigh it.  
23 And so therefore, you have to say, "Well,  
24 look, we've got a witness," for instance, "who made  
25 a number of prior inconsistent statements on  
26 television, for money, and eventually under an oath  
27 in a deposition, and now this witness is being  
28 offered up." The prejudicial effect of just having 2719

1 this person come and say things may, in fact, be  
2 quite substantial in the Court's mind when it's  
3 heard the evidence.

4 And on the other hand, the probative value  
5 the Court would have to find is probably fairly  
6 minimal, given the scenario I just gave.  
7 It would also go to the question the Court  
8 has to address, the second problem, which is undue  
9 consumption of time. Are we going to have a hearing  
10 about this witness. And taking one of the  
11 witnesses, again, hypothetically, are we going to  
12 have a hearing that necessarily involves allowing  
13 the defense to fully -- to fully defend it.  
14 As the Court knows, and we've cited cases in  
15 our main pleadings on this, that we're entitled, and  
16 not only entitled, but we're required, it's  
17 ineffective assistance of counsel to fail to do a  
18 full of defense of 1108 evidence --

19 THE COURT: Right.

20 MR. SANGER: -- as if it were an independent  
21 case.

22 THE COURT: Right.

23 MR. SANGER: So we're not only entitled to,  
24 but we're obligated to. We're going to have to  
25 bring in all of those statements on television, for  
26 money, and before a deposition.

27 And I'm saying that in a concise fashion,  
28 but Your Honor knows that's going to take time to 2720

1 bring all that out. So I think the Court has to  
2 consider that.

3 And then the third prong of 352 is confusion  
4 to the jury -- or, I'm sorry, is undue consumption  
5 of time. I may have gotten those two confused, but  
6 thereby illustrating my point, I suppose.  
7 And so to take more time to further  
8 illustrate my point, you have confusion of the jury  
9 and you have undue consumption of time. And both of  
10 those -- without restating the point, both of those  
11 are determined only after the Court has a full  
12 opportunity to figure out what the heck is going to  
13 go on in front of the jury.  
14 All right. So I think all three prongs --  
15 it's not a matter the Court usurps the function of  
16 the jury by determining credibility. It's a  
17 threshold call, like many things are, and  
18 particularly things under 352. The Court has to  
19 determine how this is going to play out in front of  
20 the jury.  
21 So you're not per se determining  
22 credibility, but you are saying, look, the  
23 credibility is going to be attacked substantially,  
24 let us say, after the Court hears the evidence, and  
25 therefore the prejudicial effect is going to be  
26 great, but there's a little probative value;  
27 therefore, there's an undue consumption of time; and  
28 therefore, there's the potential for confusing the 2721

1 jury.  
2 So I do think that we should be able to  
3 present to the Court concisely, but I think with  
4 some live testimony, as needed from both sides, the  
5 evidence that the jury is going to see. And I think  
6 that just submitting it on paper would not  
7 adequately address the issue, particularly in a  
8 criminal case with the constitutional rights that  
9 are involved.

10 Does that answer the Court's question.

11 THE COURT: Yes. Thank you.

12 MR. SNEDDON: Judge, could I address one  
13 other aspect of this motion that we haven't  
14 discussed.

15 THE COURT: Yes.

16 MR. SNEDDON: I will do it just briefly.

17 But I wanted to remind the Court that as  
18 part of this 1101 -- or 1108/1101 motion, that we  
19 had filed an earlier motion with regard to the  
20 admissibility of the civil settlements, so we had  
21 deferred that until this hearing process also. So I  
22 wanted to just make sure that the Court did that.

23 THE COURT: Thank you.

24 MR. SNEDDON: And I think that's part of  
25 this process. And also, you know, the guidelines



26 with regard to what can and won't be asked I think  
27 is important. And there will be two separate -- I  
28 believe with two witnesses, probably two separate 2722

1 civil suits involved, and so I wanted to alert you  
2 to that also.

3 THE COURT: Thank you. Those will be set at  
4 the same time.

5 MR. SNEDDON: Yes, sir.

6 THE COURT: If I don't say it, I intended to  
7 have those heard at the same time as this motion.

8 MR. SNEDDON: I don't know if you wanted me  
9 to address anything Mr. Sanger said. If you do,  
10 I'll answer the question. Otherwise, I'll just  
11 submit it to the Court.

12 THE COURT: No, you don't need to.

13 MR. SNEDDON: Thank you.

14 THE COURT: Without ruling on that, because  
15 I'm not quite ready -- I haven't quite made up my  
16 mind. But rather than spend the time now thinking  
17 about it, let's hear some argument on the other  
18 issues.

19 Let's see, the objection to calling the  
20 grand jury witness.

21 MR. SANGER: Your Honor, we've briefed the  
22 matter and so I don't want to go over --

23 THE COURT: Yes, I read that again this  
24 morning.

25 MR. SANGER: -- each one of the points.

26 But what I did want to do is briefly augment  
27 it with reference to the grand jury transcript. And  
28 we did cite the transcript in our papers in an 2723

1 effort to keep things short. You know, we didn't  
2 quote things at length and make a big deal out of  
3 it. We tried to follow the concept that this was a  
4 brief and, for a change, make it brief.

5 THE COURT: I appreciate that.

6 MR. SANGER: Okay. But looking at the  
7 actual transcripts of the grand jury, our position,  
8 as you know, is that if it's not in the transcript,  
9 that's too bad. The People are there to make their  
10 record and they know how to make a record. And  
11 we're not there. There's nobody there to object.  
12 If they wanted to have somebody put on gloves and  
13 look at things, they could say, "We're putting on  
14 gloves," and so on.

15 And, in fact, as the record shows, when you  
16 look at the actual transcript of the grand jury, and  
17 you look at the testimony of Timothy Sutcliffe, he

18 talks about having gloves on. There's a question as  
19 to whether or not he had gloves on, and he had  
20 gloves on at one point when he was handling some  
21 moldy -- what appeared to be moldy schoolbooks.  
22 When it comes to the end of the -- of his  
23 testimony, and you look at page 1245 -- and I have a  
24 clean copy. I'm sure the Court has the whole  
25 transcript, but I have a clean copy, if it would  
26 help.  
27 THE COURT: They're here. 1245.  
28 MR. SANGER: 1245. 2724

1 THE COURT: What volume would that be.  
2 MR. SANGER: That's a good question. I'm  
3 sorry, Your Honor, I just have the excerpt here.  
4 THE COURT: I can find it. That's all  
5 right.  
6 MR. SANGER: OKAY.  
7 THE COURT: Volume 5, I think.  
8 1245 did you say.  
9 MR. SANGER: Yes, sir, 1245.  
10 THE COURT: Yes. Okay.  
11 MR. SANGER: Okay. I just realized I didn't  
12 turn my cell phone off, so I'm going to do that real  
13 quick. It didn't ring, but --  
14 THE COURT: I've done that. It's been  
15 embarrassing. I've been sitting in court and my  
16 cell phone has gone off, and I have to act like,  
17 "Whose cell phone is that."  
18 MR. SANGER: "Get that cell phone."  
19 MR. MESEREAU: Must be Mr. Sneddon, Your  
20 Honor.  
21 THE COURT: Yeah.  
22 MR. SANGER: If you look at 1245, this is  
23 sort of our smoking gun conversation here. And I  
24 know that the prosecution has some other version of  
25 it. But starting at line 14 -- does the Court have  
26 that in front of you.  
27 THE COURT: Yes, I do.  
28 MR. SANGER: Since you have it in front of 2725

1 you, I'll just paraphrase and quote from the  
2 relevant source. But it's a grand juror who asked  
3 about the black suitcase, which was Item 317. And  
4 it was admitted in evidence here as some other  
5 exhibit number, which I don't remember right now,  
6 but the black briefcase. And it had all the  
7 materials inside. And the picture, you recall, had  
8 the magazine on the top that had a date later than  
9 the relevant time period.

www.mjfacts.info

10 And Mr. Auchincloss asked a question that  
11 the grand juror had proposed and said, "Did some --  
12 a forensic examination of some pornography in this  
13 case" -- I'm sorry, "You did some -- a forensic  
14 examination of some pornography in this case,  
15 correct."  
16 He says, "Correct."  
17 Now the question is, "Did you find any --  
18 did you find any fingerprints on that  
19 pornography, usable fingerprints."  
20 Now, that's not a question asked by a  
21 District Attorney who knows that there was no  
22 fingerprint analysis done. That's a question of a  
23 District Attorney who is asking a witness, "Well,  
24 did you find any fingerprints, usable fingerprints.  
25 And the answer is, "Well, we're doing all  
26 this stuff" - I'm paraphrasing - "We used an ALS,"  
27 alternate light source. They did a fluorescent  
28 check to see if there was any stains, and then they 2726

1 could do DNA, and they found no stains and no DNA.  
2 So the question is, "So they haven't been  
3 examined for fingerprints."  
4 "A. No, not at this time."  
5 And then they go on to explain the  
6 alternative light source thing.  
7 Now, at the end of the grand jury  
8 proceeding, there is a -- when the jurors are about  
9 to deliberate, there's a part of the transcript  
10 where they show Detective, I believe it was Zelis,  
11 has been instructed to wear gloves, and, "You're not  
12 to deliberate while he's in there, but he's going to  
13 take these things out and show them to you." Okay.  
14 So by the end of the grand jury, clearly  
15 someone's wearing gloves and showing the grand  
16 jurors.  
17 Now, that doesn't -- and I'll represent to  
18 the Court, we have a witness from the clerk's office  
19 who says that after the grand jury returned the  
20 exhibits, they went through without gloves and they  
21 were tabulating and making sure all the pages were  
22 there, and they didn't know there was a problem.  
23 But, aside from that, the most important  
24 thing here is that if you then go back to page  
25 421 -- and I'm guessing that would be in Volume 2.  
26 Okay.  
27 THE COURT: Uh-huh.  
28 MR. SANGER: I'm sorry, I'll get the volume 2727

1 number next time I quote the transcript.

2 But if you go to 421, starting at line 23 --  
3 I'm sorry, line 25, you have the questioner, one of  
4 the district attorneys saying, "Now, I want you  
5 to -- I broke -- we're going to break the seal on  
6 this exhibit."  
7 And they're talking at this point about the  
8 black briefcase.  
9 "I'm going to ask you to look very briefly,  
10 young man, at the stuff that's in there. All  
11 right. Take a look at the stuff.  
12 "Now, there's some magazines, correct.  
13 "Yes.  
14 "Then there's some sheets that are  
15 individual and not in magazines as if they've  
16 been torn out, correct.  
17 "Yes.  
18 "Now, can you tell me whether or not that  
19 was the kind of materials that was in the  
20 suitcase that was shown to you.  
21 "A. Yes, that was the kind of materials.  
22 "Q. Does that look like some of the stuff  
23 that was shown to you.  
24 "Yes."  
25 And it goes on beyond that.  
26 The point is, if -- realistically, if this  
27 was a point in the proceedings where somebody was  
28 wearing gloves and saying, "Don't touch it, I'm 2728

1 going to show it to you," that would be on the  
2 record.  
3 What's on the record is, "We're breaking the  
4 seal. We're opening it. Now, young man, look at  
5 this."  
6 And as you saw from the exhibit, the  
7 photograph, the way it was seized and the way it was  
8 sealed, all these things are stacked up. So the  
9 only way to see if there's other magazines and to  
10 see if there's separate pages is for somebody to  
11 look through them, for a person to look through  
12 them. There's no evidence that the District  
13 Attorney is looking through them. There's no  
14 evidence anybody put on gloves.  
15 And so the clear record on this appears to  
16 be that the District Attorney at that time,  
17 remembering this occurred on 3-30, and the Sutcliffe  
18 occurred on 4-8. In other words, it wasn't until  
19 4-8, it appears, that somebody said, "You mean you  
20 didn't even look for fingerprints. We knew you  
21 didn't get any usable prints, but you didn't look  
22 for them." And then they go in and make a big deal  
23 about gloves in the deliberations.  
24 So on 3-30, when they're showing it to Gavin

25 Arvizo, it looks, to me, from the record, pretty  
26 clearly that nobody was wearing gloves, and there  
27 was no effort to do anything to avoid contaminating  
28 this evidence by the fingerprints of Gavin Arvizo. 2729

1 Okay. So, having said that, that's our  
2 position.  
3 Now, does that give the District Attorney  
4 the right to call a grand juror. And we take the  
5 position, no, because the code says you can only  
6 call them with regard to testimony. And as we  
7 pointed out, that's pretty much obsolete these days  
8 because the recent case law -- I cited Cummiskey,  
9 but I believe there's other ones, like Moucharaub  
10 also talked about it. The courts have said we're  
11 entitled to a full transcript of the testimony, so  
12 it should pretty much negate the need to call in a  
13 grand juror. There may be other ways to do it. A  
14 District Attorney could take the stand and say what  
15 he wants to say.  
16 But we have the further problem that we were  
17 given the name of the foreperson of the grand jury  
18 for the first time two days ago. No address, no  
19 phone number.  
20 The prosecutor had a proceeding in which  
21 they had full access to these people. They know all  
22 their names. We've never been allowed to know their  
23 names. There was an objection when we asked to get  
24 their names. The Court ordered that numbers be used  
25 instead of names. That was done in the transcripts.  
26 They come up and say, "Well, here, we have a name.  
27 No statement. Except we're going to tell you this  
28 witness is going to come and say we did everything 2730

1 right."  
2 Furthermore, there were 18 other grand  
3 jurors there. We've never been given their names.  
4 We have no ability to interview them. So we have  
5 that major problem with calling grand jurors.  
6 And do we really think it's appropriate to  
7 disclose all the names of all the grand jurors and  
8 have them all interviewed with regard to whether  
9 there were gloves or not, or whatever, about  
10 something in the middle of the process.  
11 And that leads me backwards to the first  
12 point I made - or the first or second in writing -  
13 and I'll conclude with this - is that this whole  
14 thing, even if the Court were to say, "Well, okay,  
15 we'll even the playing field. We'll give you all  
16 the names and addresses and phone numbers. You can

www.mjfacts.info

17 have your investigators go talk to all of them, and  
18 then you all can call in competing grand jurors,"  
19 okay.  
20 Even if we did that, and even if that  
21 survived a 352 analysis on consumption of time and  
22 undue confusion to the jury, the prejudicial effect  
23 of bringing in people from a body that made a  
24 determination -- a quasi-judicial determination  
25 under California law and an administrative  
26 determination under U.S. Supreme Court precedent, in  
27 other words, part of the prosecution, if that -- if  
28 they're allowed to do that, that is going be 2731

1 extremely prejudicial, because you've got jurors who  
2 are trying to hear the case. They're now listening  
3 to a juror who has a vested interest in upholding  
4 the process that they went through, the best they  
5 could as laypeople, to return an Indictment. That  
6 kind of evidence to this jury is going to be -- is  
going to be very prejudicial.

8 THE COURT: You know, the interesting thing  
9 in your argument, though, is that, through excellent  
10 cross-examining skills, you, the defense, have put  
11 into issue whether or not the children touched the  
12 magazines during the grand jury proceeding.  
13 So at this point, the state of the evidence  
14 is most favorable to you that the inference is  
15 strong that they must have touched those magazines.  
16 Now, having skillfully done that -- and this  
17 is not meant to be anything but a compliment.

18 MR. SANGER: I'm always worried when I get  
19 complimented by the Court.

20 THE COURT: Yeah, I can see you starting to  
21 worry. No, I really mean that. Credit where  
22 credit's due.

23 But then you say, having skillfully raised  
24 this inference, "The District Attorney should be  
25 barred from rebutting that, and that's it." And  
26 that's -- that's what I find interesting about your  
27 argument, is that.

28 Now, let me ask you a question. 2732

1 MR. SANGER: Yes.

2 THE COURT: You don't have to defend your  
3 excellent skills at getting to this position.

4 MR. SANGER: I do have an answer to that,  
5 but --

6 THE COURT: You have an answer to that.

7 And I would say, if you had been doing the  
8 grand jury, I think that that would have been

www.mjfacts.info

9 covered, but the transcript would have been 4600  
10 pages instead of 1800, which I found overwhelming.  
11 MR. SANGER: The trial would be shorter.  
12 (Laughter.)  
13 THE COURT: I doubt that.  
14 What was I saying. How can I lose it like  
15 that.  
16 MR. SANGER: Could I respond a little bit.  
17 And I'm sure that will cause the Court to remember.  
18 THE COURT: Yes.  
19 MR. SANGER: I appreciate what the Court  
20 said and -- but I think the --  
21 THE COURT: Oh, I know. I know what I was  
22 going to say.  
23 MR. SANGER: I knew if I started talking,  
24 that would help.  
25 THE COURT: You did it. You helped me.  
26 There's a couple of possibilities that I see  
27 here. One is that you're only asking -- as well as  
28 you did, you know, it's just an inference that they 2733

1 touched. There is no evidence that they touched.  
2 We don't know if they touched or didn't touch at  
3 this point. But the inference is strong by your  
4 examination, the defense examination, that they did.  
5 There's a couple of ways we could handle  
6 that. One is you could stipulate that they didn't  
7 touch it. That would get rid of any prejudice of  
8 calling a grand juror, foreperson of the grand jury  
9 to -- and any resulting prejudice.  
10 You know, I can see from the look on your  
11 face, that's not going to happen.  
12 MR. SANGER: Right.  
13 THE COURT: But -- is that right.  
14 MR. SANGER: That's correct.  
15 THE COURT: You're not willing to stipulate  
16 to that.  
17 MR. SANGER: We actually believe he touched  
18 it. I honestly believe that, for what it's worth.  
19 THE COURT: That being the case, the question  
20 then becomes, you know, what is a fair way, if there  
21 are witnesses in -- that saw this.  
22 And one of the things that we could do would  
23 be to call that witness, but not identify them as a  
24 grand juror or foreperson of the grand jury, but  
25 simply say they were in the grand jury room and they  
26 observed whatever they observed, so that you don't  
27 have the prejudice that you're so much afraid of,  
28 you know, this formidable person being called. 2734

1 What do you think of that.  
2 MR. SANGER: Well, I think there's yet  
3 another possibility. So in answer to the Court's  
4 question what I think about that, I think this:  
5 Another possibility is there are other people in the  
6 grand jury room: The prosecution; I believe there  
7 was a police officer there, or a sheriff there most  
8 of the time.  
9 Did I just hear somebody say no, there  
10 wasn't. I don't want to waste time talking about it  
11 if there wasn't a police officer in the room at that  
12 time.  
13 But that would be a possibility. Certainly  
14 the District Attorney, whoever -- whichever one or  
15 two or three were there at the time, could testify.  
16 I would assume if they're taking the position that  
17 something else happened, we're going to hear that.  
18 The third possibility is to allow us to have  
19 the names and addresses of all the grand jurors. It  
20 seems clear -- and the reason I say this -- well,  
21 there's the obvious reason, but there's a more  
22 subtle reason as well.  
23 It seems clear from the transcript of the  
24 grand jury that there was -- there were several  
25 grand jurors who asked a lot of questions. There  
26 was one grand juror, for instance, who was  
27 particularly interested in this fingerprint issue.  
28 I don't know who it is, because we only have a 2735

1 number. The prosecution knows who it is, so we're  
2 not on even ground here.  
3 But one way to do this would be to allow us  
4 to have the names of the grand jurors so that we can  
5 adequately investigate this and see what they all  
6 have to say.  
7 In other words, in response to the Court's  
8 question, I certainly wouldn't want to stipulate the  
9 foreperson can just come up here and not be  
10 identified and say, "I was in the room when I saw  
11 this," because that's just the problem. The  
12 foreperson has -- and I don't mean to fault him or  
13 her.  
14 THE COURT: I think you made a very good  
15 point; that other people may have seen something the  
16 foreperson didn't, or -- you know, it's a good  
17 point.  
18 MR. SANGER: But my first position on this,  
19 again, is that the government should be, in a way,  
20 bound by the transcript, because they're the ones  
21 that are making it. That's what the Supreme Court  
22 has been saying over the last few years. Last, you  
23 know, 25, 30 years, it's been increasingly adamant



24 about the fact that there's -- there's a record  
25 before the grand jury. The prosecution is the only  
26 side in there. They're the only lawyers in there.  
27 They have the obligation to make sure that that  
28 transcript is complete so it can be reviewed. 2736

1 And if we're going to have a grand jury  
2 process where things can be done in secret, where  
3 the defense can't be there, the accused isn't there,  
4 there's -- there's not a Judge, if we're going to do  
5 this, the only protection is to make sure that the  
6 prosecution makes a complete record. So the -- the  
7 original position that we're taking -- I'm going  
8 full circle on all this.

9 THE COURT: No, I understand.

10 MR. SANGER: -- is that when you look at it,  
11 the transcript is the transcript. And the inference  
12 from the transcript, as I just read it to the Court,  
13 is an inference, and the jury should be allowed to  
14 hear this testimony or have this read to them.

15 They can consider that along with what other  
16 evidence has been put on to determine whether or not  
17 the chain of custody on this material was such that  
18 when fingerprint analysis was later done after it  
19 was released and they allegedly find a fingerprint  
20 of Gavin Arvizo, that the jury can say, "Yeah, we're  
21 sure that fingerprint came from February or March of  
22 2003."

23 THE COURT: I guess I have -- you have an  
24 advantage that I don't have, too. And maybe you can  
25 help me. I haven't heard the evidence on the  
26 fingerprint on the magazine or more than one  
27 magazine. I don't know. You know, I know from  
28 points and authorities something, but I don't know 2737

1 the picture. I don't know if there's a palm print  
2 or a --

3 MR. SANGER: There's a fingerprint.

4 THE COURT: Just one fingerprint.

5 MR. SANGER: Well, here's the problem right  
6 now. And before we discuss this and go into too  
7 much detail, I'm always conscious that whatever  
8 we're going to say is just going to be in the press.

9 THE COURT: You can be circumspect. You  
10 don't even have to answer that. I was just going to  
11 say that I don't know that information.

12 MR. SANGER: Let me tell the Court this in  
13 general terms, is that we don't know that  
14 information either, because there have been reports  
15 that were given to us showing that there was a

www.mjfacts.info

16 fingerprint. Well, showing that there was, in this  
17 context, a fingerprint, one fingerprint that we're  
18 concerned about.  
19 THE COURT: Okay.  
20 MR. SANGER: There were others that were  
21 determined not to have sufficient data to make --  
22 make a positive identification. There are others  
23 where they're absolutely negative. They were  
24 excluded. Okay.  
25 THE COURT: All right.  
26 MR. SANGER: What has happened very  
27 recently, in the last couple, three weeks, is we've  
28 gotten reports that there have been a meeting of 2738

1 various fingerprint people who have now decided that  
2 some of these determinations should be changed.  
3 And they go both ways. They go -- they  
4 go -- in the sense that they had a fingerprint they  
5 positively identified, they're saying, "No, we don't  
6 think we can say that." And then they said, "We've  
7 found some others that we said were not conclusive  
8 and now we think are conclusive." So we're in flux  
9 on this.  
10 But the essence of it is that, if this is  
11 true, that Gavin Arvizo had a chance to go through  
12 these papers so he could see the sheets and he could  
13 see the magazines, and he picked them up to do that,  
14 if that's true, this would be a very significant  
15 piece of evidence with regard -- this inference that  
16 we have is very significant with regard to  
17 fingerprints that are done later.  
18 And understand, and I'm sure that -- and I  
19 don't mean to just offend the government here, but  
20 it is --  
21 THE COURT: Do you mean you intend to offend  
22 more than just the government.  
23 MR. SANGER: No. Whenever anybody says  
24 that, that means we're really going to offend the  
25 government.  
26 But -- I really don't want to be rude, but,  
27 I mean, the fact is, if you look at any case that  
28 you have in the ordinary course of criminal law, 2739

1 when do you have a situation where something is  
2 referred for forensic analysis very shortly -- I  
3 don't have the exact dates here, but very shortly  
4 after it is seized it's sent over for forensic  
5 analysis - it was seized November 18th, and I think  
6 it was sent for forensic analysis in November - and  
7 they do their analysis. They do an alternate light

www.mjfacts.info

8 source.

9 And we will show from -- we started to get  
10 into it, and then the officer wasn't clear on what  
11 317 was. But the officer on the stand wrote a  
12 report saying, "Please" -- and these were the words:  
13 "Please do a fingerprint analysis." And he sent the  
14 material back with the reports saying, "Please do a  
15 fingerprint analysis." And it sat there until March  
16 and April of 2004.

17 In March of 2004, now, whatever that is, six  
18 months after it was seized, it's opened, it's shown  
19 to the grand jury, it's booked into evidence, it's  
20 handled by the clerk.

21 And then sometime in the summer of 2004, it  
22 is taken out of the grand jury, and then it's sent  
23 for fingerprint analysis.

24 Now, that isn't the way it should have gone.

25 And I don't know if anybody's going to argue, "This  
26 is the way we do things," but I've never seen it. I  
27 mean, if there's going to be fingerprints, you take  
28 them before you book it into evidence. 2740

1 THE COURT: Let's let the District Attorney  
2 respond.

3 MR. SANGER: Okay. Thank you.

4 MR. ZONEN: After we seized the magazines  
5 from Neverland - and there were many, many, many  
6 magazines that were seized at that time - there were  
7 lengthy discussions about how to handle this, these  
8 magazines, and how to process them.

9 It was exactly the opposite of what Mr.

10 Sanger said, that we were suddenly in the middle of  
11 the grand jury hearing and we're embarrassed because  
12 somebody thought for the first time to do  
13 fingerprinting.

14 The reality was quite the opposite of that.

15 The question was, do we proceed with fingerprinting  
16 first, or do we proceed with a search for biological  
17 evidence.

18 The problem is, is that the process that you  
19 use for either the search for fingerprinting or the  
20 search for biological evidence could have the  
21 consequence of negating our ability to find the  
22 opposite. Whichever you go first with could have  
23 the problem of destroying the evidence as to the  
24 opposite.

25 We had a lot of deliberations, a lot of  
26 discussions over many weeks, with a number of  
27 people, from the Department of Justice as to how to  
28 proceed on these issues, and very cautiously 2741

1 proceeded with each individual magazine and each  
2 individual page by initially using alternative light  
3 sources that would suggest the presence of  
4 biological material, either semen or perspiration or  
5 some form of human contact with it that would leave  
6 biological evidence behind.  
7 There were some cuttings that were then  
8 taken, in an effort to minimize the destruction to  
9 the magazines, and as a consequence be able to  
10 preserve the possibility of finding fingerprints.  
11 The actual fingerprint process didn't begin  
12 until after the grand jury hearings, partly because  
13 the evidence was before the grand jury, at least  
14 that portion of it. The evidence that was  
15 introduced were the magazines only in that one  
16 suitcase. It was not as to the balance of the  
17 magazines that came through.  
18 There were 19 prints that we were able to  
19 identify as belonging to the victims and to -- to  
20 Star and to Gavin, and to the defendant. At the  
21 moment, I can't tell you over how many magazines.  
22 I don't have that information right in front of us.  
23 Counsel was wrong, of course. There are no  
24 police officers who are in the grand jury room  
25 unless they're giving testimony. The rules are  
26 different from a regular court. We're not entitled  
27 to have an investigating officer present.  
28 So when counsel asked Detective Zelis, 2742

1 "Isn't it true you handed those magazines to Gavin  
2 Arvizo." the answer is, he wasn't in the room when  
3 Gavin Arvizo was on the witness stand. We're not  
4 allowed to do that.  
5 The only time that we had an officer in the  
6 room with the evidence was at the time that the  
7 jurors were allowed to view the actual magazines.  
8 And that was Detective Zelis. And he -- he was the  
9 one who handled the magazines and showed them to the  
10 jurors. They didn't touch them. And he, of course,  
11 wore gloves, as was consistent with his testimony.  
12 During the presentation of evidence of the  
13 two boys, yes, we did not put on the record that  
14 nobody was going to be touching the magazines,  
15 although there's plenty of references to the fact  
16 that we were maintaining strict control,  
17 specifically at the time that the jury viewed the  
18 material. You'll see that in the record, that they  
19 weren't allowed to touch the magazines at that time.  
20 We have asked the foreperson of the jury to  
21 come forward and testify to this, because she was  
22 the person sitting closest to the witness. And she

23 was the person responsible for taking control of the  
24 proceedings and making sure that the secretary had  
25 each of the items and that they were marked  
26 appropriately, that the witness is admonished, and  
27 of course she was in the best position to be able to  
28 see what was going on. 2743

1 And she is prepared to come in and testify  
2 that the children never touched any of those  
3 magazines; that they stayed in the suitcase. And of  
4 course if you look to other references to other  
5 material being handed witnesses throughout the  
6 course of the 12 days that we were in session and  
7 the 45-plus witnesses who testified, when they were  
8 handed an item, we said so. "I'm now handing you  
9 exhibit number so and so."

10 So it's pretty clear that the descriptives  
11 that are being used in the presentation of this  
12 suitcase is very different from how we presented  
13 other evidence where we really did hand it to them  
14 and they were able to take it.

15 But the question is, are we bound by a  
16 transcript as to this particular issue. We're not  
17 talking about legal matters presented before the  
18 grand jury. We're talking about an accusation by  
19 the defense that we handed material to a witness,  
20 and that that witness then put their fingerprints on  
21 it, and that we then presented the fingerprints that  
22 we found as having come from Neverland as opposed to  
23 from a grand jury.

24 Now, that's an accusation that was raised  
25 first by the defense, and in his opening statement,  
26 Mr. Mesereau, and then by Mr. Sanger specifically in  
27 his questioning of Detective Zelis.

28 "You did hand this magazine to Gavin, didn't 2744

1 you."

2 And he said, "No."

3 In fact, he wasn't even in the room when it  
4 was handed. It was not he who presented that  
5 information. It was, in fact, Mr. Sneddon who  
6 showed the material, and it was in the presence of  
7 19 grand jurors, myself, and Mr. Auchincloss.

8 We believe that it's appropriate for that  
9 witness to testify. And we believe it's appropriate  
10 for that witness to identify herself as the  
11 foreperson, because that is, in fact, the piece of  
12 information that makes her the most observant.

13 It is her responsibility, above and beyond  
14 the other 18 members of that grand jury, to be

15 attentive to what's going on and attentive to  
16 protocol and making sure that these exhibits get to  
17 the secretary and get marked properly, and get  
18 stored appropriately as well.

19 And I think that extra responsibility on her  
20 part, which she took very seriously, which you'll  
21 see if and when she testifies, is the indicia of  
22 credibility that is necessary to be able to resolve  
23 this issue. It's an important issue. And we  
24 need --

25 THE COURT: What about the request that you  
26 reveal the names of the other grand jurors so that  
27 they can see if any of the other grand jurors saw  
28 something different. 2745

1 MR. ZONEN: Well, they are percipient  
2 witnesses to this event. And if the Court feels  
3 that's appropriate, do it. But our position is it's  
4 overkill. That's why she is the foreperson of the  
5 grand jury. But again, that's for the Court to  
6 resolve.

7 THE COURT: So you think in this courtroom  
8 that the Judge is a better witness of what's  
9 happening at the witness stand than the jurors.

10 MR. ZONEN: I think that -- I would always  
11 think that the Judge is a better witness than  
12 anybody else in the courtroom as to what's happening  
13 in the courtroom.

14 THE COURT: The reason I raise that is that,  
15 you know, I'm looking at -- I'm doing all sorts of  
16 things. And I see a lot. I hope I see a lot. But  
17 I know at times I don't. I mean, I'm distracted by  
18 this or that.

19 MR. ZONEN: Well, it may be appropriate to  
20 do an in-camera examination of other jurors, if the  
21 Court feels that's appropriate, rather than reveal  
22 all of their identities publicly. That certainly is  
23 an option as well.

24 Ultimately, I think it's the Court's call on  
25 this matter. But I don't believe that we should be  
26 barred from being able to present evidence to  
27 contradict an event that they say took place that  
28 didn't take place for which we do have witnesses. 2746

1 And we are witnesses, for that matter. It's a  
2 suggestion for which they have no basis of belief  
3 and have no basis of belief now.

4 THE COURT: Anything else.

5 MR. ZONEN: No. Thank you.

6 MR. SANGER: Your Honor, the -- let's put it

7 this way: It may be a multi-stage process. It  
8 seems to me that, for whatever reason, the state of  
9 the record is the state of the record because it was  
10 handled the way it was handled.  
11 We didn't have anything to do with that. We  
12 made representations based on our analysis of the  
13 grand jury transcript, which we made, I believe,  
14 early on as part of the 995, and there's certainly  
15 no secret it was made as a part of Mr. Mesereau's  
16 opening statement. There's no secret that we had a  
17 concern about these items being handled in the grand  
18 jury. And I think when Mr. Zonen says there's no  
19 good-faith basis, if you read the transcript, I  
20 mean, how much more clear could it be.  
21 Now, that's that part. And I think we're  
22 entitled to go ahead with whatever inference we  
23 have.  
24 We strongly disagree with the calling of the  
25 foreperson of the grand jury. If the Court is  
26 thinking about doing that, we would like to have the  
27 opportunity to interview the other witnesses. I  
28 think that's only fair. 2747

1 Particularly, but -- not limited to, but  
2 particularly the person that asks these questions  
3 about fingerprints, because obviously he or she was  
4 very concerned.  
5 So I think it's a process that if the  
6 Court -- and the Court could say -- or it's a  
7 multi-step process. The Court could say, "I agree,  
8 they're stuck with the record. Let's move on," and  
9 that would take care of it.  
10 The Court could say, "Well, I may let you  
11 call Mr. Sneddon to the stand, and we can  
12 cross-examine him about it, and we'll move on."  
13 The Court could say, "Well, I'll let you --  
14 we'll consider whether or not you can call a grand  
15 juror," which we strongly object to for other  
16 reasons, but if the Court were going to go there,  
17 then we'd want to have a chance to interview  
18 everybody. And then, after we interview everybody,  
19 have a chance to come back to the Court before they  
20 call a grand juror, because we can see that it's a  
21 very prejudicial, very difficult matter.  
22 I mean, you have people -- I'm sure the  
23 Court's been aware that when trial jurors, for  
24 instance, are interviewed after a verdict, there's a  
25 strong inclination on the part of jurors to argue  
26 that what they did was fair. And of course they  
27 want to be fair. Most people want to believe that  
28 they're fair. 2748

1 THE COURT: I understand that feeling.  
2 MR. SANGER: Yes. Judges as well, I'm sure.  
3 But with jurors who are laypeople, quite  
4 often when they're interviewed, you know, will say,  
5 "Well, yes" -- the first thing they'll say, "We were  
6 very fair. We evaluated the evidence. We followed  
7 the Judge's instruction." Of course, like anybody  
8 else, they have a vested interest in what they did.  
9 And I think there's a real danger of putting  
10 somebody up here who's a layperson who will have a  
11 vested interest.  
12 So, what I'm saying is, if you get past  
13 stage one, stage one, we eliminate -- that's it.  
14 The record is the record. The inference is an  
15 inference. And we can argue it.  
16 Stage two, a witness such as Mr. Sneddon, if  
17 he wants to testify he was there, we'll  
18 cross-examine him.  
19 Stage three, if you're considering jurors,  
20 let us interview first and determine where we are,  
21 because we may say, after that, that it is so  
22 prejudicial to put anybody on, that we just -- we  
23 want to forego that, forego the calling of a grand  
24 juror at all.  
25 But we'd like to at least have an  
26 opportunity to talk to the others, if the Court's  
27 going to get to that level.  
28 Does that make sense. 2749

1 THE COURT: Yeah, I understand your argument,  
2 your approach.  
3 MR. SANGER: Okay. Thank you, Your Honor.  
4 THE COURT: I don't think that the law is at  
5 the state that the record is the only evidence of  
6 what happened at the grand jury proceeding. I mean,  
7 I could picture a situation where the -- somebody  
8 challenged the reporter's transcript of what was  
9 said and the Court had to have a hearing as to the  
10 accuracy of the transcript. And the Court would  
11 have to take testimony from people in the grand jury  
12 room of what was said.  
13 That doesn't happen very often, but it's --  
14 in my career it happened at least once, that -- you  
15 know, and it turned out that the Court ruled that  
16 the transcript was not accurate on that point.  
17 So you can't say that the transcript is the  
18 only way that anyone can ever determine what happens  
19 in a courtroom or a grand jury room.  
20 The next thing that the Court considers is  
21 the -- it's certainly not fair to allow the District



22 Attorney to choose one grand juror, albeit, the  
23 foreperson, and have that person be the only one  
24 that testifies.  
25 I don't think that the Court should be  
26 involved in investigating the case. In some  
27 countries, that's what happens. The Judge  
28 investigates the case, brings the Indictment, and -- 2750

1 not here. That's not what we do here. I don't  
2 investigate. So the only time we have in-camera  
3 hearings is when there's issues of privacy or  
4 privilege at stake that have to be predetermined  
5 before, to determine whether or not they outweigh  
6 the other interests.

7 So I'm not interested in myself conducting  
8 an in-camera hearing trying to examine witnesses.  
9 Not only that, you know, I think that that would be  
10 your job.

11 The only thing that I can really see as a  
12 fair situation here would be to order that the names  
13 of the grand jurors be given to the defense, and  
14 with a protective order that they cannot reveal the  
15 grand jurors' names to anyone other than their  
16 investigator, who would be bound by the same  
17 protective order, and that they be allowed to  
18 question those -- or to approach them.

19 I mean, it's up to the jurors whether they  
20 talk to them or not. It's -- it's not ordering  
21 people to talk to them, but they need to have that  
22 opportunity.

23 It seems also that I would -- well, I don't  
24 think I should make -- I have some other orders that  
25 I might make, but I think -- I probably shouldn't  
26 make those until we find out where we are after that  
27 point.

28 MR. SANGER: I understand. Could I -- with 2751

1 regard to the protective order, we were given the  
2 name of the foreperson by the prosecution two days  
3 ago. We weren't given an address, but we did locate  
4 the foreperson.

5 And my understanding is that the foreperson  
6 said, "I've" -- "I've talked to the District  
7 Attorney, and I'm not going to talk to you," in  
8 essence. I don't -- that's not a quote, but  
9 that's --

10 THE COURT: They didn't want to talk to you.

11 MR. SANGER: They didn't want to talk to us.

12 And they made it clear that they had talked to the  
13 District Attorney. So there seems to be some

14 allegiance there, which one can understand for  
15 someone being in the room with the District Attorney  
16 for however long that was.  
17 THE COURT: You think that causes allegiance.  
18 MR. SANGER: It could cause allegiance or  
19 could cause irritation.  
20 THE COURT: But that's the problem that you  
21 have with all witnesses. It depends on how things  
22 go.  
23 MR. SANGER: I think more so here, simply  
24 because -- because you do have this -- you know,  
25 there -- as we outlined in the grand jury, we had  
26 Lieutenant Klapakis apparently marshaling grand  
27 jurors around, and he was a witness. And you had  
28 the district attorneys in there. And there was a 2752

1 lot of camaraderie, and -- you know, that happens.  
2 Anyway -- and they came to a conclusion, and  
3 they're in the international spotlight for having  
4 come to that conclusion, I suppose.  
5 I would just ask in the protective order  
6 that -- that perhaps it could be phrased in a way,  
7 and perhaps we could submit a proposed order to the  
8 Court, a written order, that would allow us -- that  
9 would indicate that the Court is specifically  
10 authorizing our representative to talk to them about  
11 this particular subject matter, the handling of  
12 evidence, something general so we don't prejudice  
13 the viewpoint. And that they're not -- they're not  
14 obligated to talk to anybody, but the Court would  
15 appreciate their cooperation with both sides.  
16 And we would like to have an opportunity  
17 to -- I don't know how many grand jurors have been  
18 interviewed by the prosecution so far. We haven't  
19 gotten reports. And I think that we'd be entitled  
20 to them, quite frankly.  
21 But if they haven't interviewed grand  
22 jurors, to at least give us the first shot at this  
23 point so we have a fair chance to really find out  
24 what happened. We just want to know what happened.  
25 So I'd request those additions to the  
26 protective order. And then depending on what  
27 happens, we can come back and address the Court as  
28 to what should happen with regard to actually 2753

1 calling witnesses.  
2 THE COURT: Do you want to respond to that.  
3 And you can also respond to what I was saying, if  
4 you want.  
5 MR. ZONEN: Our response is that -- our

www.mjfacts.info

6 preference is that each of the grand jurors be  
7 interviewed in the presence of both sides at the  
8 same time to avoid needless inconvenience to them  
9 and needless intrusion into their time; that there  
10 certainly be a protective order that keeps their  
11 identity secret and not public; and that there be a  
12 restriction on the extent of the examination of the  
13 witnesses, and limited only to the issue of whether  
14 or not these boys touched the magazines, and not any  
15 other issue that may have come up in the 12 days of  
16 grand jury testimony.  
17 THE COURT: Yeah, I definitely would put that  
18 restriction on. I don't want the grand jurors  
19 examined on any issue other than this issue.  
20 MR. SANGER: Could we though -- could we,  
21 say, limit it to, say, handling of evidence. I just  
22 worry about telegraphing this particular issue.  
23 It's probably going to be telegraphed in the press  
24 anyway. But we really should have an opportunity to  
25 just talk in general about handling of evidence, and  
26 obviously this is the focus of it.  
27 THE COURT: Well, I think we could, as long  
28 as you understand - and you understand - that while 2754

1 the statement is rather broad, that the mission is  
2 limited.  
3 MR. SANGER: Yes, sir. Believe me, we have  
4 enough to do. We're not looking for wild goose  
5 chases here. We're trying to focus on this issue,  
6 so --  
7 MR. ZONEN: You're still looking at me. Is  
8 there something you wish me to add or answer.  
9 THE COURT: No, I'm just trying to think.  
10 It's a difficult problem.  
11 MR. ZONEN: It is.  
12 THE COURT: I was reflecting, actually, on a  
13 statement I made yesterday, I think, that we just  
14 had a couple of simple things to look at. I took it  
15 back right away, but what was I thinking.  
16 Let me -- let me -- I want to sit down with  
17 my research team and see if we can ourselves  
18 structure an order that will be appropriate as  
19 opposed to asking for one from either of you. So  
20 I'll -- let me do that.  
21 MR. SANGER: Thank you, Your Honor.  
22 THE COURT: Then the next item -- is it  
23 break time yet.  
24 The next item --  
25 MR. SANGER: No, Your Honor, you have three  
26 minutes.  
27 THE COURT: I'll use it, too.  
28 Motions to quash subpoena duces tecum on the 2755

1 financial issues.  
2 This is -- this is what I'm going to do  
3 here, is I'm going to deny the motion to quash.  
4 Did you have something you wanted to say.  
5 MR. SANGER: I suppose, but Your Honor's  
6 already indicated you're going to deny it. I don't  
7 want to argue it if that's the ruling.  
8 THE COURT: We've been through this and  
9 through this, you know. So what I thought I would  
10 do is to deny the motion to quash, limit the period  
11 of time. The subpoenas are too broad. We need to  
12 address some limitations on the subpoenas. And  
13 indicate that I'm not making any ruling on the  
14 admissibility of the records at trial, and I'm not  
15 releasing them for their experts to examine.  
16 This is not a part of the discovery process.  
17 This is a subpoena duces tecum for trial. And --  
18 but I think they should have the records here to the  
19 extent that they might be used in trial.  
20 It's like a lot of other records that have  
21 been subpoenaed. They are not necessarily  
22 admissible records. That would depend on how they  
23 come, what the issue is at the time they're asked to  
24 be introduced, and what the records are.  
25 But anyway, that's my proposed order on  
26 that.  
27 MR. AUCHINCLOSS: May I just make one  
28 inquiry, Your Honor. 2756

1 THE COURT: Yeah.  
2 MR. AUCHINCLOSS: Some of these records will  
3 be voluminous. And I'm happy to try and narrow the  
4 scope of the request, but there's no way around  
5 getting to the issue of the examiner having to see  
6 the exhibit and look at it.  
7 THE COURT: See, that's the whole problem  
8 here, is that this is not a subpoena for your expert  
9 to prepare himself to testify. That is not what a  
10 subpoena duces tecum is, and that's not what I'm  
11 allowing.  
12 MR. AUCHINCLOSS: So I guess I'm asking the  
13 Court, what are you proposing in terms of how --  
14 when the expert can look at the documents and --  
15 THE COURT: Absent a stipulation from the  
16 other side, you would open the documents here in  
17 open court.  
18 MR. AUCHINCLOSS: It will -- it will  
19 obviously be time-consuming.  
20 THE COURT: Well, it may not be, because

21 you'll have to tell me why you want to open them.  
22 And they won't be opened so you can spend hours  
23 thumbing through them and looking at them. And --  
24 MR. AUCHINCLOSS: If I -- may I have  
25 permission to file some authority for the opening of  
26 the documents prior to their examination on the  
27 stand.  
28 THE COURT: Yes. 2757

1 MR. AUCHINCLOSS: All right. Thank you.  
2 MR. SANGER: And --  
3 THE COURT: The point is, that the -- you  
4 have subpoenaed the records for trial. That's  
5 legitimate to subpoena the financial records,  
6 because I've already ruled that the -- that under  
7 your theory, his general financial statement --  
8 "his," Mr. Jackson's, general financial statement,  
9 can be raised as a motive, as you requested. I  
10 agree with you, that that's appropriate. And I've  
11 ruled that.  
12 I have ruled - if it's not clear, I'll make  
13 it clear now - that under 352, I am -- I do not --  
14 I find that the amount of time that would be  
15 involved in proving and disproving his true  
16 financial worth outweighs the probative value of  
17 doing that. And under 352, I'm not going to allow a  
18 detail-by-detail examination of Mr. Jackson's  
19 finances.  
20 MR. AUCHINCLOSS: And I do appreciate that,  
21 and that's why I submitted Exhibit A with our  
22 papers. And that really is the substance of the  
23 testimony we're seeking to adduce. One page.  
24 THE COURT: Just so you see maybe what --  
25 both sides see what I'm thinking is, the reason the  
26 subpoenas are valid is that his finances are at  
27 issue in this general sense.  
28 Let's suppose you have somebody testify -- 2758

1 I think somebody already has said that his finances  
2 were at issue; that that was part of the public  
3 relations effort that should be taken care of,  
4 because people were saying that he had bad finance  
5 -- his finances were not in good shape.  
6 But let's say a little further, you had  
7 someone testify that, in fact, their belief, you  
8 know, based on something legitimate, but not much,  
9 that he didn't have good financial standing at the  
10 moment, poor cash flow or whatever they say. Then,  
11 now, that's all I allow.  
12 See, then let's say that the defense calls

13 their accountant, and then he says, "Well, they're  
14 absolutely wrong," you know. "He's worth eight  
15 times as much as anyone thought before, and here it  
16 is."  
17 Now you've got the records in court, and you  
18 say, "Oh, let me look at the records."  
19 Now we have a situation where perhaps  
20 looking at the records would be appropriate to  
21 cross-examine this accountant.  
22 MR. AUCHINCLOSS: All right.  
23 THE COURT: So the other way, it doesn't  
24 quite work for me, that you call your expert and  
25 say, "You think he's in bad financial shape."  
26 And he says "Yes," and he says, "Let me show  
27 you all his records," and see if that substantiates  
28 what you're saying. We sit here for four days while 2759

1 he goes through them.  
2 No, that's not going to happen.  
3 MR. AUCHINCLOSS: I understand. Your Honor.  
4 Thank you.  
5 THE COURT: All right. Let's take our break.  
6 (Recess taken.)  
7 MR. SANGER: Your Honor, I have one, and  
8 just one, it's a technical question, because -- and  
9 I'm not arguing with the Court.  
10 THE COURT: You wouldn't do that.  
11 MR. SANGER: Not that I -- I'm just not.  
12 But a technical request.  
13 I'm hearing what the Court has ordered is  
14 that the general financial -- I think you said the  
15 general financial statement of the defendant can be  
16 gone into, or status.  
17 THE COURT: No, a statement of general  
18 finances.  
19 MR. SANGER: That's the Court's ruling on  
20 that issue.  
21 THE COURT: Yes.  
22 MR. SANGER: I'm not sure that we had that  
23 on the record. That's why -- I think we may have  
24 discussed that. It may have been on the record, but  
25 I just want to make sure on the record we have  
26 whatever the Court's ruling is.  
27 THE COURT: I think that was the ruling, and  
28 I reiterated it just before the break. 2760

1 Were you writing down what I was saying.  
2 THE REPORTER: Yes, sir.  
3 THE COURT: It was on the record.  
4 MR. SANGER: Okay. That's fine. Thank you.

5 MR. ZONEN: Might I be heard on one matter,  
6 as well, before -- let me offer one alternative  
7 solution to another problem.

8 THE COURT: All right.

9 MR. ZONEN: With regard to the issues of the  
10 grand jurors being individually interviewed by all  
11 of us, both sides, I assume there's 19 grand jurors,  
12 but there was a court reporter who was present as  
13 well, and presumably she's a witness to that as  
14 well.

15 We would accept the defense's suggestion to  
16 the alternative resolution, based on your call  
17 entirely. This would be your choice entirely. But  
18 we would offer as an alternative, if the Court's  
19 willing to do so, and we'll accept it, that one of  
20 the three prosecutors present would be made  
21 available as a witness in this case in lieu of the  
22 grand jury.

23 This is done for purposes of protecting  
24 their identity, as we had represented to them we  
25 would during the course of those grand jury  
26 presentations, and the concern that the Court has  
27 about keeping this matter moving. We're talking  
28 about 20 potential witnesses. 2761

1 So we would offer that as an alternative, if  
2 that's acceptable to the defense, and if that's  
3 acceptable to the Court. And the Court would make  
4 the determination as to whether you prefer to do it  
5 that way or prefer to proceed by way of interview of  
6 each of the 19 grand jurors, and the court reporter  
7 as well.

8 MR. SANGER: May I have just a second.  
9 (Off-the-record discussion held at counsel  
10 table.)

11 MR. SANGER: Okay. I think that -- I  
12 understand that the District Attorney is saying they  
13 would pick one of the people. I don't know that all  
14 three of them were in the room at all times, but  
15 they would pick one of the three of them to testify.  
16 We've already heard what they're going to testify  
17 to.

18 I think that under the circumstances,  
19 particularly in light of the fact that there's that  
20 one grand juror that's asking questions about  
21 fingerprints, I just have a feeling it would be  
22 appropriate for us to interview the rest of the  
23 grand jurors and find out what everybody says  
24 happened. And we can still decide, when it's all  
25 done. We may end up with a stipulation with the  
26 prosecution once we've had a chance to investigate.  
27 But I think it's gone -- the ball's rolled too far

28 in that regard. 2762

1 If the record is -- and I'm not arguing with  
2 the Court on that. The record is the record. But  
3 if we can go behind it, then we should be allowed to  
4 talk to the other people in the room.

5 THE COURT: Well, I would -- you know, I  
6 would consider -- this is a difficult problem. It's  
7 not an easy problem. And the grand jury, when they  
8 come to serve, you know, expect their identities to  
9 be protected and not to be exposed to  
10 cross-examination. That's not something that's  
11 anticipated.

12 If the prosecution is withdrawing their  
13 request to call the grand jury foreperson and  
14 intends to try to prove their -- the way that --  
15 that the records were not touched by the child  
16 during the proceedings, then the Court would accept  
17 that withdrawal of the request to call the grand  
18 jury foreperson. I don't see any particular  
19 problem.

20 Who would be the District Attorney  
21 testifying.

22 MR. ZONEN: Your Honor, it would probably be  
23 Mr. Auchincloss. There were three of us present at  
24 the time that the boys testified initially. They  
25 were recalled at the end of the proceeding.  
26 Mr. Sneddon at the time was involved in a  
27 separate trial in Santa Barbara. He was trying the  
28 Harms case at the time. He was not present during 2763

1 the second time.

2 But we would -- it would be Mr. Auchincloss  
3 who would be testifying. He certainly witnessed all  
4 the events.

5 MR. SANGER: And so we'll have Mr.  
6 Auchincloss's statement and his criminal history  
7 records and all that so we can evaluate him as a  
8 witness.

9 I'm saying that to be funny. I'm sure he  
10 doesn't have a criminal history. But we do want to  
11 have a statement of the witness, if they call him as  
12 a witness.

13 MR. AUCHINCLOSS: Is that a sound bite.

14 MR. SANGER: It was a kind sound bite.

15 But as far as the statement is concerned,  
16 the witnesses -- we're allowed to have -- we are  
17 supposed to have the information about the witness  
18 and their statement, and that's --

19 THE COURT: That's true.

www.mjfacts.info



20 MR. SANGER: That's part of discovery. So  
21 I'm asking for proper witness discovery, which, you  
22 know, would include all those things.  
23 THE COURT: That's fine. That's what he's  
24 asking for.  
25 But I just want to make clear that I'm not  
26 bargaining with you. If he wants to call the other  
27 two district attorneys that were present, that  
28 wasn't -- I'm not bargaining with you. You know, 2764

1 you are offering one for one. That wasn't what I  
2 was suggesting. I was saying if you want to  
3 withdraw the calling of the grand jury foreperson  
4 and submit yourself, or that you may, and if he  
5 wanted to, you know, talk to the other District  
6 Attorney that was present, you know, it's the same  
7 problem, isn't it.  
8 But I do think that the correct -- you know,  
9 I do appreciate and think the right choice is to not  
10 call the foreperson and involve the grand jury in  
11 this hearing. So I appreciate that.  
12 So that being the case, I'll vacate the  
13 order that I was either going to make or did make  
14 about interviewing all the grand jurors, and that  
15 won't come into effect unless you -- unless we get  
16 back to calling a grand juror.  
17 All right.  
18 MR. SANGER: Could I ask, just -- since the  
19 District Attorney actually raised it, the court  
20 reporter is under certain statutory obligations of  
21 confidentiality as are the grand jurors.  
22 Could the court reporter be relieved from  
23 those obligations, to the extent that we could  
24 inquire of her of the circumstances in which she  
25 recalls the evidence was handled. I mean, we know  
26 who she was. Her name is on the -- I won't repeat  
27 it, but her name is on the transcripts.  
28 THE COURT: Yeah. 2765

1 MR. SANGER: And I don't see why that would  
2 be a problem.  
3 THE COURT: Let me consider that.  
4 MR. SANGER: Okay.  
5 THE COURT: I'll need to look at what  
6 restrictions they have. You don't think they  
7 actually watch what's going on, do you.  
8 MR. SANGER: There's a possibility.  
9 THE COURT: Okay. Let me look at that.  
10 Do you know what code sections. I'll have to find  
11 them. What protections they have.

12 MR. SANGER: I did cite code sections. I  
13 just closed it. But I did cite the code section,  
14 the general area that talks about grand jury. It's  
15 9-something. Let me just see if I can find it here  
16 real quickly.  
17 924.1 is the grand jurors, and it's right  
18 around that same area.  
19 THE COURT: It talks about the court  
20 reporter.  
21 MR. SANGER: Yeah. Somewhere in that same  
22 series of code sections.  
23 THE COURT: Okay. Thank you. I'll let  
24 you -- I'll look at that this weekend and tell you  
25 Monday, and --  
26 MR. SANGER: Okay. Would the Court like me  
27 to get the exact code section and send it, or --  
28 THE COURT: I think we can find it. 2766

1 MR. SANGER: I'm sure.  
2 THE COURT: If it's in this area, don't  
3 worry.  
4 MR. SANGER: Yes. Thank you.  
5 THE COURT: If you find it's some other area,  
6 some other code or something, I'd appreciate if  
7 you'd just --  
8 MR. SANGER: Yes, sir.  
9 THE COURT: -- phone Carrie or something.  
10 Nothing formal.  
11 MR. SANGER: Yes, sir, I will.  
12 THE COURT: Let the other side know.  
13 Then we have -- the next item is the  
14 defendant's motion re admissibility of evidence  
15 related to George Lopez.  
16 MR. SANGER: Again, we briefed it.  
17 I guess the main point that I want to make  
18 orally here before the Court is that in a criminal  
19 case, the defendant has the constitutional right to  
20 confront and cross-examine. And generally, if you  
21 have a good-faith belief that something is true,  
22 you're entitled to ask questions on  
23 cross-examination to test the recollection and test  
24 the credibility of a witness.  
25 And I think that the Court's pre-trial  
26 rulings on this were based on information the Court  
27 had at the time.  
28 But I think it's very clear at this point 2767

1 that we have a good-faith belief that Gavin Arvizo  
2 was involved in this wallet incident with Lopez,  
3 with George Lopez. And the prosecution has already

www.mjfacts.info

4 raised -- in their own testimony on direct, they  
5 raised the issue that there was a falling out with  
6 George Lopez.  
7 I think that just stepping back from the  
8 fact that this is the Michael Jackson case and that  
9 it's George Lopez, who is an actor, ordinarily,  
10 fine, we'd be able to say, "We'll just find out what  
11 it was about and get to the bottom of it."  
12 And we understand the Court's ruling. We've  
13 all tried to abide by it. But it seems to me that  
14 at this point there's more than enough evidence to  
15 suggest that we should be allowed to vigorously  
16 cross-examine and find out.  
17 As you know, from what we have from the  
18 various interviews, there is -- there is clearly  
19 some incident that involved David Arvizo and George  
20 Lopez that apparently involve the wallet and the  
21 accusation that the \$300 was taken out of Gavin's  
22 wallet. So it's Gavin's wallet that Gavin claimed  
23 he left there and claimed he had \$300 in it, which  
24 is -- David claimed he had \$300 in it, which is  
25 inherently strange to start with.  
26 Secondly, we have information from Louise  
27 Palanker that it was Gavin who was brought into it  
28 reluctantly by his father to say how much money was 2768

1 in the wallet, and he didn't say, "No, there was no  
2 money in the wallet," he said, "Oh, I can't  
3 remember, I can't remember," based on her version of  
4 things.

5 That is enough of a good-faith belief that  
6 there's something going on here with Gavin  
7 specifically that is part of the same pattern that  
8 occurs throughout, and we've shown that there's  
9 parallel patterns. Once there's a falling-out,  
10 there's an accusation, and the accusations often  
11 escalate.

12 What we have at the moment -- you know, as  
13 defense lawyers, we have to defend. What we have at  
14 the moment is we have the prosecution putting the  
15 witness on the stand and saying, "Well, was there a  
16 falling out with George Lopez." "Yes, there was,"  
17 and we can't go into it.

18 So I think we have a good-faith basis, and  
19 they've brought the subject up. Even if they  
20 didn't, I think we could go into it, but they  
21 certainly brought the subject up. We should be  
22 allowed to freely cross-examine and really test the  
23 recollection and the credibility of the witnesses in  
24 what is a particularly critical area and an area  
25 that even the prosecution felt was warranted to  
26 bring up to this jury.

www.mjfacts.info

27 MR. SNEDDON: Judge, let me -- if I could go  
28 back and put this in perspective as to the way I 2769

1 recall this issue coming up.  
2 I recall being part of a discussion with the  
3 Court and counsel and the attorney for Mr. Lopez,  
4 and I recall that the motion was to quash the  
5 subpoena. And as I recall it, the decision that was  
6 made ultimately, at the completion of the day, was  
7 that the Court indicated that you would not release  
8 Mr. Lopez from the subpoena, but that you asked the  
9 lawyers specifically to file information to you with  
10 regard to the incident involving the wallet, so you  
11 would be in a better position to evaluate whether  
12 Mr. Lopez would be a witness or whether it would  
13 qualify for some motion under 403.

14 To my -- to my knowledge only - I can only  
15 speak for myself - I've never seen anything filed by  
16 the lawyer in response to the Court's request as to  
17 what I understood was going to be the next step.

18 And let me tell you, from our perspective, how we  
19 feel about it.

20 Our recollection, and from a review of the  
21 transcript of the defense's opening statement, Mr.  
22 Mesereau said that it was Janet Arvizo, not David  
23 Arvizo, who was involved in this wallet incident.  
24 And the purpose for us asking questions of  
25 people who knew about the incident was to show that  
26 it was, in fact, David Arvizo and not Janet Arvizo,  
27 because the defense had made a representation to  
28 this jury that it was Janet Arvizo who was involved 2770

1 in that incident, and she was not, to the best of  
2 our knowledge.

3 So with regard to the good-faith belief, now  
4 the defense says it was David, but that wasn't what  
5 they said, I believe the transcript will bear out,  
6 in the opening statement. And it was for that  
7 reason that we asked the questions of the witness  
8 that was on the stand.

9 Putting aside the change in position by the  
10 defense, we believe further that the information is  
11 that the father, David, tried to induce the child to  
12 claim that there was \$300 in a wallet, and the child  
13 refused to do so and was reluctant to do so.

14 So, I guess our position is, we would like  
15 the Court's order that Mr. Lopez be a witness in  
16 this case to stay in effect pending the fact that  
17 the lawyer file some kind of declaration or  
18 pro-offer proof to the Court, and then at that point

www.mjfacts.info

19 either side could make whatever motions that they  
20 feel is appropriate in light of the information  
21 provided to the Court.  
22 We would not want him released. And it  
23 could be very well that we want him to testify,  
24 because it was, in fact, David, and not Janet  
25 Arvizo, who was involved in this incident, and the  
26 son, the victim in this case, was not -- was not  
27 buying what the father was trying to get him to do.  
28 So that, in essence, is our position on 2771

1 this, Your Honor.

2 MR. SANGER: May I respond briefly.

3 THE COURT: Just a moment.

4 Here's the question I have: I can't tell  
5 from the declaration of Mr. Sanger, or from the  
6 attached reports, if Gavin, when he called Mr. and  
7 Mrs. Lopez seeking the return of his wallet, claimed  
8 at that time that there was several hundred dollars  
9 in the wallet. I can't tell if that's your  
10 proffered --

11 MR. SANGER: Here's -- the state of that  
12 situation is this, as I understand it: Louise  
13 Palanker says that she was advised of this wallet  
14 incident because it was a big topic of discussion --

15 THE COURT: But can you answer my question.

16 MR. SANGER: Yes. And when she was told  
17 about the incident - which is double hearsay, or  
18 hearsay at the very least - when she was told, she  
19 was told that Gavin made the call, and that later,  
20 when David Arvizo tried to get him to stand there in  
21 the office and say there was \$300, he said, "Well, I  
22 can't remember how much was in there."

23 THE COURT: Right.

24 MR. SANGER: Okay. Jamie Masada could not  
25 remember the incident until he was prompted, and  
26 then he remembered it. Then he couldn't remember  
27 all of it. So he went through several stages, but  
28 through the course of his statement, he eventually 2772

1 says, "Well, I don't really remember" -- as I  
2 recall, he says, "I don't really remember what Gavin  
3 did."

4 So we have -- we don't have a clear  
5 understanding, or a witness who is going to clearly  
6 say they heard what he said. Hence --

7 THE COURT: To the Lopezes when he called  
8 them.

9 MR. SANGER: That's right. Other than Mr.

10 Lopez, Mr. and Mrs. Lopez.

11 THE COURT: So the statement under your  
12 declaration on line 21, 20 and 21 -- are you there.  
13 MR. SANGER: Yes.  
14 THE COURT: "Gavin later called Mr. and Mrs.  
15 Lopez seeking return of his wallet. He claimed that  
16 it contained several hundred dollars."  
17 MR. SANGER: That's my understanding of  
18 Louise Palanker's claim. That's why we detailed it  
19 to show the Court. I mean --  
20 THE COURT: So we don't know that.  
21 MR. SANGER: We don't know that for sure,  
22 but we've got enough. And as I say, there's a  
23 distinction here. And I think I answered the  
24 Court's question.  
25 Okay. There's a distinction here between  
26 what Mr. Sneddon is proposing and what we're talking  
27 about at the moment, I think.  
28 Mr. Blancarte, who's representing Mr. Lopez, 2773

1 did say he would file a supplemental declaration  
2 addressing the wallet issue.

3 THE COURT: Well, here's what I recall. And  
4 since I'm in the best position to --

5 MR. SANGER: Yes, evidently.

6 THE COURT: What I recall is that I overruled  
7 the objection to the subpoena and said that Mr.  
8 Lopez had to attend. And we agreed we wouldn't call  
9 him until April because of his business schedule.  
10 The attorney for Mr. Lopez then indicated he  
11 was going to file a motion to quash the subpoena,  
12 which is different than the objection that he filed.  
13 And I told him that if he was going to file  
14 a motion to quash the subpoena, I would require a  
15 detailed statement from Mr. Lopez as to this wallet  
16 incident so I would know what he did or did not have  
17 to offer the jury in the way of evidence on the  
18 issue.

19 He has not filed a motion to quash the  
20 subpoena, so the subpoena is still in effect. And  
21 he's under no duty to file any declaration absent --  
22 only if he files a motion to quash, and that would  
23 be in an accompanying declaration.

24 MR. SANGER: That's absolutely correct, from  
25 my point of view, proving that the Court is a very  
26 percipient witness on a --

27 THE COURT: Okay.

28 MR. SANGER: Now, I was -- in fact, was just 2774

1 shortcutting that, because I didn't want to go  
2 through a long explanation, but the Court very

3 concisely did say what happened.  
4 The point of the story is precisely what I  
5 was getting at. Whether or not Mr. Lopez is called  
6 as a witness is not Mr. Sneddon's issue right now or  
7 my issue right now. The issue right now is whether  
8 or not we can confront and cross-examine the  
9 witnesses with this incident.  
10 THE COURT: I agree.  
11 MR. SANGER: And I think --  
12 THE COURT: And I think you can.  
13 MR. SANGER: Okay. Thank you.  
14 THE COURT: The difference we have is -- and  
15 there's been some -- maybe some misunderstanding  
16 from the District Attorney, judging from their  
17 objections, that on the 403 hearings, when I said  
18 that certain things couldn't be proved, I also said  
19 that that did not bar cross-examination of certain  
20 witnesses on those items, you know. It's -- and  
21 that's -- that's what was going on on some of the  
22 ones earlier this week where you seemed to be  
23 surprised that I was overruling your objection to  
24 cross-examination on some of those issues.  
25 So I agree with you, that cross-examination  
26 of witnesses that have knowledge of this would not  
27 be inappropriate. You know, there's limits on that,  
28 of course. 2775

1 MR. SANGER: Well, I understand. The Court  
2 makes rulings as you go along, obviously.  
3 Okay. Thank you. I believe that resolves  
4 that issue.  
5 We did have one more matter that we had.  
6 It's not on the agenda.  
7 THE COURT: Yes, we'll take that up now. A  
8 motion for a mistrial.  
9 MR. SANGER: That's right. And just --  
10 THE COURT: Let me just -- let me rule on the  
11 first motion first, because it's connected, in a  
12 way.  
13 MR. SANGER: Okay.  
14 THE COURT: And you connected it.  
15 What I'm going to rule on the motion for  
16 admission of evidence on the alleged prior sexual  
17 offenses under Evidence Code Section 1108 is that we  
18 will hear argument on the -- on Monday, the -- what  
19 date would that be. Would that be the 28th.  
20 THE CLERK: Yes.  
21 THE COURT: On Monday the 28th.  
22 The way I think I would like to do this is  
23 to have -- not to call witnesses unless I get to the  
24 point where I want to have a witness.  
25 So I'll have the prosecution make their

26 arguments as to why they believe particular  
27 witnesses should be called as to particular items,  
28 what they're going to say. And I'll allow the 2776

1 defense to say -- they can do this in advance. I  
2 would encourage some written material if you have  
3 time to do it, but not requiring it, as to why -- in  
4 a particular case, what you would be doing and why  
5 you think it would -- should be excluded under 352,  
6 and let you argue those things, and then I may or  
7 may not ask for a witness in any particular  
8 situation. It will depend on how I hear what you  
9 have to say, what my opinion is then.

10 MR. SANGER: And if you were going to  
11 request a witness, would it be on a different day,  
12 or should we have people lined up outside the  
13 courtroom.

14 THE COURT: Well, let's make it a different  
15 day so that we don't have to inconvenience all sorts  
16 of people.

17 MR. SANGER: Okay.

18 THE COURT: But I'm pretty much of the  
19 opinion now, having read the cases on this, that the  
20 likelihood of having any witnesses is not great.

21 MR. ZONEN: It's not what.

22 MR. SNEDDON: Not great.

23 THE COURT: Now, on your motion for a  
24 mistrial.

25 MR. SANGER: Yes, sir.

26 First of all, a motion for mistrial is  
27 generally made orally. And it was made orally in  
28 this case, just so the record's clear, by Mr. 2777

1 Mesereau when he said, "I have a motion."

2 THE COURT: He did. I understood what he was  
3 saying. And I asked him to wait, and he did. And  
4 the record was made timely, if that was an issue at  
5 all.

6 MR. SANGER: I just wanted to -- we have to  
7 connect the dots on the record, you know, so I just  
8 wanted to make sure we did that.

9 THE COURT: Yeah. That is your right.

10 MR. SANGER: Thank you.

11 And I understand that we're not supposed to  
12 say the word "mistrial" in front of the jury, and  
13 therefore we don't.

14 THE COURT: That's correct.

15 MR. SANGER: We filed a memorandum of points  
16 and authorities in support of the motion for  
17 mistrial this morning, hand-delivered it to the



18 District Attorney.  
19 A mistrial, though, is generally -- a  
20 motion for mistrial is generally made orally, and I  
21 intend to make this orally. The points and  
22 authorities just support what we said. And I'd  
23 incorporate the points and authorities in my oral  
24 presentation so that I don't have to repeat  
25 everything.  
26 Having said that, the basis for the motion  
27 for mistrial is that the Court made a ruling,  
28 whether the Court intends -- or, I shouldn't say 2778

1 "intends," whether history bears out later that the  
2 Court either grants or denies the 1108 motion, the  
3 prosecution was under a clear duty not to go into  
4 '93, '94 matters.  
5 And what they did, what Mr. Auchincloss did  
6 specifically, was not only ask a question that -- to  
7 which a witness responded out of the blue, "Oh," and  
8 named names. And I'll just avoid saying the names  
9 right now, but it's already in the record, and  
10 everybody will see it, I'm sure. But, you know,  
11 that can happen. You tell your witness there are  
12 certain rules, and the witness gets up on the stand  
13 and they're nervous, and all of a sudden you ask a  
14 question, and they blurt out things that they're not  
15 supposed to say.  
16 That's not what happened here. What  
17 happened here was that the witness came up with one  
18 name, which was Macaulay Culkin, and Mr.  
19 Auchincloss, not being satisfied with that, went  
20 back directly to the very list of names that he has  
21 in his 1108 motion, that he's been asking the Court  
22 to be allowed to go into, and the Court said, "No,  
23 not until we rule on it." And he asked leading  
24 questions. "What about so and so." And then they  
25 said, "Yes." "What about the next person." She  
26 said, "Yes."  
27 It's in the record and I've cited it. I  
28 just don't want to repeat it unless the Court wants 2779

1 me to.  
2 THE COURT: No, based on your written  
3 material, I read that record this morning.  
4 MR. SANGER: And when you compare that to  
5 the 1108 motion, there's nothing accidental about  
6 this.  
7 Now, the issue or the problem that I see  
8 here is that, number one, the Court's order has been  
9 blatantly disregarded. I'm not saying that from the

10 standpoint of being punitive. I'm just saying, as a  
11 practical matter, that's exactly what happened. It  
12 couldn't have been any more blatant and it couldn't  
13 have been any more intentional. It was clearly done  
14 with leading questions. So as I said, there's  
15 nothing accidental about this. And it goes right  
16 down the list of the people that the prosecution  
17 wants to talk about.  
18 If you look -- if you compare the 1108  
19 motion to the transcript, it's exactly what he's  
20 doing. He's getting in the information that the  
21 Court had said don't get into until we have a chance  
22 to do it.  
23 So I think that the only remedy at this  
24 point is a mistrial.  
25 Now, the prosecution could argue, "Well, you  
26 should grant our 1108 motion anyway, so there will  
27 be no harm, no foul," which means they can then put  
28 the Court in this difficult position, deliberately 2780

1 violate the Court's order, and then get the benefit  
2 of all worlds on this.  
3 That can't be right. There's got to be a  
4 sanction. And the only appropriate sanction,  
5 reluctantly - I say this reluctantly - is a motion  
6 for a mistrial. And I say it reluctantly because I  
7 think that when you look at the cases such as  
8 Oregon vs. Kennedy, the United States Supreme Court  
9 case that we cited, and the People vs. Batts, which  
10 is a California case, the case law says that if a  
11 mistrial is granted based on prosecutorial  
12 misconduct, and it's granted not at the request of  
13 the defense, then jeopardy may have attached and the  
14 case is over.  
15 On the other hand, we're in that position  
16 where we have that choice. Do we stand here and  
17 just say, "Well, we're going to take it, because if  
18 we request a mistrial and the Court grants it, they  
19 can just start all over again and prosecute again."  
20 After considering this, we've decided that  
21 our -- the only thing we can do, as a practical  
22 matter, is ask for a mistrial as the first remedy.  
23 If that's denied, there may be other remedies. But  
24 I think we have to -- in good conscience, given what  
25 happened, and the blatant nature of the violation, I  
26 think we have to request a mistrial.  
27 Now, the prosecution can come back and say,  
28 "Oh, well," you know, "what's a little violation of 2781

1 the court order here. I mean, we've spent a lot of

2 time and money, the Court's spent a lot of time and  
3 money, look at all these sheriffs are here helping  
4 us get to our cars and do things, and the press."

5 That can't -- that can't be a reason to  
6 overlook something that in any other case would be  
7 just an absolutely intolerable violation of a court  
8 order.

9 He went down with leading questions, went  
10 down the list of people that the Court has already  
11 indicated you can't get into until we -- until we  
12 have a hearing on it.

13 So what do we do. As my former colleague in  
14 this case used to say, "We have to do something more  
15 than nothing." And I think that that's -- that's  
16 precisely what we have to do in this case. And I  
17 think the only proper remedy is to grant a mistrial.  
18 None of us, believe me, wants to sit here  
19 and start this case over again. But what -- you  
20 can't unring the bell. They've gotten into specific  
21 names and specific allegations that they were told  
22 not to get into, and here we are.

23 Now, if the Court decides for some reason  
24 that a mistrial should not be granted, then we've  
25 suggested another possible sanction. But only if  
26 the Court denies that motion for a mistrial.  
27 We've also indicated that we believe, and  
28 I'm saying it up front and I've said it in the 2782

1 papers, that this -- even though we have requested a  
2 mistrial, this still may come within the exception  
3 under the Kennedy vs. Oregon or the People vs. Batts  
4 cases, in that this appears to be such deliberate  
5 misconduct, where the very names are read in leading  
6 questions that are in the motion, that it -- it  
7 would be viewed as a case in which jeopardy is  
8 attached and mistrial is deliberately caused, and  
9 there may not be a retrial.

10 But whether that's the case or not, those  
11 consequences are not for the Court to weigh at this  
12 point. The Court has to weigh whether or not there  
13 was just a blatant disregard of the Court's order,  
14 and if, based on that violation, a mistrial should  
15 be granted.

16 And we respectfully submit that that is the  
17 proper remedy. And then, as I say, if the Court  
18 disagrees and doesn't grant a mistrial, then we've  
19 suggested, among other things, as a sanction, the  
20 1108 motion should just be summarily denied, the  
21 People's motion on that, because that would -- that  
22 would at least be a sanction to deal with this.

23 The Court could then issue an admonition  
24 that these -- that, "The reference to people prior

www.mjfacts.info

25 to the 2003 time period will be stricken. You're  
26 not to regard them," and we could go from there.  
27 Thank you, Your Honor.  
28 THE COURT: Counsel. 2783

1 MR. SNEDDON: My first comment is that  
2 Mr. Sanger points out one of the anomalies of the  
3 law that we face when we try criminal cases, and  
4 that is when there's an allegation that someone on  
5 the prosecution side steps over the boundary, all of  
6 a sudden the defense can get up and make mistrials  
7 and characterize it in a certain fashion.  
8 But on the other hand, when we sit here and  
9 watch defense counsel continuously step over the  
10 boundaries and get admonished as violating the  
11 Court's 403 rules, the prosecution's basically at  
12 the mercy of the Court, because the law does not  
13 allow us to make any kind of motion to rein in or  
14 bring under control somebody who just consistently  
15 violates the Court's orders.  
16 Having said that, two wrongs never make a  
17 right, so I'd like to address the correctness of why  
18 we believe that this motion should be denied, there  
19 should be no sanctions, and why the Court should  
20 ignore this, in the sense that it was not deliberate  
21 and not intentional.  
22 First of all, the Court's 1108 motion dealt  
23 with specific allegations of misconduct on the part  
24 of the defendant involving other young boys. There  
25 was no attempt to elicit that information from these  
26 witnesses. There was no intent to infer that there  
27 was any improper conduct on the part of Mr. Jackson  
28 with the individuals. The questions were directed 2784

1 totally at the witness with regard to who were  
2 people who came to the ranch and visited Mr. Jackson  
3 on certain occasions.  
4 And frankly, given the Court's ruling on  
5 staying away from the 1108 areas of misconduct, I  
6 can't see how, frankly, it comes within the purview  
7 of just simply asking whether these were individuals  
8 who came to the ranch during a particular point in  
9 time involving the period of time in which this  
10 person was an employee at the ranch.  
11 In fact, the Court sustained some  
12 objections, but most of the objections you sustained  
13 were on the basis of foundation. And it was at that  
14 point when Mr. Auchincloss went back and went  
15 through them serially, individually, you did not  
16 overrule -- in fact, you overruled objections on the

17 part of the defense as to some of those questions.  
18 Now, I think it's pretty hard to stretch  
19 that kind of questions and those kind of answers in  
20 the kind of context that they were presented as  
21 being prosecutorial, deliberate misconduct on the  
22 part of somebody, when it was clear that there was  
23 nothing inferred with regard to the conduct of these  
24 people at the time, and the conduct of the defendant  
25 in relationship to these people.  
26 And so I just submit to the Court that,  
27 given the whole series of questions and answers and  
28 the sustaining of objections, that there was nothing 2785

1 really improper that happened in the first place;  
2 that this is part of the give and take at trial.  
3 And some of the boundaries, I think the Court would  
4 probably -- you won't take judicial notice of it,  
5 but the Court has tried to guide us generally  
6 through some of these landmines in this case, and  
7 it's not altogether sometimes clear just how far one  
8 can go and one can't go. And I think that's been a  
9 problem on both sides of this case.  
10 But to say that something is deliberate and  
11 something rises to the magnitude of some kind of a  
12 mistrial declaration in this particular case, I  
13 think is a very, very big stretch in light of what  
14 happened in the total context of this trial and in  
15 the total context of the examination of this  
16 witness, Your Honor.  
17 THE COURT: Any rebuttal.  
18 MR. SANGER: Yes. First of all, I'd feel a  
19 lot more comfortable, rather than bringing up other  
20 things and then saying two rights don't make a  
21 wrong, if we just address the issue. And also, I'd  
22 feel a lot more comfortable if the prosecution  
23 indicated that they were wrong.  
24 However, what's happened here is we're  
25 saying there was no intent to infer. And as we  
26 cited in our papers on page two, and including the  
27 footnote on page two, that it was Mr. Auchincloss,  
28 not Miss Fournier, who said things like "special 2786

1 relationship" and "special friends." It was Mr.  
2 Auchincloss who was trying to make this relevant to  
3 his 1108 motion. It was Mr. Auchincloss who brought  
4 out the ages of the children. It was Mr.  
5 Auchincloss who asked questions only about boys and  
6 not about girls.  
7 He chose to do that, why. Not because it  
8 was a random discussion of Miss Fournier and what

9 she'd been doing on the ranch for 10 or 12 years.  
10 This is directed specifically to the inference. And  
11 Mr. Sneddon just got up and said there was no  
12 intention of bringing out. You know, I'm just taken  
13 aback by that. Of course there was an intention to  
14 infer something by this testimony. I can't believe  
15 we're in the same courtroom.  
16 And if you look at that, when Mr.  
17 Auchincloss goes on about special relationships,  
18 special friend, ages, boys, he's clearly tying it in  
19 to his 1108 argument. And if he wasn't doing that,  
20 the relevance objections would have been sustained,  
21 I'm sure.  
22 It was -- it was offered as relevant  
23 evidence. It wasn't offered for some background of  
24 Miss Fournier. And the Court ruled earlier that  
25 that evidence would not be admissible until the  
26 Court had a hearing on it.  
27 So, you know, it clearly was improper, and  
28 it clearly was for a purpose. I just can't believe 2787

1 I heard to the contrary.  
2 The question is, you know, what does the  
3 Court do about it. And in saying that somebody on  
4 the defense team overstepped boundaries from time to  
5 time makes this right, it just doesn't. And the  
6 defendant does have a constitutional right to a fair  
7 trial and to have the Court -- the Court's orders  
8 followed by the prosecution.  
9 This is a bell that cannot be unrung. And I  
10 just think under the circumstances, there's no  
11 choice but to grant a mistrial. As, you know,  
12 remarkable as that might seem to the public or  
13 somebody else, the fact is, as lawyers and as a  
14 Judge, we all know that there are legal rules.  
15 These legal rules, in this case that the  
16 prosecution follow the court orders, were not  
17 followed, and the consequence of those breaches of  
18 legal rules is that the Court has to declare a  
19 mistrial, and I believe that that's the appropriate  
20 remedy.  
21 Thank you, Your Honor.  
22 MR. SNEDDON: Judge, I promise it will be  
23 less than a minute, but I wrote something down that  
24 I didn't tell you that I think is relevant to this  
25 issue.  
26 THE COURT: No, we have --  
27 MR. SNEDDON: All right.  
28 THE COURT: We have opening, response and 2788

1 reply.

2 Well, let me tell you how I was looking at  
3 it when I was making the rulings, which is there was  
4 some evidence by the District Attorney where -- from  
5 which he would like to prove or have the jury infer  
6 that when children go to Michael Jackson's ranch,  
7 that they are unsupervised, they become wild and  
8 crazy kids, you know. There was a lot of -- the  
9 inference they wanted to be drawn, I think, was that  
10 that is a situation that Mr. Jackson wanted; that he  
11 didn't supervise them; he wanted them to become  
12 uncontrolled children.

13 Then Mr. Mesereau, in cross-examination,  
14 spent a good deal of time trying to establish --  
15 that's not a good word, "trying." I should say  
16 working to establishing that, in fact, many  
17 truckloads, busloads -- not "truckloads," busloads  
18 of children, carloads of children, appeared at the  
19 ranch when he was there, and -- when Michael Jackson  
20 was there, and when Michael Jackson wasn't there.  
21 And there was an ongoing entertainment of children,  
22 and that -- excuse me, that the children acted as  
23 children do when they're taken to any amusement  
24 park. And that, in fact, Mr. Jackson wasn't there a  
25 lot, and wasn't out watching them a lot and really  
26 didn't have much contact at all with all of these  
27 children who took advantage of the rides and zoo and  
28 everything. 2789

1 And then the District Attorney came back  
2 and, in my acceptance of that evidence at that time,  
3 was to try to reestablish or to establish the  
4 contact that Mr. Jackson did have with the children.  
5 And that, in fact, there were certain children that  
6 he had a great deal of contact with, and that this  
7 was the balancing of the evidence that I was  
8 watching from this position.

9 And so when the District Attorney asked if  
10 there weren't certain children that he had  
11 established good, strong relationships with - and  
12 she confirmed, the witness confirmed that that was a  
13 fact, and started naming them - I didn't feel that  
14 that violated the 1108 order. I didn't see -- from  
15 my standpoint, I didn't see that it was either  
16 harmful or helpful to either the defense or the  
17 prosecution.

18 I mean, some of the children that were named  
19 were relatives of Mr. Jackson. And I did  
20 specifically limit that testimony to that area  
21 purposefully. And I thought the District Attorney  
22 recognized it when he said he intended to go no  
23 further than that, and I said I would hold him to

24 it.  
25 And then when the -- when he did mention  
26 Jordie Chandler, he said -- he was the one that  
27 raised it, not the witness.  
28 "How about Jordie Chandler." 2790

1 And she said, "Yes."  
2 And Mr. Mesereau said, "Your Honor, I'm  
3 going to object based on the Court's ruling on  
4 1108.  
5 "The Court: Sustained.  
6 And Mr. Mesereau said, "Move to strike."  
7 And the Court struck the testimony.  
8 And it was after that, of course, that Mr.  
9 Mesereau moved for a mistrial. But I felt that that  
10 cured the situation.  
11 And one has to keep in mind that this isn't  
12 the first that the jury's heard that name. And even  
13 one of the questionnaires for service of jury was to  
14 ask the jurors what they knew about the alleged  
15 1993 -- or the 1993 alleged incident. And it's come  
16 up -- 1993 has been mentioned by other witnesses.  
17 So it's not like this is the first, nor will it  
18 probably be the last time, it's mentioned.  
19 So I'll deny the motion for a mistrial and  
20 any request for sanctions.  
21 Let's see. Is there anything else before  
22 me.  
23 MR. SNEDDON: Judge, may I ask a question  
24 about the procedure on the 28th, in terms of what  
25 the expectations are, us moving forward with our  
26 case. And then I have one minor thing that I'd like  
27 to discuss.  
28 THE COURT: Yes. 2791

1 MR. SANGER: Before you change the subject,  
2 though, could I just ask one clarification question  
3 on that ruling.  
4 THE COURT: Yes.  
5 MR. SANGER: Just so we don't have a  
6 problem -- I mean, the Court is going to rule  
7 however it's going to rule.  
8 THE COURT: The Court ruled however it did  
9 rule.  
10 MR. SANGER: That's true. I'm speaking  
11 about prospectively on other -- if this comes up  
12 again. It would be our position that mentioning the  
13 names of children who are in the 1108 motion,  
14 whether they're there because -- well, for whatever  
15 reason, mentioning those names from '93, '94, or



16 prior to that should not occur, it would be our  
17 position, unless counsel approaches and asks for  
18 permission. Because I still believe that that comes  
19 within the 1108.  
20 I understand what Your Honor said. I'm not  
21 arguing with the ruling. But prospectively, until  
22 the Court rules on the 1108, that would be my belief  
23 and understanding. And I'd ask if we could follow  
24 that procedure; that if there is an intention to do  
25 something like that, that we have an opportunity to  
26 be heard on it.  
27 THE COURT: I think that's only fair. There  
28 could be other situations where that testimony is 2792

1 admissible before we get to 1108. It's not  
2 admissible under 1108 or -- so it would have to be  
3 some limited purpose. But to prevent the need for  
4 further hearings like this, I think you should  
5 advise them if you're going to go through that  
6 list --  
7 MR. SNEDDON: Okay.  
8 THE COURT: -- before then.  
9 MR. SANGER: Thank you, Your Honor.  
10 MR. SNEDDON: Judge, on the 28th, when you  
11 said we were going to have argument, should we  
12 anticipate that that will take the day, and we  
13 shouldn't be required to have witnesses standing by.  
14 I don't even mean in connection with the 1108. I  
15 mean just --  
16 THE COURT: Yeah.  
17 MR. SNEDDON: -- to carry on that day.  
18 Do you envision that would take the whole  
19 day or part of the morning. I just want to get  
20 direction so --  
21 THE COURT: Well, how long do you think your  
22 argument will take.  
23 MR. SNEDDON: Depends on whether it's --  
24 who's arguing it. But -- and depends on how much  
25 leeway the Court gives.  
26 THE COURT: How much --  
27 MR. SNEDDON: Based on our experience, I  
28 would expect it would probably take a couple of 2793

1 hours, I guess.  
2 THE COURT: I think at least.  
3 What do you think. Who's arguing that here.  
4 MR. SANGER: I believe I am, Your Honor.  
5 I would say it's liable to take a couple  
6 hours. We could intend to take an hour, but we'll  
7 probably take a couple by the time we're through

8 THE COURT: So are we talking two hours.  
9 Are you each saying two hours total, or are you  
10 saying two hours --  
11 MR. SNEDDON: I would --  
12 THE COURT: -- each.  
13 MR. SNEDDON: No, I would anticipate that I  
14 would be able to address the Court's concerns in my  
15 opening remarks. And since it's our motion, we  
16 carry the pail on this one, that probably I could do  
17 that in a half hour easily, because you already have  
18 our declarations.  
19 THE COURT: I already have your written  
20 declarations.  
21 MR. SNEDDON: So I'll just highlight things  
22 and we'll go from there. So I would expect that  
23 mine -- my opening would take less than a half hour.  
24 MR. SANGER: And by the time I get through  
25 going back and forth, I think total, the whole thing  
26 will probably take a couple hours. And we'll  
27 probably have a break, so --  
28 THE COURT: So if we had the jury come in on 2794

1 Monday at 11:30 and did the 11:30 to 2:30, that  
2 would work.  
3 MR. SANGER: I think that would be fine. If  
4 the Court needed more time, we could do the jury and  
5 take more time on another day.  
6 MR. SNEDDON: So 11:30.  
7 THE COURT: So we'll -- we're going to  
8 argue -- the arguments will start at 8:30.  
9 MR. SNEDDON: Yes, sir.  
10 THE COURT: But you'll need to have witnesses  
11 commencing at 11:30.  
12 MR. SNEDDON: Is it the Court's intention to  
13 rule that day.  
14 THE COURT: Unless -- yes, unless I need to  
15 call a witness.  
16 MR. SNEDDON: Okay. So if the Court rules  
17 in our favor on one or more witnesses, we could go  
18 ahead and put them on right away, then.  
19 THE COURT: Yes.  
20 MR. SNEDDON: All right.  
21 The second thing is kind of a personal  
22 thing, and it involves the Court also. You  
23 indicated we would not be in session Tuesday  
24 afternoon, and the reason is the dedication at the  
25 Juvenile Hall. And I know they're dedicating it to  
26 Sue Gionfriddo, who is a close personal friend of  
27 mine, and we've been colleagues for over 30 years  
28 together, and I was very close to her and her 2795

1 deceased husband.

2 I had intended to attend that service, but  
3 then you invited all the jury, and I'm a little  
4 squeally about going over there, because I don't  
5 want to run into a juror, and I don't want to get  
6 accused of any improper conduct. So I guess what  
7 I'm asking the Court is --

8 THE COURT: I would expect you to attend, and  
9 I don't expect any of the jurors to attend. Did  
10 you notice the laughter when I --

11 MR. SNEDDON: I know, Judge. But I just  
12 want to make sure that I've addressed -- I've  
13 consulted with you about that.

14 THE COURT: I'll address that with them  
15 Monday and tell them I really don't expect them to  
16 attend. I think they're in tune with my humor.

17 MR. SNEDDON: I don't want to get accused of  
18 showing up if you said they were going to be there,  
19 or something like that.

20 THE COURT: No, I understand. I think  
21 everybody -- Mr. Sanger might even want to be there.

22 MR. SANGER: I was going to say, Sue  
23 Gionfriddo has been a good friend of mine for a long  
24 time, too, and I intend to attend. And I assume if  
25 we saw a juror, we would go in a different  
26 direction.

27 THE COURT: Yes. I'd require them to wear  
28 their badges if they went. I don't think they're 2796

1 going to go. They're really looking forward to the  
2 break.

3 MR. SNEDDON: Last thing: Do we have an  
4 update on the computer. We're in the middle of  
5 trial here. We'd like to get some of that  
6 information.

7 Are we done with at least one of the  
8 computers with regard to the --

9 THE COURT: I'll have to defer to Jed.

10 MR. BEEBE: The last word I heard was that  
11 the -- that there was -- that the disk, based on the  
12 new list, was in the mail yesterday. And so as soon  
13 as the special master makes a ruling, that material  
14 will be available.

15 MR. SNEDDON: It's -- can I ask a clarifying  
16 question.

17 My understanding was that the Brad Miller  
18 computer was completed and that the scoping down of  
19 the inquiries was on the Evvy Tavasci computers. Am  
20 I mistaken about that.

21 MR. BEEBE: It's the other way around.

22 MR. SNEDDON: The other way around.

23 MR. BEEBE: Yes.  
24 MR. SNEDDON: Oh, but -- the Evvy Tavasci is  
25 completed, but Brad Miller's is the one that we're  
26 re-evaluating.  
27 MR. BEEBE: Yes.  
28 MR. SNEDDON: I'm sorry, Your Honor, I was 2797

1 trying to get to the point.  
2 THE COURT: Go ahead and address him. He  
3 knows. Go ahead.  
4 MR. SNEDDON: Is it -- have the Evvy Tavasci  
5 materials been given to the special master.  
6 MR. BEEBE: Yes.  
7 MR. SNEDDON: And then the next process is  
8 it goes to the Judge. Judge Melville will make a  
9 ruling from there.  
10 MR. BEEBE: Yes.  
11 MR. SNEDDON: I'm just trying to get an  
12 update, Judge.  
13 THE COURT: I agree.  
14 MR. SNEDDON: We're in the middle of trial  
15 and --  
16 THE COURT: It's just something that I'm  
17 as -- didn't know any more than you did. So we both  
18 now know where it is.  
19 MR. SNEDDON: Perfect. Thank you very much.  
20 Thank you for your indulgence.  
21 THE COURT: All right. Is there anything  
22 else.  
23 MR. SANGER: I don't think so, Your Honor.  
24 Thank you.  
25 THE COURT: All right. Court's in recess.  
26 Have a good weekend.  
27 MR. AUCHINCLOSS: Thank you, Your Honor.  
28 MR. ZONEN: You too. 2798

1 MR. MESEREAU: Have a good weekend, Your  
2 Honor.  
3 (The proceedings adjourned at 11:05 a.m.)  
4 --o0o--

5  
6  
7  
8  
9  
10  
11  
12  
13  
14

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28 2799

1 REPORTER'S CERTIFICATE

2  
3  
4 THE PEOPLE OF THE STATE )  
5 OF CALIFORNIA, )  
6 Plaintiff, )  
7 -vs- ) No. 1133603  
8 MICHAEL JOE JACKSON, )  
9 Defendant. )

10  
11  
12 I, MICHELE MATTSON McNEIL, RPR, CRR,  
13 CSR #3304, Official Court Reporter, do hereby  
14 certify:  
15 That the foregoing pages 2711 through 2799  
16 contain a true and correct transcript of the  
17 proceedings had in the within and above-entitled  
18 matter as by me taken down in shorthand writing at  
19 said proceedings on March 18, 2005, and thereafter  
20 reduced to typewriting by computer-aided  
21 transcription under my direction.  
22 DATED: Santa Maria, California,  
23 March 18, 2005.

24  
25  
26  
27 MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304  
28 2800

www.mjfacts.info