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County of Santa Barbara

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

MAY - 4 2005

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

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 MICHAEL JOE JACKSON. )

16 )  
17 Defendant. )

No. 1133603

PLAINTIFF'S MOTION IN  
LIMINE TO EXCLUDE  
EVIDENCE OF 1994 INTERVIEW  
OF LIZETTE BARNES ON  
EVIDENCE CODE SECTION  
352 GROUNDS

DATE: TBA  
TIME: TBA.  
DEPT: SM-2 (Melville)

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19  
20 A. Introduction:

21 The defense intends to call witness Lizette Barnes to the stand on May 5, 2005. Ms.  
22 Barnes is the mother of Brett Barnes, previously identified by witnesses as a victim during the  
23 1108 portion of the People's case. The defense wish to elicit testimony from Ms. Barnes  
24 regarding statements made to her by Mr. Sneddon during a visit to the Barnes home in  
25 Australia in 1994. Ms. Barnes expected testimony, gleaned from a defense report provided  
26 after 4:00 p.m. May 3, 2005, is nothing short of an assault upon the integrity of the prosecution.  
27 The purpose of the visit was to determine if the Barnes' would allow their son to be  
28 interviewed since his name had been brought up in the previous investigation as being the

1 victim of lewd acts by this defendant.

2           The defense intends to elicit testimony from this witness designed to portray the  
3 District Attorney as heavy-handed, demanding, and determined to prosecute Jackson. Such  
4 testimony is wholly irrelevant to the issue of whether Mr. Jackson molested any boys, at any  
5 time, or in any place. In addition to being inflammatory, the information contained in the  
6 defense report is contradicted by two other witnesses who were present, one of whom is a  
7 current Superior Court Judge in Los Angeles. [See attached declarations of Judge Birnstein,  
8 and Head Deputy Hodgman] In particular, the defense witness wishes to relate to this jury that  
9 the information about her son being the victim of oral copulation is a "new" allegation. Her  
10 basis for this, she claims, is that Mr. Sneddon never mentioned "oral sex" during the Australia  
11 visit. In fact, Mr. Sneddon did very little of the talking at that meeting. Judge Lauren Weis  
12 Birnstein conducted the majority of that meeting and she was the one who told the Barnes  
13 what the allegations were. That included that a guard witnessed oral copulation. What was  
14 said and by whom during the Australia meeting is irrelevant to this proceeding.

15           It has long been recognized that the People, just as much as the defendant, are  
16 entitled to due process in a criminal proceeding. (*Stein v. New York* (1952) 346 U.S. 156, 197;  
17 *Department of Corrections v. Superior Court (Ayala)* (1988) 199 Cal.App.3d 1087, 1092.)  
18 Regarding the People's right to due process Justice Cardoza wrote: "But justice, though due to  
19 the accused, is due to the accuser also. The concept of fairness must not be strained till it is  
20 narrowed to a filament. We are to keep the balance true." (*Snyder v. Massachusetts* (1934)  
21 291 U.S. 97, 122.) The alleged motives or actions of the prosecution in 1994 must be  
22 excluded on the basis of 352 and due process. Defendant Jackson was indicted by a Grand Jury  
23 in this proceeding and it is that indictment which brings him to trial.

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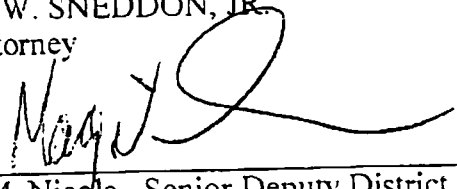
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This court has denied on numerous occasions the use of this defense tactic, and we request once again, the court exclude this 'class' of evidence.

DATED: May 4, 2005

THOMAS W. SNEDDON, JR.  
District Attorney

By:   
Mag M. Nicola, Senior Deputy District Attorney  
Attorneys for Plaintiff

## DECLARATION

I, Lauren Weis Birnstein, do hereby declare:

1. I am currently employed as a Los Angeles County Superior Court Judge;
2. From January 22, 1979 through November 4, 2002, I was licensed to practice as an attorney in the state of California and employed by the Los Angeles County District Attorney's Office;
3. In 1994, I was the Acting Head Deputy of the Sex Crimes Division of the Los Angeles County District Attorney's Office and was assigned to investigate child sexual molestation allegations against Michael Jackson to determine whether or not to file charges;
4. In June of 1994, I, along with Los Angeles County Deputy District Attorney William Hodgman, Santa Barbara District Attorney Tom Sneddon, and Santa Barbara Sheriff Deputies Russ Birchim and Glen Monk, traveled to Melbourne, Australia to attempt to interview Brett Barnes;
5. We arrived at the known address for the Barnes family. No one was home and we waited outside in the car;
6. At some point, while my colleagues remained in the car, I approached some children who appeared to be neighbors and asked them if they knew Brett Barnes and whether the family was in town. I told them that we were reporters who had come from the U.S.;
7. As a car drove up, they pointed and told me it was Mrs. Barnes and that Brett was in the car;
8. I went over to the car and asked Mrs. Barnes if we could speak to her. Brett went off to play;
9. Some time later, Mr. Hodgman, Mr. Sneddon, and I were allowed to enter the house and sit in the living room, where we spoke with Mr. and Mrs. Barnes;
10. I conducted the majority of the interview and very little was said by either Mr. Sneddon or Mr. Hodgman;
11. I was the one who told Mr. and Mrs. Barnes that, in order to respect their privacy and not to embarrass them, I had said that we were reporters;

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12. I was the one who told Mr. and Mrs. Barnes that the trip was made in secret so as to avoid press leaks back home;
13. I told Mr. and Mrs. Barnes that a guard had seen inappropriate sexual contact between Michael Jackson and Brett, and that we had come with two Santa Barbara Sheriff's deputies to ask permission to interview him;
14. I was the one who told Mr. and Mrs. Barnes the substance of what the guard related regarding the sexual contact between her son and Michael Jackson;
15. I did not intend to tell Brett's parents the details as related by the guard prior to interviewing Brett, and began simply by saying that we had a witness to some sexual contact between Brett and Michael Jackson. However, due to Mrs. Barnes apparent reluctance to allow us access to Brett, I felt compelled to give both parents more information about the witnessed encounter in the hope that they would agree to the interview;
16. I do not recall Mr. Sneddon ever asking to see Brett's passport;
17. Mr. and Mrs. Barnes said they would think about whether they would allow us to interview Brett and would call us the next day. We waited approximately two days for the call. When they called, they refused to allow the interview;
18. I do not recall anyone saying that it did not matter whether or not we got a statement from Brett; and
19. No one said that we were going to go back and prosecute Michael Jackson;

I declare under penalty of perjury that the foregoing is true and correct to the best of my recollection this 4<sup>th</sup> day of May, 2005, at Inglewood, California



Lauren Weis Birnstein

## DECLARATION OF WILLIAM HODGMAN

I, WILLIAM HODGMAN, declare:

1. I am an attorney licensed to practice law in State of California, and I have been continuously employed by the Los Angeles County District Attorney's Office since 1982. Presently, I am assigned as the Head Deputy of the Target Crimes Division.

2. In June 1994, I was assigned as the Director of Central Operations for the District Attorney's Office. As such, I had oversight over a number of special prosecution units including the Sex Crimes Division. At the time, Lauren Weis was Acting Head Deputy of the Sex Crimes Division and was assigned to participate in the investigation of allegations of child molestation committed by Michael Jackson.

3. In June 1994, I accompanied then Head Deputy District Attorney Lauren Weis, Santa Barbara County District Attorney Thomas Sneddon, Santa Barbara County Sheriff Detective Russ Birchim, and Santa Barbara Sheriff Detective Glen Monk to Melbourne, Australia, for the purpose of making contact with the family of Brett Barnes.

We went to a residence on the outskirts of Melbourne that had been identified to us as the residence of Brett Barnes. In the late afternoon hours, we made contact with the mother of Brett Barnes and she informed us that she wanted to wait until her husband came home from work before speaking to us. We left the Barnes' residence and returned approximately 90 minutes later. A person identified to us as Brett Barnes' father, along with Mrs. Barnes, met with us in the living room of the Barnes' home.

Among other things, we explained to Mr. and Mrs. Barnes that we had information that their son may have been molested by Michael Jackson and that we were requesting their permission to speak to their son about that matter. We explained that we had a witness who had stated that he had seen Michael Jackson orally copulating their son while Jackson and her son were in a pool house on the grounds of Jackson's Neverland estate. We stated that we understood this information was difficult for a

DECLARATION OF WILLIAM HODGMAN

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parent to hear and that they might want some time to discuss the matter as a family before responding to our request to interview their son Brett Barnes.

4. I recall Mrs. Barnes being very quiet during the conversation that took place in the living room and that for a portion of the time we were conversing she sat with her head down. I recall Mr. Barnes appeared to be upset with Mrs. Barnes.

5. A day or two after this conversation we were contacted by telephone by Mr. or Mrs. Barnes and informed that they did not wish to have their son Brett interviewed.

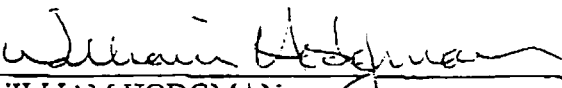
6. I do not recall Mr. Sneddon demanding to see Brett Barnes' passport.

7. I do not recall Mr. Sneddon advising Mrs. Barnes that the guard had seen Michael Jackson kissing her son on the stomach.

8. I do not recall Mr. Sneddon telling Mrs. Barnes that it did not matter whether or not a statement was obtained from Brett Barnes and that we were going to go back to California and prosecute Michael Jackson.

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

Executed on this 4<sup>th</sup> day of May 2005, at Los Angeles County, State of California.

  
WILLIAM HODGMAN

DECLARATION OF WILLIAM HODGMAN

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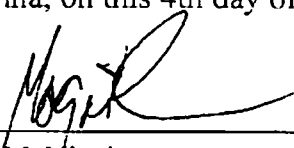
1 **PROOF OF SERVICE**

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

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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 April 20, 2005, I served the within PLAINTIFF'S MOTION IN LIMINE TO  
11 EXCLUDE EVIDENCE OF THE NOVEMBER 2003 "SURRENDER FLIGHT" on  
12 Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER and BRIAN OXMAN, .  
13 by transmitting a facsimile copy thereof to Attorney Sanger at his Fax number in Santa Maria.

14 I declare under penalty of perjury that the foregoing is true and correct.  
15 Executed at Santa Barbara, California, on this 4th day of May, 2005.

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19 Mag M. Nicola