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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.)

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17 REPORTER'S TRANSCRIPT OF PROCEEDINGS

18

19 THURSDAY, APRIL 21, 2005

20

21 8:30 A.M.

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23 (PAGES 7116 THROUGH 7163)

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27 REPORTED MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304

28 BY: Official Court Reporter 7116

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1 I N D E X

2

3 Note: Mr. Sneddon is listed as "SN" on index.

4 Mr. Zonen is listed as "Z" on index. Mr. Auchincloss is listed as "A"
on index.

5 Mr. Mesereau is listed as "M" on index. Ms. Yu is listed as "Y" on
index.

6 Mr. Sanger is listed as "SA" on index. Mr. Oxman is listed as "O" on
index.

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9 PLAINTIFF'S WITNESSES DIRECT CROSS REDIRECT RECROSS

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11 BARRON, Brian 7120-SA (Contd.)

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1 Santa Maria, California

2 Thursday, April 21, 2005

3 8:30 a.m.

4

5 THE COURT: Good morning, everyone.

6 THE JURY: (In unison) Good morning.

7 COUNSEL AT COUNSEL TABLE: (In unison)

8 Good morning, Your Honor.

9 MR. SANGER: Good morning, Your Honor.

10 THE COURT: Mr. Sanger?

11 MR. SANGER: Thank you, Your Honor.

12 Could we please have the document screen

13 again, please? There we go.

14 All right. With the Court's permission,

15 we'll resume with Exhibit 334. And the Court may

16 recall this is a series of a couple hundred

17 documents and they have the Bates stamped number on

18 the bottom, so we'll be referring to those by the

19 MJ00 three-digit number, sometimes four-digit

20 number.

21 Is that all right, Your Honor?

22 THE COURT: You may do so.

23 MR. SANGER: Thank you.

24

25 BRIAN BARRON

26 Having been previously sworn, resumed the

27 stand and testified further as follows:

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1 CROSS-EXAMINATION (Continued)

2 BY MR. SANGER:

3 Q. And in that regard, Mr. Barron, or Officer
4 Barron, we had gotten to this period of time, just
5 before we stopped yesterday, where the gate log
6 showed from 2-17 to 2-20. Do you recall that?

7 A. Yes.

8 Q. And that was not the usual mode of
9 recording. Usually it was day by day; is that
10 correct?

11 A. That's correct.

12 Q. All right. So I'm going to show you 149
13 here again. Even though we had gotten up to 2-20, I
14 want to go back to that period for a couple of other
15 entries, all right?

16 So just to remind us where we were, I have
17 MJ00149 up on the board. And that is the one that
18 said 2-17 through 2-20-03, correct?

19 A. Correct.

20 Q. And at the top, that had the extensive list
21 of guests and where they were staying, correct?

22 A. Correct.

23 Q. And then it shows "CO," so it's carry-over
24 for the Arvizo family, and then it has times out,
25 but those times out are not necessarily coordinated
26 with a particular day; is that correct?

27 A. Correct.

28 Q. All right. Now, I'm going to refer to 00152 7120

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1 and put that up on the board, if I may. Shows, at
2 the bottom, 152.

3 Do we have our laser pointer, by any chance?

4 If you have it.

5 152. And then up at the top there's an

6 entry that I'm going to -- I'm going to push the

7 wrong button. I'm sorry. There we go. Sorry. I'm

8 going to push the -- that button. See if you can

9 read that entry.

10 Do you have it there?

11 MS. YU: No, somebody took it out.

12 MR. SANGER: All right. That's all right.

13 Q. Are you able to read the top entry there

14 after I stop moving it? Just a second. There we

15 go. Can you read that entry?

16 A. At 3:05?

17 Q. Yes. Would you like to have another copy up

18 there?

19 A. I think -- I believe it says Marie Nicole,

20 Danielle, Aldo are staying upstairs theater.

21 Q. Okay. And this particular gate log is dated

22 2-18-03, correct?

23 A. Correct.

24 Q. Now, what would be the purpose of that

25 particular entry; do you know?

26 A. So we would know where they were.

27 Q. So that would be a reference to where those

28 particular guests were staying on that particular 7121

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1 day; is that correct?

2 A. That's correct.

3 Q. So as of 3:05, those guests had decided to

4 stay in the upstairs theater, correct?

5 A. Correct.

6 Q. All right. We'll skip ahead, then, to -- I

7 don't want to get this out of order. We'll skip

8 ahead to 155. Now, I'm going to show you 155.

9 And I'll try to speak up when I come back

10 here? If anybody can't hear, raise a hand so the

11 Court and bailiff know.

12 That's for 2-19-03, correct?

13 A. Correct.

14 Q. And on this, I want to direct your attention

15 to the top part of this one. It appears to indicate

16 Hamid, a photographer.

17 A. Yes.

18 Q. Okay. And by the way, there's a column that

19 says, "CONF." What does that mean?

20 A. Confidentiality, if they need to sign one or

21 not.

22 Q. So a person who has been there doesn't have

23 to sign that agreement each time they come in,

24 correct?

25 A. Correct.

26 Q. And the agreement basically says, "I'm not

27 going to disclose private things about Mr. Jackson's

28 residence"; is that right? 7122

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1 A. Correct.

2 Q. Okay. And it shows that Hamid and
3 apparently a couple other people, a Mark Adams and a
4 Ray Dominguez, arrived at 1620 hours, is that
5 correct, 4:20 in the afternoon?

6 A. Yes.

7 Q. And departed at 2010 hours, which would be
8 8:10 in the evening, correct?

9 A. Yes.

10 Q. Now, other -- let me ask you, did you have a
11 chance to review these logs since you testified
12 yesterday?

13 A. No.

14 Q. All right. I'm going to show you now 157.

15 And I think this was really the last one that we put
16 up yesterday. And this shows -- let me back this up
17 a little bit. 00157 is for 2-20-03, correct?

18 A. Correct.

19 Q. And this one shows that the Arvizos returned
20 to the property at 1420 hours, or 2:20 in the
21 afternoon, on the 20th of February, 2003, correct?

22 A. Yes.

23 Q. And it also shows that Aja Pryor and
24 something Tucker, that's cut off there, returned at
25 the same time?

26 A. Yes.

27 Q. So it indicated all those people came to the

28 gate at the same minute, correct? 7123

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1 A. Yes.

2 Q. And generally that would indicate they came
3 in the same vehicle?

4 A. Generally, yes, it would.

5 Q. All right. Now, if we go to the next page,
6 which would be 00158, which I'll put up, that shows
7 158 at the bottom. If we look at the top, that's
8 also for 2-20-03, correct?

9 A. Yes.

10 Q. And you indicated there usually are three
11 pages per day; is that right?

12 A. Generally, yes.

13 Q. Generally. So this is just another page for
14 that same day?

15 A. If it's dated the same day, then yes.

16 Q. Yeah. And what I would like to do is direct
17 your attention to -- see if I can get it in there so
18 you can still read it.

19 If you look at the entrance for 1420 --

20 A. Yes.

21 Q. -- that's the same time that was indicated
22 on the preceding page that the Arvizos, Aja Pryor,
23 and Destin Tucker arrive; is that correct?

24 A. Yes.

25 Q. And here the entry indicates Jesus S., so
26 let's start with that. That would be Jesus Salas;
27 is that correct?

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1 Q. Jesus Salas cleared Aja Pryor, Dustin
2 Tucker, Gavin Arvizo, Star Arvizo, Davellin Arvizo
3 to come in, correct?

4 A. Correct.

5 Q. And the purpose of that entry is what, that
6 type of entry?

7 A. That type of entry is generally for, first
8 of all, whomever's at the gate to know to let
9 someone in if they don't have prior -- you know, if
10 we haven't been given a list of somebody who's
11 coming in that day, and then to let the oncoming
12 shift know that they're there.

13 Q. So that would be further evidence in these
14 logs that all of those people just mentioned, Pryor,
15 Tucker, and three Arvizos, came back to the ranch at
16 1420 hours on February the 20th, correct?

17 A. Correct.

18 Q. Oh, I'm sorry, there was one other thing on
19 that. It also looks like Shane Brando ran over
20 somebody's foot with a cart, is that true, at about
21 1815 hours?

22 A. If that's what it says, I'm assuming it's
23 true.

24 Q. And then 1924, it looks like Shane Brando
25 hit Gavin Arvizo with a cart?

26 A. Yes.

27 Q. And then the cart was taken away, all right?

28 A. Yes. 7125

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1 Q. Okay. So, again, somebody in security or
2 somebody on the staff, when they saw that there was
3 a safety issue, exercised supervision over guests on
4 the ranch; is that correct?

5 A. Correct.

6 Q. And it shows Gavin is Code 4, right?

7 A. Yes.

8 Q. And then it says, "Received EMT care from,"
9 what does that say, K-10 and K-13?

10 A. No, it's R-10 and R-13.

11 Q. R-10 and R-13, are those designations for
12 people that worked on the ranch?

13 A. "R" is Robert. It's a call sign over the
14 radio, so we're not using each other's name.

15 Q. So whoever it was who responded from the
16 fire department came down to give him some sort of
17 emergency care to make sure he's okay, is that
18 right?

19 A. Yes. Robert 10 gave the care. Robert 13
20 wrote it down.

21 Q. There you go. When it says, "Gavin,
22 Code 4," Code 4 means no further assistance
23 required, okay?

24 A. Yeah, he's okay.

25 Q. If you say, in police talk basically,
26 "Code 4," you mean no further assistance,
27 everything's okay?

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1 Q. All right, good. We're going to skip ahead
2 here to 160. I'm putting up 160. Now, that's for
3 2-21-03; is that correct?

4 A. Yes.

5 Q. And at the bottom, it shows, "Vincent
6 Black," yes, "22" -- I think that says "55," "2255,"
7 correct?

8 A. Yes.

9 Q. So that would indicate -- even though it's
10 written on the bottom, it would indicate, sir, that
11 Vincent Black arrived, had to sign an agreement,
12 right?

13 A. Yes.

14 Q. And that he arrived at 2255 hours, correct?

15 A. Pull the paper down a little more.

16 Q. Certainly. Would you like to look at a --
17 would it be easier to look at a full sheet?

18 A. Yes, my eyes haven't adjusted from yesterday
19 yet.

20 MR. SANGER: All right. May I approach,

21 Your Honor?

22 THE COURT: Yes.

23 MR. SANGER: Excuse me. Does anybody want
24 to see this? I'm just going to show him my copy.

25 MR. AUCHINCLOSS: Go ahead.

26 THE WITNESS: Mr. Black did need to sign a
27 confidentiality, and he was checked in at 2255.

28 It's on the bottom, because there's no more room for 7127

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1 guests here.

2 Q. BY MR. SANGER: All right. So, the fact
3 that it's put in the margin is of no significance
4 other than the fact you ran out of room on the form,
5 right?

6 A. Yes, and the officer didn't want to start a
7 new sheet.

8 Q. For ecological reasons, I assume?

9 A. Sure.

10 Q. It says "CO" next to the 2255, so that means
11 Mr. Black checked in at 10:55 at night, he came
12 through the gate at 10:55 at night, and then he
13 stayed to the next day, correct?

14 A. Correct.

15 Q. And below it, it says Janet Arvizo, correct?

16 A. Correct.

17 Q. That tends to indicate that Janet Arvizo
18 came in at 2255 hours as well; is that correct?

19 A. Yes.

20 Q. And she was not required to sign a
21 confidentiality agreement?

22 A. No.

23 Q. And then she also stayed overnight that
24 night; is that correct?

25 A. Yes.

26 Q. And if we go up here, higher on the sheet,
27 we see among the guests who were there on this day,

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28 the 21st of February, you also had Aja Pryor, 7128

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1 correct?

2 A. Yes.

3 Q. And then Destin Tucker, correct?

4 A. Yes.

5 Q. And then the Arvizo children, Gavin, Star

6 and Davellin?

7 A. Yes.

8 Q. And it shows that the Arvizos were there

9 from the night before, and they continued on to the

10 next day without checking out; is that correct?

11 A. That's correct.

12 Q. Okay. And then, of course, there are other

13 people that are listed on the list. We won't go

14 through each one. There are other guests there that

15 day?

16 A. Yes.

17 Q. All right. There you go.

18 May I approach to retrieve that?

19 THE COURT: Yes.

20 Q. BY MR. SANGER: Now, we'll go to page 164,

21 if I may. It's MJ00164. Show that. And that's for

22 February 22nd, 2003; is that correct?

23 A. Okay.

24 Q. It's hard to read. Maybe counsel would

25 agree that when you look at it closely it says the

26 22nd. If not, let me approach.

27 May I approach, Your Honor?

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1 MR. SANGER: I'll tell you what --

2 MR. AUCHINCLOSS: I can't read it on mine.

3 MR. SANGER: Let's do this.

4 THE WITNESS: Is there a date on the top or

5 just one on the bottom?

6 Q. BY MR. SANGER: No, there's just one on the

7 bottom. But let me show you the -- let me show you

8 that page.

9 May I approach with that page?

10 I'm going to show you page 00164, and ask

11 you to take a look -- excuse me, take a look at the

12 date at the bottom, and see if you can tell the date

13 from that.

14 A. I'll agree it's the 22nd.

15 Q. All right. Thank you. And it would be in

16 order, correct? There should be other pages

17 pertaining to the 22nd in the book, correct?

18 A. Yes.

19 Q. All right. Okay. So there's the date. And

20 I'm putting 00164 back up on the screen. And do you

21 see there is the entries for Gavin, Star, Davellin

22 in the guest information?

23 A. Yes.

24 Q. Okay. Gavin, it shows -- under "Limo/POV,"

25 it shows "#2." What does that represent to you?

26 A. To me that would represent he was staying in

27 Guest Unit 2.

28 Q. And it shows Star Arvizo, ditto, is also in 7130

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1 Guest Unit 2; is that correct?

2 A. Yes.

3 Q. And they were both staying overnight. They
4 had been there and they stayed over to the next time
5 period, to the next 24-hour period, correct?

6 A. Correct.

7 Q. If you look at Davellin, what does that say?

8 A. Upstairs viewing.

9 Q. And upstairs viewing would be the room in --

10 one of the rooms in the theater; is that correct?

11 A. Yes.

12 Q. So that indicates that she was staying in
13 the upstairs viewing part of the theater; is that
14 correct?

15 A. Yes.

16 Q. And if you look up at the third entry up
17 there, you have Cascio, comma, Marie Nicole; is that
18 correct?

19 A. Yes.

20 Q. And it shows that she was also staying in
21 the upstairs viewing in the theater; is that
22 correct?

23 A. Yes.

24 Q. All right. And she also stayed overnight,
25 correct?

26 A. Yes.

27 Q. Okay. And down at the bottom it shows Janet

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28 Arvizo, correct? 7131

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1 A. Correct.

2 Q. And it shows No. 4. Is that Guest Unit

3 No. 4?

4 A. Yes.

5 Q. Now, is Guest Unit No. 4 the guest unit that

6 Elizabeth Taylor likes to stay in when she visits?

7 A. I have no idea.

8 Q. Okay. Is it a nice guest unit?

9 A. Yes.

10 Q. And it shows Janet Arvizo was staying

11 overnight. She had been there at midnight, and she

12 was there at the next cutoff, which would be the

13 next midnight; is that correct?

14 A. Correct.

15 Q. Okay. We'll go to MJ00166, and that's

16 2-23-03; is that correct?

17 A. Yes.

18 Q. Now, on this date, we have the Arvizos shown

19 again as staying at the ranch; is that correct?

20 A. Yes.

21 Q. And they were all staying -- they had all

22 been there and they were all staying overnight as

23 guests again, correct?

24 A. Correct.

25 Q. And Gavin and Star are in Unit 2; is that

26 right?

27 A. Yes.

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28 Q. Davellin's at the theater upstairs? 7132

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1 A. Yes.

2 Q. And Janet is in Unit 4?

3 A. Yes.

4 Q. All right. And Marie Nicole Cascio is also
5 in the theater upstairs, the same place as Davellin;
6 is that correct?

7 A. Correct.

8 Q. Now, it's possible for people at Neverland
9 to -- for guests at Neverland to request the
10 services of staff people there; is that correct?

11 A. Yes.

12 Q. And in a sense, it's almost like a hotel as
13 far as service is concerned; is that right?

14 A. That's correct.

15 Q. If somebody wants to call and have coffee
16 brought to them or breakfast or anything, they can
17 simply call and that will be done for them; is that
18 correct?

19 A. Yes.

20 Q. If somebody wants to call and have their
21 laundry done, for instance, if they have laundry or
22 cleaning that needs to be done, somebody would come
23 and pick it up and take care of it for them; is that
24 right?

25 A. That's correct.

26 Q. If somebody wants to have a wake-up call,
27 they can make a request for a wake-up call; is that

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28 correct? 7133

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1 A. Yes.

2 Q. So I'm going to show 167 here, if I may.

3 167. By that I mean 00167, and the top is

4 2-23-03. And here this shows that a wake-up call is

5 requested for Unit 4 at seven o'clock in the

6 morning; is that correct?

7 A. Yes.

8 Q. All right. Let's skip ahead. I like to say

9 that. It gives everybody a false sense of progress

10 here. We are getting there. Skip ahead to 171, if

11 I may. 00171 is 2-24-03, correct?

12 A. Correct.

13 Q. Okay. Now, there's a number of entries I'd

14 like to -- a number of entries I'd like to focus on

15 here. First of all, let's look at -- Gavin and Star

16 Arvizo were staying in Unit 2, correct?

17 A. Correct.

18 Q. Davellin is again at the theater?

19 A. Correct.

20 Q. Janet Arvizo is in Unit 4; is that right?

21 A. Yes.

22 Q. Okay. Now, it appears that the Arvizos were

23 there overnight from the night before, correct?

24 A. Yes.

25 Q. And then it appears that they all left at

26 1634 hours, which would be 4:34 in the afternoon; is

27 that right?

28 A. Yes. 7134

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1 Q. And then it appears that Gavin and Star and
2 Janet came back at 2005, which would be 8:05 p.m.;
3 correct?

4 A. Correct.

5 Q. And then they stayed overnight till the next
6 day, right?

7 A. Correct.

8 Q. And then Davellin came back at 1855, which
9 would be 6:55, five minutes to 7:00 in the evening,
10 correct?

11 A. Yes.

12 Q. So it looks like they all left together, but
13 Davellin came back a little earlier, and Janet, Star
14 and Gavin stayed out and did something else and came
15 back later, right?

16 A. Yes.

17 Q. All right. Now, if we look down on this
18 sheet -- and by the way, do you know if Gavin and
19 Star were taken to the dentist at some point?

20 A. I don't remember that.

21 Q. All right. This is not a day that you were
22 particularly on duty, was it?

23 A. Which day?

24 Q. This day, which is 2-24-03.

25 A. You'd have to show me the other log.

26 Q. That would be 172. Let me put that up.

27 This is 00172. And can you tell whether or not you

28 were on duty that day? 7135

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1 A. No. Not according to that.

2 Q. I'm going to put 00171 back up. And let's
3 see if we can figure this out. It looks like from
4 the top that the whole Arvizo family left at 1634
5 hours. And then if you look down at the bottom, it
6 says, "Employee vehicle," and the second entry shows
7 "Vinnie, Arvizos 4," correct?

8 A. The second entry down?

9 Q. Yes.

10 A. No, that would be on the first entry.

11 Frank, Vinnie.

12 Q. Frank and Vinnie. Okay. That's fair
13 enough.

14 That says, "Frank and Vinnie, brown dually."

15 Was there a -- or some kind of dually. Is there a
16 dually?

17 A. Yes, it's a brown dually.

18 Q. Okay. And a dually, as most people know
19 here, has got dual wheels in the back of the truck?

20 A. Correct.

21 Q. It looks like they went out in a brown
22 dually at 11:05 in the morning and got back at 3:11
23 in the afternoon, correct?

24 A. Yes.

25 Q. Okay. And the next entry, the one I was
26 focusing on -- and it seems to be cut off just a
27 little bit there. The second one says, it looks

28 like "Vinnie," does it not? Or, "i-n-n-i-e," 7136

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1 a little bit of a first letter got cut off?

2 A. Could I see your sheet? I --

3 Q. You can see mine, sure. If it's all right

4 with the Court.

5 May I approach?

6 THE COURT: Yes.

7 THE WITNESS: It doesn't look like "Vinnie"

8 to me.

9 Q. BY MR. SANGER: What does it look like?

10 A. "Chris."

11 Q. Oh, "Chris"? Okay. Anyway, you see -- I'm

12 going to move away - because I'm not supposed to

13 talk up here - so I don't have to walk back and

14 forth.

15 You see where it says, "Arvizos 4"?

16 A. Yes.

17 Q. And whatever that says before, it might be

18 "Chris," it might be anything, but whatever it is,

19 after "Arvizos 4," it then says, "Pontiac," right?

20 A. Yes.

21 Q. So somebody took a Pontiac out. Was that a

22 ranch vehicle?

23 A. I don't recall a Pontiac. It doesn't mean

24 there wasn't one. I don't recall a Pontiac.

25 Q. Do you remember Vinnie was driving a

26 Pontiac, if he brought a Pontiac to the ranch?

27 A. I have no idea.

28 Q. Did Vinnie at that time -- do you recall 7137

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1 Vinnie having some kind of a vehicle that he brought
2 to the ranch?

3 A. No, I -- I don't recall his vehicle
4 whatsoever.

5 Q. Okay. You don't recall either way, whether
6 he brought one or didn't bring one?

7 A. No.

8 Q. All right. In any event, somebody with four
9 Arvizos took a Pontiac and left at 1634, correct?

10 A. Yes.

11 Q. If we look up at the top, that's consistent
12 with the check-out at the gate, 1634, of the family;
13 is that correct?

14 A. Correct.

15 Q. And then whoever that was with the Arvizos
16 came back at 1855 hours, correct?

17 A. Yes.

18 Q. If we look up at the top, it would appear
19 that whoever came back with that vehicle brought
20 Davellin back; is that correct?

21 A. Yes.

22 Q. And so Janet and the boys remained out until
23 2005 hours, right?

24 A. Right.

25 Q. And if we look at the next entry, we've got
26 Joe Marcus, right?

27 A. Right.

28 Q. Joe Marcus is the ranch manager; is that 7138

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1 correct?

2 A. If he still is. He was at that time, I

3 believe, yes.

4 Q. That's fine. As of the time, he was the

5 ranch manager, correct?

6 A. Yes, he was.

7 Q. And do you know Joe?

8 A. Yes.

9 Q. Is he a good guy, decent guy?

10 A. Yes.

11 MR. AUCHINCLOSS: Objection; relevance.

12 THE COURT: Sustained.

13 Q. BY MR. SANGER: Okay. You get along with

14 Joe Marcus?

15 A. At times.

16 Q. All right. At times not, I gather. All

17 right.

18 A. Well, I did at the time.

19 Q. You did at the time?

20 A. At the time, yes, I did.

21 Q. And had Joe Marcus, to your knowledge, been

22 at the ranch for a long time?

23 A. Very long.

24 Q. In fact, his father had been the ranch

25 manager for the prior owner; is that right?

26 MR. AUCHINCLOSS: Objection; relevance.

27 THE COURT: Sustained.

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28 Q. BY MR. SANGER: All right. Now, it shows 7139

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1 Joe Marcus has -- took a gray van; is that right?

2 A. Yes.

3 Q. And was the gray van one of the ranch

4 vehicles?

5 A. Yes.

6 Q. And it appears that he left at 1759 hours,

7 which would be one minute to 6:00 in the evening; is

8 that correct?

9 A. Correct.

10 Q. And then came back at 2005 hours; is that

11 right?

12 A. That's right.

13 Q. And when you look at the -- put two and two

14 together here, the Arvizos, Janet and the two boys,

15 came back at that time. It would appear that they

16 came back with Joe Marcus; is that right?

17 A. Yes.

18 Q. We'll go to 174. And 174, MJ00174, was from

19 February the 25th, 2003; is that correct?

20 A. Correct.

21 Q. And here we see that the Arvizos, Gavin and

22 Star, stayed overnight, correct?

23 A. Yes.

24 Q. And they were in Unit 2; is that right?

25 A. That's right.

26 Q. And then Davellin and Janet were in Unit 4;

27 is that correct?

28 A. Correct. 7140

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1 Q. The Arvizos, all four of them, stayed
2 overnight?

3 A. Yes.

4 Q. And then they left at 7:25 in the morning --

5 A. Yes.

6 Q. -- is that correct?

7 So at 7:25 on the morning of February 25th,
8 they leave the ranch?

9 A. Yes.

10 Q. And if you look down a little farther, it
11 says, "Vinnie," who is apparently staying in the
12 video library, he stayed overnight and he left at
13 7:25 in the morning?

14 A. Yes.

15 Q. So it looks like Vinnie and the Arvizos left
16 together at that time, correct?

17 A. They left at the same time. If they left
18 together, I don't know, but they definitely left at
19 the same time.

20 Q. All right. Now, let's go to 180. This will
21 be 00180 that I'm putting up. And this skips ahead
22 now to February the 27th, .03, correct?

23 A. Correct.

24 Q. I'm going to direct your attention in this
25 case to Frank Cascio.

26 A. Yes.

27 Q. It appears that Frank Cascio returned to the

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28 ranch on February the 27th, .03, at 1735 hours or 7141

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1 5:35 in the afternoon; is that correct?

2 A. Correct.

3 Q. And we'll go to 00181. 181. February 27th.

4 This is another one of those sheets that pertains to
5 the same day; is that correct?

6 A. Yes.

7 Q. And at 735 -- I'm sorry, 1735 hours, the
8 same time that was shown on the previous sheet, it
9 shows that Jesus Salas cleared Frank Cascio to come
10 on the property; is that correct?

11 A. Yes.

12 Q. That's just further indication that Frank
13 Cascio came back to the property at 1735 hours on
14 that day?

15 A. Yes.

16 Q. All right. And I'll put up 183. And this
17 is 00183 on February the 28th, .03. And directing
18 your attention to the third line down under "Guest
19 Information." It shows Frank Cascio; is that
20 correct?

21 A. Yes.

22 Q. So on February the 28th, it shows that he
23 had been on the ranch from the previous day, and
24 continued to stay on the ranch to the next day?

25 A. Yes.

26 MR. SANGER: Okay. Your Honor, I'm now,
27 with the Court's permission, going to go to Exhibit

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28 335 and proceed in the same fashion. That's a 7142

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1 couple hundred pages. So I'm going to pick out a
2 few of those pages and make reference to the Bates
3 stamp number, if that's all right

4 THE COURT: That's fine.

5 MR. SANGER: Thank you.

6 Q. Just so we're oriented here, there's the
7 Court's Exhibit No. 335 that starts on page MJ00185,
8 and the date on that page is March 1, 2003, correct?

9 A. Yes.

10 Q. And that was not a leap year, so February
11 had 28 days; is that right?

12 A. Yes.

13 Q. Okay. So the next day, from the last page
14 we showed, would be 3-1; is that right?

15 A. Correct.

16 Q. And in the back they're in these envelopes,
17 back to back, here. I'm going to show you 186,
18 which also says 3-1-03.

19 A. Yes.

20 Q. And it looks like somebody's trying to give
21 February 29 days there, but tried to correct it?

22 A. Looks that way.

23 Q. And I want to focus your attention on the
24 last line there of the guest information log where
25 it says, "Frank Tyson," and that means that Frank
26 was staying at the video library, and he stayed
27 overnight; is that correct?

28 A. Correct. 7143

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1 Q. And it didn't -- it didn't show that he
2 checked out that day?

3 A. No, it doesn't.

4 Q. All right. I do see at the bottom, it says
5 Frank/Chris took a gray van from 1:30 in the
6 afternoon to 4:30. Is that an indication that Frank
7 Tyson or Cascio went out with Chris?

8 A. Yes.

9 Q. Okay. There was not another Frank there at
10 the time, that you're aware of?

11 A. Not that I'm aware of, no.

12 Q. But they came back, right?

13 A. Yes.

14 Q. And so Frank, as far as you can tell, was an
15 overnight visitor that night as well?

16 A. As far as it shows. Didn't show that he
17 left. Doesn't show that he was carried over, so
18 very possibly.

19 Q. And then let's go to --

20 Okay, Your Honor, this is the exhibit as it
21 exists from the way it was presented by the
22 prosecution. This particular page does not have a
23 Bates stamp number on the bottom. I'll show it to
24 counsel. This does not have a Bates stamp number.
25 It follows Bates stamp number 33673 and precedes
26 Bates stamp number 33675.

27 THE COURT: I see that.

28 MR. SANGER: So I'm going to put that page 7144

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1 up.

2 THE COURT: All right.

3 MR. SANGER: And I'm going to hope it

4 focuses. There we go.

5 Q. Okay. So no Bates stamp number, but it does

6 say 3-2. So that's March the 2nd, 2003, correct?

7 A. Yes.

8 Q. And on March the 2nd, 2003, Frank Tyson, it

9 shows, stayed overnight from the night before,

10 correct?

11 A. Excuse me, correct.

12 Q. And then it shows 1630 that he left; is that

13 right?

14 A. On -- that who left?

15 Q. Frank Tyson. Am I not reading it correctly?

16 A. I'm sorry, I was -- yes. Six --

17 Q. Let's take our time here. I'm sorry if I

18 confused you --

19 A. I apologize, I had to work last night.

20 Q. You worked last night?

21 A. Yes.

22 Q. Okay. I apologize, I'm sorry that you have

23 to be here after doing that.

24 All right. We'll try to get you through

25 this here. But take a look at it again, take your

26 time. Looks like it says, "ank," a-n-k, "Tyson."

27 A. Yes.

28 Q. That's Frank Tyson, right? 7145

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1 A. Yes.

2 Q. And where it says 3625, are those the

3 phone --

4 A. Phone extensions.

5 Q. And those phone extensions are where?

6 A. In the video library.

7 Q. So it's another way of saying that's where

8 he was?

9 A. Correct.

10 Q. It shows he stays overnight and then it

11 shows 1630, it appears that he left; is that

12 correct?

13 A. To me, it looks like 20 from here.

14 Q. All right. Whatever it says, that would be

15 the time that he left, according to this log; is

16 that correct?

17 A. Correct.

18 Q. And down at the bottom it says, "Frank

19 Tyson" again, and it shows "out." That means he

20 took a ranch vehicle of some sort and left; is that

21 right?

22 A. It should, if it was put there.

23 Q. All right. And that, I think, says 1305?

24 A. Yes.

25 Q. So 1:05 in the afternoon. And then it shows

26 "in," meaning he came back at 3:30 in the afternoon,

27 right?

28 A. Yes. 7146

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1 Q. All right. And it looks like at 4:30 or
2 4:20, whatever that says, he may have left again;
3 is that correct?

4 A. Yes.

5 Q. Now, there's a star next to his name, and
6 what does that mean?

7 A. Most likely that he came back and the person
8 at the gate didn't record the time he came in.

9 Q. All right.

10 A. But if there was a star there, most likely
11 whomever was at the gate knew that he was there.

12 Q. That he came back on the property but they
13 just didn't record the exact time?

14 A. They didn't record the exact time.

15 Q. If you look up above that, we see what I
16 think says, "n-n-i-e."

17 A. Yes.

18 Q. And that shows that probably Vinnie; is that
19 correct?

20 A. Probably.

21 Q. All right. Arrived at 1430 hours. It
22 should be 2:30 in the afternoon.

23 A. Yes.

24 Q. And that he left at 1630 hours, correct?

25 A. Yes.

26 Q. And then there's a star, indicating he came
27 back and somebody forgot to put it down?

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28 A. Correct. 7147

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1 Q. So if we put those two together, it looks
2 like Frank Tyson and Vinnie probably left at the
3 same time, around 4:30 in the afternoon; is that
4 right?

5 A. Yes.

6 Q. All right. Now, we also see that the Arvizo
7 family came back, and we have Gavin, Star, and
8 Davellin -- whose name is now recorded as "Davida"
9 or something; right?

10 A. Yes.

11 Q. -- and Janet all came back at about 2:30,
12 apparently with Vinnie.

13 A. Yes.

14 Q. All right. I'm going to go to 033667, which
15 is dated 3-3-03, correct?

16 A. Correct.

17 Q. And this shows that -- excuse me one second.

18 (Off-the-record discussion held at counsel
19 table.)

20 Q. BY MR. SANGER: This shows -- just going
21 down the list, on this particular date, which is
22 3-3-03, Vinnie was there, stayed overnight, and then
23 he left at ten minutes after noon; is that correct?

24 A. Yes.

25 Q. It doesn't show that he came back that day?

26 A. No.

27 Q. Then you have Gavin, Star, "Davellia" and

28 Janet Arvizo all staying overnight both from the 7148

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1 night before and till the next night, right?

2 A. Correct.

3 Q. This shows both the extensions and the room

4 numbers, or the unit numbers in some cases, right?

5 A. Yes.

6 Q. So Gavin was staying in Unit 3, which is

7 Extension 20 on the phone; is that right?

8 A. Correct.

9 Q. Star was staying in Unit 4, which is

10 Extension 21, is that correct?

11 A. Correct.

12 Q. We'll skip one there and go to Janet Arvizo

13 was staying in Unit 4, also at Extension 21, also?

14 A. Yes.

15 Q. Now, Davellin was staying -- first it said

16 Extension 3. I'm sorry, it said, "Unit 3." That's

17 scratched out and it says, "Extension 50"; is that

18 correct?

19 A. Yes.

20 Q. And Extension 50 is out at the theater; is

21 that right?

22 A. Been a while. I -- I know 48 is. So it

23 could be, yes. I don't remember which one 50 was

24 at.

25 Q. But in any event, wherever 50 is, it's not

26 one of the guest units?

27 A. No.

28 Q. So it's someplace else on the ranch, right? 7149

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1 A. Yes.

2 Q. And that shows that she was staying at
3 whatever room was associated with Extension 50; is
4 that correct?

5 A. Yes.

6 Q. All right. Now, there are also -- and
7 throughout, we've been not commenting on everybody
8 who was staying there, but if you look down at the
9 bottom there, it says Rio and Simone.

10 A. Yes.

11 Q. And you know who they are?

12 A. Yes.

13 Q. Does it appear that Rio and Simone arrived
14 at about eight o'clock at night on the 3rd of March?

15 A. Yes.

16 Q. And then they stayed overnight; is that
17 right?

18 A. Correct.

19 Q. And who are Rio and Simone?

20 A. They are cousins, I believe, of Mr. Jackson.

21 Q. Okay. And I'm going to go to 189. 00189,
22 and that's for 3-4-03; is that correct?

23 A. Correct.

24 Q. And on 3-4-03, we have Gavin and Star up at
25 the top, staying overnight?

26 A. Yes.

27 Q. From overnight to overnight, there's no

28 check-out time; correct? 7150

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1 A. Yes. Well, they were there overnight.

2 Q. Yeah.

3 A. At least one night.

4 Q. All right. In other words, it doesn't show
5 that they left. Usually you'd show carry-over for
6 "out," but it just didn't show that, so you don't
7 know. We'll look at the next day.

8 A. Yes.

9 Q. All right. The best way to do it. And look
10 at the next day and see if they're still there,
11 right?

12 A. That would be the best way.

13 Q. In any event, they're at 20 and 21. So
14 those are guest units, right?

15 A. Yes.

16 Q. And then we have Davellin, and she was
17 staying at that Extension 50, wherever that is,
18 right?

19 A. Yes.

20 Q. That's somewhere other than the guest units
21 and it may be the theater?

22 A. I believe it's one of the rooms in --
23 there's two bedrooms in the theater.

24 Q. All right. And the other bedroom in the
25 theater is 51, is it not?

26 A. I believe so.

27 Q. All right. So it shows that she was there

28 from overnight; is that right? 7151

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1 A. Yes.

2 Q. And then it shows that she went out at 2:25

3 in the afternoon, right?

4 A. Yes.

5 Q. And came back at 6:01 in the evening?

6 A. Yes.

7 Q. And it appears, if we do some detective work

8 there, down at the bottom, Chris Carter took the

9 gray van out and apparently was driving -- was the

10 driver of the van, and drove her out at 1425 and

11 back at 1801, the same times; is that correct?

12 A. Yes.

13 Q. And then Rio and Simone were also on the

14 ranch; is that correct?

15 A. Correct.

16 Q. And it looks like they had been staying

17 overnight, right?

18 A. Right.

19 Q. And that they went out with Davellin driven

20 by Chris Carter at 1425 and came back at 1801, at

21 the same time; is that right?

22 A. Yes.

23 Q. And it looks like Rio was staying in the

24 same room as Gavin; is that correct?

25 A. Yes.

26 Q. All right. So that's 3-4, and now

27 they're -- we're going to go to -- we're going to go

28 to 191. 7152

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1 Just for the record, Your Honor, it's not a
2 big thing, but it's just a thing. As I'm paging
3 through here, I'm seeing that these are a little bit
4 out of order. It goes from 188 to 193 to 191 in the
5 exhibit book. I don't know that there's any
6 significance, but I just --

7 THE COURT: It's the same in my copy.

8 MR. SANGER: That's fine.

9 Q. So we go to 191, and that shows for 3-5,

10 March the 5th, 2003, correct?

11 A. Yes.

12 Q. And here we show, once again, Gavin in 20,

13 guest unit?

14 A. Yes.

15 Q. Star, guest unit?

16 A. Yes.

17 Q. Both there from overnight, and no indication

18 that they left; is that correct?

19 A. Correct.

20 Q. We have Davellin -- and I'll persist in

21 saying "Davellin," even though it's spelled

22 countless ways in these logs; is that all right?

23 A. That's fine.

24 Q. You knew eventually her name was Davellin,

25 is that correct?

26 A. Yes.

27 Q. So we have Davellin again at 50, which is

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28 apparently in the theater; is that right? 7153

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1 A. Yes.

2 Q. And she stayed overnight, or she had been
3 staying overnight, and there's no indication she
4 checked out; is that right?

5 A. Correct.

6 Q. And then you have Janet, who's staying in
7 one of the guest units; is that correct?

8 A. Yes.

9 Q. And again, she was staying from overnight
10 and there's no indication that she checked out,
11 correct?

12 A. Correct.

13 Q. And then you have Rio, who is apparently
14 staying in the same guest unit as Gavin; is that
15 correct?

16 A. Correct.

17 Q. And Rio was there from overnight, and on
18 this date, March the 5th, it appears that both Rio
19 and Simone left about 7:30 in the evening; is that
20 correct?

21 A. Yes.

22 Q. Okay. Let's go to 195. Showing MJ00195.

23 That's for 3-6-03; is that correct?

24 A. Yes.

25 Q. Here we show Janet Arvizo is now in Unit 4,
26 which is Extension 21, correct?

27 A. Correct.

28 Q. And she had been staying overnight? 7154

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1 A. Yes.

2 Q. And then we have Davellin, who's in Unit 3.

3 She had been staying overnight, correct?

4 A. Yes.

5 Q. And in fact, Gavin and Star are also shown
6 in Unit 3, staying overnight; is that correct?

7 A. Correct.

8 Q. I'll put up MJ00198, which is for March the
9 7th, so once again the next day. And let's take the
10 easy ones first. We have Gavin, Star and Davellin
11 Arvizo, they show they're in Unit 3, which is
12 Extension No. 20, right?

13 A. Yes.

14 Q. And that they were there overnight, and they
15 continued to remain overnight, correct?

16 A. Correct.

17 Q. Then you have Janet Arvizo, who was logged
18 in for Unit 4. It's crossed out. Do you have any
19 idea why it was crossed out?

20 A. No.

21 Q. And then there's a star and a star; is that
22 correct?

23 A. Correct.

24 Q. And what does the star tend to mean?

25 A. Generally it means there was no time given,
26 written in, no time given written out, so it wasn't
27 written out. The fact that it's crossed out can

28 mean that she wasn't there. I don't know. 7155

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1 Q. It shows she was there the day before?

2 A. Yes.

3 Q. All right. And then if we look here, we see

4 that Frank and Vinnie -- it says, "Vinnie Black."

5 That's the same Vinnie. There was one Frank and one

6 Vinnie throughout this, right?

7 A. Yes.

8 Q. So Frank and Vinnie, if I may use the first

9 names, are staying in the video library, and they

10 were there at the beginning of the day, at midnight,

11 and they were there at midnight the next --

12 A. Next day, yes.

13 Q. Next day, right?

14 A. Yes.

15 Q. Okay. Now we go to 2001. 2001, I'm sorry.

16 Too many numbers. Sorry. 00201, which is 3-8 of

17 .03, correct?

18 A. Correct.

19 Q. The next day. And on that day, the logs

20 show that we have Gavin, Star, and Davellin as well

21 as Frank and Vinnie all there the entire 24-hour

22 period?

23 A. Correct.

24 Q. So they didn't come; they didn't go. All

25 right.

26 Now we go to -- oops. Again, these seem to

27 be a little bit out of order. 204 comes before 203.

28 But in any event, I'm going to put 204 up, which is 7156

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1 3-9-03. So that's the next day.

2 A. Yes.

3 Q. And on this day we have Gavin, Star,

4 Davellin, all there the entire time, correct?

5 A. Correct.

6 Q. And then you have Frank and Vinnie, who were

7 there from the night before, and they seem to leave

8 at about 3:43 in the afternoon, correct?

9 A. Correct.

10 Q. And then they come back at -- the two of

11 them come back at the same time, at about 8:43 at

12 night, correct?

13 A. Yes.

14 Q. And then they stay overnight; is that right?

15 A. Yes.

16 Q. We also on that day have other guests of

17 course, but we have Rio and Simone arriving at ten

18 minutes after noon, correct?

19 A. Yes.

20 Q. And then they stayed overnight?

21 A. Yes.

22 MR. SANGER: Now, may I approach the witness

23 with the book?

24 THE COURT: Yes.

25 MR. SANGER: Let me put that page back

26 first.

27 Let me just say it out loud if I'm going to

28 say it to the prosecutor. What I'm going to show 7157

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1 the witness, keeping the pages in order and hoping
2 not to trip and drop them all over the place, we
3 have page 203 and then we have page 33697, and then
4 there's page 121, which is followed by page 33698,
5 and I want to ask the witness if that page, 121,
6 belongs in the sequence here. And that's what I
7 intended to approach him to do, if that's all right
8 with the Court. And that gives counsel an idea of
9 why I'm doing it.

10 MR. AUCHINCLOSS: Sure.

11 THE COURT: All right.

12 MR. SANGER: Thank you.

13 Q. Okay. Now, I'm not supposed to talk up
14 here, but I just want to tell you this. Obviously
15 these pages, we're going to keep them in the same
16 order. It's just too hard to put them back in the
17 binder as we went along.
18 Here we have page 121 and I'm going to ask
19 you if that belongs in that particular position, and
20 I'm going to ask you to take a look towards the
21 beginning of the book. And I'll try to give you a
22 better indication, when I get back to my book, as to
23 where that page may have come from.

24 MR. AUCHINCLOSS: Can I just interrupt?

25 (Off-the-record discussion held at counsel
26 table.)

27 MR. SANGER: I don't think this is the

28 biggest thing in the world, but if you look at 121 7158

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1 that's in the book right there where you're looking

2 at it --

3 A. Yes.

4 Q. -- does that appear to be in the correct

5 sequence? Forget about the numbers at the bottom.

6 A. Right.

7 Q. That will just confuse us for the moment.

8 A. This looks like one of the pages that we

9 looked at yesterday.

10 Q. In fact, if you look back to -- hesitant to

11 have you flip that because it might fall apart.

12 A. I'll do my best.

13 Q. If you look back at Exhibit 334, and now

14 look at the bottom --

15 A. Any idea how far back that is?

16 Q. 334 is just --

17 Okay. May I approach again? It might be --

18 THE COURT: Yes. He's referring to an

19 exhibit number, not the page numbers now.

20 THE WITNESS: Oh, I'm sorry. I'm sorry.

21 Q. BY MR. SANGER: No, no, it's not your fault.

22 Okay. There's Exhibit 334, and now -- if I may,

23 I'll just speak here briefly -- if we look at the

24 bottom, and you flip forward to 121, which is

25 MJ00121, does that look like that's the same page?

26 A. Yes.

27 Q. All right. And -- all right. May I have

28 the book back? 7159

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1 Do you want to look at it, Counsel?

2 Okay. Thank you.

3 And -- okay. And this is just the way the
4 exhibit is, so we have to leave the exhibit the same
5 way here. I'm now going to put this copy of 121 up
6 on the board, just so we're all oriented.

7 There's no date on it; is that correct?

8 A. Correct.

9 Q. And you've gone back and you've seen -- this
10 is a second copy of a page we looked at yesterday;

11 is that right?

12 A. That's right.

13 Q. And that was really the page from February
14 the 8th of 2003 -- oops, let me make sure I said
15 that right. I'm sorry, February the 7th of 2003,
16 correct, when CBS Entertainment was at the ranch
17 with Ed Bradley and Jack Sussman, and so on?

18 A. I don't know from yesterday, but if that's
19 the date that it says on the paper, then that's the
20 day that it was from.

21 Q. I will represent that's in between the pages
22 for February the 7th in Exhibit 334.

23 A. Yes.

24 Q. All right? Okay. So that has nothing to do
25 with the current sequence then, in March. All
26 right?

27 A. Correct.

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28 Q. Now, on -- on the -- 7160

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1 MR. AUCHINCLOSS: Counsel?

2 MR. SANGER: Yeah.

3 MR. AUCHINCLOSS: Just for point of
4 reference -- it's between the 7th and the 9th.
5 So it's not keyed to the 7th.

6 MR. SANGER: Counsel is saying it's between
7 the 7th and the 9th. Suffice it to say it's in the
8 book in February and we can let the exhibit speak
9 for itself. It doesn't have a date on it.

10 Is that all right, Your Honor?

11 THE COURT: Yes.

12 MR. SANGER: All right. Thank you.

13 Q. Now, for this particular time period --

14 THE COURT: For a minute I thought the clock
15 was going backwards.

16 (Laughter.)

17 THE COURT: Go ahead.

18 MR. SANGER: We'd like to start with
19 February 7th, if we could, please.

20 THE COURT: All right.

21 MR. SANGER: And do it all over again.

22 THE WITNESS: No, we wouldn't.

23 Q. BY MR. SANGER: No, we wouldn't. I think we
24 all agree with that.

25 We are almost through, which is always a
26 terrible thing to hear from a lawyer. But I think
27 it's true in this case.

28 All right. I'm going to show you now 7161

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1 033698. We're back on Exhibit 335, okay? So we're
2 going to put this up. Now, I will represent to you,
3 and counsel can disagree if he wants, there does not
4 appear to be the regular guest information page
5 for --

6 MR. SNEDDON: Can't see it.

7 MR. SANGER: I know. It will focus in a
8 moment.

9 Q. There does not appear to be the regular
10 guest information page on March the 10th in this set
11 where it lists who's staying at the ranch.

12 A. Okay.

13 Q. I'll just represent that. And this -- I'm
14 hoping while I'm talking it's going to focus.

15 There we go. Okay. But this appears to be
16 one of the other pages for March the 10th, 2003; is
17 that correct?

18 A. Yes.

19 THE COURT: Can we take a break here?

20 MR. SANGER: Fine.

21 (Recess taken.)

22 --o0o--

23

24

25

26

27

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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 7119 through 7162

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 April 21, 2005, and thereafter

20 reduced to typewriting by computer-aided

21 transcription under my direction.

22 DATED: Santa Maria, California,

23 April 21, 2005.

24

25

26

27 MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304

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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

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17 REPORTER'S TRANSCRIPT OF PROCEEDINGS

18

19 THURSDAY, APRIL 21, 2005

20

21 8:30 A.M.

22

23 (PAGES 7164 THROUGH 7325)

24

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27 REPORTED MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304

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1 I N D E X

2

3 Note: Mr. Sneddon is listed as "SN" on index.

4 Mr. Zonen is listed as "Z" on index. Mr. Auchincloss is listed as "A"
on index.

5 Mr. Mesereau is listed as "M" on index. Ms. Yu is listed as "Y" on
index.

6 Mr. Sanger is listed as "SA" on index. Mr. Oxman is listed as "O" on
index.

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8

9 PLAINTIFF'S WITNESSES DIRECT CROSS REDIRECT RECROSS

10

11 BARRON, Brian 7174-A 7195-SA

12 7209-A 7211-SA (Further) (Further)

13 7213-A

14 (Further)

15 CLEAVES, Stephen 7214-SN 7218-SA

16 SUTCLIFFE, Timothy 7223-SN 7226-SA 7229-SN (Re-called)

17 ROONEY, Timothy 7232-SN 7235-SA

18 MOELLER, Steven 7238-SN 7246-SA

19 KLAPAKIS, Jeff 7250-A

20 (Re-called)

21

22 MONTGOMERY, Examination by The Court - Page 7317 Cynthia C.

23 (Nonjury)

24

25

26

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27

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1 THE COURT: Counsel?

2 MR. SANGER: Your Honor, could we have the
3 screen, please?

4 Q. Where we left off was MJ0033698 is the
5 identifying number on the bottom, and on the top it
6 says, "3-10-03."

7 And what I'm going to do, with the Court's
8 permission, is I'm going to put this back in the
9 book where it was and approach the witness, if I
10 may.

11 THE COURT: All right.

12 MR. SANGER: I had time during the break to
13 put all the pages back in the clamps so they won't
14 fall all over the place.

15 And before I get up, what I'm going to do --
16 ask you to do, we had established that this page,
17 33698, with Jack Sussman on the top, was out of
18 order, and that was really from February, right?

19 A. Right.

20 Q. I'm going to give you the book -- we have to
21 leave it the way it was anyway. I'm going to give
22 you the book here, and I'm going to ask you to look
23 in this time period, and see if you have the guest
24 information page for March the 10th, 2003, or if
25 that page seems to be missing from this, all right?

26 A. All right.

27 Q. And you're welcome to flip back and forth,

28 do whatever you want, and then we'll -- I'm not 7167

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1 going to ask you to look through the entire book,
2 but in the general vicinity.

3 A. In the general vicinity after it, I don't
4 see it.

5 Q. Look before.

6 A. I don't see it.

7 MR. SANGER: May I approach?

8 THE COURT: Yes.

9 MR. SANGER: Thank you.

10 Thank you, sir.

11 THE WITNESS: Uh-huh.

12 Q. BY MR. SANGER: Okay. So that brings us
13 back to putting that same page back up, which is
14 033698, all right? And we looked at that and that
15 does appear to be from the 10th; is that correct?

16 A. Correct.

17 Q. But since the guest information log page is
18 not there, I'm going to ask you to take a look at
19 this, which is part of the gate activity log. And
20 at 2145 hours, there's an indication there that
21 Janet Arvizo did not return with Vinnie and Gavin.
22 Do you see that?

23 A. Yes.

24 Q. All right. So trying to fill in the gaps on
25 a page that's missing, it appears, from that entry,
26 that Vinnie and Gavin Arvizo came back to the ranch
27 at 2145 hours, correct?

28 A. Yes. 7168

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1 Q. And that Janet Arvizo did not come back at
2 that time?

3 A. Correct.

4 Q. And we can't tell from that anything about
5 Star and Davellin, but at least we can tell that
6 much, correct?

7 A. Correct.

8 Q. All right. And by the way, the -- just to
9 save some time here, I'll put that same page back up
10 again.

11 When these -- when these entries are made on
12 this page, they are made contemporaneously with the
13 event that's occurring; is that correct?

14 A. Correct.

15 Q. So when it says "Time" there, "2145," that
16 would be the time the gate officer noted that Vinnie
17 and Gavin had returned; is that correct?

18 A. According to this, it would be that Janet
19 did not return with --

20 Q. With them.

21 A. -- Vinnie and Gavin.

22 Q. So Vinnie and Gavin returned, Janet's not in
23 the car or whatever, and that would have been at
24 2145 hours, correct?

25 A. Yes.

26 Q. Okay. Now, having said that, let's go to
27 0033701, which is for March the 11th, the next day.

28 And here we have Gavin, Star, and Davellin, whose 7169

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1 name is yet spelled a different way, all staying in

2 Unit 3; is that correct?

3 A. Yes.

4 Q. All right. And it looks like they were

5 there overnight from the night before, correct?

6 A. Yes.

7 Q. And then it appears that they all left at

8 1645 hours?

9 A. Yes.

10 Q. To go someplace off the ranch, correct?

11 A. Yes.

12 Q. And they came back at 1829 hours, correct?

13 A. Correct.

14 Q. So they returned to the ranch at that point

15 and there's no indication that they left again, so

16 you would assume they were there again overnight; is

17 that correct?

18 A. Correct.

19 Q. If you look down at the bottom of that page,

20 it appears that Chris Carter checked out the gray

21 van, correct?

22 A. Correct.

23 Q. And he was out and in earlier in the

24 morning, but if you look at the last two entries

25 there, he left at 1645 hours, and he came back at

26 1829 hours, correct?

27 A. Correct.

28 Q. So it appears that he gave a ride to the 7170

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1 Arvizos?

2 A. Yes.

3 Q. All right. And then we'll go to the next

4 page. Excuse me.

5 And, Your Honor, this page, for the record,

6 in the book is the next exhibit page to Exhibit 30 --

7 or, I'm sorry, 335. It's the next exhibit page

8 following MJ033701. The number seems to be cut off

9 at the bottom. I take it it's the same way in the

10 Court's book.

11 THE COURT: Yes.

12 MR. SANGER: So I'm referring to the

13 numberless page.

14 THE COURT: You can see half of it, can't

15 you?

16 MR. SANGER: Well, that's an optimistic view

17 of this. Let's see if we can get this to focus.

18 That's all I can see on mine. Is that what

19 the Court is seeing in your book?

20 THE COURT: Mine's a little clearer.

21 MR. SANGER: The next page is about half.

22 I'm wondering if we're looking at the same page.

23 THE COURT: 702.

24 MR. SANGER: I believe that's the next page,

25 Your Honor. This is -- well, I don't want to argue

26 with the Court. I don't know what you're looking

27 at, but that's what we have, and it's the same in my

28 copy that was given to us by the government. 7171

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1 THE COURT: Okay. It is a different page.

2 I don't have the beginning page --

3 MR. SANGER: All right.

4 THE COURT: -- which is all right. That's

5 the official exhibit book. So you go ahead with

6 it.

7 MR. SANGER: All right. So in the official

8 exhibit book, this follows MJ033701 and there's just

9 the very top of a number there.

10 Q. And what it is, for the record, is the gate

11 activity log for 3-11-03, correct?

12 A. Correct. I'm sorry.

13 Q. I'm sorry. I was talking to the Court, and

14 now I'm talking to you, so, all right.

15 It's a little hard to read there, but -- and

16 I'm happy to bring it to you to look at. But it

17 does appear that on the third line down, it says

18 "C/O."

19 A. Yes.

20 Q. And that would, again, be continued from the

21 night before; is that right?

22 A. That's right.

23 Q. And it says Janet Arvizo did not return with

24 Vinnie and Gavin; is that correct?

25 A. Correct.

26 Q. So it's another notation in the logbook for

27 the next day that from overnight from the day

28 before, Janet Arvizo did not return; is that right? 7172

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1 A. That's -- it's just to let the next shift
2 know that that was written on the page before.

3 Q. All right.

4 A. Or the day before.

5 Q. Okay. Now I'm going to go to MJ033703, and
6 this is the last page that I'm going to show you.

7 A. Excellent.

8 Q. Sigh of relief that caused a veritable
9 windstorm up here by the podium.

10 Okay. That's not going to focus. There we
11 go. Okay. MJ033703, this is on March the 12th,
12 2003, the next day?

13 A. Yes.

14 Q. All right. And on this day, we see Gavin,
15 Star, and Davellin, and it shows that they stayed in
16 Unit 3; is that correct?

17 A. That's correct.

18 Q. And that they had been there overnight,
19 correct?

20 A. Yes.

21 Q. And it shows at 12:15, or 15 minutes after
22 noon on that day, March 12th, 2003, that they left;
23 is that correct?

24 A. Yes.

25 Q. And it shows further that -- if you look
26 there, it says, "Frank, video library," stayed
27 overnight, in essence, and "stayed overnight."

28 And right below that it says, "Vinnie, video 7173

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1 library." He was there from the night before. And
2 it shows at 12:15 he apparently left at the same
3 time as Gavin, Star, and Davellin, correct?

4 A. Correct.

5 Q. And he was gone from the ranch from 15
6 minutes after noon until 7:49 at night, when he
7 returned to the ranch --

8 A. Yes.

9 Q. -- correct?

10 And then he stayed overnight following that;

11 is that correct?

12 A. Correct.

13 MR. SANGER: And I have no further
14 questions.

15 Do you want this book here?

16 MR. AUCHINCLOSS: Yes, please.

17

18 REDIRECT EXAMINATION

19 BY MR. AUCHINCLOSS:

20 Q. All right. Good morning, Mr. Barron.

21 A. Good morning.

22 Q. Unfortunately I'm going to have to return to
23 these records, but I'm going to give us a little bit
24 of a break, ask you a few questions beforehand.

25 A. Certainly.

26 Q. Mr. Sanger asked you about the intruders on
27 the ranch.

28 A. Yes. 7174

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1 Q. Can you characterize what -- any
2 generalities concerning what type of intruders they
3 would be? What would their purpose be to try and
4 get onto the ranch?

5 MR. SANGER: I'm going to object. That's
6 vague.

7 MR. AUCHINCLOSS: I'll begin by asking you a
8 foundational question. I'll withdraw that question.

9 Q. Was there anything that these individuals
10 had in common, any generalities you could make in
11 terms of their motive to be on that property?

12 A. Yes.

13 Q. What was that?

14 A. To see Mr. Jackson in the ranch.

15 Q. So these were fans?

16 A. Yes.

17 Q. Predominantly not physically threatening to
18 Mr. Jackson?

19 MR. SANGER: I object. Calls for
20 speculation and leading.

21 THE COURT: Sustained.

22 Q. BY MR. AUCHINCLOSS: Did these fans, in your
23 opinion as a security guard and based on your
24 observations of them, appear to present any physical
25 threat to Mr. Jackson, in general?

26 MR. SANGER: Objection; lack of foundation.

27 THE COURT: Sustained.

28 Q. BY MR. AUCHINCLOSS: Did you see these 7175

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1 intruders on the ranch on occasion?

2 A. Yes.

3 Q. How many occasions?

4 A. Several. Not many came on the ranch while I
5 was working.

6 Q. During the five years you were there?

7 A. Yes. We did have --

8 MR. SANGER: Objection, Your Honor. The
9 witness is trying to answer the question.

10 Q. BY MR. AUCHINCLOSS: How many were there?

11 MR. SANGER: Excuse me.

12 THE COURT: I think the last question was,
13 "During the five years you were there?" Answer,
14 "Yes, we did have...", and then you were
15 interrupted.

16 THE WITNESS: We did have intruders
17 throughout my working there. When I was working, at
18 the times that I was working, maybe a handful, five
19 to ten.

20 Q. BY MR. AUCHINCLOSS: Okay. And in terms
21 of -- in terms of staying on top of the potential
22 security threat from fans entering the ranch, were
23 you generally apprised when other intruders entered
24 the property when you weren't there?

25 A. Yes.

26 Q. So this was part of your job as a security
27 officer to be aware of who might want to get on the

28 property? 7176

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1 A. Yes.

2 Q. All right. And during the course of your
3 employment during this five-year period, can you
4 state whether or not these intruders in general
5 appeared to present any physical threat to Mr.
6 Jackson?

7 A. In general, not much physical threat. There
8 were a few, a couple, that we felt could. Maybe not
9 to him, but we were not just there to protect him.

10 I mean, there was lots of other people on the ranch.

11 Q. Okay. And what do you mean when you say
12 they might not present a threat to Mr. Jackson, but
13 might present a threat to someone else?

14 A. For the most part, if Mr. Jackson was inside
15 a building, he would be fairly secure.

16 Q. Uh-huh.

17 A. We didn't have a dozen security guards to
18 post at every door or anywhere -- I mean everywhere
19 that we could possibly have an intruder on the
20 ranch. But there were -- there were a few that we
21 were concerned with when they were seen in the area
22 or did happen to get on the ranch.

23 Q. Okay. In terms of Frank Cascio, you've
24 testified that you've seen him with Mr. Jackson
25 about 75 to 100 times. He's visited the ranch over
26 100 times. Is that accurate?

27 A. Absolutely.

28 Q. Are there any guests that you're aware of 7177

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1 that you would say had visited Mr. Jackson on more
2 occasions than Mr. Cascio?

3 A. Possibly Miko Brando and his family.

4 Q. Okay. Anybody else?

5 A. I can't think of any right off the top of my
6 head.

7 Q. And would Mr. Cascio typically be on the
8 property -- well, let me strike that.

9 Would Mr. Cascio always be on the property
10 when his siblings were with him?

11 A. Not always. But most of the time.

12 Q. Who is Miko Brando?

13 A. Marlon Brando's son.

14 Q. In terms of his relationship with Jackson,
15 is he an employee?

16 A. I think so. I don't know. I'm sure -- I
17 know that they're friends. I don't know for certain
18 if he is employed by Mr. Jackson.

19 Q. Okay. You said that you were certain that
20 Janet Arvizo had access to the house. Did you ever
21 see her in the house?

22 A. No.

23 Q. Do you have any personal knowledge to base
24 that statement on?

25 A. She was a guest. Her children had access to
26 the house. I would just, as a security guard at
27 that time, put two and two together and say she had

28 access to the house. 7178

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1 Q. So that's an assumption?

2 A. Yes.

3 MR. SANGER: Objection. Leading;

4 argumentative.

5 THE COURT: Overruled.

6 Q. BY MR. AUCHINCLOSS: You testified that

7 typically, ideally I should say, that you would be

8 notified when guests would be leaving Neverland?

9 A. Ideally, yes.

10 Q. Would that -- and that would include

11 children as well as adults?

12 A. Yes.

13 Q. And that rule was -- is it fair to say that

14 that rule was -- generally was not really enforced

15 or followed very often?

16 MR. SANGER: I will object, Your Honor.

17 First of all, it's vague. And secondly, if it

18 wasn't vague, it would be leading.

19 MR. AUCHINCLOSS: Well, I'll strike the

20 question and ask another one.

21 Q. Can you tell me whether that rule was

22 followed or not?

23 A. Not often.

24 Q. In terms of being allowed off the property,

25 you talked a little bit about children, whether or

26 not they'd be allowed off the property.

27 If a 16-year-old walked up to the gate and

28 said, "I want to take a walk down the road," would 7179

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1 you allow them to do so?

2 MR. SANGER: Objection. Calls for

3 speculation; incomplete hypothetical.

4 THE COURT: Overruled.

5 You may answer.

6 THE WITNESS: If they wanted to take a walk

7 down the street?

8 Q. BY MR. AUCHINCLOSS: Yeah.

9 A. I don't see why not.

10 Q. So you wouldn't question their leaving,

11 exiting the ranch for purposes of taking a walk?

12 A. No.

13 Q. And as far as ATV use, you said those were

14 not allowed off the property?

15 A. That's correct.

16 Q. So if -- did that rule apply to adults as

17 well as children?

18 A. Anyone.

19 Q. Anyone. Okay.

20 A. Yes.

21 Q. So if Chris Tucker drove up on an ATV, on

22 one of these quads, you'd say, "Sorry, you can't go

23 off the property"?

24 A. Correct.

25 MR. SANGER: Objection. Calls for

26 speculation and relevance.

27 THE COURT: Overruled. The answer was,

28 "Correct." Next question. 7180

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1 Q. BY MR. AUCHINCLOSS: Neverland Ranch, is

2 that in the County of Santa Barbara?

3 A. Yes.

4 Q. Now, as far as having access to Mr. Jackson,

5 the employees having access to Mr. Jackson, can you

6 characterize for me the degree with which he valued

7 his privacy on the ranch?

8 A. In my opinion, his privacy was most

9 important on the ranch.

10 Q. Okay. So why do you say that?

11 A. He never specifically told me that his --

12 that he wanted his privacy, but that's what we were

13 there for was to help him have his privacy on the

14 ranch.

15 I tried to impose on him as little as

16 possible, only if needed be. And that was something

17 that I was taught as I was trained at the ranch, to

18 let him have his own time. And if we needed to

19 speak to him, we would. If not, we wouldn't. We'd

20 pass it through a chain of command.

21 Q. Okay. So if Mr. Jackson was, let's say, in

22 the dance studio --

23 A. Yes.

24 Q. -- and you knew he was in the dance

25 studio --

26 A. Yes.

27 Q. -- would you avoid that area; I mean, let

28 him kind of have his space there? 7181

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1 A. Yes.

2 MR. SANGER: Wait a second. I'm going to
3 object. I'm sorry. Move to strike the answer. For
4 purpose of objecting, the question was vague and
5 compound.

6 THE COURT: Overruled.

7 Q. BY MR. AUCHINCLOSS: Were you encouraged or
8 discouraged in engaging with guests in
9 conversations?

10 A. Discouraged.

11 Q. Discouraged?

12 A. Yes.

13 Q. What about privacy for the guests?

14 A. Same as Mr. Jackson.

15 Q. Were you aware that Mr. Jackson -- were you
16 ever aware that Mr. Jackson would have young boys
17 sleep in his room with him?

18 MR. SANGER: Objection; foundation.

19 THE COURT: Sustained.

20 Q. BY MR. AUCHINCLOSS: You mentioned that you
21 were -- you would report something illegal if you
22 saw it?

23 A. Yes.

24 Q. Were you allowed into Mr. Jackson's bedroom
25 when he had guests in there?

26 A. No.

27 Q. Do you know of any employees that were

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28 allowed access into his bedroom to see what was 7182

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1 going on in there when he had guests in there?

2 MR. SANGER: Objection; foundation.

3 THE COURT: Overruled.

4 You may answer.

5 THE WITNESS: I know that Joe Marcus had

6 access to his room. Or the house manager, whomever

7 that was at the time. Whether or not they were

8 allowed to go in when he had guests in his room, I

9 don't know.

10 Q. BY MR. AUCHINCLOSS: You just know that he

11 had the key, the code; is that what you're saying?

12 Or you tell me.

13 MR. SANGER: Objection; leading.

14 THE COURT: Overruled.

15 You may answer.

16 THE WITNESS: I know that Joe Marcus was able

17 to get into the -- Mr. Jackson's room. Whether he

18 had a key or had the key pad, I would assume he had

19 both.

20 Q. BY MR. AUCHINCLOSS: Who did Joe Marcus

21 report to?

22 A. Mr. Jackson.

23 Q. Directly?

24 A. I believe so, yes.

25 Q. Okay. Anybody outrank Joe Marcus on the

26 ranch?

27 A. When he was ranch manager, no.

28 Q. Okay. Do you know if there were guests 7183

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1 allowed on the property without Mr. Jackson's
2 approval?

3 MR. SANGER: Objection; foundation.

4 THE COURT: Sustained.

5 Q. BY MR. AUCHINCLOSS: Are you aware of any
6 instances, personally aware of any instances, where
7 an individual was allowed on that property,
8 Neverland Ranch, if Mr. Jackson -- and Mr. Jackson
9 did not want them there?

10 A. At the time of them coming on?

11 MR. SANGER: Objection. Foundation and
12 vague.

13 Q. BY MR. AUCHINCLOSS: Yes.

14 THE COURT: Overruled.

15 You may answer.

16 THE WITNESS: No, generally Mr. Jackson would
17 be the one who allowed people to come on the
18 property. There was sometimes when somebody would
19 show up and we would call whomever was in charge,
20 like Jesus Salas or Joe Marcus, and he would make a
21 decision whether or not they could come on. But for
22 the most part, from what all I remember, those are
23 people who have been allowed on the property prior
24 to that occasion.

25 Q. BY MR. AUCHINCLOSS: Was Frank Tyson one of
26 these people?

27 A. Yes.

28 Q. So during your evening rounds as a security 7184

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1 officer, would you ever have occasion to see Mr.

2 Jackson during the late and early morning hours?

3 A. Yes.

4 Q. Would you ever have occasion to see him with

5 his guests during the late and early morning hours?

6 A. Yes.

7 Q. Were his guests during these periods ever

8 children?

9 A. Yes.

10 Q. How often?

11 A. Often.

12 Q. Okay.

13 A. Often. I don't know how to say how often,

14 but often.

15 Q. And the assignments and guest logs. There

16 are certain rooms that are assigned to certain

17 guests. Does that mean that that individual who was

18 assigned to that unit necessarily slept in that unit

19 on that given night?

20 A. No.

21 Q. Why do you say that?

22 A. Because -- well, one of the biggest reasons

23 is we would receive the phone calls in the evening

24 hours for guests at the front gate. And nine times

25 out of ten, we had to try several extensions to find

26 that person. The first one you would try would

27 always be where on the log it said they would be, if

28 it were a guest unit or in the theater or wherever 7185

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1 it said they may be. We went through several
2 different places. So you would try that first. But
3 it was -- often we had to go through more than one
4 extension to find someone.

5 Q. Were there any instances where you'd see
6 children sleeping in areas of the ranch where they
7 were not assigned?

8 A. Yes.

9 Q. How common was that?

10 A. Um, it happened. It wasn't uncommon. It
11 wasn't something that happened every time, but it
12 definitely happened.

13 Q. Okay. Who is Dr. Farshshian? Do you know
14 that name?

15 A. I know he's a doctor. I don't know what
16 he's a doctor of. And I know he came to the ranch
17 often.

18 Q. Do you know if Dr. Farshshian would ever
19 come to the ranch without Mr. Jackson?

20 A. I don't know if he did or didn't.

21 Q. As far as the -- as far as the individual
22 you've named as Chris Carter --

23 A. Yes.

24 Q. -- you previously identified him as what?

25 A. Chris Carter?

26 Q. Yes, and his relationship to Mr. Jackson.

27 A. As a security guard, I believe personal

28 security guard. 7186

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1 Q. And how often would you see Mr. Carter with

2 Mr. Jackson?

3 A. Together?

4 Q. Yes.

5 MR. SANGER: I'm going to object. Vague as

6 to time.

7 MR. AUCHINCLOSS: That's fine. I'll refine

8 that question.

9 Q. When did you first see Chris Carter start to

10 visit Neverland?

11 A. Oh. Probably in either late 2001 or early

12 2002.

13 Q. And was he employed as a security guard for

14 Mr. Jackson at that time?

15 A. Yes.

16 Q. Now, you've mentioned that there are

17 security guards that are personal guards and

18 security guards that are guards on the ranch.

19 A. Yes.

20 Q. The difference is what?

21 A. Guards on the ranch generally don't travel

22 with Mr. Jackson.

23 Q. So Chris Carter would be someone who

24 traveled with Mr. Jackson?

25 A. Yes.

26 Q. When Mr. Jackson -- well, let me strike

27 that. When Mr. Carter was on the ranch, would he

28 ever spend any time just as a guest of the ranch, 7187

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1 generally speaking?

2 A. No.

3 Q. So if Mr. Carter visited -- was on the
4 ranch, would it be fair to say that Mr. Jackson
5 would generally be with him?

6 MR. SANGER: Objection; leading.

7 MR. AUCHINCLOSS: I can rephrase it.

8 THE COURT: Sustained.

9 Q. BY MR. AUCHINCLOSS: When Mr. Carter was on
10 the ranch, generally where was Mr. Jackson?

11 A. On the ranch.

12 Q. Okay. Now, you've mentioned during direct
13 examination that there was this grease board with a
14 message from somebody that says Gavin is not to
15 leave the property.

16 A. Yes.

17 Q. And Mr. Sanger has shown you one of the
18 exhibits that says Gavin and Star are not to leave
19 the property.

20 A. Yes.

21 Q. Is there a relationship between the logs
22 that you looked at and the information that you
23 would normally find on that grease board?

24 A. Yes, at times there --

25 Q. Would one normally track the other?

26 A. Yes.

27 Q. And why is that?

28 A. So that -- because we don't all -- let's say 7188

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1 there's three of us on duty at the ranch as security
2 guards. Because we're not all at the front gate at
3 the same time -- for instance, if we all worked 6
4 p.m. to 6 a.m., we're not all going to work the gate
5 at 6 p.m. to 6 a.m. So there would be one at the
6 gate, or two or three, however many more, at the
7 house, so that both areas of the security, both
8 offices of the security had the same information.

9 Q. Okay. So all the security guards would be
10 on the same page working to fulfill those
11 directives?

12 A. Correct.

13 Q. Now, I believe the directive that appears in
14 the log, if I remember correctly -- let me just find
15 it here.

16 If I could have the Elmo, Your Honor.

17 The date on this particular exhibit is
18 2-19-03. And this is the one that has, "The kids
19 are not to leave per Joe." Let's get the entire
20 statement in there, and I believe that's at 5:52.

21 Now --

22 MR. SANGER: Your Honor, I'm sorry, just for
23 the record, could we have the page number?

24 MR. AUCHINCLOSS: Oh, yes. Certainly.

25 MR. SANGER: And the exhibit number.

26 MR. AUCHINCLOSS: That's a good point. This
27 is Exhibit No. 334 and it's page number 154.

28 Q. Have you ever seen a directive like this on 7189

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1 one of the logs before that told the security guards
2 not to let a child off the property?

3 A. No.

4 Q. Have you ever seen a directive before like
5 the one you saw on the grease board that said, "Do
6 not let Gavin off the property"?

7 A. No.

8 Q. During your five years, did you ever see
9 anything of that nature during your employment?

10 A. No.

11 MR. SANGER: Objection; asked and answered.

12 MR. AUCHINCLOSS: I said "before," and this
13 contemplates the entire period.

14 THE COURT: All right. The objection is
15 overruled. It's answered.

16 Q. BY MR. AUCHINCLOSS: As far as this date
17 goes, February 19th, are you aware whether or not
18 Janet Arvizo was scheduled to return to Neverland on
19 that particular day?

20 A. I'm not aware if she was.

21 Q. All right. I have a few questions about the
22 logs and I'll be done.

23 Beginning with the log for 334, Exhibit 120,
24 we've had considerable testimony about this
25 particular page.

26 Now, first of all, let me ask you, based
27 upon your review of the logs and your experience in

28 working with these logs, how would you characterize 7190

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1 the degree of accuracy that is recorded?

2 MR. SANGER: I'm going to object. Are we

3 talking about this particular page or are we talking

4 about --

5 MR. AUCHINCLOSS: In general.

6 THE WITNESS: In general, they were -- can I

7 answer?

8 THE COURT: Sure.

9 THE WITNESS: Sorry.

10 In general they were accurate. Obviously we

11 make mistakes spelling names. There was that issue.

12 But they were accurate.

13 Q. BY MR. AUCHINCLOSS: And as far as this

14 particular page goes, which is at the bottom,

15 2-7-03, this shows that the Arvizos are a carry-over

16 from the previous day?

17 A. Yes.

18 Q. And if we go back to the preceding day, we

19 have -- I'm now showing you 2-6-03. We have this

20 guest information --

21 MR. SANGER: Your Honor, excuse me. Could

22 we have a page number?

23 MR. AUCHINCLOSS: Yes, thank you. That same

24 exhibit, 00116.

25 Q. Now, if Gavin, Star, and Davellin were on

26 the property, if the Arvizos were on the property on

27 2-7-03 as a carry-over, shouldn't they be reflected

28 in this document on February 6 somewhere in "Guest 7191

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1 Information"?

2 A. Yes.

3 Q. So how do you explain that?

4 MR. SANGER: Calls for speculation, Your

5 Honor.

6 MR. AUCHINCLOSS: Not necessarily.

7 MR. SANGER: And lack of foundation.

8 THE COURT: Overruled.

9 You may answer.

10 THE WITNESS: Either it was completely

11 overlooked or they weren't there.

12 Q. BY MR. AUCHINCLOSS: Would you agree there

13 clearly is an error in the logs somewhere on those

14 two pages?

15 A. Yes.

16 Q. Now, as far as the "Owner and guest"

17 notation there that you see, I believe you were

18 shown that by Mr. Sanger, and you responded that

19 there was something odd about that?

20 A. Yes.

21 Q. What is it that you find curious about that

22 entry?

23 A. What strikes me is that we would never -- I

24 would never, and I don't believe anyone else would

25 ever write "Owner" down, "Owner and guest," on one

26 of these logs. Again, for his privacy. We never

27 logged him in or out.

28 Q. Okay. Would you sometimes make a notation 7192

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1 if he was to be expected on the property?

2 A. On one of these sheets?

3 Q. On a sheet somewhere; just that, "Mr.

4 Jackson is expected to come today," or something of

5 that nature.

6 A. No, that was generally verbal.

7 Q. Okay. But as far as an entry on -- in this

8 particular fashion, you've never seen this before?

9 A. No.

10 Q. Never seen it during your five years there?

11 A. No.

12 Q. Do you recognize that handwriting at all?

13 A. No. I can barely read it. But, no, I don't

14 recognize it.

15 MR. AUCHINCLOSS: All right. If I could

16 just have a moment, Your Honor.

17 THE COURT: Yes.

18 Q. BY MR. AUCHINCLOSS: Do you know an

19 individual by the name of Klein?

20 A. Is there a first name?

21 Q. Doctor?

22 A. Dr. Klein. I remember the name of Dr.

23 Klein.

24 Q. Okay. And did that have any relationship to

25 your employment at Neverland?

26 A. Yes.

27 MR. SANGER: I'm going to object. It's

28 beyond the scope of cross. 7193

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1 MR. AUCHINCLOSS: I believe counsel showed
2 him a document that had Dr. Klein's name on it.

3 THE COURT: All right. Overruled.

4 Q. BY MR. AUCHINCLOSS: And how do you know Dr.
5 Klein?

6 A. Just that he came to the property.

7 Q. Do you know what his relationship was to Mr.
8 Jackson?

9 A. No.

10 Q. Do you know if he would be a guest of Mr.
11 Jackson's when Mr. Jackson was not present?

12 MR. SANGER: Objection. Lack of foundation,
13 Your Honor, and relevance.

14 THE COURT: Overruled.

15 You may answer.

16 THE WITNESS: I don't recall if he was ever
17 there without Mr. Jackson being there.

18 Q. BY MR. AUCHINCLOSS: Okay. When one of the
19 Rolls or the Bentleys would leave the property, can
20 you tell me whether or not Mr. Jackson would
21 generally be associated with the use of that
22 vehicle, such a vehicle?

23 MR. SANGER: Objection. Vague and lack of
24 foundation.

25 THE COURT: Sustained on vague.

26 Q. BY MR. AUCHINCLOSS: When you were
27 conducting your daily duties at the security guard

28 booth -- 7194

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1 A. Yes.

2 Q. -- would you see Mr. Jackson coming and
3 going onto the property?

4 A. Yes.

5 Q. Would he typically be in a vehicle?

6 A. Yes.

7 Q. Would you see an occasion where the Bentley
8 or the Rolls was used?

9 A. Yes.

10 Q. Would you be able to see if Mr. Jackson was
11 in that vehicle?

12 A. In the Rolls, the older Rolls Royces, yes,
13 because there wasn't as dark a tint as on the
14 Bentley. The Bentley was very dark tinted.

15 Q. Can you tell me, were those cars generally
16 used when Mr. Jackson was being transported
17 somewhere?

18 A. The Bentley in particular, yes.

19 Q. And I'm going to direct you to Exhibit No. 191,
20 and/or I should say Exhibit 335, page number 191, if
21 I can find it. It's not in order. Here we go.

22 That's the wrong exhibit. I'm sorry, Your
23 Honor.

24 That actually completes my redirect. Thank
25 you.

26 //

27 //

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1 RE-CROSS-EXAMINATION

2 BY MR. SANGER:

3 Q. I know you want to go home.

4 A. Yes, sir.

5 Q. I'll try to get you out of here.

6 First of all, you had occasion to meet

7 Michael Jackson from time to time, correct?

8 A. Yes.

9 Q. Had a chance to talk with him from time to

10 time, correct?

11 A. Yes.

12 Q. And you felt it was appropriate to respect

13 his privacy at his home, correct?

14 A. Correct.

15 Q. There was nothing weird about allowing a

16 celebrity to have private time at his home, was

17 there?

18 A. No.

19 Q. And in fact, how many employees were there

20 at the ranch, roughly, during the time you worked

21 there?

22 A. Probably around 80. Between 80 and maybe

23 100.

24 Q. So if 80 or 100 people came up and spent a

25 minute with Mr. Jackson every time, every day, he

26 would have no privacy, correct?

27 MR. AUCHINCLOSS: Objection; argumentative.

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1 Q. BY MR. SANGER: Okay. In other words, with
2 that many people or even with a few people, it would
3 be important to allow a person whose home it was to
4 spend time at their home and not be bothered by
5 people who are employed there to work for him,
6 correct?

7 MR. AUCHINCLOSS: Same objection.

8 THE COURT: Overruled.

9 You may answer.

10 THE WITNESS: Yes.

11 Q. BY MR. SANGER: Okay. Now, in the course of
12 knowing Mr. Jackson in the context that you just
13 described, Mr. Jackson is sensitive to the sun; is
14 that correct?

15 MR. AUCHINCLOSS: Objection; foundation.

16 THE COURT: Sustained.

17 Q. BY MR. SANGER: Were you aware that he took
18 measures to try to avoid direct sunlight?

19 MR. AUCHINCLOSS: Objection; exceeds the
20 scope.

21 MR. SANGER: Not at all. Dr. Klein.

22 THE COURT: Overruled.

23 (Laughter.)

24 THE WITNESS: Was I aware --

25 Q. BY MR. SANGER: That he took measures to
26 avoid direct sunlight.

27 A. Yes.

28 MR. AUCHINCLOSS: Object as to foundation. 7197

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1 THE COURT: Overruled.

2 MR. SANGER: And the answer's in, Your

3 Honor?

4 THE COURT: Yes.

5 MR. SANGER: Thank you.

6 Q. Were you aware that Dr. Klein was the

7 dermatologist treating Mr. Jackson's vitiligo?

8 A. No.

9 Q. Were you aware that he was a dermatologist?

10 A. I was aware that he was a doctor.

11 Q. And you believe he was Mr. Jackson's doctor

12 for one problem or another; is that correct?

13 A. Yes.

14 Q. All right. Now, there was testimony on

15 direct and then redirect again about this notation

16 on the grease board and the notation in the logs on

17 page -- it was 154 of Exhibit 334 about -- the

18 notation on the grease board you recall was specific

19 to Gavin. Gavin should not leave the property; is

20 that right?

21 A. "Gavin is not allowed off property."

22 Q. That's your recollection of what was on the

23 grease board, correct?

24 A. Yes.

25 Q. And your recollection of what was in the log

26 is what, in fact, was shown to you in Exhibit 334,

27 page 154.

28 May I, your Honor? 7198

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1 THE COURT: Yes.

2 Q. BY MR. SANGER: Page 00154, and again, it
3 says -- the whole quote is, "The kids are not to
4 leave per Joe." "Kids" meaning like Gavin, Star, et
5 cetera, right?

6 A. Right.

7 Q. And this was on the log of - you can see it
8 there - 2-19-03, correct?

9 A. February 19th.

10 Q. February 19th, 2003, correct?

11 A. Yes.

12 Q. And that was that time period where you had
13 so many people on the ranch that you had this master
14 list on 2-17, and then the regular posting of guests
15 didn't resume again until after 2-20. You resumed
16 again on 2-21-03, correct?

17 A. Yes.

18 Q. All right. So it was not possible to track
19 everybody's movements on and off the ranch during
20 that period of time; is that correct? They weren't
21 all logged in and out as they should have been?

22 A. Not possible to --

23 Q. Track whether or not people left and came
24 back on the ranch between that 2-17 and 2-20 when
25 they were all kind of lumped together?

26 A. I believe there's even a note on the bottom
27 of that page that that's going to be carried over

28 through those periods. I believe it would be easy 7199

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1 to keep track of who comes and goes on the property.

2 In answer to your question, no, I believe

3 that it could be tracked --

4 Q. Okay.

5 A. -- who was coming and going.

6 Q. All right. And I'm going to --

7 A. Maybe not by paperwork, but it could have

8 been done.

9 Q. Okay. It could have been done, but the

10 paperwork here is somewhat deficient in that regard,

11 isn't it?

12 Let me put up 149, which is the page that

13 said 2-17 through 2-20. And that's where we had

14 everybody there on that big list, correct?

15 A. Correct.

16 Q. And, for instance, it shows for the Arvizo

17 family, the kids, it shows carried over from the day

18 before, and it shows 1951 hours out, and it doesn't

19 show back in.

20 A. Well, if you lift -- scoot the page back so

21 we can see the bottom.

22 Q. Certainly.

23 A. If I were working the gate at this time

24 period and I saw that note on the bottom, "List

25 until guest departs, C-1," which is for Charles 1,

26 which was Curtis Gordon, who was a supervisor, I

27 would take that to mean that they came in on -- or

28 the carry-over happened on the 17th, and their time 7200

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1 out was on the 20th.

2 Q. Okay. I understand. So your interpretation
3 of this, if this were accurate, is that the Arvizos
4 did not leave until the evening of the 20th, 1951
5 for the children, and 2145 for Janet, correct?

6 A. Correct.

7 Q. So again, everybody gets this, but 7:51 at
8 night and 9:40, whatever that says, at night for
9 Janet, correct?

10 A. Yes.

11 Q. Now, were you -- are you aware, as you sit
12 there right now, that the Arvizos were in Los
13 Angeles on the evening of the 19th?

14 A. No.

15 MR. AUCHINCLOSS: I'm going to object as to
16 the form of the question being -- assuming facts.

17 THE COURT: The answer is, "No." Next
18 question.

19 Q. BY MR. SANGER: And if they were in Los
20 Angeles on the evening of the 19th, there is no
21 indication in these logs that they left the ranch
22 for that purpose; is that correct?

23 A. That's correct.

24 Q. All right. And, now, turning to 154 again,
25 which we've all seen, 2-19, it says 1752, so that's
26 5:52, just before six o'clock in the evening on the
27 19th.

28 If the Arvizos were supposed to be available 7201

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1 for the purpose of going to Los Angeles for a
2 videotaping, would it be reasonable for the gate to
3 be advised that the kids should not leave the ranch?

4 MR. AUCHINCLOSS: I'm going to object as
5 argumentative and assuming facts not in evidence.

6 THE COURT: Sustained as argumentative.

7 MR. SANGER: All right.

8 Q. Let's put it this way: In other words, as
9 part of the duties of somebody at the gate, would
10 you feel it was an appropriate instruction that
11 somebody not -- whether it's an adult or a child,
12 that somebody not leave the ranch if they're
13 expected to be available to get into a car to go
14 somewhere?

15 MR. AUCHINCLOSS: Objection. Argumentative;
16 calls for a conclusion.

17 THE COURT: Sustained.

18 MR. SANGER: All right.

19 Q. Now, whatever that notation is for, was that
20 notation placed there in a place on these gate
21 activity logs where any and all of the security
22 staff would be able to read it?

23 A. Any and all that were working that day, yes.

24 Q. Okay. And was it -- are these records kept
25 as permanent records?

26 A. I believe so.

27 Q. All right. So presumably months later,

28 years later, somebody could go back and find that 7202

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1 notation, right?

2 A. Yes.

3 Q. This is not a secret communication that was
4 designed to be destroyed after people received the
5 information, correct?

6 A. Correct.

7 Q. Okay. It was left as a permanent memorial
8 to something that was instructed or something that
9 was communicated to the security staff; is that
10 right?

11 A. Yes.

12 Q. And when you talk about this grease board,
13 any message that was on the grease board was put
14 there so that anybody on the security staff could
15 see it; is that correct?

16 A. Correct.

17 Q. And anybody else that consulted the records
18 could also see it, obviously; is that right?

19 A. These records.

20 Q. I'm sorry, you're right. You're up all
21 night and I'm getting confused, so let me clarify
22 it.

23 First of all, the grease board. Anybody
24 that came into the security office could see that
25 grease board and would be able see what was up
26 there, right?

27 A. Yes.

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28 Q. And that was right in the front room, 7203

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1 correct?

2 A. Correct.

3 Q. The doors are often open?

4 A. When someone comes in and out.

5 Q. There's windows there?

6 A. Yes.

7 Q. Administration people can come down and do

8 often come down into the security office, correct?

9 A. Correct.

10 Q. So there's people that would work up in the

11 administration building, the ranch manager, the

12 administrative assistants and so on, correct?

13 A. Yes.

14 Q. Firemen could go in there and see that,

15 correct?

16 A. Yes.

17 Q. You of course could see it, and you were a

18 sworn peace officer, right?

19 A. Correct.

20 Q. All right. And then similarly, with regard

21 to those records, the gate log records, those were

22 maintained so that people from the administration

23 could review them, correct?

24 A. Correct.

25 Q. And again, firemen and other security

26 officers could review them?

27 A. Yes.

28 Q. So this was not a secret? 7204

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1 A. No.

2 Q. Thank you.

3 Now, you indicated that sometimes
4 assignments got -- let me withdraw that.

5 The question was about room assignments.

6 Was there really a room assignment system?

7 A. Yes, at times there were.

8 Q. Okay.

9 A. Especially with the guest units.

10 Q. Who assigned people guest units?

11 A. Generally it would be the -- whomever was in
12 charge of the house, or at times who was in charge
13 of the housekeeping, or the ranch manager.

14 Q. Okay. So was it your understanding that
15 those -- that somebody like that would actually tell
16 the guest, "You are assigned to this unit"?

17 A. Yes.

18 Q. Okay. And if guests wanted to stay
19 someplace else, for instance, somebody said, "Boy,
20 I'd really like to have Unit No. 4," would an effort
21 be made on the part of the staff to allow that
22 person to have that unit?

23 A. I never was involved in that.

24 Q. Fair enough. If somebody wanted to stay,
25 for instance, out at the theater rather than a guest
26 unit, would they be accommodated, for the most part?

27 A. For the most part, yes.

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28 Q. All right. Now, sometimes somebody might be 7205

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1 assigned, say, to a guest unit and they would
2 decide, "Well, I'd really rather stay out at the
3 theater." That could happen, right?

4 A. Sure, it could happen.

5 Q. They might ask permission of somebody,
6 whatever happens; they end up staying out at the
7 theater on Night No. 1?

8 A. Okay. Yes.

9 Q. And it's -- it's generally -- it generally
10 becomes known where the guests are staying; is that
11 correct?

12 A. Eventually, hopefully.

13 Q. Okay.

14 A. Yes.

15 Q. But guests may make requests for food or
16 other services on a -- well, let me ask that. They
17 may do that from time to time?

18 A. Yes.

19 Q. In fact, it's very common for people to call
20 for food or drink or something and have it delivered
21 to where they are?

22 A. Yes.

23 Q. And security eventually becomes aware of
24 where people are, either through them requesting
25 services, or phone calls coming in for them, or
26 something else, right?

27 A. Yes.

28 Q. And so if somebody is logged in repeatedly 7206

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1 in the same unit in the security logs, that would
2 tend to indicate that security is now pretty much
3 aware that that's where the person is staying; is
4 that right?

5 A. Yes.

6 Q. All right. Now, you remember Davellin, do
7 you not?

8 A. Vaguely.

9 Q. Vaguely. Do you remember -- and you
10 remember Marie Nicole?

11 A. Yes.

12 Q. During this time period, do you remember
13 Davellin and Marie Nicole hanging out together?

14 A. Yes, I believe I do.

15 Q. And they seemed to be good friends; is that
16 correct?

17 A. Yes.

18 Q. And did they seem to be having fun?

19 A. Yes.

20 Q. All right. And they'd walk around the
21 property and have a good time?

22 A. Sure.

23 Q. All right. And do you recall Davellin and
24 Marie Nicole staying out at the theater during this
25 period of time?

26 A. Yes, I do.

27 Q. So in addition to the log entries, you

28 personally recall them being out -- staying out in 7207

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1 that area; is that correct?

2 A. Yes.

3 Q. Okay. And I believe one last area I want to

4 ask you about here that was brought up by Mr.

5 Auchincloss.

6 You have experience as a police officer, and

7 also experience being a security guard for Mr.

8 Jackson, a major celebrity, and I'm going to ask

9 you, drawing on all of that, do you assume that

10 intruders are not going to be a danger to anybody?

11 A. No.

12 Q. In fact, you assume they're going to be a

13 danger?

14 A. Yes.

15 Q. You have to do that. And you're aware of

16 celebrity stalkers, are you not?

17 A. Yes.

18 Q. And you're aware of instances where

19 celebrity stalkers, even though they were fans, did

20 harm to celebrities, correct?

21 A. Yes.

22 Q. And did harm to people around celebrities,

23 correct?

24 A. Yes.

25 Q. Were you aware that one of the intruders

26 actually got into the train room upstairs in Mr.

27 Jackson's house?

28 MR. AUCHINCLOSS: I'll object. Assumes 7208

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1 facts.

2 THE COURT: Overruled.

3 You may answer.

4 THE WITNESS: The third floor of the house?

5 Q. BY MR. SANGER: Yes.

6 A. Yes.

7 Q. And you would consider that to be a serious

8 intrusion into Mr. Jackson's security, would you

9 not?

10 A. Yes.

11 Q. Were you aware that one of the intruders was

12 possessing a handgun?

13 A. No.

14 Q. A number of these intruders were actually

15 arrested, the sheriff was brought on, and they were

16 arrested and taken away; is that correct?

17 A. Correct.

18 Q. And some of the repeat intruders were

19 actually prosecuted by the District Attorney's

20 Office; is that right?

21 A. Yes.

22 MR. SANGER: Okay. Thank you. No further

23 questions.

24

25 FURTHER REDIRECT EXAMINATION

26 BY MR. AUCHINCLOSS:

27 Q. Generally speaking, based on your experience

28 and not on what you anticipated, what did these 7209

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1 intruders want?

2 MR. SANGER: I'm going to object. That's --

3 that's vague.

4 THE COURT: Overruled.

5 You may answer.

6 THE WITNESS: What did they want?

7 Q. BY MR. AUCHINCLOSS: Yeah. Why did they

8 want to come on Neverland?

9 A. They wanted to see Mr. Jackson.

10 Q. Just see him?

11 A. See him.

12 Q. Maybe meet him?

13 A. Yes.

14 Q. That's all?

15 MR. SANGER: Objection. Calls for

16 speculation, Your Honor.

17 THE COURT: Argumentative; sustained.

18 Q. BY MR. AUCHINCLOSS: As far as the grease

19 board goes, you previously testified that that

20 instruction was on the board for approximately a

21 week?

22 A. That's about the length that I remember it

23 being there.

24 Q. Did you take that instruction seriously for

25 the entire week?

26 A. Yes.

27 Q. Did you consider that to be an order to not

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28 let Gavin off the property for that entire period of 7210

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1 time?

2 A. Yes.

3 Q. And can you tell me, based on your
4 experience and training at Neverland, who would have
5 authority to make such an order on the grease board
6 and in the logs?

7 A. Well, ultimately Mr. Jackson.

8 Q. Okay. And who would do -- who would
9 ultimately? How would the chain go? Who put stuff
10 up on the board?

11 A. Generally one of my supervisors.

12 Q. And who was your supervisor?

13 A. Either Curtis Gordon, Julio Magana or Violet
14 Silva.

15 Q. And who do they report to?

16 A. Joe Marcus.

17 Q. And who does he report to?

18 A. Mr. Jackson.

19 MR. AUCHINCLOSS: Thank you. No further
20 questions.

21

22 FURTHER RECROSS-EXAMINATION

23 BY MR. SANGER:

24 Q. Now, when you say "report to," you have
25 absolutely no evidence whatsoever that Mr. Jackson
26 himself gave an instruction that Gavin was not to go
27 off the ranch; is that true?

28 MR. AUCHINCLOSS: Objection; argumentative. 7211

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1 THE COURT: Overruled.

2 You may answer.

3 THE WITNESS: I have no knowledge of him

4 giving that.

5 Q. BY MR. SANGER: All right. And the fact

6 that people report -- Mr. Jackson owns the property,

7 to your knowledge, correct?

8 A. To my knowledge, yes.

9 Q. Okay. And the fact that people ultimately

10 report to the owner of the property does not mean

11 that they get every instruction that they

12 communicate down the line from the owner of the

13 property, correct?

14 A. Correct.

15 Q. So it's entirely possible, based on your

16 understanding of this chain of command, that

17 somebody somewhere in the middle, up or down, in

18 this chain of command decided to put this on the

19 grease board, correct?

20 A. It could have happened, yes.

21 Q. And you certainly never saw Mr. Jackson come

22 in and write anything on the security grease board

23 himself, correct, sir?

24 A. That's correct.

25 Q. And you never saw Mr. Jackson write anything

26 himself into the gate logs; is that correct, sir?

27 A. Correct.

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28 MR. SANGER: Okay. Thank you. 7212

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1 MR. AUCHINCLOSS: One last question.

2

3 FURTHER REDIRECT EXAMINATION

4 BY MR. AUCHINCLOSS:

5 Q. Are you aware, during the course of your

6 employment at Neverland, of any motive, reason, why

7 Joe Marcus, Violet Silva, Curtis Gordon, Julio

8 Magana, any of these individuals, any -- are you

9 aware of any reason why they would want to have

10 Gavin Arvizo kept on the Neverland property?

11 A. No.

12 MR. SANGER: Calls for speculation, Your

13 Honor.

14 THE COURT: Sustained.

15 MR. AUCHINCLOSS: Thank you. No further

16 questions.

17 MR. SANGER: And move to strike the answer.

18 I think it did come in or was said.

19 THE COURT: I'll strike the answer.

20 MR. SANGER: Thank you.

21 He had no questions. There were no

22 questions, so I have no questions.

23 THE COURT: You're free to go.

24 THE WITNESS: Thank you, sir.

25 THE COURT: Come forward.

26 When you get to the witness stand, please

27 remain standing, face the clerk and raise your right

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1 STEPHEN CLEAVES

2 Having been sworn, testified as follows:

3

4 THE WITNESS: I do.

5 THE CLERK: Please be seated. State and

6 spell your name for the record.

7 THE WITNESS: Stephen Cleaves.

8 S-t-e-p-h-e-n; C-l-e-a-v-e-s.

9 THE CLERK: Thank you.

10 MR. SANGER: Your Honor, could I have just

11 one moment, please?

12 THE COURT: Yes.

13 MR. SANGER: Thank you.

14 MR. SNEDDON: Go ahead?

15 MR. SANGER: Yeah.

16

17 DIRECT EXAMINATION

18 BY MR. SNEDDON:

19 Q. Good morning.

20 A. Good morning.

21 Q. You're a sergeant employed by the Santa

22 Barbara County Sheriff's Department, correct?

23 A. That's correct.

24 Q. How long have you been with the department?

25 A. 25 years.

26 Q. And your current assignment?

27 A. I'm working special operations.

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28 Q. And you live in Santa Ynez? 7214

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1 A. That's correct.

2 Q. And on November the 18th of 2003, were you
3 part of a group of people who executed a search
4 warrant at Neverland Valley Ranch?

5 A. I was.

6 Q. And what was your particular responsibility
7 on that day?

8 A. To supervise a group of investigators that
9 went and searched the security offices for files.

10 Q. And when you say "security office," where
11 was that located on the premises?

12 A. It was part of the main residence at the far
13 west end, I believe that is.

14 Q. Was it directly connected to the residence
15 or was there a breezeway between the two buildings?

16 A. I believe there's a breezeway.

17 Q. Now, when you got to the security office,
18 you said that you were assigned a particular
19 responsibility in that office.

20 A. That's correct.

21 Q. What was the responsibility?

22 A. To look for files or computers.

23 Specifically, we had a list of names that we were
24 looking for that -- of persons who came on or off
25 the ranch.

26 Q. And did those names include the Arvizo
27 family?

28 A. Yes, they did. 7215

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1 Q. And other individuals?

2 A. They did.

3 Q. Now, did you actually participate in looking
4 through the records yourself?

5 A. I did.

6 Q. And from where did you obtain the records?

7 A. There were several boxes of -- cardboard
8 boxes that had files stored in them in that room,
9 and we ultimately went through each one of those
10 boxes and then pulled the files with the names that
11 we were looking for.

12 Q. So with regard to the search that occurred,
13 all of the boxes and all the files contained in that
14 security office were viewed by you or other
15 members -- or the people working with you in that
16 task?

17 A. That's correct.

18 MR. SANGER: Objection. Calls for
19 speculation; lack of foundation; and leading.

20 THE COURT: Overruled. Next question.

21 Q. BY MR. SNEDDON: Did you personally, as a
22 result of your efforts in looking through these
23 materials, take into your custody and control
24 certain exhibits?

25 A. I did.

26 Q. And do you recall just approximately how
27 many -- well, first of all, what were the nature of

28 the items that you actually took into your custody 7216

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1 and control?

2 A. Mine were files, and they were related to
3 the gatehouse log entries and/or any medical injury
4 incident reports. I believe all of mine were
5 directly related to the entry logs, though, for the
6 ranch.

7 Q. And when you went through the items and you
8 saw items that you felt were items that you wanted
9 to seize pursuant to the search warrant, what did
10 you do with those items?

11 A. As we went through the box, we would collect
12 the items that we wanted to seize and set them
13 aside, completed the box, and then we took the items
14 over to Deputy Moeller, who was our seizing officer,
15 and turned them over to him. He assigned them an
16 item number and packaged them for evidence.

17 Q. And that's what you did with regard to the
18 items that you took?

19 A. That's correct.

20 Q. Now, do you recall whether or not any of the
21 documents that you went through personally that day
22 involved any records beyond December 31st of the
23 year 2002? In other words, did you find any records
24 for the year 2003?

25 A. I -- I don't believe so, no.

26 MR. SNEDDON: No further questions.

27 //

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1 CROSS-EXAMINATION

2 BY MR. SANGER:

3 Q. Sergeant Cleaves, in your 25 years with the
4 Santa Barbara Sheriff's Department, what kinds of
5 duties did you have?

6 A. Started off in patrol, working down in
7 Goleta. Was transferred to Solvang, Santa Ynez.
8 Worked there for a number of years. Went back down
9 to special operations, where I worked vice,
10 narcotics, gangs, and then was assigned to the
11 helicopter crew. Was promoted to sergeant,
12 transferred to Santa Maria.

13 From Santa Maria, back to Santa Ynez. From
14 Santa Ynez, back to Santa Maria. And then back to
15 Santa Ynez, and I'm currently working in special
16 operations.

17 Q. Special operations is a -- is that a
18 detective assignment?

19 A. It is.

20 Q. All right. And in this particular case, the
21 extent of your assignment in this case was
22 essentially to assist with this search and look for
23 some records in the office?

24 A. That's correct.

25 Q. And did you search anyplace other than the
26 security office?

27 A. Our search also --

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28 Q. I'm sorry. I was vague. Let me clarify the 7218

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1 question. Did you personally search anyplace other
2 than the office?

3 A. I did.

4 Q. Where else did you search?

5 A. The garage immediately to the rear of the
6 security office. And the video library that was
7 upstairs above that office.

8 Q. You did not search the administration
9 building; is that correct?

10 A. No.

11 Q. In fact, there was not a warrant to search
12 the administration building, correct?

13 A. I don't know. I just searched the area that
14 we were asked to search.

15 Q. So did you review the warrant?

16 A. I did.

17 Q. And you were given a briefing --

18 A. Yes.

19 Q. -- the morning of the search?

20 A. Yes.

21 Q. Is that correct, sir?

22 A. Yes, yes.

23 Q. And prior to your searching, you were given
24 a copy of a protocol; is that right?

25 A. A protocol.

26 Q. It was a -- I forgot the name of -- a

27 memorandum, in any event, that explained what the

28 case was about and what you were looking for? 7219

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1 A. We received the warrant, we read the
2 warrant. And my assignment was to do the security
3 wing, and that's what we did.

4 Q. Do you remember whether or not you got a
5 little packet that included an outline of what the
6 case was about and who the significant parties were
7 and that sort of thing?

8 A. I don't recall that. I do recall getting a
9 list of names that we were supposed to look for in
10 the security office.

11 Q. And you got a copy of the affidavit for the
12 search warrant?

13 A. Right.

14 Q. So you had a chance to familiarize yourself
15 with that; is that correct?

16 A. Yes, sir.

17 Q. And the affidavit would have been something
18 that explained to the judge issuing the warrant,
19 would have explained what your department thought
20 the case was about, and why you should be allowed to
21 search, correct?

22 A. True.

23 Q. Correct?

24 A. Yes.

25 Q. And -- all right. Did you have a copy of
26 the warrant itself, see a copy of the warrant?

27 A. We did get a copy of the warrant and we did

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28 read it, yes. 7220

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1 Q. Was it your understanding, from all of that
2 information, that the warrant was for the main
3 residence, correct?

4 A. Yes.

5 Q. And it was for the security office, correct?

6 A. Yes.

7 Q. And it was for the separate building that
8 was described as an arcade; is that correct?

9 A. I don't specifically recall that.

10 Q. All right. In any event, it was not for
11 every building on that ranch, was it?

12 A. I don't have that specific knowledge.

13 Q. All right. In any event, to your
14 knowledge -- well, let me withdraw that.

15 Aside from where you said you looked, which
16 would have been the security office, and then in
17 that same building, which was part of the garage,
18 correct?

19 A. Correct.

20 Q. You looked in the garage?

21 A. Correct.

22 Q. And then you went upstairs in that same
23 building and you looked in the video library,
24 correct?

25 A. Correct.

26 Q. All right. Other than that, you did not
27 search any other part of that ranch, you personally,

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28 for records, correct? 7221

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1 A. No, I did not.

2 Q. And are you familiar with Brian Barron?

3 A. I know the name. A security guard.

4 Q. Were you aware that he was a sworn peace
5 officer?

6 A. At the time of the search I don't believe
7 so.

8 Q. You're aware --

9 A. I hadn't paid attention.

10 Q. You are aware now; is that correct?

11 A. Yes.

12 Q. And if he has indicated that records are
13 accurate, as presented to him in court by the
14 prosecutor that pertain to these gate logs, would
15 you have any reason to believe that he was
16 incorrect?

17 MR. SNEDDON: Your Honor, I'm going to
18 object. Calls for speculation; no foundation.

19 THE COURT: Sustained.

20 MR. SANGER: Okay. I have no further
21 questions.

22 MR. SNEDDON: Nothing further.

23 THE COURT: Thank you. You may step down.

24 MR. SNEDDON: Thank you, Sergeant Cleaves.
25 Whoever's out there.

26 MR. SANGER: There are probably a lot of
27 people out there, but --

28 MR. SNEDDON: Only some of them are 7222

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1 witnesses.

2 THE COURT: Raise your right hand, please,

3 face the clerk.

4

5 TIMOTHY SUTCLIFFE

6 Having been sworn, testified as follows:

7

8 THE WITNESS: I do.

9 THE CLERK: Please be seated. State and

10 spell your name for the record.

11 THE WITNESS: Timothy Sutcliffe, and that's

12 spelled S-u-t-c-l-i-f-f-e.

13 THE CLERK: Thank you.

14

15 DIRECT EXAMINATION

16 BY MR. SNEDDON:

17 Q. Actually, just to clarify things, you're the

18 same Timothy Sutcliffe who testified previously in

19 this case?

20 A. Yes, I am.

21 Q. That was a long time ago, but -- now,

22 everybody probably recalls this, but just for the

23 purposes of refreshing people's recollections,

24 you're employed by the Santa Barbara County

25 Sheriff's Department?

26 A. That is correct.

27 Q. And your current assignment is?

28 A. I work for the Criminal Investigations 7223

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1 Division in the Forensics Unit.

2 Q. And was that your assignment back on

3 November 18th of 2003?

4 A. Yes, it was.

5 Q. Now, on that particular date, were you

6 assigned to assist Sergeant Cleaves in the review of

7 certain records and files in the security office of

8 Neverland Valley Ranch during the execution of a

9 search warrant?

10 A. Yes, I was.

11 Q. Now, tell me what you did on that particular

12 day with regard to the records in the security

13 office.

14 A. We were given a list of names of individuals

15 that -- to search for specific items. We were

16 checking through the security documents, which were

17 gate logs and guest lists, for those particular

18 names, and I did find some of those items.

19 Q. And with regard to the items that you found,

20 what did you do with them?

21 A. As I collected those items, I then gave

22 those to Detective Moeller, who listed them on the

23 SH-451 property form.

24 Q. Now, prior to testifying here today, I asked

25 you to review the logs that you personally took on

26 the occasion of the execution of that search warrant

27 on November 18th. Do you recall doing that?

28 A. That's correct. 7224

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1 Q. And I specifically asked you to review those
2 logs to see whether or not you found the name of
3 Janet Arvizo on any of those documents that you
4 took.

5 A. That's correct.

6 Q. And with regard to the documents you took,
7 you found the name of the Arvizo children listed,
8 did you not?

9 A. Yes, I did.

10 Q. And on the documents that you reviewed, did
11 you find the name of Janet Arvizo listed as a guest
12 at the ranch during any of those occasions?

13 A. No, I did not.

14 Q. Now, the records that you found, describe to
15 the jury the process that you went through
16 personally to take the records.

17 A. There were several boxes of records, and
18 there was a filing cabinet, and I had selected a
19 specific box to go through of records. And as I was
20 pulling the records out, looking over each
21 individual record searching for those individuals'
22 names, then I would set those aside. And when I was
23 done with a particular box or file, I'd hand those
24 to Detective Moeller so he could enter those into
25 the 451 form.

26 Q. All right. Now, lastly, with regard to the
27 logs and the documents that you actually took on

28 this particular occasion, did you find or take any 7225

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1 logs that went beyond the date of December 31st of
2 2002?

3 A. Can I check my --

4 Q. Do you need to refresh your recollection on
5 that?

6 A. Yes, I do.

7 Q. What document are you doing that from?

8 A. The SH-451 form.

9 Q. All right. Please take a look at it and see
10 if it refreshes your recollection. That's just for
11 the documents you took, now.

12 A. Correct.

13 Yes, just the last entry is 12-2 of .02.

14 Q. Nothing with regard to the year 2003?

15 A. No.

16 MR. SNEDDON: Thank you. No further
17 questions.

18

19 CROSS-EXAMINATION

20 BY MR. SANGER:

21 Q. Detective Sutcliffe, how are you?

22 A. Good morning.

23 Q. The logs that you saw were located in the
24 security office; is that correct?

25 A. That's correct.

26 Q. All right. And that is, once again, the
27 office at the end of the building that has the

28 garage on the first floor and the video library on 7226

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1 the second floor; is that correct?

2 A. That's correct.

3 Q. Did you search the administration building?

4 Do you know where the administration building is?

5 A. No. If you could tell me where it is.

6 Q. Up on the hill.

7 A. No, I did not search the administration

8 building.

9 Q. Okay. Did you -- did you -- and you were

10 briefed before you went out there to do the search;

11 is that correct?

12 A. That's correct.

13 Q. The search warrant did not include the

14 administration building, did it?

15 A. I don't recall on that.

16 Q. Okay. And you did not search the office at

17 the gate; is that correct?

18 A. No, I did not.

19 Q. You said the last record you have an entry

20 for in your sheriff's booking form is December 2,

21 2002; is that correct? Is that what you just said?

22 A. Can I check?

23 Q. Sure. Certainly. I thought I was wrong.

24 But you need to look. That's fine. Okay.

25 A. Yes, 12-2 of .02.

26 Q. Okay. That's the last record you seized; is

27 that correct?

28 A. That's the last -- the latest date. 7227

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1 Q. That's the last date or the latest date that
2 you seized, correct?

3 A. That is correct.

4 Q. That is not the latest date that you saw?

5 A. I don't recall any further than that.

6 Q. Do you recall seeing records there at that
7 office that went through the end of 2002?

8 A. Yeah, I -- I recall. I think there was some
9 2003 records as well.

10 Q. Some 2003?

11 A. But I didn't seize those, no.

12 Q. In any event, you just seized the records up
13 to the date -- let me withdraw that.

14 You just seized the records that had entries
15 for the names that you were looking for, correct?

16 A. Correct.

17 Q. And you did not make any record of the last
18 date of any records that were there; is that
19 correct?

20 A. I don't understand the question, I'm sorry.

21 Q. That's fine. You did not make a note of the
22 last -- the most recent record that was there
23 present in the office; is that correct?

24 A. The only ones I'm real familiar with are the
25 ones I collected. And the last date of the items I
26 collected was -- the latest date was 12-2 of 2002.

27 Q. Okay. My question was, you did not make a

28 note of the latest date that was present in the 7228

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1 office, did you?

2 A. No, I did not.

3 Q. And your recollection was, however, that you
4 did not have the current logs for 2003, correct?

5 A. I recall that there was some 2003 logs. I
6 just remember dates for 2003, but I don't recall
7 what exactly they were.

8 Q. Okay. You didn't have logs -- this was
9 November 18th, 2003, that you're there, right?

10 A. Correct.

11 Q. You didn't have the logs for November 17th,
12 for instance, did you?

13 A. Not that I'm aware of.

14 Q. All right. And you did not locate the
15 current logs for the recent months of 2003 in your
16 searching, correct?

17 A. I personally did not, no.

18 MR. SANGER: All right. I have no further
19 questions. Thank you.

20

21 REDIRECT EXAMINATION

22 BY MR. SNEDDON:

23 Q. Well, let's just get this straight so
24 everybody understands it.

25 You were only authorized by the warrant to
26 seize documents through the time that the Arvizo
27 family was there, isn't that correct, through March

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1 A. That's correct.

2 Q. So there would be no reason to look for
3 documents in April, May, June, July, November of
4 2003?

5 MR. SANGER: Objection. That's leading and
6 it's also argumentative.

7 THE COURT: Sustained.

8 Q. BY MR. SNEDDON: In the execution of the
9 search warrant, are you bound not to review the
10 records that go beyond the period authorized by the
11 judge in the warrant?

12 A. Yes.

13 Q. Now, with regard to whatever document you
14 may have seen in 2003 that would have been within
15 the time limit of the warrant itself, did you
16 personally see anything within 2003?

17 A. No.

18 MR. SANGER: Excuse me, I'm going to object
19 to that question. The way it's phrased is -- it's
20 vague and it's also compound, if I understand it at
21 all.

22 THE COURT: Sustained.

23 Q. BY MR. SNEDDON: Did you personally see any
24 documents during your examination of the records
25 covering the month of January 2003?

26 A. I don't recall the specific month. I just
27 remember seeing 2003s. Seems to me that there was

28 some, but I don't recall any specific information 7230

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1 about 2003.

2 Q. In the execution of the warrant, if you'd
3 seen something during the time period set forth in
4 the warrant, in other words, January, February,
5 March of 2003, and it contained the name of any of
6 the parties that you were looking for, would you
7 have taken it?

8 A. Yes, I would have.

9 MR. SNEDDON: Nothing further. No further
10 questions.

11 THE COURT: Thank you.

12 MR. SNEDDON: Investigator Rooney.

13 THE COURT: We'll take our break.

14 MR. SNEDDON: Okay.

15 (Recess taken.)

16 THE COURT: Counsel?

17 MR. SNEDDON: Thank you, Your Honor. Tim
18 Rooney.

19 THE COURT: Remain standing, please. Face
20 the clerk and raise your right hand.

21

22 TIMOTHY ROONEY

23 Having been sworn, testified as follows:

24

25 THE WITNESS: I do.

26 THE CLERK: Please be seated. State and
27 spell your name for the record.

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1 THE CLERK: Thank you.

2

3 DIRECT EXAMINATION

4 BY MR. SNEDDON:

5 Q. Mr. Rooney, you're employed by the Santa

6 Barbara County District Attorney's Office, correct?

7 A. Yes, sir.

8 Q. How long have you been with the District

9 Attorney's Office?

10 A. 16 years.

11 Q. And in what capacity are you employed by the

12 District Attorney's Office?

13 A. Senior criminal investigator.

14 Q. Before that, did you have law enforcement

15 experience?

16 A. 11 years with Santa Barbara Police

17 Department.

18 Q. Okay. Now, on November the 11th of --

19 November the 18th, I'm sorry, November 18th, 2003,

20 were you assigned to participate in the execution of

21 a search warrant on Neverland Valley Ranch?

22 A. Yes.

23 Q. And what were your -- was part of the

24 assignment that you were given that day to

25 participate in the review of some documents and logs

26 in the security office?

27 A. Yes.

28 Q. And were you working in conjunction with 7232

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1 other people in doing that?

2 A. Yes, sir.

3 Q. I'm not sure that mike's working. You might

4 want to try that one there.

5 A. Okay.

6 Q. And who was it that you were working with in

7 processing these documents?

8 A. Sergeant Steve Cleaves from the sheriff's

9 office, Deputy Moeller from the sheriff's office,

10 Tim Sutcliffe from the sheriff's office, Shelly

11 Sweeton, a criminal investigator with the District

12 Attorney's Office, and myself.

13 Q. And from where did you obtain the materials

14 that you personally went through?

15 A. From the security area.

16 Q. And were they in some form of containers?

17 A. Yes.

18 Q. What kind?

19 A. Some were retrieved from files that were in

20 file cabinets and boxes.

21 Q. Now, what is the process that you used in --

22 first of all, were you given a list of names of

23 people to look for on these logs and records?

24 A. Yes.

25 Q. And what was the nature of the records that

26 you were looking through?

27 A. Records consisted of logs of people going in

28 and out of the ranch, employees, guests, business 7233

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1 vendors.

2 Q. And you had a list of names to look for; is
3 that correct?

4 A. Yes, sir.

5 Q. And during the course of your examination of
6 the documents that you personally examined, did you
7 have occasion to remove some of those documents?

8 A. Yes, I did.

9 Q. And after you removed them, what did you do
10 with them?

11 A. I notified Deputy Moeller and he scribed
12 them, took them from my possession and documented
13 them.

14 Q. So he took them from you, you gave them to
15 him and he documented them --

16 A. Yes.

17 Q. -- is that correct?

18 A. Yes, sir.

19 Q. Now, have you had a chance to review the
20 documents that you took on that particular day --

21 A. Yes.

22 Q. -- generally speaking?

23 A. Yes, I have.

24 Q. Do any of those documents include documents
25 after the date of December 31st of 2002?

26 A. I don't believe so.

27 MR. SNEDDON: No further questions.

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1 CROSS-EXAMINATION

2 BY MR. SANGER:

3 Q. Good morning.

4 A. Good morning.

5 Q. It's still morning. We always have to check

6 here. We get kind of out of sequence.

7 Did you write a report in this case?

8 A. No, sir.

9 Q. Your assignment, among other things, was to

10 look through those documents; is that correct?

11 A. Yes.

12 Q. Were you assigned to do anything else in

13 this case?

14 A. I helped search the video movie room that he

15 had.

16 Q. The video library?

17 A. Yes, the library.

18 Q. I'm sorry.

19 A. The video library at the ranch.

20 Q. I didn't mean to talk over you.

21 Okay. The video library was upstairs in the

22 same building as the security office?

23 A. Yes.

24 Q. And you also were assigned to stand watch

25 over the guest units until somebody came to search

26 them?

27 A. Yes.

28 Q. Okay. Other than that, did you do anything 7235

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1 else in this case?

2 A. I went to the back employee area and stood
3 by till somebody came -- from the sheriff's office
4 came and contacted the employees.

5 Q. Okay. Did you search the administration
6 building? Let me ask the foundational question. Do
7 you know where the administration building was on
8 the ranch?

9 A. No, sir.

10 Q. Okay. You were down at the main residence
11 on the adjoining building with the video library and
12 the security office, correct?

13 A. Yes, sir.

14 Q. You did not go up on the hill to an
15 administration building to search there, did you?

16 A. Yes, that's the building I was referring to
17 in the back. I didn't search there, but I stood by
18 with the employees until somebody from the sheriff's
19 office relieved me. I did not search that area.

20 Q. You're saying "the back." Do you mean right
21 behind the house?

22 A. Up high where you're talking about.

23 Q. What does that building look like?

24 A. I don't remember.

25 Q. Was it an industrial-looking building?

26 A. I believe so.

27 Q. Okay. So we're then talking about the -- is

28 that the building that has a fire truck up there? 7236

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1 A. There were no fire trucks when I was up
2 there, I don't believe, but other employees'
3 vehicles.

4 Q. All right. Okay. In any event, you did not
5 search inside of that administration building; is
6 that correct?

7 A. That's correct.

8 Q. And you're aware at the front gate there is
9 an office at the gatehouse; is that correct?

10 A. Yes, there is.

11 Q. Did you search the office at the gatehouse?

12 A. No, sir.

13 MR. SANGER: Okay. Thank you. No further
14 questions.

15 MR. SNEDDON: Nothing further.

16 THE COURT: Thank you. You may step down.

17 MR. SNEDDON: Detective Moeller.

18 Is that one on?

19 BAILIFF CORTEZ: It's on.

20 THE COURT: Remain standing. Face the clerk.

21 Raise your right hand.

22

23 STEVEN MOELLER

24 Having been sworn, testified as follows:

25

26 THE WITNESS: I do.

27 THE CLERK: Please be seated. State and

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28 spell your name for the record. 7237

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1 THE WITNESS: My name's Steven Moeller,

2 M-o-e-l-l-e-r.

3 THE CLERK: Thank you.

4

5 DIRECT EXAMINATION

6 BY MR. SNEDDON:

7 Q. All right. Mr. Moeller, you're going to

8 have to scoot up to that microphone there.

9 A. Can you hear me?

10 Q. That's perfect. That's as good as it gets

11 in here.

12 All right. You're a deputy employed by the

13 Santa Barbara County Sheriff's Department?

14 A. I am.

15 Q. How long have you been with the department?

16 A. 30 years.

17 Q. And what are your current duty assignments?

18 A. Currently I'm attached to the Aviation

19 Bureau of the sheriff's department.

20 Q. And on November the 18th of 2003, you are

21 one of the people who participated in the execution

22 of a search warrant at Neverland Valley Ranch; is

23 that correct?

24 A. That's correct.

25 Q. And on that particular occasion, were you

26 assigned some responsibilities in connection with

27 the execution of that warrant at the security

28 office? 7238

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1 A. Yes, I was.

2 Q. And what were those responsibilities?

3 A. To go through various documentation looking
4 for specific names on the list, and doing a basic
5 search of that security office.

6 Q. All right. And were you assigned a
7 particular responsibility with regard to any of the
8 documents that were found during the course of that
9 search?

10 A. Yes. I was a scribe.

11 Q. What's that mean?

12 A. That means that I -- for the search team,
13 once they find something that they believe they want
14 to hold as evidence, they turn it over to me, I
15 assign it a number, and then I fill out the property
16 sheet.

17 Q. And then after you assign it a number and
18 you fill out the property sheet, what do you do with
19 it? What did you do with it on this occasion?

20 A. The evidence?

21 Q. Yes.

22 A. Bagged it.

23 Q. Okay. And then after you bagged it?

24 A. I turned it over to the evidence officer.

25 Q. All right. Now, you were working with some
26 other officers in the security office who you
27 provided the scribe responsibilities for. Now, who

28 were the other officers you were working with in 7239

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1 there?

2 A. There was Sergeant Steve Cleaves, Detective
3 Sutcliffe, Detective Rooney, and Detective Sweeney.

4 Q. And as they -- as they gave you the
5 particular item and you assigned a number to it, did
6 you make out what's called an SH-451 form?

7 A. I did.

8 Q. What is that, for the jury?

9 A. Basically that takes the evidence that's
10 turned over, any description of that evidence, and
11 we log who located that evidence and what location.

12 Q. All right. I want to show you a series of
13 exhibits, with the Court's permission.

14 I can approach the witness, if I might.

15 THE COURT: Yes.

16 MR. SNEDDON: And Counsel, this is 300
17 through --

18 MR. SANGER: 334.

19 MR. SNEDDON: 334. Excellent.

20 Q. I'm going to ask you to examine the items
21 300 through 334, which basically ends where that
22 yellow tag is.

23 MR. SANGER: Your Honor, I'm going to object
24 to this procedure as cumulative, in that there's
25 already a foundation and these documents were
26 admitted.

27 MR. SNEDDON: I have other questions about

28 the documents that I'm going to ask. 7240

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1 THE COURT: I'm not going to rule on your
2 objection, because I don't know -- he's just asked
3 him to look at the records. So I don't know if it's
4 cumulative or not.

5 Q. BY MR. SNEDDON: Okay. Have you looked at
6 all those documents?

7 A. I have.

8 Q. Now, with regard to the very last one, this
9 is People's 333, it's in evidence, it's the one --
10 yeah, flip that over, because I'm going to ask you a
11 question about -- no. Flip it this way.

12 A. Okay.

13 Q. With regard to that particular document, in
14 the upper left-hand corner is a number written in
15 ink; is that correct?

16 A. That's correct.

17 Q. And do you recognize that number?

18 A. Yes.

19 Q. Okay. Did you put that number on there?

20 A. I did.

21 Q. Okay. Now, go back one more document, if
22 you would. That document -- excuse me. With regard
23 to the exhibit we were just talking about is in
24 small numbers, black ink, correct?

25 A. That is correct.

26 Q. Now, go back one more.

27 MR. SANGER: May I approach, Your Honor?

28 I'm not sure I'm following this. 7241

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1 THE COURT: Yes.

2 MR. SNEDDON: It's the same as in yours.

3 MR. SANGER: It's a different colored ink on
4 that one. This is not colored.

5 MR. SNEDDON: It's black.

6 MR. SANGER: I see, okay. That was the
7 first number? Can I just ask where the second
8 number was?

9 THE WITNESS: 602?

10 MR. SNEDDON: That's on 601.

11 THE WITNESS: 601.

12 MR. SNEDDON: In the upper left-hand corner
13 of the document.

14 MR. SANGER: All right. Thank you.

15 Q. BY MR. SNEDDON: Moving back, the next
16 document has, in the upper left-hand corner, what
17 number in black?

18 A. 6-3-5.

19 Q. Is that your handwriting?

20 A. Yes.

21 Q. Now, the handwriting with regard to 635
22 compared to 601 is significantly larger, is it not?

23 A. It is.

24 Q. Okay. And with regard to the review of the
25 documents that I asked you to do in front of the
26 jury here, those all have large print on them like
27 the 6 -- like the one that's marked as People's 332,

28 correct? 7242

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1 A. Correct.

2 Q. So even though they're smaller in size in
3 one case and bigger in others, it's the same
4 handwriting, your scribe?

5 A. It is.

6 Q. Do you have your SH-451 form --

7 A. I do.

8 Q. -- with you?

9 Don't look at it yet. I'm going to ask you

10 a question.

11 A. Okay.

12 Q. And if you have to look at it, I'll let you
13 do that.

14 A. Oh. Okay.

15 Q. With regard to the items that were given you
16 from No. 300 through 332 - okay? --

17 A. Okay.

18 Q. -- were any of those documents beyond the
19 date of January 1st, 2003?

20 A. I don't believe so.

21 Q. Did you -- would your SH-451 help you
22 refresh your recollection to that effect?

23 A. It might.

24 Q. Make sure you're certain of that.

25 Let me just ask you a question. Your
26 report, your SH-451, is listed by item number,
27 correct?

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1 Q. So it doesn't necessarily correspond,
2 without individually looking at every page, as to
3 which is which?

4 A. Correct.

5 Q. So why don't we just turn all the way back,
6 just momentarily to get the place on this, to Item
7 No. 300 -- or Item 301. How's that? Just turn the
8 book to 301.

9 A. 301.

10 Q. Okay. And that corresponds to your Item No.
11 614, correct?

12 A. Correct.

13 Q. Just run consecutively to 614 down to the
14 end of your documents.

15 MR. SANGER: I'm going to object, Your
16 Honor.

17 MR. SNEDDON: Let me do it another way.

18 MR. SANGER: Sorry. Go ahead.

19 Q. BY MR. SNEDDON: Just please review your
20 form for right now.

21 A. Okay.

22 Q. And, now, does that refresh your
23 recollection as to whether or not items -- the
24 evidentiary items 301 through 332 were all items
25 from the year of 2002?

26 A. With the exception of one.

27 MR. SANGER: I'm going to object, Your

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28 Honor. The exhibits speak for themselves. We're 7244

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1 getting a report about the exhibits.

2 THE COURT: He just asked him to refresh his
3 recollection. If I understand your objection
4 correctly, I'll overrule it.

5 MR. SANGER: Well, the objection was -- the
6 question was, what is the dates on the exhibits, not
7 in his report.

8 THE COURT: He asked him to review the item
9 and see if it refreshed his recollection.

10 Q. BY MR. SNEDDON: This would be only through
11 Items -- your Item 635?

12 A. Correct. 2002.

13 THE COURT: I think what's happened is the
14 question is in two stages. So I'll ask you to break
15 the question down to two separate questions.

16 MR. SNEDDON: Yes, Your Honor. I will do
17 that.

18 Q. Does reviewing your SH-451 form refresh your
19 recollection as to whether or not the Exhibits 301
20 through 332 are all from the same year?

21 A. Correct.

22 Q. And that year would be what?

23 A. 2002.

24 Q. And there was a single document which is
25 Exhibit 333, correct?

26 A. Correct.

27 Q. One-page document. That was from the year

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1 A. Correct.

2 MR. SNEDDON: Nothing further.

3 MR. SANGER: The only problem is the book

4 that was given to me has a two-page document. Maybe

5 it's two sides of one page.

6 May I just inquire?

7

8 CROSS-EXAMINATION

9 BY MR. SANGER:

10 Q. 333, is that two pages, or is it one page

11 with two sides, or what is it?

12 A. Two sides.

13 Q. Actually --

14 A. Well --

15 Q. -- one piece of paper?

16 A. No, two pieces of paper.

17 Q. So basically, then, the answer would be

18 Exhibit 333 is two pages that pertain to 2003?

19 A. Correct.

20 Q. Without getting too complicated here, you

21 have a number of records which include gate logs

22 from 2002?

23 A. Correct.

24 Q. And then you have two pages, which is

25 Exhibit 333, that are not gate logs; is that

26 correct?

27 A. No, they're not.

28 Q. Okay. So you have -- those are a Neverland 7246

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1 Valley Fire Department Emergency Medical Report from
2 2003, correct?

3 A. Correct.

4 Q. And then there's a Neverland Valley Medical
5 Report Log from 2003?

6 A. That's also correct.

7 Q. So those medical reports are from 2003. The
8 gate logs that you scribed in during the search were
9 from 2002?

10 A. Correct.

11 Q. There you go.

12 Now, by the way, is your assignment with the
13 Aviation Bureau, is that a -- does that mean you're
14 up in the air full time in a helicopter or a plane?

15 A. Yes.

16 Q. That's where you are at all times?

17 A. As much as --

18 Q. As much as you can, probably?

19 A. As much as the county can afford.

20 Q. When did you first get that assignment?

21 A. Approximately six years ago.

22 Q. All right. So at the time you were -- you
23 were assigned to do this, you were taken out of the
24 air to come down to the ground and help out?

25 A. Actually, during that year that the search
26 warrant occurred, I was temporarily with the
27 narcotics unit for about eight months.

28 Q. So you were working as a detective? 7247

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1 A. I was.

2 Q. And you have prior experience as a detective
3 in the department?

4 A. No.

5 Q. That was your only time as a detective?

6 A. Yes.

7 Q. All right. Now, you were briefed on this
8 search before you went out to the ranch, correct?

9 A. Correct.

10 Q. And you received a copy of the search
11 warrant, correct?

12 A. Correct.

13 Q. And you were aware of the structures that
14 were covered by the search warrant; is that correct?

15 A. Correct.

16 Q. And that would be the main house, correct?

17 A. Correct.

18 Q. The security office, correct?

19 A. Correct.

20 Q. And then the arcade building?

21 A. Yes.

22 Q. Did you search the administration building?

23 A. I did not.

24 Q. Do you know where that administration
25 building was?

26 A. No.

27 Q. Were you aware there was an

28 industrial-looking building up on the hill? 7248

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1 A. If that's by the fire department --

2 Q. Yes.

3 A. -- area, yes.

4 Q. You're aware of that building?

5 A. I'm aware of that building, yes.

6 Q. But you did not search it?

7 A. I did not.

8 Q. And you're aware of the gatehouse or the

9 office next to the gate, the very front gate on

10 Figueroa Mountain Road, correct?

11 A. Yes.

12 Q. And that was an office that was not searched

13 as well; is that correct?

14 A. I did not search that.

15 MR. SANGER: All right. Okay. No further

16 questions.

17 MR. SNEDDON: Nothing further, Your Honor.

18 THE COURT: You may step down.

19 MR. AUCHINCLOSS: Your Honor, we'll call

20 Jeff Klapakis as our next witness.

21 THE COURT: All right. Come forward. When

22 you get to the witness stand, you may be seated.

23 You're still under oath.

24 LIEUTENANT KLAPAKIS: Yes, sir.

25

26 JEFF KLAPAKIS

27 Having been previously sworn, resumed the

28 stand and testified further as follows: 7249

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1 DIRECT EXAMINATION

2 BY MR. AUCHINCLOSS:

3 Q. Good afternoon, Lieutenant Klapakis.

4 A. Good afternoon.

5 Q. You've previously testified in this case
6 that you were a lieutenant assigned to the Michael
7 Jackson case. During the month of January in 2004,
8 did you serve a search warrant on the home of
9 F. Marc Schaffel?

10 A. Yes.

11 Q. And where did you serve that warrant?

12 A. In Calabasas, California. At his residence.

13 Q. What was the date of the -- that the warrant
14 was served?

15 A. January 31st, .04.

16 MR. SANGER: Before we go any further --

17 yes, all right. Before we go any further, could we
18 approach the bench briefly?

19 THE COURT: Yes.

20 MR. SANGER: Thank you.

21 (Discussion held off the record at sidebar.)

22 THE COURT: (To the jury) Before we have any
23 further testimony, I have to hear some motions, and
24 not just as to this witness, but to several
25 witnesses that the District Attorney is anticipating
26 calling. And there's -- I don't see any way that we
27 could complete those this afternoon, so I'm going to

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28 have to let you go home. 7250

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1 THE JURY: (In unison) Oh.

2 (Laughter.)

3 THE COURT: I knew you would be disappointed.

4 So you don't come back.

5 THE JURY: (In unison) Oh.

6 THE COURT: And I'll see you Monday at 8:30.

7 Remember the admonitions.

8 Let me just say one thing to you. This is

9 not unusual. When you get to the end of either side

10 of the case, things -- it starts stuttering. Every

11 case I've ever had, those -- the witnesses that are

12 left are the ones that have something that I have to

13 do, and it's just not unusual. I don't want you to

14 think it is. It just sort of -- cases don't just

15 ride out to the end smoothly and stop. At least not

16 in my court. They always go bump, bump, bump.

17 That's where we are; bump, bump, bump.

18 So I'll see you next Monday.

19 I'm going to just leave the stand for a

20 moment until you're ready to start the motions.

21

22 (The following proceedings were held in

23 open court outside the presence and hearing of the

24 jury:)

25

26 MR. SANGER: Your Honor, before you start on

27 the motion, I asked Mr. Dunkle to come over and sit

28 in, because so many of these things were filed at 7251

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1 the last minute and he's worked on responses, so I'd
2 like to have him here. And he'll be here in a few
3 minutes, but we can start without him, of course.

4 THE COURT: That's fine.

5 All right. The first item on the calendar
6 is the plaintiff's motion in limine re admission of
7 expert testimony on Battered Women's Syndrome. I
8 deferred ruling. I would like to have Mr. Sneddon,
9 whoever is handling the motion here, explain to me
10 why this witness is necessary, what you intend to
11 prove.

12 MR. AUCHINCLOSS: This is my motion, Your
13 Honor. And given the enormity of the evidence
14 concerning Janet Arvizo's 16-year abusive
15 relationship at the hands of her husband, and given
16 the fact that the charges and facts of this case
17 fall immediately upon the end of that 16-year
18 relationship, both sides have made the issue of this
19 relationship central to this case.

20 The defense has even attempted to use this
21 relationship to show that Miss Arvizo was somehow
22 fraudulent in the J.C. Penney case by attempting --
23 I won't concede that they were successful, but they
24 attempted to lead the jury to believe that some of
25 her injuries were, in fact, caused by her husband.
26 So there doesn't seem to be any contention that both
27 sides agree that this woman suffered at the hands of

28 her husband. 7252

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1 THE COURT: I guess the issue that I want
2 discussed is what is the relevance here. The code
3 section says that if you show relevance and you have
4 an expert that will so testify --

5 MR. AUCHINCLOSS: Very well. I'll go
6 straight to the point.

7 False imprisonment. Child endangerment.

8 Personal verbal attacks. Death threats. Isolation.

9 Hopelessness. Emotional abuse. These are all the

10 central issues of domestic violence. They are also
11 the central issues in this case.

12 Domestic violence evidence, expert evidence
13 by a Battered Women's Syndrome expert, is designed
14 to debunk misperceptions about women who have
15 suffered this posttraumatic stress disorder. Women
16 who have been raped, women who have been beaten,
17 women who have been abused do not act in a -- in a
18 predictive manner.

19 There are many misconceptions about how
20 Janet Arvizo should act, given the stimulus of the
21 defendant's conduct in this particular case.

22 Specifically -- these are problem areas for this
23 jury that this expert will help them now to wade
24 through. Specifically, why did she return to her
25 abusers at Neverland? The jury needs to understand
26 that. Victims of domestic violence virtually always
27 return to their abusers.

28 Why didn't she go to the police? Why 7253

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1 doesn't she report this? Victims of domestic
2 violence -- this expert will testify, victims of
3 domestic violence, when they're threatened, when
4 they're abused, when they're taken advantage of,
5 they virtually never go to the police.

6 Why didn't she make greater attempts to
7 leave? Why didn't she just walk away? Those are
8 the questions of people who wonder why these women
9 stay in these domestic violence relationships. This
10 expert will help this jury understand this issue.
11 Why she's still susceptible, why she's so gullible.
12 Common traits in domestic violence cases. Why was
13 she so easily manipulated? Domestic violence
14 victims are routinely manipulated by the men who
15 abuse them. Why did she continue to trust in people
16 who had proven they were untrustworthy?

17 Another common trait, this learned
18 hopelessness. That's the terminology that the
19 experts use, "learned hopelessness"; that they
20 become eternal believers in, "Well, you know, if I
21 just tow the line, if I just do what I'm told, if I
22 don't make any waves, if I don't make any fuss,
23 everything will be okay."

24 Why did she act so helpless? A common
25 question that we all have of victims of domestic
26 violence and a common trait that's certainly
27 associated with this disorder.

28 Why did she have -- continue to have hope 7254

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1 and faith in Jackson when Jackson's people were
2 conducting this conspiracy around her? Again, this
3 sense of hope, trying to find some light at the end
4 of the tunnel, trying to believe, wanting to
5 believe. She wanted to believe that Jackson could
6 help her, even when all the evidence was contrary.
7 Why does she lie under oath? Now, here's an
8 important point. The defense has placed that fact
9 in the center of their attack on Janet Arvizo.

10 They've charged her with perjury. They made a big
11 deal about it. They questioned her extensively
12 about that.

13 And this expert will come forward and tell
14 you that victims of domestic violence virtually
15 always or routinely lie under oath and protect their
16 abusers. And that's exactly what she did in this
17 case.

18 THE COURT: But I'm having trouble keeping up
19 with you here. Are you talking at this point about
20 her lying under oath in depositions about whether
21 her ex-husband was abusive or not?

22 MR. AUCHINCLOSS: Yes, I am.

23 THE COURT: But just before that, you were
24 attributing the -- it wasn't -- you were sort of
25 placing Mr. Jackson in the position of a husband,
26 weren't you?

27 MR. AUCHINCLOSS: Well, I am. I'm

28 placing -- 7255

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1 THE COURT: You made a big jump there.

2 MR. AUCHINCLOSS: Well, I did. And I'm

3 saying that Mr. Jackson was in a position where he

4 could exploit the vulnerabilities of a woman who

5 suffers from posttraumatic stress disorder.

6 Now, the statute itself says that the common

7 misperceptions regarding Battered Women's Syndrome

8 is admissible to help the jury understand the nature

9 and effect of the physical, emotional, mental abuse

10 on the beliefs, perceptions and behavior of victims

11 of domestic violence.

12 Janet Arvizo's beliefs, her perceptions and

13 her behavior in this case have been called into

14 question by the defense. And those beliefs,

15 perceptions and behaviors were altered, permanently

16 probably, during those 16 years of being a battered

17 wife.

18 Now, there are some interesting parallels

19 here, even though Mr. Jackson is not in a position

20 of being a typical classic father figure in a

21 family. I mean, there's the family overtones.

22 There's the I'm-going-to-take-care-of-you overtones.

23 There's certainly some interesting parallels here.

24 But this is primarily to help the jury understand

25 why Janet behaves the way she does. Many questions

26 are asked about this, and questions that have been

27 focused on by the defense.

28 And Janet behaves the way she does because 7256

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1 of her history as a victim of domestic violence.
2 Because of the stimulus that's provided, death
3 threats, she reacts that way when she gets death
4 threats. When she's scared, when she's upset, she
5 doesn't go to the police. When she's feeling
6 hopeless, she locks herself in a room and sits there
7 on Neverland and doesn't go out and see anybody.
8 She is -- is she paranoid? Yes, as most
9 victims of domestic violence are.

10 THE COURT: The thing I'm having trouble
11 with is that the case where this usually arises is
12 in a case where a -- if it's a husband -- let's use
13 that as an example. A husband is charged in court
14 with abusing his wife, and she testifies, and
15 there's a lot of inconsistencies because she didn't
16 report it, or at other times she said he was
17 abusive, he wasn't abusive, that type of thing, and
18 you have --

19 MR. AUCHINCLOSS: Well --

20 THE COURT: -- the testimony to explain
21 her -- it's not too different from the Child Abuse
22 Accommodation Syndrome, where the child doesn't
23 accurately report and you bring in an expert to
24 suggest why that would be, you know, in the total
25 scheme of things.

26 MR. AUCHINCLOSS: And you're exactly right.

27 THE COURT: In this case, that's not the

28 situation at all. I mean, she's -- 7257

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1 MR. AUCHINCLOSS: This is an unusual hybrid.
2 I couldn't agree more.
3 But as you pointed out, there's two tracks
4 here for admissibility. One deals with the conduct
5 of the defendant, and trying to understand Janet's
6 conduct, which I think is just -- just something
7 that this jury absolutely has to have to help them
8 understand Janet. She suffers from a posttraumatic
9 stress disorder. They should be apprised of that
10 and the classic symptomology, which is completely
11 counterintuitive. And we don't want this jury to
12 make this decision based on misconceptions. And
13 there are an abundance of misconceptions of how
14 women should be behave and how they actually do
15 behave when they've been abused by domestic
16 partners.
17 But the other side, the other track, which
18 is completely independent of this and which this
19 evidence should come straight in on, is to explain
20 why she didn't tell the truth under oath. It goes
21 straight to that issue, which the defense has chosen
22 to make a centerpiece on their attack on Janet.
23 So for the jury to understand why did she
24 perjure herself, why did she lie about her husband,
25 that's a highway to bring this type of evidence in
26 so that the jury can understand, that's normal.
27 Women who are -- who are abused do that. It

28 shouldn't be held against her, and it shouldn't be 7258

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1 used against her the way this defense intends to do,
2 and the way they tried to do when they examined her,
3 and the way they ultimately will do when they argue
4 this case.

5 So on one hand, the defense has asked for
6 it. They've asked -- they should have all the
7 evidence on what the reasons why she perjured
8 herself. But on the other hand, it's -- there are
9 many enigmas about why Janet acted the way she did,
10 and those enigmas are largely explained when people
11 understand that she is a classic -- she's exhibiting
12 the classic symptoms of posttraumatic stress
13 disorder.

14 And I might point out finally, just that
15 under the code, under the section here, this is not
16 exclusively used in the case of Battered Women's
17 Syndrome where there's a domestic violence, where
18 the husband is charged and the woman is the victim.
19 I mean, the code itself says "whenever it's
20 relevant." So it's not a matter of whether it's
21 normal or not. The question is, is it relevant?
22 Does it have a tendency in reason to prove --

23 THE COURT: Well, it's just that it's -- the
24 relevancy is very clear under the typical scenario.

25 MR. AUCHINCLOSS: Yes.

26 THE COURT: It's not so clear here.

27 MR. AUCHINCLOSS: But even in the cases, the

28 cases don't always just go to that classic scenario. 7259

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1 Sometimes it's used on the other side of the coin.

2 Sometimes it's used to show why the woman assaulted
3 the man.

4 THE COURT: Well --

5 MR. AUCHINCLOSS: And there's case law on
6 that as well.

7 THE COURT: Yeah, and --

8 MR. AUCHINCLOSS: So --

9 THE COURT: I chose the example of the man
10 assaulting the woman because that's the scenario we
11 have in front of me.

12 MR. AUCHINCLOSS: Sometimes it's used to
13 show that the defendant -- it's not only used to
14 show the victim suffered from post-traumatic.
15 Sometimes it's used to show the defendant
16 suffered --

17 THE COURT: Oh, I see what you're saying.

18 MR. AUCHINCLOSS: When the woman is charged
19 with murder, for instance, and an expert is
20 introduced to show she suffered from Battered
21 Women's Syndrome. So there are other cases.
22 But I agree with you, it's not always
23 simple, but we are not always confronted with simple
24 facts for the application of the law. But I will
25 say that it is abundantly clear that, under the
26 defense's own intent and their own tactic in this
27 case, they made it relevant, at a minimum, by

28 charging her with perjury and parading that out in 7260

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1 front of this jury.

2 So I would submit there are two very strong
3 reasons that make this evidence highly relevant.

4 And I don't think you can -- you can dispute the
5 fact that many of her -- much of her conduct is
6 counterintuitive, that -- and that it does fit
7 within a pattern that is prevalent among women who
8 are victims of this.

9 THE COURT: But you're saying that the

10 expert's going to testify that not only does the
11 spousal abuse accommodation theory explain why a
12 person doesn't report, prosecute, et cetera, a
13 person who is physically abusing them, and will say
14 that that's equivalent to this case where --

15 MR. AUCHINCLOSS: Yes, she will say that.

16 She will say that this -- this disorder, the
17 symptomology of this disorder, is not isolated to
18 the home. When they walk out of the home, they
19 carry this disorder with them. When they are
20 confronted in the world with the stimulus, the
21 similar stimulus that they have in the home, such as
22 death threats, such as false imprisonment, such as
23 threats of child abduction, such as trying to obtain
24 control, any act of power, isolation and control,
25 which we have here, when they're confronting these
26 types of influences, they react the same way they do
27 in the home. The posttraumatic stress disorder goes

28 with them wherever they go. 7261

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1 And that's what this witness -- this expert
2 witness will testify to. She will testify to that
3 these types of incidences are -- are Janet suffering
4 from this syndrome. That this type of behavior
5 is -- and not specifically, but generally, because
6 this will be general testimony, as it should be.
7 It's to demystify the area. But she'll testify that
8 women do not leave this disorder when they walk out
9 of the house or even when they leave their husband.

10 So --

11 THE COURT: Okay. Mr. Sanger, are you going
12 to discuss this?

13 MR. SANGER: Yes, sir. Yes, sir.

14 We briefed it, and I think the Court has hit
15 one of the major points on the head, is that this
16 isn't relevant to this kind of a case.
17 But responding to what Mr. Auchincloss said
18 in an effort to answer the Court's question, we
19 didn't make her perjury relevant. She has committed
20 perjury, I think it's pretty clear, in this court
21 from the stand. And she has said things that are
22 preposterous, that are absolutely counter to the
23 other evidence in the case. And that's not because
24 she's a battered woman. That's because she lies for
25 gain.
26 I don't want to be unnecessarily harsh, but
27 let's face it, that's what this is about. She took

28 the Fifth so that she has that protection to not be 7262

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1 cross-examined. But the Court is going to allow us
2 to bring in evidence that she lied for gain on
3 repeated declarations for money and got that money
4 and continued to get that money, and lied and
5 cheated her way through life. That is what she
6 does. That has nothing to do with being a battered
7 woman.

8 Now, the People say, well, they should bring
9 this in and because Mr. Auchincloss says she's
10 really suffering from posttraumatic stress disorder,
11 which is interesting, because they specifically
12 asked to exclude Dr. Hochman's testimony, who
13 indicates that she is basically an antisocial
14 personality disordered patient, person, who coaches
15 her children to lie. Remember, Dr. Hochman was the
16 one that said that, and that she lies for gain, and
17 lied for gain in that case in the J.C. Penney's case
18 itself. But he made a diagnosis after actually
19 seeing her and evaluating her and testing her. If
20 they're --

21 MR. AUCHINCLOSS: I'm going to object that
22 that misstates the evidence, and this should be a
23 legal argument rather than a factual one.

24 MR. SANGER: Well --

25 THE COURT: Overruled.

26 MR. SANGER: If they bring in PTSD and say
27 that's what this is all about, and she can get up

28 and say whatever she wants, obviously it proves too 7263

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1 much. It's not relevant to this case. It's not
2 relevant to the facts of this case, despite the
3 heroic effort to stretch it. But it would prove too
4 much. Anybody who claims that they were assaulted
5 by their husband could come into court, lie in the
6 trial proceedings before the Court, lie in countless
7 other proceedings, and under oath, and then say, "I
8 get a pass."

9 Now, there's nothing funny or nothing to be
10 minimized about being the victim of any kind of
11 violence, whether it's domestic violence or any
12 other kind of violence. But it proves too much to
13 say that therefore this witness, who Your Honor
14 heard for five days -- and we'll address this maybe
15 in an 1118.1 motion at some point here.

16 But without prejudging that, Your Honor
17 heard this witness for five days. That is not the
18 behavior of a shy, hopeless - what were the words? -
19 a hopeless person who can't stand up for herself.

20 She was perfectly willing to take Mr. Mesereau on as
21 aggressively as possible. She has taken other
22 people on in her history in that very same way.

23 When she wants something, she will get it.

24 There is nothing -- nothing shy about that
25 woman that was on the tape that was trying to keep
26 herself situated as close to Michael Jackson as
27 possible, while denying that Jay Jackson even

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28 existed. There is nothing shy about this woman at 7264

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1 any time. And she'll get up here and blatantly lie.
2 If the Court says, "Well, you can" -- if any
3 court said, "Well, you can bring in an expert to say
4 this person gets a pass and they can lie," what's
5 the point of cross-examination? What's the point of
6 coming into court and having the jury hear these
7 things?

8 Now, it simply proves too much. It's not
9 relevant to the facts of this case. If they do
10 intend to bring in something like that and claim
11 that it shows PTSD, and therefore she's not able to
12 tell the truth, what does that tell us? But if
13 they're able to do that, then we should, of course,
14 be able to bring in Dr. Hochman to say he knows
15 exactly why she doesn't tell the truth.

16 THE COURT: Don't you think there's
17 relevance, without conceding your position, though?
18 I'm having trouble with you, just like I am with the
19 District Attorney. There's two areas we're talking
20 about. One area, the claim is that she was the
21 victim of abuse by David Arvizo. And as the
22 District Attorney pointed out in his argument,
23 neither side seems to be -- that's not an area of
24 contest in this case. You know, when it occurred,
25 and all that, may be, but not that it actually
26 occurred.

27 So then we have the actual impeachment by

28 the defense of her testimony that Mr. Arvizo was 7265

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1 abusive by you, the defense, bringing in the
2 depositions of the J.C. Penney case where she denies
3 that he's abusive. And I don't want to go into the
4 evidence at length, but there was a considerable
5 amount of evidence relating to her responses in the
6 J.C. Penney case, and then the -- you know, the
7 final, ultimate statement by her that if she, you
8 know, was at the point that he was finally arrested
9 and removed from her presence, that she was able to
10 go to her attorney and explain some of the untruths
11 that she told.

12 That's one area.

13 Now, what's your argument, without drifting,
14 please, as to the relevance of her -- of expert
15 testimony explaining the Spousal Abuse Accommodation
16 Syndrome in regard to that issue?

17 MR. SANGER: Or Battered Women's Syndrome.

18 THE COURT: Yes.

19 MR. SANGER: So, if I'm understanding the
20 Court, the -- taking the argument -- and I
21 understand the Court's advancing for the purpose of
22 discussion, taking the argument --

23 THE COURT: You're giving me a discussion,
24 yes.

25 MR. SANGER: Taking the argument that, while
26 the testimony might not be admissible with regard to
27 Mr. Jackson and any other conduct associated with

28 people at Neverland, the argument may be relevant to 7266

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1 explain what happened with David Arvizo and why she
2 may have lied in the J.C. Penney's lawsuit.

3 THE COURT: Yes.

4 MR. SANGER: Okay. First of all, under 352,
5 let's start there, the Court has to make the cut at
6 some point on evidence that is going to come in to
7 explain what is an issue in the case, but it is not
8 the core issue in the case.

9 And the Court has made that determination

10 with regard to Dr. Hochman, for instance, that we
11 cannot bring in what we considered to be probative
12 evidence. The Court did not say it was not
13 probative. The Court said that you were going to
14 exclude it, I take it, in part, on the grounds that
15 it would be -- I believe the Court said on the
16 grounds that we're not going to have a complete
17 trial within a trial on all aspects of it.

18 So there does have to be a cut of some sort.

19 And it seems to me that's a place where we can start
20 with the discussion. Can they -- in a trial where
21 Mr. Jackson is on trial for his liberty over what
22 these people allegedly did, we're going to have an
23 expert come in, whose testimony should really be
24 limited to this very small area.

25 Now, I understand if the Court were to do
26 that, Mr. Auchincloss would not be allowed, nor
27 would anybody on that side be allowed to argue that

28 this testimony explains away her perjury in this 7267

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1 case or her perjury in other respects. But Your
2 Honor would propose that somehow the jury be limited
3 to that.
4 And so under 352, besides the undue
5 consumption of time, you have the potential for
6 prejudice to this defendant, to whom this witness
7 would not apply at all, but the jury would not be
8 capable of making that very surgical line, if you
9 make a line surgically, but make that line very
10 specifically. So it would cause prejudice, and it
11 would cause undue confusion to the jury, besides the
12 undue consumption of time.

13 Now, I want to address the relevance issue
14 even more specifically, but I started with 352,
15 because I think that really answers the question.
16 But going more specifically beneath that, to whether
17 or not it's probative at all on this, Your Honor
18 said we don't dispute that she was abused by her
19 husband.

20 There's already been reference to the fact
21 that there was a photograph taken of her where she
22 was appearing to assault her husband with a knife.
23 And she said it was all a game, but I will represent
24 to the Court that we have a number of witnesses who
25 say that she was the violent one in the marriage,
26 and was, in fact, striking not only her husband but
27 other family members, and she's --

28 MR. AUCHINCLOSS: I'm going to object that 7268

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1 this is all irrelevant as to what she -- what Janet
2 Arvizo is and what she may have done.

3 THE COURT: Overruled. Go ahead.

4 MR. SANGER: And we have a number of
5 witnesses who we could call for that. Whether we
6 will call them -- I'm representing they've been
7 interviewed and that's what they say. Whether we
8 will call them is a question of trial strategy and
9 tactics, depending on where this all goes, of
10 course. And there's evidence that -- well, suffice
11 it to say, without going into the detail, there's
12 evidence from third-party witnesses and family
13 members to that effect.

14 Given that, if the Court allows her to now
15 shore up her credibility as to why -- sort of a
16 strange phrase, shore up her credibility as to why
17 she perjured herself --

18 THE COURT: That's a phrase you've been
19 choosing. I mean --

20 MR. SANGER: What the prosecution would be
21 saying -- Your Honor argued this for them, I
22 suppose, because we're talking about this narrow
23 issue.
24 What the prosecution would be saying on this
25 part of it, I suppose, is, "Look, of course she lied
26 in J.C. Penney's because her husband's abused her
27 and she's afraid." So then when she -- when she

28 testified, she not only testified that her husband 7269

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1 never beat her and she loved her husband, and they
2 had a hide-away love nest, and there was all these
3 other things that went along with that deposition,
4 but she also felt compelled to testify that she was
5 sexually molested and all the other things that came
6 out in that deposition that were just inherently
7 preposterous. And they would argue, "Well, she's a
8 battered woman, so she tends to lie about everything
9 if she lies about anything."

10 THE COURT: The expert on the Battered
11 Women's Syndrome, doesn't the expert in that
12 situation just explain why a person who's been the
13 subject of abuse might not report it, might not
14 report it accurately, might at one time say one
15 thing about it and other times about another? That
16 explanation doesn't extend to everything a person
17 says thereafter to anybody, does it?

18 MR. SANGER: Well, it shouldn't, but I heard
19 Mr. Auchincloss just argue that it does. However,
20 focusing on the Court's argument, the question is
21 what would the expert bring to this?
22 The expert is not going to be able to
23 substantiate the argument that Mr. Auchincloss made,
24 and that's my point. The expert's not going to be
25 able to say that she committed perjury just in
26 general because she's hopeless. The expert can
27 simply say there are syndromes where a woman, or a

28 man, or anybody that's subject to a Battered Person 7270

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1 Syndrome, usually a woman, hence the name, but where
2 a person is subject to this syndrome, they are
3 beaten down, they're dependent on the person, they
4 feel hopeless. And the theory goes, therefore they
5 don't necessarily avail themselves of conventional
6 means to resolve the problem. They tend to go back
7 to the person, things that Mr. Auchincloss said are
8 common -- I won't adopt them all, but those that I'm
9 repeating are common denominators in the expert
10 testimony. And that will explain the traditional
11 case where, in fact, a woman doesn't go report it,
12 and when asked, after being beaten, says, "No, I
13 wasn't beaten."

14 It just doesn't explain the facts in this
15 case. When I say, "this case," I mean the J.C.
16 Penney's case. It certainly doesn't explain
17 anything in this case. But in the J.C. Penney's
18 case, it just doesn't explain the facts that are in
19 that case, where she will go in for gain and make up
20 a big story about all sorts of things for gain.
21 And then remember, Your Honor, she
22 doesn't -- it's not that she's afraid to report her
23 husband. She reports her husband five days after
24 they get a settlement by mediation, while they are
25 still deciding how the money's going to be split
26 between them. And during the months that ensue,
27 they can't decide, the insurance company files an

28 interpleader -- I don't know if they actually filed, 7271

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1 but stated in correspondence they're going to file
2 an interpleader because they don't want to have
3 anything to do with it. She reports him then for
4 sexual abuse. And he finally says, "I give up.
5 I'll just take 5,000 for my divorce lawyer and you
6 can have the rest." And that's not a battered
7 woman.

8 THE COURT: You're really not addressing the
9 issue. But --

10 MR. SANGER: I'm trying.

11 THE COURT: Let me ask you the other
12 question.

13 MR. SANGER: I'm sorry.

14 THE COURT: The area I cut you off on --
15 I just wanted to hear the argument related to my
16 hypothetical, so I cut you off from arguing why it
17 shouldn't apply, if the expert actually purported to
18 be able to apply it to the -- a situation outside of
19 the marriage or the relationship such as the Michael
20 Jackson connection that she has. I'll let you argue
21 that a little bit, because I wouldn't let you argue
22 it.

23 MR. SANGER: All right. And not wanting to
24 decline that invitation, could I make just one
25 closing remark on the other issue?

26 THE COURT: If it relates to my question,
27 yes.

28 MR. SANGER: And I want to tie it to the 7272

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1 question. I think that is the question, is Your
2 Honor says if it was limited to that issue, I
3 suppose the question is how do you limit it to that
4 issue? And that's why I come back to the 352, which
5 is if you let in a battered woman expert on that,
6 then we have all this other evidence as to whether
7 or not she was actually battered, and whether or not
8 she was behaving in accordance with a Battered
9 Women's Syndrome, which would open that whole area
10 substantially more than the Court, I think, intends
11 to have it opened at this point.

12 Having said that -- that was the point of
13 going on about the additional facts with regard to
14 that point.

15 Having said that, the -- the greater
16 argument, as it pertains to Mr. Jackson, who, after
17 all, is the person we're representing -- we're not
18 taking David Arvizo's side or not. You know, that's
19 something that either did or didn't happen. The
20 question is whether or not Janet Arvizo is telling
21 the truth in this case when she's accusing Michael
22 Jackson and other people at Neverland and elsewhere
23 of doing things to her.

24 And this syndrome, as it's typically
25 described in the testimony, would have no
26 application to this picture, despite Mr.
27 Auchincloss's argument that basically explains

28 perjury in general. 7273

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1 Not only that, we still do not have an
2 offer, specific offer of proof or a report of
3 anything from a Battered Women's Syndrome expert.
4 And as far as I know, they haven't elected which one
5 of the number that they listed on their list they
6 were going to actually call.
7 So we don't know what they're going to say.
8 We have to assume they're going to say no more and
9 probably no less than they generally will say in
10 domestic violence cases or cases in which the
11 parties, whichever one is the victim of the ultimate
12 offense, where the parties are husband and wife or
13 boyfriend and girlfriend, and they have that kind of
14 a relationship.
15 So if they give that kind of testimony, that
16 kind of testimony will not apply to this. That
17 means that they are expecting to call somebody who
18 is either going to say that, and therefore there's
19 no relevance, or they're going to call somebody
20 who's going to expand on the theory beyond any
21 measure upon which it's been approved to explain
22 that somehow this can give an account of what
23 happened here for five days.
24 THE COURT: Have you ever seen a case where
25 it's been applied, this testimony, to anything other
26 than the people involved in the relationship?
27 MR. SANGER: I have never seen such a case.

28 I have never seen such a case reported. 7274

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1 And let me just ask very quickly. Did you

2 see a report of this?

3 MR. DUNKLE: No.

4 MR. SANGER: And Mr. Dunkle, who is

5 religiously researching some of these things,

6 particularly the last-minute motions, has tried to

7 read every case there is on all of these things.

8 MR. AUCHINCLOSS: If the record could

9 reflect, Mr. Dunkle shrugged his shoulders.

10 THE COURT: Clearly he said, "No."

11 Right? I heard him absolutely say, "No."

12 MR. SANGER: I'm a battered defense

13 attorney.

14 THE COURT: The way he was shrugging his

15 shoulders was in fright. It was, "Don't ask me."

16 (Laughter.)

17 MR. DUNKLE: That's correct.

18 MR. SANGER: As a battered defense attorney,

19 I may not be able to hear him clearly. I guess

20 that's --

21 THE COURT: Okay.

22 MR. SANGER: The point is, I just don't see

23 how it can apply. If the Court has any other

24 questions, I'll answer them. Otherwise, I'll submit

25 it, Your Honor.

26 MR. AUCHINCLOSS: Two comments.

27 THE COURT: I'll let you make your two

28 comments, but let me ask you the same question. Do 7275

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1 you have any case where this has been allowed or
2 used other than between the two parties and the
3 typical domestic violence situation?

4 MR. AUCHINCLOSS: I don't have a reported
5 case.

6 THE COURT: Do you have any unreported case?

7 MR. AUCHINCLOSS: Um --

8 THE COURT: Oh, you're not supposed to cite
9 those, are you?

10 MR. SANGER: Rule of Court 977, but the
11 delay answered the question.

12 THE COURT: You should have let him make his
13 answer and then move to strike.

14 MR. AUCHINCLOSS: But the bottom line -- one
15 of my two important points is, number one, this is
16 apples and oranges to Dr. Hochman, who would testify
17 specifically about Janet Arvizo. This is not going
18 to be testimony about Janet Arvizo.

19 THE COURT: No, I understand that.

20 MR. AUCHINCLOSS: This is just general
21 testimony. Mr. Hochman would testify about
22 specifically Janet Arvizo and it's inadmissible for
23 that purpose.

24 THE COURT: You're getting --

25 MR. AUCHINCLOSS: Putting that aside, I want
26 to make that point, because it's not prejudicial to
27 the defendant. It's not about the defendant. It's

28 merely some information that the jury can use or not 7276

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1 use. It's up to them. If they think it applies to
2 this case, no problem. If they don't think it
3 applies, they're the arbiters. So in terms of
4 prejudice, really it's -- all it is is informing the
5 jury of the truth about a certain syndrome.

6 Secondly, as far as this thing about
7 perjury, I've never said that this gives her a pass
8 to commit perjury. And Battered Women's Syndrome
9 does not provide any exculpation of an individual
10 who lies under oath except for the individual who
11 lies about their mate. That is the one area, when
12 they say, "He didn't beat me." When they say, "He
13 didn't do anything." When they say, "He's a great
14 guy. Oh, he's a good person. He's an honest
15 person." When they say those things, that's where
16 they do get a pass, and that's the only area. And
17 that's what this witness would testify to. And
18 that's why it's so -- it's so important and so
19 probative in this case.

20 Thank you.

21 THE COURT: This is an area that has caused
22 me a great deal of concern. Probably why I didn't
23 rule on it initially, I wanted to hear all of the
24 evidence before making the ruling.

25 And I think this type of evidence is
26 valuable in domestic violence cases for jurors to
27 help understand the dynamics of a particular

28 relationship involving violence, but I'm not going 7277

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1 to allow it in this case. It may or may not explain
2 her -- or a person's conduct in a similar case, such
3 as the J.C. Penney case, which was not a domestic
4 violence case between her and her husband either, as
5 this one is. And I think it would be a mistake for
6 me to allow that type of evidence on what is a
7 peripheral issue in this case, i.e., whether or not
8 she told the truth in the Michael Jackson -- in the
9 J.C. Penney depositions.

10 The Court will also find, under 352, that in
11 this case the prejudicial effect far outweighs the
12 probative value of the information, in that the jury
13 might well confuse the purpose of the testimony,
14 which would be -- the only way I could see it at any
15 time would be to explain the relationship of the
16 abused and abusing couple.

17 And I also think that, under 352, to allow
18 the evidence would force the defense to approach the
19 abuse in a different area, a different way, which
20 would cause an undue use of time and prolong the
21 trial unduly.

22 So for all those reasons, the Court will
23 deny the use of the expert on the Spousal Abuse
24 Syndrome.

25 The next issue we'll take up is the
26 plaintiff's supplemental motion for admission of
27 additional evidence pursuant to Evidence Code

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1 MR. SNEDDON: Judge, I'll be brief. I just
2 want to correct a couple of misconceptions in the
3 response by the defense to this motion.
4 Mr. Kassim was on the original witness list
5 and has been since the beginning of this trial.
6 Secondly, the discovery with regard to Mr.
7 Kassim's statement was provided, along with all the
8 other materials, back in October of 2004 of the
9 statements that he made to police in 1994 -- in
10 1994, in May, during the course of the first
11 investigation involving Mr. Jackson. These have
12 been known to the defense since that period of time.
13 With regard to the motion itself, I will
14 indicate to the Court that he was not on the list of
15 the 1108, because in my view, with regard to the
16 observations that he made, as I've indicated in the
17 brief, they were corroborative of the testimony of
18 Mr. Chacon and did not involve the actual seeing of
19 any misconduct on the part of any individual. And
20 frankly, it didn't dawn on me that he couldn't just
21 come in and testify to those events. However, when
22 the Court asked me to do it and put it in writing
23 and defer his testimony, I was more than glad to do
24 so.
25 But this -- so this is not something that
26 we're trying to bootstrap into something we didn't
27 plan to do a long time ago. He's been on the

28 witness list, items have been discovered, and so we 7279

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1 filed a supplemental motion. And I believe that the
2 evidence is probative and is admissible under the
3 code section and certainly is -- sets a stage and
4 corroborates the testimony of Mr. Chacon in terms of
5 the fact of the defendant being with the children
6 that were mentioned by Mr. Chacon, and the events as
7 mentioned by Mr. Chacon, and then the corroboration
8 of the incidents by finding the swimming trunks in
9 the rest room when he went to turn the lights off
10 immediately after the defendant went from that
11 position to the house.

12 I'll answer any other questions that the
13 Court has, but that was -- I wanted to explain those
14 differences between our position and the defense's
15 position on the factual issues in terms of what was
16 and was not provided.

17 THE COURT: Okay. Counsel?

18 MR. SANGER: Yes, I don't know that
19 there's -- that there is a dispute, nor did we
20 intend to say there was a dispute about what Mr.
21 Sneddon said.

22 All of the people that they could find in
23 the Abdool, Chacon, McManus, Domz and Bagnall vs.
24 Jackson case, the civil case, all of those
25 plaintiffs were listed as potential witnesses in
26 this case on the December 6th witness list, as I
27 recall. If it wasn't that one, it was the one

28 shortly thereafter. That was not our complaint. 7280

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1 Our complaint was that Abdool was not listed in the
2 1108 -- specific 1108 motion where the government
3 spelled out what they intended to prove.
4 It has been and continues to be our
5 contention that the government is required to turn
6 over witness statements of witnesses who talk to the
7 government, whether it's police officers or district
8 attorneys. And our concern is that we had reports
9 from 1994. We've had testimony, of course, from
10 this Mr. Abdool in 1996 or '97, and that was
11 involving the case I was involved in in representing
12 Mr. Jackson, but we don't have any current reports.
13 And it's just hard to imagine that any of
14 these witnesses -- and I'm taking just a moment,
15 because this applies to other witnesses that will
16 come up, that any of these witnesses from times gone
17 by would just be called to the stand cold, without
18 even so much as a reinterview. So that was our
19 concern, so that was what we were trying to express.
20 And without anything new, and without
21 anything by way of an offer in the original 1108,
22 all we have now is the new offer, which is not based
23 on declarations, as so many of these motions are.
24 They're just things that are said in the motions,
25 and the government wants to call Mr. Abdool for
26 that.
27 This goes far afield. The Court was

28 limiting the testimony under 1108, recognizing, I 7281

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1 believe, that 1108 evidence can be very distracting
2 to the jury for the same 352 reasons that we've
3 discussed before, and the Court made an effort to
4 limit it, my belief was, to people who saw some
5 actual acts or purported to see some actual acts
6 that would amount to actual evidence as opposed to
7 circumstance and innuendo.

8 And not to go on about all the details of
9 Mr. Abdool's testimony and whether or not it's been
10 refuted by his own words, which I can indicate to
11 the Court it has been, but aside from that, you're
12 talking about a tangential witness to shore up
13 another witness who has testified here, and we're
14 turning the 1108 into more than it should be turned
15 into.

16 This still remains a balancing act, and the
17 Court has discharged that duty to balance by
18 attempting to limit the 1108 testimony so the jury
19 could hear what might be important to hear for the
20 purposes set forth in 1108 and not to allow 1108
21 evidence to overtake the significance of the actual
22 evidence in this case of guilt or innocence.

23 And so I think that expanding it any further
24 would be a mistake, and I think it would be -- it
25 would be harmful, be prejudicial, for all the
26 reasons under 352, consumption of time, confusion to
27 the jury, and prejudice to the defendant.

28 Thank you. 7282

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1 MR. SNEDDON: Your Honor, I just want to
2 make one comment and I'll -- with regard to Mr.
3 Sanger's position.
4 I think that the -- there's three incidents,
5 and I tried to be specific about the incidents
6 involved in the offer of proof. And clearly, my
7 take on it, and has been from the beginning, that
8 the first two incidents that really frankly involve
9 relevancy issues more than anything else, and that
10 they are like having multiple people see the same
11 events and you're allowed to call people in to
12 testify to certain portions of what they saw during
13 the course of those events.
14 Clearly, I think the third incident is one
15 that is more akin to the 1108 and 1101 kind of
16 evidence that's been before the Court. But clearly,
17 I think the first two incidents are ones that are
18 more, in the sense, relevant because they
19 corroborate Mr. Chacon as to significant events that
20 he's testified to in this case.
21 And there's been a -- an attempt by the
22 defense to claim that this evidence was fabricated
23 based upon his involvement in later suing Mr.
24 Jackson. And I think in fairness to Mr. Chacon,
25 when there's a witness out there who can testify
26 that he was also there that night and he also saw
27 the same things that Mr. Chacon saw, in terms of the

28 setting for the event and placing Mr. Jackson with 7283

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1 the child at the time that Mr. Chacon says, that
2 that's highly relevant evidence that this jury
3 should be presented with.

4 So I think there's a difference in the basis
5 for which the first two incidents would be
6 admissible as opposed to the third.

7 And I'll submit it.

8 THE COURT: You know, I want to take a couple
9 of minutes to read the briefs again on this. I'll
10 take a five-minute recess.

11 (Recess taken.)

12 THE COURT: What department is this? Where
13 are we?

14 (Laughter.)

15 THE BAILIFF: 8.

16 THE COURT: Okay. On this plaintiff's
17 motion for admission of additional evidence pursuant
18 to 1108 and 1101(b), I am going to deny the request
19 to allow the -- what I'll refer to as the bedroom
20 incident, which is your third incident.

21 I think I will allow the evidence relating
22 to the -- what you call the bathroom incident, the
23 swimming trunks. And the second one, the hug, that
24 will be allowed under 1101.

25 Then the next item on the Court's agenda is
26 the admissibility of certain testimony of several of
27 the defense proposed witnesses.

28 I have a way of sort of streamlining this 7284

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1 one. I can't tell how to rule without knowing why
2 you would offer a certain witness in what regard.
3 This is evidence that what you want to do is produce
4 employees who will declare that they never saw Mr.
5 Jackson touch a child inappropriately or something,
6 you know, some type of evidence. And it's,
7 generally speaking, negative evidence, you know. We
8 can call a million people who never saw him do that.
9 But if there's some way of advising me and the
10 prosecution in advance that a particular witness was
11 in a particular situation, it makes that not seeing
12 something germane, then we have a different
13 situation, right? Do you understand what I'm
14 saying?

15 MR. SANGER: Yes.

16 THE COURT: If you could give me the facts as
17 to a -- I don't know, maybe it would be a situation
18 where the District Attorney had a witness that said,
19 "I saw such and such happen," and you had a witness
20 that was there in the vicinity that didn't see such
21 and such happen, then that becomes relevant.

22 MR. SANGER: Yes.

23 THE COURT: Does my streamlining really
24 work?

25 MR. SANGER: No, it didn't work, Your Honor.

26 THE COURT: All right.

27 MR. SANGER: I'm here to prove that point.

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1 MR. SANGER: No, I understand what the
2 Court's saying.
3 Certainly that streamlined version -- I
4 think there's no question -- if they say at eleven
5 o'clock in the morning on the 1st of whatever,
6 somebody was standing outside the theater and
7 something untoward happened, and we have an
8 employee, for instance, who was working in that
9 vicinity at eleven o'clock and was vigilant, and we
10 can say he was looking around and he never saw any
11 such thing happen on that particular day, clearly
12 that's relevant. I mean, that wouldn't be a
13 question. So to the extent it's streamlined to that
14 extreme, I mean, obviously --
15 THE COURT: That's an extreme situation.
16 MR. SANGER: But I think that the kind of
17 evidence that we are talking about is much more --
18 is much broader than that. There will be evidence
19 of that sort. But there's also evidence of people
20 who, for instance, worked at the park, the amusement
21 park, saw children on a regular basis, saw Michael
22 Jackson with children on a regular basis, some of
23 whom saw the Arvizo children, some of them who did
24 not see the Arvizo children, per se. They may have
25 seen them, but they didn't see anything particular
26 with regard to those children one way or another,
27 but were able to say that they have seen Mr. Jackson

28 on a regular basis with children and never seen him 7286

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1 do anything inappropriate. There are also people
2 who would say that they did not see children who
3 were --

4 THE COURT: Do you think that's character
5 testimony? Now you're having people testify to a
6 trait of character. Do you want to put his
7 character in issue for the trait of, you know,
8 whatever?

9 MR. SANGER: Well, in essence, his character
10 has been put in issue and that was part of what we
11 briefed. 1108 evidence is -- the way 1108 is
12 written and the way it's been interpreted, although
13 we have thought -- I say "we." You know, the
14 defense bar in general and a lot of legal scholars
15 have thought that it really went overboard. It's
16 been interpreted as propensity evidence. That's
17 character evidence. If they're allowed to introduce
18 some evidence of some events from 12, 13, 15 years
19 ago for the purpose of showing propensity, which is
20 what 1108 allows, we should be able to counter that
21 by saying, no, there is no propensity.

22 And when they've been allowed to introduce
23 evidence of children running amuck, this is not
24 character as to Mr. Jackson, but you've heard the
25 testimony elicited by the prosecution that there are
26 children running amuck and totally unsupervised and
27 out of control. Some witnesses say that. And other

28 witnesses say, other than particular children, like 7287

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1 the Arvizos, for instance, children were not running
2 amuck, there was supervision, a certain amount of
3 decorum. I think those are relevant. That's not
4 character evidence as to Mr. Jackson. That is --
5 that is evidence that's directly offered to refute
6 the evidence that was put in by the prosecution.
7 So if we take those two different categories
8 and talk about those -- let's take the last one
9 first. Let's assume -- let's assume we put on a
10 witness who worked at the ranch in the public areas
11 and saw children on a regular basis and said, "I've
12 seen children on a regular basis there. I have not
13 seen any children under the influence of alcohol.
14 I had the opportunity to observe." Of course there
15 could be a foundation objection. But assuming that
16 there is a foundation, survives that, they have an
17 opportunity to observe and they say, during the
18 relevant time periods, "I saw dozens, hundreds of
19 kids," whatever it is, "and nobody was under the
20 influence," that's evidence we should be allowed to
21 present, because it directly refutes evidence that
22 was presented by the prosecution.
23 If we have evidence that -- so that's that
24 category, and I think that's pretty simple.
25 If we have evidence with regard to Mr.
26 Jackson behaving appropriately with children and
27 providing -- you know, not doing anything

28 inappropriate in his contact with them, that 7288

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1 counters the 1108 evidence, the propensity evidence.

2 THE COURT: Well, I think what I'll do is

3 I'll let you -- what I would do is let you, as to

4 each witness - and we're not going to do it now, but

5 either in through some written paragraph or through

6 some offer of proof before they're called - tell me

7 the basis, because I see some of those, but, you

8 know, the example you just gave me, an employee who

9 worked in the area of -- observed all these

10 children, never saw any of them drinking, you know,

11 if you had the ability and it was an area where they

12 would be seen if they were drinking, you know, then

13 I think I could -- I would go along with that

14 employee. But, you know, if he's a ranch hand and

15 comes in and out of the ranch occasionally and says

16 he never saw anyone, we're starting to talk about

17 people who wouldn't have an opportunity.

18 MR. SANGER: And that would be a foundation

19 issue.

20 THE COURT: So I think I need a better -- and

21 I would allow the D.A. to address each one, too.

22 It's not just showing me, but -- the general scheme

23 of things, there has to be something specific here

24 to make it relevant. Just plain negative testimony

25 isn't going to get it.

26 MR. SANGER: I understand.

27 So what the Court is saying, we have to show

28 a foundation for the observation; that if the 7289

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1 foundation is that there's adequate opportunity to
2 observe and that it's relevant to the area or the
3 time period.

4 THE COURT: Yeah. Something that makes the
5 fact they didn't see it relevant.

6 MR. SANGER: Right.

7 THE COURT: Which is -- and I think your
8 alcohol example is a good example of something that
9 I would allow.

10 MR. SANGER: All right. And -- and I don't
11 want to argue with the Court, and I'm not, but as
12 far as --

13 THE COURT: And just like you're not supposed
14 to talk over there by the witness stand, so you
15 always remind yourself of that right before you
16 start talking.

17 (Laughter.)

18 THE COURT: That saves me from reminding you.

19 (Laughter.)

20 MR. SANGER: It provides a warning,
21 actually.

22 THE COURT: Yes. Could I go direct to
23 contempt from there? Or -- go ahead.

24 (Laughter.)

25 MR. SANGER: Well, I'm just a little
26 concerned that we're sort of in the position of
27 having to make an offer of proof on all these

28 defense witnesses. 7290

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1 THE COURT: Just the ones relating to the
2 negative testimony.

3 MR. SANGER: Yeah. And there may be -- I
4 mean, we'll have witnesses who'll have percipient
5 testimony on very particular things for which there
6 would be no question. And they might also say
7 something like that. It puts us in a position of
8 just about every witness that worked at the ranch
9 that we're going to call, because we're not going to
10 call people that spent their entire time up at the
11 administration building or over at the zoo --

12 THE COURT: I don't think it's burdensome to
13 ask you to give me less than a paragraph. Just
14 something.

15 MR. SANGER: Not overburdensome to me, but
16 Mr. Dunkle, he's young, so he can take it. I say
17 that facetiously. If the Court requires it,
18 obviously we'll do it.

19 THE COURT: I think I do.

20 MR. SNEDDON: Judge, can I have 30 seconds
21 on this issue?

22 THE COURT: Well, I thought you were winning,
23 but if you want to --

24 MR. SNEDDON: No, I'm winning, but I want to
25 make something very clear that I think needs to be
26 very clear on the record on this issue that may have
27 not been clear from Mr. Sanger's remarks, but what's

28 abundantly clear from the Court. 7291

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1 I couldn't agree more with the Court, and I
2 couldn't agree more based upon the defense's own
3 case, the Calpine case. That if they attempt to put
4 people on the witness stand to testify to Mr.
5 Jackson not -- not seeing Mr. Jackson molest some
6 kid, that is opinion -- lay opinion testimony of
7 character and opens the door for us to do the
8 have-you-heards.

9 And I want to make it clear now, so that --

10 so they don't say I'm doing something different
11 later, that's not -- that has nothing to do with
12 1101 or 1108. That's for everything that contests
13 the credibility of that witness's lay opinion with
14 regard to Mr. Jackson's character trait for deviancy
15 or nondeviancy. And so I just want to make it clear
16 today that if that's where they go, that's where
17 we're going.

18 MR. SANGER: I want to make it clear that
19 that's not clear, because what Mr. Sneddon said was
20 lay opinion. If you bring somebody up to talk about
21 an opinion, that's one thing. But if you say, "Did
22 you see specific conduct during the relevant time
23 period," that's not opinion as to character. And
24 when we talked about 1108 being a type of character
25 evidence, it is propensity evidence. It's not
26 opinion.

27 THE COURT: It's not character evidence

28 under the legislative approach. 7292

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1 MR. SANGER: That's correct.

2 THE COURT: It is propensity evidence, and
3 it's an unusual statute, and California is one of
4 the few states that has it. But it's been held
5 constitutional, and we go by it.

6 MR. SANGER: And there it is.

7 THE COURT: But it's not character evidence.

8 MR. SANGER: I mean, I was speaking in
9 general terms. When you respond to propensity
10 evidence, which says there was conduct that
11 occurred, and you respond by showing that there is
12 conduct that is inconsistent with that, that is not
13 a lay opinion that's offered as character evidence.
14 So Mr. Sneddon getting up making the remarks, it was
15 welcome, because if there is any question --

16 THE COURT: I think he was responding to
17 your -- you argued more broadly than I think you
18 performed. In other words, you argued, "Well,
19 Judge, 1108's character evidence, so we can put on
20 character evidence."

21 MR. SANGER: Yes.

22 THE COURT: That's what you argued.

23 MR. SANGER: That's why I say, I welcome
24 that, because when I was saying it, I didn't mean
25 it --

26 THE COURT: I was just tipping you off, you
27 know.

28 MR. SANGER: Well, there you go. 7293

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1 But in any event, just so we're clear --

2 THE COURT: Okay.

3 MR. SANGER: -- Your Honor, it is not

4 character evidence. This is our position. It's not

5 character evidence to bring in specific acts.

6 THE COURT: You're telling me that you're not

7 going to offer character evidence.

8 MR. SANGER: That's correct.

9 THE COURT: All right.

10 MR. SANGER: And if we do, we will and we'll

11 let you know. But what we're talking about here is

12 not character evidence.

13 THE COURT: Now you're telling me you might

14 offer character evidence.

15 MR. SANGER: Speaking as the -- as a member

16 of a group, we have to decide at some point, and

17 if -- in other words, to be serious about it --

18 THE COURT: I won't hold you to anything.

19 Don't worry about that.

20 MR. SANGER: Okay. If we introduce

21 character evidence, it will be of a different

22 character.

23 THE COURT: I think the discussion just got

24 way off track on the character evidence issue, and I

25 think I probably started it.

26 Okay. The next item is the motion to quash

27 the subpoena for Manuel Ramirez.

28 My thought on this is that I'm going to deny 7294

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1 the motion to quash, but I'm going to ask the
2 defense if they can accommodate this person. He's
3 in the military. He needs to move on. Can you put
4 him somewhere at the beginning of your case?

5 MR. SANGER: I had offered to do a
6 conditional exam, and I say that's an offer. The
7 prosecution opted to seek to quash first. I don't
8 know that they would -- given the Court's ruling,
9 that they would refuse to do a conditional exam, but
10 that may be one way to take care of it. And we can
11 talk about that. If that doesn't work, we will try
12 to accommodate him.

13 THE COURT: Counsel, you're -- you stood up
14 after I ruled.

15 MR. ZONEN: Actually, I was standing before,
16 but I'll be happy to go sit down at this point, if
17 you would like.

18 I'm not agreeable to a conditional exam.
19 They want to do that because they have no idea what
20 this person's going to testify to. That's why they
21 want to do a conditional exam.

22 He doesn't have any information on this
23 particular case, and he was subpoenaed because he's
24 the boyfriend of the victim's sister. That's all.
25 Now, if they want to put him at the very beginning
26 and put him on the witness stand, they can do that.
27 They won't. They're not going to call him as a

28 witness in this case because they have no idea what 7295

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1 he's going to say.

2 MR. SANGER: We do have an idea, and if Mr.

3 Zonen tells us that this witness is not saying

4 something, he's making a representation that he has

5 a statement of a witness he hasn't turned over. I

6 think it's rhetoric. But if it's more than

7 rhetoric, I want that statement of this witness that

8 he has nothing to say, because I believe, from all

9 the evidence that we've presented, he does.

10 THE COURT: There appears to be evidence that

11 he has something to say, and that's why I denied the

12 motion to quash.

13 And now back to my question. Can we

14 accommodate this young man somehow? He's in the

15 military, we're holding up his transfer, and I would

16 like to help him get on with his life in the Marine

17 Corps -- is it the Marines?

18 MR. SANGER: Yes, sir.

19 THE COURT: They won't let him go anywhere

20 until this subpoena is taken care of.

21 MR. SANGER: I understand. We will talk.

22 There's a colonel who is representing him, and we

23 will communicate with the colonel and see what we

24 can do.

25 THE COURT: All right. The next one is the

26 defendant's motion to admit evidence of alleged

27 sexual conduct which, in accordance with the Penal

28 Code, had been filed -- or Evidence Code had been 7296

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1 filed under seal.

2 Who is going to speak first?

3 MS. YU: Thank you, Your Honor.

4 I didn't realize we can have a hearing on
5 this, because I thought it was under seal.

6 THE COURT: It is under seal, and I've read
7 the points and authorities. And if you have
8 anything to say, you have to say it without --

9 MS. YU: The issue presented by this motion,
10 Your Honor, is critical to the defense, because it
11 really presents whether Gavin and Star are telling
12 the truth when they say Mr. Jackson inappropriately
13 touched Gavin or masturbated Gavin, because we're
14 here to seek the truth. And the truth of the matter
15 is that they themselves engaged in the very act that
16 they are accusing Mr. Jackson of having committed.
17 They themselves --

18 THE COURT: What I was trying to ask you when
19 you interrupted me was not to mention the acts
20 that --

21 MS. YU: I'm sorry. About the date in
22 particular?

23 THE COURT: I just asked if you had any
24 further legal argument on it. I know what's
25 involved.

26 MS. YU: No, Your Honor.

27 THE COURT: All right. Anything from the

28 People? 7297

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1 MR. AUCHINCLOSS: Yes.

2 One thing that I think is very important for
3 the Court to focus on in the analysis of whether to
4 conduct a hearing, move forward under 782, is to
5 make certain that we do not obviate the intent and
6 purpose of 782 in the method in which we proceed.

7 One of the complications in this case at the
8 present time is the fact that the victim has been
9 cross-examined about this subject matter. The

10 reason that's complicated is because if the victim
11 answers in the affirmative, then the evidence comes
12 in doing an end run around 782. In other words, 782
13 is obviated if the victim admits the conduct. If
14 the victim denies the conduct, then the defense
15 says, "Well, we want to get it in because we want to
16 impeach him with this conduct," irrespective of 782.

17 Now, the intent of 782 is specifically to
18 allow this evidence in when the conduct itself is
19 credible or deals with -- goes to the credibility of
20 the victim in the case. Not to impeach him about
21 some statement. But when that conduct impeaches the
22 victim for purposes -- I shouldn't use the word
23 "impeaches," but when that conduct imputes the
24 credibility of the victim by virtue of its
25 relevancy, it has some similarity, some aspect that
26 helps the jury understand whether or not this
27 victim's being truthful.

28 Now, the cases on this which we've cited, 7298

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1 the first one -- I don't know if we cited this case,
2 but it's of course before we get to the next stage
3 of 782, which is an open hearing, calling witnesses,
4 that the defense has a burden to show affirmatively
5 under oath the relevance of the complaining
6 witness's ascribed sexual conduct and they must show
7 that this is not evidence that's just designed to
8 deprecate the character of the victim.

9 Secondly -- and that is People v. Rios at
10 161 Cal.App.3d 905.

11 Secondly, the case of People vs. Woodward,
12 at 116 Cal.App.4 281, says that the conduct itself
13 must be similar to the charged crime.

14 Now, I won't go into the facts, but I
15 suggest to the Court that this is not similar
16 conduct in terms of the actual act itself. There
17 may be a similar description of events, but there is
18 one that involves two people and one that involves
19 one.

20 Finally, one case that we did cite for the
21 Court is the Harlan case, which specifically states
22 that this type of conduct is not relevant. It's
23 not -- it doesn't go to the blameworthiness of the
24 victim.

25 So going back to my original problem, if we
26 look at the conduct itself that we're -- that the
27 defense is trying to get in, under Harlan, the

28 courts hold that that conduct, in and of itself, is 7299

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1 not really relevant to the credibility of a victim
2 in a child molest case. The reason it's not
3 relevant is because it's common and it's something
4 that could be ascribed to any child victim.

5 So if this conduct is not relevant, I
6 suggest it would be unjust and unfair to let it in
7 to impeach the victim's statement denying this
8 conduct.

9 It's a little convoluted, but if you follow
10 me, if we do that, if we say that the defense gets
11 to cross-examine the victim about it, and the victim
12 denies it, then the protections of 782 are
13 completely obviated and the purpose is ignored.

14 So our point is, is that really the only way
15 that they can get this evidence in is by showing
16 that this type of conduct is sufficiently directly
17 relevant to the facts of this case, even assuming
18 it's true. And the case of Harlan specifically
19 states that this type of -- this type of conduct
20 does not pass muster and should not be admissible.

21 Thank you.

22 MS. YU: This conduct is relevant, Your
23 Honor. It is relevant because Mr. Jackson is
24 charged with masturbation, and that is the very act
25 that deals with this particular motion. And it goes
26 directly to the credibility as to whether they're
27 telling the truth. Did they, in fact, do it

28 themselves, or are they blaming now Mr. Jackson for 7300

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1 the very act that he never did?
2 Star got on the stand and he -- he testified
3 under oath that he looked at these adult materials
4 outside the presence of Mr. Jackson, when in fact
5 they looked at the adult materials, they looked at
6 other explicit materials, and engaged in the very
7 act that they're blaming Mr. Jackson for. It is
8 credible to this case.

9 THE COURT: All right. Thanks.

10 Normally Evidence Code Section 782 does
11 require a hearing outside the presence of the jury
12 to determine what the complaining witness would say
13 about that. But in this case, the complaining
14 witness has already been questioned on the behavior,
15 so the necessity of a 782 hearing is dissipated. We
16 don't need one now.

17 I find that the evidence is relevant based
18 on the -- particularly in view of the amended
19 declaration as to the time frame, which I thought
20 was critical to the relevance. So the evidence will
21 be allowed.

22 Let's see, the next item is Mr. Jackson's
23 request for clarification of the Court's order known
24 to prosecution and unknown to defense.

25 The Court did provide you with a copy of the
26 minute order of March 11th, 2005. And I don't want
27 to hear argument on this.

28 MS. YU: Okay. 7301

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1 THE COURT: This is for my clarification. I
2 don't see any need for it. But I have ordered that
3 the defense may not attack Gavin's credibility with
4 evidence that he maintained an e-mail account with
5 the password "Sexy" on it. That's prohibited.
6 And the second one was -- stated that I
7 would only permit the information that was submitted
8 with respect to Rio's testimony, which was referred
9 to as the male witness in the minute order. So
10 that's -- that's -- I don't think any further
11 clarification is necessary. It's -- is there?

12 MS. YU: I'm sorry? I apologize.

13 MR. MESEREAU: Is there any other
14 clarification that's necessary?

15 MS. YU: No, Your Honor. I believe we're
16 informed about the password. That was the only
17 clarification.

18 THE COURT: They're all waving at you.

19 So that takes care of the clarification.

20 MS. YU: We were seeking clarification as to
21 Mr. Mesereau's cross-examination of Gavin on the
22 e-mail account, as well as the passwords, because he
23 did testify about the various passwords.

24 THE COURT: But I prohibited this area.

25 MS. YU: Yes.

26 THE COURT: All right. The next item was the
27 plaintiff's memorandum regarding admissibility of

28 evidence of criminal charges pending against witness 7302

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1 Chris Carter.

2 MR. SNEDDON: Judge, let me take this
3 opportunity to indicate to the Court that Mr.
4 Carter's attorney, Mr. Segal, is here - he's in the
5 front row. Jeff Segal - and might want to address
6 the Court with regard to his advice he's given his
7 client with regard to this case. I will indicate to
8 the Court that --

9 THE COURT: Counsel, if you'd like to come
10 in.

11 MR. SEGAL: Thank you, Your Honor.

12 THE COURT: Someone will give up a seat for
13 you, I'm sure.

14 MR. ZONEN: Why don't you sit up here at the
15 table.

16 MR. SNEDDON: I just want to indicate to the
17 Court that the representations that have been made
18 in the brief with regard to the fact, the key fact,
19 one of the key facts, I think, in the Court's
20 determination about how much can be brought before
21 the jury in this particular case, Mr. Carter is
22 testifying and he's testifying on his own, and he
23 has not been promised anything at all with regard to
24 his testimony.

25 MR. SANGER: Well, on that issue, the
26 reported decisions are replete with cases where the
27 representation was that there was no promise of

28 leniency. And we've had very little time to respond 7303

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1 to this, so I'll ask leave to do this off the cuff,
2 but if the Court wanted some citations to the cases,
3 I could certainly give them.

4 The cases are numerous where there has been
5 no promise of leniency, or that's been the
6 representation, and then when it comes time for
7 sentencing, the witness later, in his own case,
8 receives a lenient sentence. There are a number of
9 habeas corpus cases where habeas corpus was granted
10 based on that exact scenario.

11 I am not disputing at the moment what Mr.
12 Sneddon has just said, but the fact of the matter
13 is, that anybody who's facing both state and federal
14 charges and very serious charges, bank robbery and
15 robbery charges, may well have an inclination to
16 please whatever government official comes before
17 him.

18 And here we have the District Attorney of
19 the entire County of Santa Barbara who is handling
20 this case. There's no question this is a very
21 high-profile, big case. There is no question that a
22 person might believe that by cooperating with Mr.
23 Sneddon in the case of the century de jour, which
24 will be superseded, I'm sure, by some other case
25 next week or next month, but right now that's the
26 way it was perceived and it would be perceived to a
27 witness like this, he may feel, by cooperating, that

28 somehow this is going to redound to his benefit with 7304

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1 other prosecutors.

2 We went back to the Gilio case, because

3 that's sort of the root of all of this. The United

4 States Supreme Court made it clear that the

5 potential for influence of a witness's testimony is

6 not up to the District Attorney to decide. It's up

7 to the jury. And therefore, the defense should be

8 allowed to explore that, to know about it. This is

9 Gilio and that's the genesis of these cases. And

10 the jury should be allowed to know about it so that

11 they can evaluate whether or not there's any

12 influence.

13 It's just -- even though this has already

14 happened with Janet Arvizo, I mean, this is

15 extremely unusual that the prosecution would come

16 forward and say, "We want to avoid" -- "We want a

17 witness to testify for us, but we want to prohibit

18 the defense from fully confronting and

19 cross-examining that witness."

20 And the Court has fashioned a remedy with

21 regard to Janet Arvizo, which obviously was over

22 objection, but this is beginning to add up, because

23 following this motion, they've got yet another

24 motion. They've got another witness they want to

25 call who wants to take the Fifth and the jury's not

26 supposed to know about it.

27 This is getting to be pretty weird, to put

28 it in legal terms. All right? It's very, very 7305

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1 unusual. It's gone beyond unusual to weird. I
2 mean, you just cannot put a defendant in a position
3 where the historic right to confront and
4 cross-examine is being cut off or circumvented not
5 only once, but twice and three times.
6 This particular situation is particularly
7 egregious. I mean, we've got somebody who's charged
8 with bank robbery, and, you know, this is -- this is
9 not something that the defense should --

10 THE COURT: So what are you asking?

11 MR. SANGER: Well, I think if the witness is
12 going to -- as we said with regard to Mrs. Arvizo,
13 if the witness is going to be taking the Fifth, then
14 their entire testimony is subject to being stricken.
15 I know the Court has cited the Hecker case, and --

16 THE COURT: Well, I think that's a little
17 different situation with Miss Arvizo.

18 MR. SANGER: Well, what I was going to say
19 with regard to -- with regard to the cases -- and I
20 don't know what the Court meant. Maybe I should
21 find out what you just meant by that remark, if I
22 may.

23 THE COURT: I think we're dealing with a
24 little different situation here. But what did you
25 want to say about the case?

26 MR. SANGER: I'm trying to guess what the
27 Court is getting at.

28 What I was going to say was that this is a 7306

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1 witness called by the prosecution. It's not a
2 complaining witness. And maybe that's the
3 distinction the Court was looking at.

4 THE COURT: (Nods head up and down.)

5 MR. SANGER: Okay. This is a witness they
6 want to call. None of the cases that are cited by
7 the prosecution really stand for the proposition
8 that they're advancing. It is true that in the
9 leading case that they cite, the defense sought to
10 call a witness just to have the witness take the
11 Fifth in front of the jury to gain that kind of
12 impact. And that's not what we're talking about
13 here. We're talking about the prosecution calling a
14 witness and being immunized from confrontation.
15 One of the things Hecker said, and I'm not
16 conceding this at all. I think if these witnesses,
17 these two witnesses -- if we could address both at
18 the same time, but certainly we can start with this
19 one and equally it applies to Miss Montgomery. If
20 they're going to take the Fifth, then they take the
21 Fifth out of the presence of the jury and they go
22 home, and that's it.

23 I would point out that Hecker said, which is
24 the case the Court cited to us, that one of the
25 remedies there, in a different situation admittedly,
26 but one of the remedies there would be to allow
27 somebody to take the Fifth and to have adverse

28 comment made about that. Because again, it's -- as 7307

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1 I argued in the Arvizo matter, these people are not
2 stakeholders. And certainly these two witnesses
3 we're now talking about are not stakeholders. If
4 Miss Arvizo had any stake, it's the mother of a
5 complaining witness, I mean maybe.
6 But these people have absolutely no stake,
7 and their asserting the Fifth Amendment should not
8 hurt them in their own affairs, if they were suing
9 somebody or if they were being prosecuted and
10 they're defending their own case, but there's no
11 reason why they should be immunized from
12 confrontation in this case, and there's no interest
13 that they can assert --

14 THE COURT: Let's hear from his attorney.

15 MR. SANGER: All right. Thank you.

16 THE COURT: Would you state your name,
17 please?

18 MR. SEGAL: Yes. Good afternoon. My name
19 is Jeff Segal, and I represent Chris Carter.
20 Mr. Carter has no dog in this fight. If he
21 is called by the People or by Mr. Jackson, he is
22 prepared to testify truthfully, so long as he can do
23 that without risking self-incrimination. He is
24 charged with very serious crimes in Las Vegas. He
25 denies that he was involved in committing those
26 crimes. And the issue in all of those crimes is the
27 identity of the perpetrator.

28 So I have instructed Mr. Carter to exercise 7308

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1 his Fifth Amendment privilege with respect to any
2 questioning about the alleged criminal actions in
3 the State of Nevada, or anything that might tend to
4 implicate him in any of those crimes.

5 With respect to whether he does that in
6 front of the jury, or outside the presence of the
7 jury, that's for the parties in this litigation to
8 address. So long as Mr. Carter's rights are fully
9 protected, you know, I have no other point to make
10 on that issue.

11 So he is prepared to testify with respect to
12 his knowledge and involvement with Mr. Jackson, but
13 he cannot do that if it means self-incrimination.

14 So he will be -- he will be asserting his Fifth
15 Amendment privilege.

16 With respect to any agreement for leniency
17 or expectation for leniency, I certainly don't have
18 that expectation. There is no agreement with either
19 Mr. Sneddon's office or with any of the prosecutors
20 in Nevada. And I have no expectation that there
21 would be any leniency down the road.

22 THE COURT: If he -- what if -- if he was
23 asked the simple question whether or not charges are
24 pending against him, in other words, not whether he
25 committed them, but, "Is it true you're charged
26 with" -- I don't know what it is, robbery, or
27 whatever it is, in Nevada.

28 MR. SEGAL: Your Honor, I believe in an 7309

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1 abundance of caution that he should not be required
2 to answer even those questions. I think there may
3 be another way to introduce that evidence before the
4 jury, either by stipulation of the parties, or by
5 the introduction of some kind of court record, but I
6 would strongly prefer that Mr. Carter is not asked
7 those questions, even that question, in front of the
8 jury. I have no objection to that being admitted in
9 court. I have no standing to object to that. But I
10 would instruct him to exercise his Fifth Amendment
11 privilege even as it relates to what crimes he's
12 charged with in Nevada.

13 THE COURT: All right. Anything further by
14 either side?

15 MR. SANGER: If I could just clarify one
16 thing, just to say we object in Santa Barbara to
17 analogies of dogs in fights, I think, but we might
18 say no horse in this race.
19 However, there is a horse that this witness
20 does have in this race, and he's charged with
21 federal offenses. State offenses would be the same,
22 but federal offenses in particular, the 5K1 downward
23 departure is something that a person would argue if
24 they came to sentencing, and there's no question
25 that to be competent, as I'm sure Mr. Segal is, he
26 would argue for a 5K1 downward departure under the
27 United States sentencing guidelines. And the

28 guidelines, as the Court is probably aware, have 7310

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1 really been --

2 THE COURT: Held unconstitutional.

3 MR. SANGER: More or less. Under Booker and
4 Fanfan, the two cases Booker and Fanfan, the
5 guidelines have been opened up because they're found
6 to be guidelines now, which was, actually, the
7 title, as to opposed to actual requirements, and so
8 therefore any kind of mitigation can be brought
9 before the Court and would be brought before the
10 Court. And I would actually expect Mr. Segal, as I
11 believe he's the lawyer on the federal case --

12 Is that correct?

13 MR. SEGAL: In both cases.

14 MR. SANGER: In both cases, okay.

15 I would expect Mr. Segal, as a federal
16 practitioner, unless he's confident he's just going
17 to win the case, he'd be looking, as we all would in
18 a case like that, to the consequences at the time of
19 sentencing and would be looking to present evidence
20 of mitigation.

21 So there is a horse in the race or a dog in
22 the fight, if we take the analogy that was used by
23 Mr. Segal, and we need to have the opportunity to
24 confront this person in front of the jury if he's
25 going to testify, and say, "Look, it's a fact that
26 you know that you're -- that you're facing serious
27 charges, and that's going to color your testimony,

28 isn't it?" and go into that kind of a 7311

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1 cross-examination with him.
2 Simply sanitizing it and saying, well, you
3 can bring in evidence through a docket or something,
4 or from some other witness that, yes, he's facing
5 these charges doesn't do what cross-examination
6 does. And the cases we cited before on
7 cross-examination, it is a -- it is a very effective
8 tool in getting to the heart of somebody's testimony
9 and allowing the jury, the contemporaneous trier of
10 fact, to see how that person performs and how things
11 like that might affect their assessment of
12 credibility.

13 So I'd submit as to this witness and also
14 the other one, to save some time, if it does, that
15 either they take the Fifth or they don't, which is
16 certainly their right. But if they take the Fifth
17 as to anything, then they should be precluded from
18 testifying as to everything.

19 Thank you.

20 THE COURT: Anything further, Mr. Sneddon?

21 MR. SNEDDON: No. I guess my only comment
22 would be -- I guess I shouldn't have said "No." I
23 should have said "Yes."

24 I do have a brief comment, and my brief
25 comment to the Court is, first of all, I haven't
26 heard any reason why the two cases we cited, the
27 Bento case, B-e-n-t-o, and the Dyer case, D-y-e-r,

28 don't apply to this situation. And I just can't sit 7312

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1 there and let it go unsaid that Mr. Jackson's not
2 the first person in the world that's ever had a case
3 where somebody comes in and claims the Fifth.
4 That's why we have cases like this, and there's a
5 lot of them on the dockets. And it's -- it's -- two
6 of the three people were people associated with Mr.
7 Jackson and we just happened to call them as
8 witnesses. They're in our case, but they're
9 associates of Mr. Jackson.

10 So I find it unfortunate that they have to
11 do that, but I don't think that this -- this sin
12 should be laid at our doorstep. It's just a fact
13 that we have to bring to the Court's attention,
14 because counsel representing those people have
15 indicated in their representation of them they have
16 to do it. It's that simple.

17 THE COURT: All right. What I'm going to do
18 is allow him to testify, and I'm going to preclude
19 the defense from inquiring into the circumstances of
20 the crimes in Nevada for which Mr. Carter is
21 charged.

22 I will allow, through some form, the fact
23 that he is -- that he has those pending charges in
24 Nevada and that he is incarcerated. How we tell the
25 jury that I'm open to suggestion.

26 MR. SANGER: Could I address that issue?

27 THE COURT: Yes.

28 MR. SNEDDON: I'll make it very simple, stop 7313

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1 Mr. Sanger from addressing the Court. I'll be
2 willing to work out a stipulation with Mr. Sanger
3 which would satisfy the Court. If we can't, then
4 we'll come back to the Court.

5 MR. SANGER: I think we should be allowed to
6 ask the question, not -- and not in an excessive
7 fashion, but ask two or three direct questions to
8 the witness, and he should -- if he wishes to take
9 the Fifth, he should take the Fifth in front of the
10 jury, and it should be subject to adverse comment
11 under the Hecker case.

12 THE COURT: Well, I've already ruled that
13 you're not to ask him any questions to force him to
14 make a claim of the Fifth Amendment in front of the
15 jury. And that suggestion that you turn around and
16 do that flies in the face of the ruling I just made.

17 MR. SANGER: I apologize. I didn't
18 understand that. So --

19 THE COURT: I'll give you an opportunity to
20 work something out. If not, I'll do something, tell
21 them myself personally.

22 I'll give you time. You can tell me Monday
23 whether you've reached agreement on how he's -- how
24 the jury is to be advised.

25 The next item is the -- shall we take up the
26 other claim of privilege? That's the plaintiff's
27 motion in limine to exclude evidence under the

28 surrender flight. Is that -- 7314

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1 MR. NICOLA: Should I bring the witness in,
2 Your Honor, or would you like to hear argument first?
3 THE COURT: The witness isn't here? Maybe we
4 should bring her. Is she close?
5 MR. NICOLA: She's right outside.
6 THE COURT: Okay. Let's have her come in.
7 MR. NICOLA: Should she take the stand, Your
8 Honor?
9 THE COURT: No. Let's see here.
10 You're Miss Montgomery?
11 MS. MONTGOMERY: Right.
12 THE COURT: She's right there?
13 MR. NICOLA: She's right there.
14 THE COURT: Why don't you step forward,
15 please.
16 You don't have counsel with you, do you?
17 MS. MONTGOMERY: No.
18 THE COURT: It's my understanding that --
19 well, before I state what my understanding is, do
20 you wish -- I'll have counsel address me.
21 Do you want to address me on the issue?
22 MR. NICOLA: If I may, Your Honor.
23 THE COURT: You can sit down for a second.
24 I'm sorry.
25 MR. NICOLA: We filed this motion with two
26 alternatives. One is to preclude any mention of the
27 November 20th, 2003, flight, because it's simply

28 irrelevant. What happened on that flight and the 7315

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1 conduct of anybody involved with that flight or
2 thereafter is simply not relevant to any issue that
3 Miss Montgomery will testify to or any other issue
4 in this case.

5 And insofar as the defense has certainly
6 made it a habit to bring things up in their
7 cross-examination which are marginally relevant to
8 attack credibility of witnesses, this is a
9 particularly thorny issue, because Ms. Montgomery
10 has, in fact, been advised by her attorney not to
11 answer any questions with respect to conduct arising
12 out of the November 20th surrender flight, as we've
13 called it. And her attorney may have many reasons
14 for that. To presume it's kind of guilty conscience
15 or knowledge of guilt or anything adverse is not
16 fair. And certainly the courts have said that's not
17 a proper inference to draw.

18 With respect to perhaps drawing an analogy
19 as to the previous motion the Court heard, we --

20 THE COURT: Would you -- would you come
21 forward, please?

22 You know what I'd like to do, I don't know
23 what instructions your counsel's given you, but what
24 I would like to do is have you sworn and have you
25 state under oath that you intend to invoke the Fifth
26 Amendment so there's no question about what you're
27 doing. That's the only reason.

28 MR. NICOLA: I appreciate that, Your Honor. 7316

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1 THE COURT: Would you swear the witness,
2 please?

3

4 CYNTHIA C. MONTGOMERY

5 Having been sworn, testified as follows:

6

7 THE WITNESS: I do.

8 THE CLERK: Please state and spell your name
9 for the record.

10 THE WITNESS: Cynthia C. Montgomery,

11 C-y-n-t-h-i-a, C., Montgomery, M-o-n-t-g-o-m-e-r-y.

12 THE CLERK: Thank you.

13

14 EXAMINATION

15 BY THE COURT:

16 Q. Miss Montgomery, if any questions were asked
17 to you concerning the travel on charter jets and the
18 booking of flights by Michael Jackson or Michael
19 Jackson's companies, what would your answer be?
20 Would you be claiming the Fifth Amendment?

21 MR. NICOLA: I don't think she understood
22 the question, Your Honor.

23 Q. BY THE COURT: All right. I'm just asking
24 you a general question. If you were questioned at
25 all about arranging chartered flights for Michael
26 Jackson or his company during the time period from,
27 let's say, 2002 through 2004, would you claim the

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1 A. Um, only on November 20th of 2003.

2 Q. Only on that --

3 A. Correct.

4 Q. -- flight?

5 Is that the flight you were going to

6 question her about?

7 MR. NICOLA: No. That's the flight that we

8 wish to exclude from evidence under 352 and

9 relevance.

10 THE COURT: Okay. That's the flight you're

11 going to question her about?

12 MR. SANGER: Yes, Your Honor, and all the

13 circumstances surrounding it, including the lawsuit,

14 her cross-complaint against Mr. Jackson that she is

15 litigating for money, and the fact that she came

16 forward and offered to be an informant, a

17 confidential informant, and brought forth a friend

18 of hers who she offered as a confidential informant,

19 who in fact was enlisted by the police to

20 surreptitiously tape-record phone calls.

21 That kind of cooperation, that level of

22 cooperation was, we believe, directly dictated by

23 the fact that she's under federal investigation and

24 engaged in a lawsuit surrounding the same facts both

25 as a defendant and as a cross-complainant.

26 THE COURT: What's the -- what are you

27 calling her for? What is the purpose of the

28 testimony that you wish -- 7318

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1 MR. NICOLA: Well, as a general proffer,
2 Your Honor, Ms. Montgomery was the defendant's
3 travel coordinator for a period of some time, during
4 the relevant period of time. Say late 2002 through
5 approximately September, she arranged private
6 flights for Mr. Jackson. She's aware of the people
7 that he flew with and continued to fly with after
8 the conduct alleged in the 288 counts, which is
9 circumstantial evidence of a continuing conspiracy.
10 She's going to offer testimony about Count 1,
11 with respect to the Arvizos getting, through Mr.
12 Schaffel, short-set one-way tickets to Brazil, with
13 a date to leave of nearly immediately after the
14 rebuttal video was filmed, things of that nature.
15 With respect to the November 20th, 2003,
16 flight, we didn't intend to introduce at all or ask
17 her any questions at all. And we understand that
18 the existence of a civil lawsuit is certainly
19 something that the defense can argue creates a bias
20 within the witness as she testifies. However, the
21 underlying facts of the lawsuit appear to be largely
22 irrelevant.
23 It's almost like a witness -- mind you,
24 there are no charges. She has not been charged.
25 There's no evidence that she's being actively
26 investigated, only that an investigation is being
27 conducted. Under those circumstances, it's akin to

28 asking a witness, "Isn't it true that you're being 7319

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1 audited by the IRS?" And the implication there is
2 that you violated some kind of federal tax statute.
3 It's just simply not relevant.

4 MR. SANGER: Interesting. Because this
5 actually is a progression along a continuum. Your
6 Honor said the Janet Arvizo was different than Chris
7 Carter, and Chris Carter is actually different than
8 this, so I suppose this tests the hypothesis here.

9 In this particular case, Mr. Sneddon said
10 two of the three witnesses -- I forgot what his
11 words were. Two of the three witnesses are
12 associates of Michael Jackson, something like that.
13 This witness is not in any sense an
14 associate of Michael Jackson. She was in business
15 for herself. But more importantly, Michael Jackson
16 is the victim in her criminal activity. The FBI has
17 an active investigation. They've interviewed
18 people, and they've seized evidence indicating that
19 Xtra Jet and Miss Montgomery have engaged in --

20 MR. NICOLA: Your Honor, I'm going to object
21 at this point. I don't think Mr. Sanger's doing
22 this for anybody's benefit except for the people
23 behind us. If he has --

24 MR. SANGER: That's absolutely not true, and
25 if there's a legal objection --

26 THE COURT: The objection is overruled.

27 MR. SANGER: All right. She -- they

28 surreptitiously videotaped Michael Jackson and 7320

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1 attempted to sell the tape, and that's how they got
2 caught, and Michael Jackson is the victim of this
3 person.

4 So we really have a continuum here of some
5 sort, or maybe it comes back to a circle, depending
6 on how you look at Janet Arvizo's activities. But
7 certainly here he's -- he is a victim. And if
8 Michael Jackson, the victim of this conduct of
9 surreptitiously taping and attempting to sell that
10 tape, if Mr. Jackson were convicted in this case
11 with the help of Miss Montgomery, it would certainly
12 help her in her civil case where she has filed a
13 cross-complaint against Mr. Jackson.

14 Excuse me one second.

15 Yes.

16 (Off-the-record discussion held at counsel
17 table.)

18 MR. SANGER: I mean, was that not clear?

19 I'm sorry. I'm sorry, it's the end of the day.

20 Mr. Mesereau is saying the Court understands
21 that Mr. Jackson in the civil case is the plaintiff.

22 I think I said this. And I think the Court knows
23 it. He's the plaintiff.

24 THE COURT: I understand.

25 MR. SANGER: He has sued Xtra Jet. And she,
26 Miss Montgomery, has cross-complained against Mr.
27 Michael Jackson.

28 The point is, she has a big stake in the 7321

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1 outcome of this case because it would directly
2 impact her civil case and may or may not impact the
3 underlying criminal case.

4 But all of that behavior on the part of
5 Miss Montgomery and Xtra Jet also gives a tremendous
6 amount of content and context, both content and
7 context, to her activities in volunteering, going to
8 the police, the sheriff here in Santa Barbara and
9 volunteering that she had information. Her

10 information that she offered was primarily hearsay,
11 double or triple hearsay, and she offered to be
12 helpful and she was considered to be a confidential
13 informant for about eight or nine months.

14 The Court may remember that we complained
15 that we didn't get discovery about Miss Montgomery
16 and about Mr. Provencio that they had compiled in
17 January, and we didn't get it until October or
18 something. And the government got up and said,
19 "Well, we didn't give that to you because they were
20 confidential informants. We didn't want to tell you
21 what they were doing."

22 They came forward, and she really didn't
23 have much firsthand or anything firsthand, but she
24 then got the government in contact with Mr.
25 Provencio, who she continued to contact. And he
26 eventually was told to tape-record conversations
27 with other people, not with Mr. Jackson, so -- I

28 don't think he knew Mr. Jackson. But that was -- 7322

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1 that was being used, and in fact, they're seeking to
2 call him as another witness in this case.

3 So I think we have to have the right to
4 confront and cross-examine this woman on her bias.
5 She's involved in litigation. And the underlying
6 basis of the litigation is the illegal not only
7 taping of Mr. Jackson as a celebrity and making him
8 a victim of this, but attempting to sell that tape.

9 THE COURT: Well, the case is -- this is a
10 different situation than the other two, as you
11 pointed out. Each are distinctly different
12 approaches. And the -- in this case, the Court's
13 going to exclude the testimony entirely. I believe
14 that the District Attorney has the ability to
15 produce the evidence that she would testify to
16 through other means, and the claim of the privilege
17 here would be a total deprivation of the right to
18 cross-examination.

19 So her testimony is ordered excluded based
20 on her claim of privilege under the Fifth Amendment.

21 Let's see, we're through with our day.

22 There's one motion left. I guess we could take that
23 up Monday morning, unless everyone wants to meet
24 tomorrow.

25 MR. SANGER: I think there are two.

26 THE COURT: Hold up your hand if you want to
27 meet tomorrow.

28 My bailiff is holding up.... 7323

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1 THE COURT: Oh, I skipped 9 and 10, too.

2 I don't want to go on now because the court
3 reporter has to do her daily transcript, and we're
4 all -- I guess 9 and 10 --

5 MR. SANGER: I think there's 9, 10 and 12.

6 THE COURT: Yeah, on 9 we're going to have a
7 longer hearing. I need more information on those
8 documents. So I'm not -- I wouldn't -- that's not a
9 short issue.

10 The admissibility of the state of Gavin's
11 testimony by Chris Carter, if I could have resolved
12 that by saying no, we wouldn't have had to deal with
13 the Fifth Amendment problem. So you know my ruling
14 on the admissibility of that statement is that he
15 can give that evidence. But I think we'll take up
16 the other issues on Monday, then.

17 All right. Court's in recess.

18 MR. SANGER: Thank you.

19 (The proceedings adjourned at 2:35 p.m.)

20 --o0o--

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1 REPORTER'S CERTIFICATE

2

3

4 THE PEOPLE OF THE STATE OF)

5 CALIFORNIA,)

6 Plaintiff,)

7 -vs-) No. 1133603

8 MICHAEL JOE JACKSON,)

9 Defendant.)

10

11

12 I, MICHELE MATTSON McNEIL, RPR, CRR, CSR

13 #3304, Official Court Reporter, do hereby certify:

14 That the foregoing pages 7167 through 7324

15 contain a true and correct transcript of the

16 proceedings had in the within and above-entitled

17 matter as by me taken down in shorthand writing at

18 said proceedings on April 21, 2005, and thereafter

19 reduced to typewriting by computer-aided

20 transcription under my direction.

21 DATED: Santa Maria, California,

22 April 21, 2005.

23

24

25

26

27 MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304

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