

1 **COLLINS, MESEREAU, REDDOCK & YU**  
Thomas A. Mesereau, Jr., State Bar Number 091182  
2 Susan C. Yu, State Bar Number 195640  
1875 Century Park East, 7<sup>th</sup> Floor  
3 Los Angeles, CA 90067  
Tel.: (310) 284-3120, Fax: (310) 284-3133

4 **SANGER & SWYSEN**  
5 Robert M. Sanger, State Bar Number 058214  
233 East Carrillo Street, Suite C  
6 Santa Barbara, CA 93101  
Tel.: (805) 962-4887, Fax: (805) 963-7311

7 **OXMAN & JAROSCAK**  
8 Brian Oxman, State Bar Number 072172  
14126 East Rosecrans  
9 Santa Fe Springs, CA 90670  
Tel.: (562) 921-5058, Fax: (562) 921-2298

10 Attorneys for Defendant  
11 **MICHAEL JOSEPH JACKSON**

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION**

15 **THE PEOPLE OF THE STATE OF**  
16 **CALIFORNIA,**

17 Plaintiffs,

18 vs.

19 **MICHAEL JOSEPH JACKSON,**

20 Defendant.

) Case No. 1133603

) **RESPONSE TO THE DISTRICT**  
) **ATTORNEY'S SUPPLEMENTAL MOTION**  
) **FOR THE ADMISSION OF ADDITIONAL**  
) **EVIDENCE PURSUANT TO EVIDENCE**  
) **CODE SECTION 1108 AND 1101(B)**

) Honorable Rodney S. Melville  
) Date: TBA  
) Time: 8:30 am  
) Dept: SM 8

21 \_\_\_\_\_ )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 \_\_\_\_\_ )  
28 **RESPONSE TO THE DISTRICT ATTORNEY'S SUPPLEMENTAL MOTION FOR THE**  
**ADMISSION OF ADDITIONAL EVIDENCE PURSUANT TO EVIDENCE CODE SECTION**  
**1108 AND 1101(B)**

**FILED**  
SUPERIOR COURT of CALIFORNIA  
COUNTY of SANTA BARBARA

APR 18 2005

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

1  
2 MEMORANDUM OF POINTS AND AUTHORITIES

3 I.

4 THE ADDITIONAL TESTIMONY SHOULD NOT BE ADMITTED BECAUSE THE  
5 DISTRICT ATTORNEY FAILED TO COMPLY WITH EVIDENCE CODE SECTION  
6 1108 AND PENAL CODE SECTION 1054.7

7 The District Attorney has been aware of the statements of Kassim Abdool for almost a  
8 decade. For whatever reason, the prosecution opted not to include this "evidence" in their 1108  
9 motion. Penal code Section 1054.7 requires disclosure of statements of witnesses at least 30  
10 days prior to trial, or immediately if the information becomes known within 30 days of trial,  
11 unless good cause is shown. Now, in the middle of trial, the prosecution seeks to introduce this  
12 testimony without offering good cause as to why they did not disclose the statements of Mr.  
13 Abdool 30 days prior to trial. The Court should reject this request based on the failure to show  
14 good cause.

15 II.

16 THE TESTIMONY OF MR. ABDOOL SHOULD NOT BE ADMITTED PURSUANT TO  
17 EVIDENCE CODE SECTION 352

18 The proffered testimony amounts to salacious innuendo, not proper Sections 1108 or  
19 1101(b) evidence. The prosecution seeks to introduce testimony that Kassim Abdool<sup>1</sup> that he

20  
21 <sup>1</sup> The District Attorney's motion incorrectly claims that the undersigned contacted Mr.  
22 Abdool and met with him around the time of the grand jury investigation in 1993. That is not  
23 correct. The fact is that attorney Steve Cochran and investigator Eric Mason met with both  
24 Abdool and Ralph Chacon. They used a conference room in the undersigned's law office in  
25 Santa Barbara.

26 Both Chacon and Abdool testified to this under oath in their depositions. They testified  
27 that they did not talk to nor did they even meet the undersigned during that period of time.

28 Perhaps unintentionally -- or perhaps to distract attention from the personal involvement  
of the prosecutors in various aspects of this case -- there is an effort to involve the undersigned in  
some sort of meeting with these witnesses. Chacon testified on direct in this trial that he met  
with Eric Mason and Steve Cochran. On re-direct, he was asked a leading question about the  
time he met with "Mr. Sanger and Mr. Cochran." That was, of course, an improper question

RESPONSE TO THE DISTRICT ATTORNEY'S SUPPLEMENTAL MOTION FOR THE  
ADMISSION OF ADDITIONAL EVIDENCE PURSUANT TO EVIDENCE CODE SECTION  
1108 AND 1101(B)

1 saw wet swimming trunks on a floor, witnessed a brief hug between Mr. Jackson and Jordan  
2 Chandler, and that he was asked to bring Vaseline to Mr. Jackson's bedroom. Mr. Abdool's  
3 stories will do nothing to assist the trier of fact. The Court should reject the proffered testimony  
4 as unduly prejudicial, likely to confuse and inflame the jury and time consuming.

5  
6 III.

7 SECTIONS 1108 AND 1101(B) WERE NOT DESIGNED TO ALLOW THIS SORT OF  
8 TESTIMONY

9 The prosecution has been given a significant amount of leeway with regard to the  
10 presentation of alleged prior offense evidence. This is the time, however, where the Court should  
11 draw the line. Sections 1108 and 1101(b) were not designed to allow a prosecutor a second  
12 chance to prove, using a preponderance of the evidence standard, a case that he never could have  
13 proved beyond a reasonable doubt. The Legislature's principal justification for enacting Section  
14 1108 was that "[b]y their very nature, sex crimes are usually committed in seclusion without third  
15 party witnesses or substantial corroborating evidence." (*People v. Falsetta* (1999) 21 Cal.4th  
16 903, 915.) Ironically, in the present case, the current alleged offenses were supposedly witnessed  
17 by a third party, Star Arvizo, whereas the vast majority of the Section 1108 evidence was based  
18 on third party circumstantial witnesses.

19 With regard to Abdool, this is precisely the kind of inflammatory evidence that is more  
20 prejudicial than probative. It does not amount to evidence of an offense and only serves to

21 \_\_\_\_\_  
22 which misstated his testimony on direct. This motion now makes an attempt to place the  
23 undersigned at a similar meeting with Abdool. Just like Chacon, Mr. Abdool has testified under  
24 oath that he did not meet the undersigned until after discovery started in his lawsuit,  
25 approximately a year later.

26 The prosecution has now been adequately warned that Mr. Sanger had nothing to do with  
27 these meetings with Ranch employees during the grand jury investigations. The prosecution is  
28 also on notice that their witnesses have so testified - including Mr. Abdool. If Abdool is allowed  
to testify, we would expect that the prosecution would not attempt to introduce such false  
evidence, either directly or by innuendo, without a hearing out of the presence of the jury.

29 \_\_\_\_\_  
RESPONSE TO THE DISTRICT ATTORNEY'S SUPPLEMENTAL MOTION FOR THE  
ADMISSION OF ADDITIONAL EVIDENCE PURSUANT TO EVIDENCE CODE SECTION  
1108 AND 1101(B)

1 advance the prosecution's case by indirect innuendo. The Court should reject this testimony  
2 because it is not proper prior offense evidence.

3 IV.

4 CONCLUSION


5 For the reasons stated above, the Court should not admit the proposed additional  
6 alleged prior offense evidence.

7 Dated: April 18, 2005

8 COLLINS, MESEREAU, REDDOCK & YU  
Thomas A. Mesereau, Jr.  
Susan C. Yu

9 SANGER & SWYSEN  
Robert M. Sanger

10 OXMAN & JAROSCAK  
11 Brian Oxman

12  
13   
14 \_\_\_\_\_  
Robert M. Sanger  
Attorneys for Defendant  
MICHAEL JOSEPH JACKSON

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
*EX:*  
*For*

---

RESPONSE TO THE DISTRICT ATTORNEY'S SUPPLEMENTAL MOTION FOR THE  
ADMISSION OF ADDITIONAL EVIDENCE PURSUANT TO EVIDENCE CODE SECTION  
1108 AND 1101(B)