

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY  
County of Santa Barbara  
2 By: RONALD J. ZONEN (State Bar No. 85094)  
Senior Deputy District Attorney  
3 J. GORDON AUCHINCLOSS (State Bar No. 150251)  
Senior Deputy District Attorney  
4 GERALD McC. FRANKLIN (State Bar No. 40171)  
Senior Deputy District Attorney  
5 1112 Santa Barbara Street  
Santa Barbara, CA 93101  
6 Telephone: (805) 568-2300  
7 FAX: (805) 568-2398

**FILED**  
SUPERIOR COURT of CALIFORNIA  
COUNTY of SANTA BARBARA  
  
JAN 31 2005  
  
GARY M. BLAIR, Executive Officer  
By *Carrie L. Wagner*  
CARRIE L. WAGNER, Deputy Clerk

*\* Unsealed pursuant  
to 6/16/05 Court  
Order*

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SANTA BARBARA  
10 SANTA MARIA DIVISION

12 THE PEOPLE OF THE STATE OF CALIFORNIA,  
13 Plaintiff,  
14 v.  
15  
16 MICHAEL JOE JACKSON,  
17  
18 Defendant.

No. 1133603  
PLAINTIFF'S MOTION FOR  
RECONSIDERATION OF  
DEFENDANT'S MOTION FOR  
AN ORDER EXCLUDING  
"FOURTEEN (14) ITEMS OF  
IRRELEVANT EVIDENCE";  
DECLARATION OF GERALD  
McC. FRANKLIN IN SUPPORT  
THEREOF; MEMORANDUM OF  
POINTS AND AUTHORITIES  
  
DATE: February 10, 2005  
TIME: 9:30 a.m.  
DEPT: TBA (Melville)

**UNDER SEAL**

22 TO: THE CLERK OF THE SUPERIOR COURT AND TO DEFENDANT AND  
23 HIS COUNSEL:

24 PLEASE TAKE NOTICE that on February 10, 2005, Plaintiff will respectfully  
25 move the court to re-open and consider Defendant's "Motion for Order Excluding Fourteen  
26 (14) Items Of Irrelevant Evidence," notwithstanding Plaintiff's conspicuous failure to file the  
27 Response (see attached) it had prepared in anticipation of the hearing on January 28, 2005.

28 Plaintiff's motion will be made on the grounds that (1) our failure to file our


1 Response was due to an oversight by the prosecutor who prepared that and several other  
2 responses for filing on January 20, 2005, and who mistakenly believed he had filed all of those  
3 several responses, (2) that certain of the "items" of evidence characterized as "irrelevant" are in  
4 fact quite relevant and relate to other evidence to be introduced by the People in their case in  
5 chief, and (3) no prejudice to Defendant will result, other than having to confront evidence the  
6 Court may well deem to be admissible and relevant.

7 This motion is supported by the attached Declaration of Gerald McC. Franklin and  
8 the accompanying memorandum of points and authorities.

9 DATED: January 31, 2005

10 Respectfully submitted,

11 THOMAS W. SNEDDON, JR.  
12 District Attorney

13 By:   
14 Gerald McC. Franklin, Senior Deputy

15 Attorneys for Plaintiff


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1 quite overlooked our "14 Items" response, and it went out of my conscious mind when I  
2 dispatched our other submissions.

3           7. I was surprised and embarrassed to hear the Court state that no response had  
4 been received from us to Defendant's "14 Items" motion, and to hear Mr. Sanger state  
5 Defendant had not received a response to that motion from us, either. I personally delivered a  
6 copy of several of our submissions filed on January 20th to his office, and mistakenly assumed  
7 that our "14 Items" response was one of them. Shortly after court recessed Friday afternoon, I  
8 asked Mr. Beebe to kindly check to see whether the court might have received our response and  
9 had misfiled it. I have since satisfied myself that I neither filed the response nor served  
10 defendant with a copy thereof. I have apologized to my colleagues for embarrassing them, and  
11 I apologize to the Court for my error.

12           I declare that the foregoing is true, except for matters stated upon my information  
13 and belief, and as to those matters I believe it to be true. I execute this declaration at Santa  
14 Maria, California on Monday, January 31, 2005.

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17 Gerald McC. Franklin

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1 two young sibling boys who figure in the pending prosecution, its relevance as evidence  
2 corroborating the complaining witness's evidence that Defendant retained his soiled underwear  
3 rather than return it to him seems self-evident.

4 Item 14 is another pair of underwear containing traces of cocaine and evidence of  
5 Defendant's own DNA, in a blood-spot also containing traces of Demerol. Plaintiff  
6 respectfully submits that the relevance of the evidence extracted from that undergarment, when  
7 considered together with the other evidence of Defendant's apparent addiction to Demerol, is  
8 patently relevant. (Please see the discussion in our Response, 4:15 – 15:14.) The particular  
9 significance of Item 14 is that it tends to identify Defendant as the custodian of the label-less  
10 vial containing identifiable traces of Demerol, seized from the Arcade building. The traces of  
11 cocaine on that garment didn't get there by themselves. And the jury should be allowed to  
12 ponder the fact that defendant evidently desired to preserve, in the same container, both his  
13 own soiled underwear and underwear soiled with the semen of another male.

## 14 II

### 15 DEFENDANT WILL NOT BE PREJUDICED IN THE 16 PREPARATION OF HIS DEFENSE BY THE COURT'S 17 CONSIDERATION OF THE MERITS OF HIS "MOTION 18 TO EXCLUDE 14 ITEMS OF EVIDENCE" WELL 19 BEFORE TRIAL COMMENCES

20 Timely response to in limine motions brought pursuant to Evidence Code section  
21 402 is the rule. Failure to adhere to that rule should not lightly be excused, both because casual  
22 enforcement of the rule tends to result in casual obedience to it and because, often enough, the  
23 proponent for admission or exclusion of given evidence will depend heavily on the court's  
24 ruling in preparing his side of the case.

25 The Defendant has not so much as hinted that he intends to quarrel with the  
26 accuracy of the analysis of the blood and semen samples obtained from the undergarments for  
27 its DNA component, let alone that he had elected to put off his own analysis of referee  
28 specimens made available to him pending the Court's ruling on his motion to bar Plaintiff from



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3 **PROOF OF SERVICE**

4 STATE OF CALIFORNIA  
5 COUNTY OF SANTA BARBARA } SS

6 I am a citizen of the United States and a resident of the County aforesaid; I am over  
7 the age of eighteen years and I am not a party to the within-entitled action. My business  
8 address is: District Attorney's Office; Courthouse; 1112 Santa Barbara Street, Santa Barbara,  
9 California 93101.

10 On January 31, 2005, I served the within PLAINTIFF'S RESPONSE TO  
11 DEFENDANT'S IN LIMINE MOTION FOR AN ORDER EXCLUDING "FOURTEEN (14)  
12 ITEMS OF IRRELEVANT EVIDENCE" on Defendant, by THOMAS A. MESEREAU, JR.,  
13 ROBERT SANGER and BRIAN OXMAN, by personally delivering a true copy to counsel in  
14 open court.

15 I declare under penalty of perjury that the foregoing is true and correct.

16 Executed at Santa Maria, California on this 31st day of January, 2005.

17  
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19 Gerald McC. Franklin



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**SERVICE LIST**

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Attorney for Defendant Michael Jackson

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FAX: (805) 963-7311

Co-counsel for Defendant

BRIAN OXMAN, ESQ.  
Oxman & Jaroscak, Lawyers  
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Co-counsel for Defendant

**EXHIBIT "A"**

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY  
County of Santa Barbara  
2 By: RONALD J. ZONEN (State Bar No. 85094)  
Senior Deputy District Attorney  
3 J. GORDON AUCHINCLOSS (State Bar No. 150251)  
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SANTA BARBARA  
10 SANTA MARIA DIVISION

11  
12 THE PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 v.

15  
16 MICHAEL JOE JACKSON,

17 Defendant.

No. 1133603

PLAINTIFF'S RESPONSE TO  
DEFENDANT'S IN LIMINE  
MOTION FOR AN ORDER  
EXCLUDING "FOURTEEN (14)  
ITEMS OF IRRELEVANT  
EVIDENCE"

DATE: January 28, 2005  
TIME: 9:30 a.m.  
DEPT: TBA (Melville)

18  
19  
20 A. Introduction

21 Defendant moves for an order excluding 14 items of evidence he claims is  
22 "irrelevant," and to exclude, as well, "any reference (direct or indirect and oral or written) to  
23 those "irrelevant" and "extraneous" items of evidence.

24 This response replies to the argument concerning each of the 14 items, in the order  
25 those items are listed and discussed in the pending motion.

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1           B. Discussion

2           1. "Baby Dangling"

3           The People do not presently intend to refer specifically to the incident where the  
4 defendant dangled his infant child off a balcony in Germany. However we will be seeking to  
5 introduce the Martin Bashir documentary "Living with Michael Jackson" which contains  
6 footage of that very incident. (See People's pending motion to introduce evidence of that  
7 documentary.) Should Defendant or other witnesses for the defense testify that the defendant is  
8 a loving, concerned, caring father we would likely then seek to impeach that testimony with  
9 this example of Defendant's reckless indifference to his baby's safety.

10           2. Cosmetic or Plastic Surgery

11           The People have no present intention to refer to defendant's numerous facial  
12 surgeries, never mind his public insistence that he hasn't had any such surgeries – well, "just  
13 two." However (as noted), we will be seeking to introduce the Martin Bashir documentary  
14 "Living with Michael Jackson," in which Bashir questioned Jackson about exactly that fact and  
15 recorded defendant denying having had any surgery other than one, or maybe two nose jobs.

16           3. Lyrics from Defendant's Songs

17           Song-writing is a personal matter often reflecting the experiences of the writer-  
18 singer. In Mr. Jackson's case there is at least one song written by him that speaks to his use of  
19 drugs. To the extent that defendant's songwriting should become relevant in the course of the  
20 trial the People reserve the right to introduce lyrics from those writings. No effort will be made  
21 to do so without prior review by the court.

22           4. Jackson Family Bankruptcy

23           We will not be referring to his family's bankruptcy unless and until members of his  
24 family who are dependent on his largess testify in his behalf. Their financial well-being and  
25 their dependence on the defendant certainly speak to their bias.

26           5. Al Malnik's Alleged Ties to Organized Crime

27           Mr. Jackson did not have a "brief contact" with Al Malnik, he had a significant  
28 connection and appears still to maintain that connection. However, we will not be referring to

1 Attorney Malnik's alleged mob connections unless it becomes relevant during the trial and  
2 then only with leave of court to do so.

3 6. Co-Conspirator Weisner's Brothel

4 We will not be referring to Mr. Weisner's brothel unless the evidence makes the  
5 subject relevant. Weisner is a co-conspirator and appears in the documentary. His reputation  
6 may become an issue at trial. We will address the issue with the court out of the presence of  
7 the jury should we decide Mr. Weisner's other business ventures have become relevant.

8 7. Scott Peterson Case

9 We will not be referring to the Scott Peterson case unless it becomes relevant during  
10 the trial and then only with leave of court to do so.

11 8. Mark Geragos' Website

12 We will not be referring to Mr. Geragos' website unless it becomes relevant during  
13 the trial and then only with leave of court to do so.

14 9. Ray Chandler's Book

15 We will not be referring to Mr. Chandler's book unless it becomes relevant during  
16 the trial and then only with leave of court to do so.

17 10. Victor Gutierrez's Book

18 We will not be referring to Mr. Gutierrez's book unless it becomes relevant during  
19 the trial and then only with leave of court to do so.

20 11. Attorney General's Investigation Of Defendant's "Injury"

21 Defendant's false and well-publicized claims of injury, post-arrest, are relevant to  
22 the People's case-in-chief. The detectives who participated in his arrest and booking are the  
23 investigators who will be giving evidence in this case. His ill-considered and unsupported  
24 public effort to accuse those officers of deliberate and malicious assaults against his person was  
25 plainly undertaken to throw doubt on their credibility. As part of his "They're vindictively  
26 prosecuting an innocent man" public posture that defendant has consistently maintained, his  
27 "they injured me and threw me in a feces-spattered cell" is evidence of his own consciousness  
28 of guilt. (See CALJIC 2.04 and 2.05.) Should the defendant take the witness stand, the People

1 expect to cross-examine him extensively on his allegations that both his shoulders were  
2 dislocated and one forearm was injured by during his arrest and booking. The Attorney  
3 General's report could become relevant should that happen.

4 12. Henry Vaccaro Items

5 We will not be referring to the Vaccaro items unless it becomes relevant during the  
6 trial and then only with leave of court to do so.

7 13. DNA Of Anyone Other Than Defendant

8 Several semen stains were recovered from defendant's bed mattress and from a pair  
9 of underpants seized from his home, from which DNA was extracted. The profile identified as  
10 "male 1" is the defendant's. The other profiles found on the bed and the underpants are not his.  
11 The sources are unidentified. The DNA on the bed will not be referred to by the People.  
12 However the DNA in the underpants suggests that Jackson kept a pair of soiled underpants  
13 belonging to another male, just as he did with Gavin, thereby corroborating Gavin's testimony.  
14 We do intend to introduce that pair of underpants and the DNA results.

15 14. Underwear and Cocaine

16 One pair of underpants recovered from Jackson's residence had a blood stain. The  
17 stain contained cocaine and Demerol. The DNA profile from that stain is in fact defendant's.  
18 It is believed that Jackson has been a Demerol addict for many years and a significant amount  
19 of evidence supports that belief. That evidence includes a near-empty vial found on his  
20 property with the label torn off containing Demerol; a letter from a Dr. Farschian in Miami  
21 promising defendant help in curing him of his "D" addiction; a doctor who acknowledged  
22 having delivered him Demerol to his house; and numerous witnesses who speak of his  
23 addiction<sup>1</sup>. In addition defendant has publicly acknowledged in the past that he had become

24  
25  
26 <sup>1</sup> One of the numerous lawsuits pending against defendant was filed by a practitioner of  
27 some kind, who claims he was not paid by defendant for his efforts at freeing him from his  
28 drug addiction. Another lawsuit, filed by co-conspirator and former employee Mark Schaffel,  
contains detailed references to defendant's drug use.

1 addicted to prescription medications, and that he required medical intervention for that  
2 addiction.

3 Defendant suggests the blood-spot on his underwear may have been the result of a  
4 "medical injection" he receives for "vitiligo." We are reliably informed there is no injectible  
5 medication for vitiligo. And that explanation doesn't account for the Demerol in the blood.

6 We also will seek to introduce evidence of the presence of cocaine in his  
7 underpants. Cocaine was found on two locations on that garment; in the fabric sample contain  
8 the blood stain and on another sample of the fabric taken and examined as a reference sample.  
9 The most likely reason the cocaine was detected on both samples is that defendant excreted it  
10 in both his blood and his urine.

11 "How stoned was he when he crawled into bed with those two boys behind multiple  
12 locked doors?" may be a very relevant question. Should defendant testify, his chronic use of  
13 Schedule III drugs will be relevant on the issue of how well he recalls events and his state of  
14 awareness during those events.

15 DATED: January 20, 2005

16 THOMAS W. SNEDDON, JR.  
17 District Attorney

18 By: Ronald J. Zonen by Gerald M. Franklin  
19 Ronald J. Zonen, Senior Deputy  
20 Attorneys for Plaintiff

1 **PROOF OF SERVICE**

2  
3 STATE OF CALIFORNIA )  
4 COUNTY OF SANTA BARBARA ) SS

5  
6 I am a citizen of the United States and a resident of the County aforesaid; I am over  
7 the age of eighteen years and I am not a party to the within-entitled action. My business  
8 address is: District Attorney's Office; Courthouse; 1112 Santa Barbara Street, Santa Barbara,  
9 California 93101.

10 On January 20, 2005, I served the within PLAINTIFF'S RESPONSE TO  
11 DEFENDANT'S IN LIMINE MOTION FOR AN ORDER EXCLUDING "FOURTEEN (14)  
12 ITEMS OF IRRELEVANT EVIDENCE" on Defendant, by THOMAS A. MESEREAU, JR.,  
13 ROBERT SANGER and BRIAN OXMAN, by delivering a true copy to Attorney Sanger's  
14 officer and causing a true copy to be transmitted to Mr. Mesereau at the facsimile number  
15 given us by counsel, and then causing that copy to be mailed to Mr. Mesereau at the address  
16 shown on the Service List.

17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed at Santa Barbara, California on this 20th day of January, 2005.

19  
20 \_\_\_\_\_  
21 Gerald McC. Franklin



**SERVICE LIST**

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2 THOMAS A. MESEREAU, JR.  
3 Collins, Mesereau, Reddock & Yu, LLP  
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5 Los Angeles, CA 90067  
6 FAX: [CONFIDENTIAL]

7 Attorney for Defendant Michael Jackson

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9 ROBERT SANGER, ESQ.  
10 Sanger & Swysen, Lawyers  
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12 Santa Barbara, CA 93001  
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14 Co-counsel for Defendant

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19 Santa Fe Springs, CA 90670

20 Co-counsel for Defendant  
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SANTA BARBARA  
10 SANTA MARIA DIVISION

11 [PROPOSED] REDACTED VERSION

12 THE PEOPLE OF THE STATE OF CALIFORNIA,	)	No. 1133603
13 Plaintiff,	)	PLAINTIFF'S RESPONSE TO
14 v.	)	DEFENDANT'S IN LIMINE
15	)	MOTION FOR AN ORDER
16 MICHAEL JOE JACKSON,	)	EXCLUDING "FOURTEEN (14)
17 Defendant.	)	ITEMS OF IRRELEVANT
18	)	EVIDENCE"
	)	DATE: January 28, 2005
	)	TIME: 9:30 a.m.
	)	DEPT: TBA (Melville)

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20 A. Introduction

21 Defendant moves for an order excluding 14 items of evidence he claims is  
22 "irrelevant," and to exclude, as well, "any reference (direct or indirect and oral or written) to  
23 those "irrelevant" and "extraneous" items of evidence.

24 This response replies to the argument concerning each of the 14 items, in the order  
25 those items are listed and discussed in the pending motion.

26 ////

27 ////

28 ////

1 B. Discussion

2 1. [REDACTED]

3 The People do not presently intend to refer specifically to the incident [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 (See People's pending motion to introduce evidence of that

7 documentary.)

8 [REDACTED]

9 [REDACTED]

10 2. [REDACTED]

11 The People have no present intention to refer to defendant's [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 3. [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 4. [REDACTED]

23 We will not be referring to [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 5. [REDACTED]

27 Mr. Jackson did not have a [REDACTED]

1 [REDACTED] unless it becomes relevant during the trial and  
2 then only with leave of court to do so.

3 6. [REDACTED]

4 We will not be referring to [REDACTED] unless the evidence makes the  
5 subject relevant [REDACTED]. His reputation  
6 may become an issue at trial. We will address the issue with the court out of the presence of  
7 the jury should we decide [REDACTED].

8 7. [REDACTED]

9 We will not be referring to [REDACTED] unless it becomes relevant during  
10 the trial and then only with leave of court to do so.

11 8. [REDACTED]

12 We will not be referring to [REDACTED] unless it becomes relevant during  
13 the trial and then only with leave of court to do so.

14 9. [REDACTED]

15 We will not be referring to [REDACTED] unless it becomes relevant during  
16 the trial and then only with leave of court to do so.

17 10. [REDACTED]

18 We will not be referring to [REDACTED] unless it becomes relevant during  
19 the trial and then only with leave of court to do so.

20 11. Attorney General's Investigation Of Defendant's "Injury"

21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
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[REDACTED]

12. [REDACTED]

We will not be referring to the [REDACTED] unless it becomes relevant during the trial and then only with leave of court to do so.

13. [REDACTED]

[REDACTED]

14. [REDACTED]

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[REDACTED]

DATED: January 20, 2005

THOMAS W. SNEDDON, JR.  
District Attorney

By: \_\_\_\_\_  
Ronald J. Zonen, Senior Deputy  
Attorneys for Plaintiff

1  
2  
3 **PROOF OF SERVICE**

4 STATE OF CALIFORNIA }  
5 COUNTY OF SANTA BARBARA } SS

6 I am a citizen of the United States and a resident of the County aforesaid; I am over  
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10 On January 20, 2005, I served the within *Redacted Version* PLAINTIFF'S RESPONSE TO  
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12 ITEMS OF IRRELEVANT EVIDENCE" on Defendant, by THOMAS A. MESEREAU, JR.,  
13 ROBERT SANGER and BRIAN OXMAN, by delivering a true copy to Attorney Sanger's  
14 officer and causing a true copy to be transmitted to Mr. Mesereau at the facsimile number  
15 given us by counsel, and then causing that copy to be mailed to Mr. Mesereau at the address  
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17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed at Santa Barbara, California on this 20th day of January, 2005.

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21 Gerald McC. Franklin  
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SERVICE LIST

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FAX: (805) 963-7311

Co-counsel for Defendant

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Santa Fe Springs, CA 90670

Co-counsel for Defendant