

12609

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

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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

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19 WEDNESDAY, JUNE 1, 2005

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21 8:40 A.M.

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23 (PAGES 12609 THROUGH 12717)

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

28 BY: Official Court Reporter 12609

1 APPEARANCES OF COUNSEL:

2

3 For Plaintiff: THOMAS W. SNEDDON, JR.,

4 District Attorney -and-

5 RONALD J. ZONEN, Sr. Deputy District Attorney

6 -and- GORDON AUCHINCLOSS,

7 Sr. Deputy District Attorney 1112 Santa Barbara Street

8 Santa Barbara, California 93101

9

10

11 For Defendant: COLLINS, MESEREAU, REDDOCK & YU BY: THOMAS A.
MESEREAU, JR., ESQ.

12 -and- SUSAN C. YU, ESQ.

13 1875 Century Park East, Suite 700 Los Angeles, California 90067

14 -and-

15 SANGER & SWYSEN

16 BY: ROBERT M. SANGER, ESQ. -and-

17 STEPHEN K. DUNKLE, ESQ. 233 East Carrillo Street, Suite C

18 Santa Barbara, California 93101

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28 12610

1 E X H I B I T S

2 FOR IN

PLAINTIFF'S NO. DESCRIPTION I.D. EVID.

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4 910 Portions of Bashir documentary that the Court

5 found to be admissible as admissions 12624 12624

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1 Santa Maria, California

2 Wednesday, June 1, 2005

3 8:40 a.m.

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5 (The following proceedings were held in
6 open court outside the presence and hearing of the
7 jury:)

8

9 THE COURT: Good morning.

10 MR. SANGER: Good morning, Your Honor.

11 MR. SNEDDON: Good morning.

12 THE COURT: Let's see, would you -- would
13 counsel approach, here?

14 I'll just give you a couple minutes to read
15 the instructions I just handed you.

16 Have you had time to read those?

17 MR. SANGER: Yes, Your Honor.

18 THE COURT: Mr. Sneddon?

19 MR. SNEDDON: Yes.

20 THE COURT: Well, I'm sure glad we stopped
21 yesterday. That was exhausting. It's amazing how
22 things look different the next morning, huh?

23 Okay. Number one, I'm going to take some
24 items up that are hanging loose here. Number one is
25 that the special instruction requested by the
26 District Attorney re the definition of "property" as
27 being "something of value," I'm going to give that

28 instruction. 12612

1 For your purposes, I'm placing the
2 instruction in the package to the jurors following
3 CALJIC 14.70.

4 Number two --

5 MR. SANGER: And, Your Honor, just so the
6 record is clear, I think we objected to this
7 yesterday, but we definitely object to it.

8 THE COURT: Okay. The record's clear. You
9 definitely object to it.

10 MR. SANGER: All right. Thank you.

11 THE COURT: Number two, D.A.'s proposed
12 CALJIC 3.30 re general criminal intent, it appears
13 that the D.A.'s proposed 3.30 is adequate,
14 furnishing alcoholic beverage as a lesser-included.
15 I'm going to give that and place it after 16.010.
16 That's in the package I -- the next one is in the
17 package that I gave you on false imprisonment.

18 MR. SANGER: Yes, Your Honor. I don't think
19 we got the 3.30 for furnishing, the one you just
20 referred to. We do have the one on false
21 imprisonment. Maybe I'm wrong on that.

22 THE COURT: It came down -- the District
23 Attorney -- I had ordered them to prepare it and
24 bring it to my office. And they did. I assumed
25 they would give you a copy of it.

26 Did you give them a copy of it?

27 MR. SNEDDON: Your Honor, I can't tell you

28 that, because Mr. Franklin did all that, and when he 12613

1 left, he went directly back to Santa Barbara. So I
2 guess if they didn't get it, I would assume that he
3 did not do that.

4 THE COURT: Well, he gave me three or four
5 instructions yesterday afternoon.

6 MR. SNEDDON: I'm -- I know he did, because
7 he was called back. And -- but I was not in
8 communication with Mr. Franklin after that. And I
9 know he went back to Santa Barbara.

10 THE COURT: Why isn't he here today?

11 MR. SNEDDON: Because he has a brief due
12 with the California Supreme Court.

13 THE COURT: Oh. You got him here as being
14 your representative on instructions, you know.

15 MR. SNEDDON: I got him here to carry my
16 briefcase. But I apologize, Judge, I just didn't
17 know. These are not --

18 THE COURT: How do I know what ones you --

19 MR. SNEDDON: I think you should assume that
20 whatever Mr. Franklin did for the Court and gave
21 extra copies of did not get to Mr. Sanger. I think
22 that would be a fair assumption.

23 MR. BEEBE: Here's another copy.

24 MR. SNEDDON: I understood there was only
25 two, perhaps three.

26 THE COURT: What's the another one?

27 MR. SANGER: The only one that we received,

28 Your Honor, was the "property" or "something" -- and 12614

1 "something of value" defined.

2 MR. SNEDDON: I know he did 3.31. The
3 mental state one he came back and did. And there
4 was one other that the Court requested he come back
5 and do.

6 MR. SANGER: I think we got "property" and
7 "something of value" yesterday. I think he brought
8 this back yesterday before the end of the day while
9 we were still in court. But we did not receive
10 anything else.

11 I don't want to pick on Mr. Franklin. He
12 was, I'm sure, trying to do his best, but we just
13 haven't seen them. So if we could have a copy, I'd
14 appreciate it.

15 THE COURT: What were the other ones? He
16 did 17.01.

17 MR. BEEBE: 3.31 and 3.31.5, and the
18 property one.

19 MR. SNEDDON: I think it's the mental state
20 one.

21 MR. BEEBE: Yeah.

22 THE COURT: And what number was that; do you
23 know?

24 MR. BEEBE: I think it's 3.31.5.

25 MR. SNEDDON: So that would be 3.31.5.

26 THE COURT: Okay.

27 MR. SNEDDON: I know that one for sure. And

28 I think there was one other, which may have been the 12615

1 lesser-included, 17.00.

2 THE COURT: What was the long one we had him
3 filling in all those blanks? Do you remember?

4 MR. BEEBE: That was 6.23.

5 THE COURT: And give it to Mr. Sanger and
6 then give it back to me.

7 What was the other one?

8 MR. BEEBE: 6.23.

9 THE COURT: Okay.

10 MR. SNEDDON: I believe that one was
11 actually delivered to the Court and I think Mr.
12 Sanger has a copy of that one.

13 MR. SANGER: Yeah.

14 MR. SNEDDON: It was delivered before we
15 left yesterday.

16 MR. SANGER: That was delivered yesterday
17 during the day while we were in session, changing
18 the --

19 MR. SNEDDON: Font.

20 MR. SANGER: Changing whether it was capped
21 or not capped. We got the final version of that, so
22 we're okay on that one.

23 Okay. So we now have 3.30 on the
24 furnishing, misdemeanor. And I think the Court's
25 ruled that comes in.

26 And we have 3.31.5 on mental states, and we
27 will submit on that.

28 And then we have the "property" and 12616

1 "something of value," which we got yesterday, to
2 which we objected and the Court accepted it.

3 And then we have 6.23, which changed the
4 capitalization.

5 So are there any others that we're missing?

6 THE COURT: Probably, but I don't know. I
7 have a feeling there's one more, and I'm trying to
8 remember which one it was.

9 MR. SANGER: I heard somebody say
10 17-something.

11 THE COURT: I said that.

12 MR. BEEBE: 17.12.

13 THE COURT: I'm thinking of the one that had
14 all of the blanks in it that we asked them to
15 prepare. Maybe Tracy remembers.

16 MS. SPLITGERBER: That was, I think, 17.12.

17 THE COURT: 17.12.

18 MR. SNEDDON: That's my recollection. It
19 was something in the 17.00 series, and I think
20 that's the one.

21 MS. SPLITGERBER: And they did do it, and I
22 think the copy was in the packet that you handed
23 out, the copy of what the D.A. prepared.

24 THE COURT: You got that copy?

25 MR. SANGER: You gave us that this morning,
26 17.12.

27 THE COURT: Okay. What I want you to do,

28 then, is come up and get these. There's two more 12617

1 here. These are minor changes.

2 On that, I just changed the heading. I took
3 the heading off. I'll show you the -- this is what
4 it said before.

5 MR. SANGER: Yes.

6 MR. SNEDDON: Okay.

7 THE COURT: Then the next one, I gave you a
8 proposed C, and now I'm giving you a different
9 proposed C. And the only difference is in this line
10 here, "identified as People's Exhibit 910," instead
11 of "as an addendum," which it previously said.

12 MR. SANGER: Very well. Thank you.

13 THE COURT: That's in the package I gave you
14 this morning.

15 MR. SANGER: And we do want to be heard on
16 that.

17 THE COURT: We're going to go through all
18 this. I'm just -- we were starting to go through
19 all of this.

20 MR. SANGER: All right.

21 THE COURT: All right. The next thing, we
22 had just finished discussing 3.30 on the furnishing
23 alcoholic beverage lesser, and I told you I would
24 put it behind -- well, following CALJIC 16.010.

25 The next one is the instruction as it
26 relates to false imprisonment.

27 MR. SANGER: Yes. Could I be heard on that,

28 Your Honor? 12618

1 THE COURT: Yes.

2 MR. SANGER: I'll stand up so I get a little
3 exercise here this morning.

4 I have a suggestion on that one that I think
5 will help, and we'll see.

6 I would propose that there be a second
7 paragraph added to that that says, "However, before
8 a person can be convicted of conspiracy to commit
9 false imprisonment, the specific intents to commit
10 conspiracy must be proved."

11 And I think that's -- I could have made it
12 more elaborate, but I think that would help the jury
13 not to get confused when they're being told
14 "specific intent," "specific intent," and then all
15 of a sudden "general" on one of the conspiracy
16 counts. And I wrote it out, if the Court would like
17 to have what I just read.

18 THE COURT: Okay.

19 MR. SANGER: Mr. Sneddon?

20 THE COURT: Do you have it? This is that
21 area that's -- it's a difficult area. So that
22 repeats another instruction, but I don't see any
23 problem with giving it at that point, just to --
24 because it is a tricky area.

25 MR. SNEDDON: I don't have a problem with
26 that, Judge.

27 MR. SANGER: May I approach? Or just --

28 THE COURT: Would you just give it to -- 12619

1 MS. SPLITGERBER: Thank you.

2 THE COURT: I think if you send that over to
3 Carrie....

4 MS. SPLITGERBER: I'll take it.

5 THE COURT: Then the -- number three, 17.12,
6 as it has been prepared, seems -- this is the one
7 that the District Attorney -- it's a standard CALJIC
8 instruction, but there were a lot of blanks in it,
9 so I had them fill in the blanks for us. It looks
10 all right to me.

11 Have you looked at it?

12 MR. SANGER: I have looked at it. Obviously
13 I haven't compared every word, but it looks correct.

14 THE COURT: Okay.

15 MR. SANGER: However, could I just briefly
16 be heard --

17 THE COURT: Yes.

18 MR. SANGER: -- on that?

19 I don't want to -- it seems the Court is
20 committed to giving the lessers, but having done a
21 little more research on it last night, it does
22 appear that the standard would be that you cannot
23 commit the greater without committing the lesser.
24 And the greater involves anyone. The lesser
25 involves a minor. So you can commit the greater
26 without committing the lesser.

27 And of course there's the issue of

28 furnishing versus administering. I believe that 12620

1 Mr. Sneddon yesterday -- and I don't know if he
2 actually said it loud enough to be on the record,
3 but said something to the effect that if it's
4 substantially the same, it's acceptable. And
5 whether he said it on the record or not, that seems
6 to be the Geiger standard for lesser-relateds.

7 THE COURT: You mean you listen to what he
8 whispers to his colleagues?

9 MR. SANGER: He wasn't whispering. It was,
10 at the very least, a stage whisper, if it wasn't
11 said loud enough for the record. I don't know if it
12 got on, but I couldn't help but hear it. The point
13 being -- whether the Court heard it or not, the
14 point being the Geiger case was overruled. That was
15 the lesser-related standard. And that was only at
16 the request of the defense. So I'm not going to
17 argue it further.

18 I think the Court has in mind what the law
19 is, but I do think that it would be incorrect to let
20 in the lesser. I realize that would result in some
21 revision of jury instructions at the last second,
22 but --

23 THE COURT: Well, that's not the issue, but,
24 you know, we're here. As you see, we're changing
25 jury instructions as we speak. So it's not a
26 hardship on the Court to change the language in a
27 jury instruction.

28 MR. SANGER: Especially if you're deleting 12621

1 some of them. I suppose that would be a good thing.

2 THE COURT: Well, getting to the point,

3 there's two mandatory -- I'm sure you've read this

4 Mandatory Criminal Jury Instruction Handbook. And

5 on page III, D.[1.7], "Lesser Offenses to Offense

6 Charged," there's two approaches that you have to

7 look at. One is the legal elements test, which

8 you've been discussing, and the other one is the

9 accusatory pleading test.

10 And when you look at the language in the

11 indictment, you find that the accusatory pleading

12 test, if you follow that, is the test that mandates

13 that I give the lesser-included.

14 MR. SANGER: I think that would answer the

15 second part, which is minor versus anyone, because

16 the accusatory pleading would give notice of a

17 minor.

18 THE COURT: Right.

19 MR. SANGER: And I think that's what the

20 Court's referring to. But the furnishing versus

21 administering I think is still an issue.

22 THE COURT: It seems that you would have to

23 furnish to administer or -- it doesn't seem, to me,

24 to be a --

25 MR. SANGER: There's --

26 THE COURT: Anyway, yes, I've decided to give

27 the lesser-included.

28 MR. SANGER: Okay. 12622

1 THE COURT: And here's the changed 330, 3.30.

2 MR. SANGER: I'll bring it back if you want.

3 THE COURT: And that should go in the

4 material -- what's the number of the instruction on

5 false imprisonment?

6 MR. BEEBE: 9.70?

7 THE COURT: Yeah, here it is, 9.60. 9. -- so

8 I'm going to put it right behind 9.60.

9 Then I do not have a clean copy of 17.12.

10 Does someone have a --

11 MS. SPLITGERBER: Yes, Carrie does.

12 THE COURT: Okay. I need that.

13 MS. SPLITGERBER: All right.

14 THE COURT: Number four, let's see, we

15 covered that, the furnishing alcohol to a minor.

16 Number five, the Court's proposed

17 instruction C and C-1 on the various use of the

18 videos. What I'm proposing to do here is to

19 instruct with the Court's proposed C and put that

20 after 2.09, "Evidence limited as to purpose."

21 The thing that's -- and I did receive your

22 points and authorities this morning. And I agree

23 with your points and authorities on use of the

24 outtake language. You know, it's clear that --

25 that's why I admitted the outtake footage was to

26 give a complete context of everything that was said.

27 But the case you cited doesn't stand for admitting

28 it for the truth of the matter asserted. I think it 12623

1 stands for what we thought, is that you admit that
2 for what other purpose you admitted the main body of
3 material.

4 So it's a good citation, but it's -- it
5 doesn't change my approach. My approach is outlined
6 in Instruction C.

7 MR. SANGER: I do have a comment on that
8 whenever the Court's ready.

9 THE COURT: Yes. Before you comment, let me
10 explain something so you get -- maybe you have the
11 complete picture, maybe not, but I want to be sure
12 you do.

13 So, initially the -- well, I'm beginning to
14 think like you. I was going to explain all of the
15 side stuff before I got to the point. It's time we
16 end this, you know.

17 I'm going to go to using an exhibit, which
18 I've marked as People's 910, and that contains the
19 material that they prepared at my request, which is
20 the material that they are going to maintain to the
21 jury is an admission.

22 And by using an exhibit of the People -- I
23 had originally placed it as an appendix to the
24 instruction, but I think that makes the connection
25 to the Court that I don't want to make; that it's
26 not me that's proposing that these are admissions.
27 I have to make some preliminary determination, but

28 not final, and I don't think they need to know that 12624

1 I have to make some preliminary determination.

2 So the D.A. needs to say, "These are" -- in
3 his argument, he'll say, "These are things that we
4 urge you to believe are admissions by the
5 defendant." Then I have -- the exhibit is
6 referenced, so that the jury can, if they choose to,
7 look at it, or if the D.A. chooses to, can show the
8 jury this exhibit, which is the admissions you are
9 claiming. But at any rate, they have something
10 specific to relate this instruction to.

11 And on Instruction C-1, it's really the
12 standard admission instruction, but I have
13 pinpointed it to -- with the paragraph in the middle
14 that refers them to Exhibit 910, and then reiterates
15 again that they are the exclusive judges as to
16 whether or not there are admissions.

17 So that's my proposal for covering the
18 admission part of this video.

19 Now you may speak.

20 MR. SANGER: At my peril, evidently, but I
21 will.

22 On Exhibit C, first of all, I would propose
23 to modify it in paragraph four that says "the
24 outtakes video." If you go to the second
25 sentence -- let me tell the Court what I propose to
26 modify and then explain why.

27 THE COURT: Yes.

28 MR. SANGER: I propose to say -- instead of 12625

1 "none of," take that out and say, "The statements in
2 the outtakes video may be considered for their
3 truth," and then strike the rest of it and say, "If
4 they are on the same subject matter as the
5 statements offered by the People in Exhibit 910."
6 And conveniently, your modification to put
7 the reference to Exhibit 910 in the very latest
8 version makes that work conveniently.

9 Now, having said that, the argument is --

10 THE COURT: Just a moment. Let me make sure
11 I understand that.

12 MR. SANGER: I can say it again, if that
13 helps.

14 THE COURT: Well, I'm reading it.

15 Okay. So the proposal is, instead of "none
16 of," it will say -- it will start out with, "The
17 statements in the outtakes video may be considered
18 for their truth."

19 I see. It's covering -- there's actually --
20 I've taken a sentence that was covering another
21 subject, which is that in any of -- either the
22 outtake or the Bashir video, if the same -- they
23 show the same scenes. Some of the scenes are the
24 same. Some of the outtakes are the parts that the
25 Bashir video uses, so the words are the same. So to
26 the extent that those are the same words in both
27 videos, if those -- then that's what that sentence

28 is meant to say, that they would be admitted for the 12626

1 truth of the matter asserted, if they're on this
2 list.

3 Now you want to cover the second problem,
4 which is, "What parts of my statement that I want to
5 introduce can be taken for the truth of the matter
6 asserted"?

7 MR. SANGER: That's correct. And I think,
8 given Evidence Code Section 356 that says "on the
9 same subject," so we've taken the same language
10 there, "If they are on the same subject as the
11 statements offered by the People in 910."

12 Now, I understood, from the Court's comments
13 earlier, that the Court apparently is not reading
14 356 to say that statements on the same subject come
15 in for the truth of the matter. In the Douglas case
16 that we cited, where it says --

17 THE COURT: No, they would be -- you're not
18 understanding what I said.

19 356 and the Douglas case do not stand for
20 the proposition that if I admit statements not for
21 the truth of the matter asserted, and you want to
22 connect statements to that, that they get to go in
23 for the truth of the matter asserted.

24 MR. SANGER: Okay.

25 THE COURT: You are not maintaining that --

26 MR. SANGER: I would agree with what the
27 Court said. I'm talking about the statements in

28 Exhibit 910. So if -- 12627

1 THE COURT: Okay. So I'm not saying what
2 you thought -- what you accused me of saying.

3 MR. SANGER: All right. Good.

4 THE COURT: All right. So the issue is --
5 I agree with you that if part of the admission is
6 not given, if the part of the statement, the context
7 of the statement is not given by the District
8 Attorney and there's more to that statement, then
9 that should be considered for the truth of the
10 matter asserted also as part of the statement. If
11 there's an admission there and it comes in for the
12 truth of the matter asserted, then any part of that
13 statement that was excluded by the D.A. should also
14 come in with the same understanding.

15 MR. SANGER: If it's on the same subject
16 matter.

17 THE COURT: If it's part of that statement.

18 See, what --

19 MR. SANGER: The way I look at it -- I
20 understand what the Court's saying.

21 THE COURT: Here's the problem that I see
22 with your position, is that there's a whole lot of
23 discussion about children by Mr. Jackson. And if
24 the subject matter you're saying is "children," then
25 my answer to you is no, that's too broad of a
26 subject matter.

27 MR. SANGER: Well, okay. And I understand

28 that's the answer. If that's the ruling, I won't 12628

1 argue with it, but if you're inviting discussion on
2 it --

3 THE COURT: I'm inviting discussion.

4 MR. SANGER: -- it seems to me this comes up
5 all the time, and you'll have typically a letter or
6 a writing or a statement made to the -- to the
7 police by a defendant. Somebody's arrested, they're
8 given the Miranda rights, and they sit down and they
9 talk about the case, and the prosecution comes in
10 and says, "Ahh, we want to take this statement and
11 that statement and we want to say that's an
12 admission."

13 You're allowed to play the entire tape and
14 the jury's entitled to consider the entire tape. It
15 happens all the time. The entire tape of the police
16 interview. And they can consider it for the truth
17 of the matter asserted.

18 Now, I suppose -- and I must say, I can't
19 remember anybody ever doing this, but I suppose it
20 could happen that there could be a discussion on the
21 tape about something that's totally irrelevant, and
22 the prosecution could say, "Well," you know, "you
23 can't have that," because they're talking about,"
24 you know, another event or something totally
25 unrelated to the case, but otherwise the whole --
26 the whole tape comes in, and it happens all the
27 time. Same thing with a letter. The whole letter

28 comes in as long as it's the same subject matter. 12629

1 And so what you have here is you have a
2 series of tapings and interviews by Bashir that take
3 place during the latter part of 2002, on into the
4 early part of 2003, in January 2003, and Bashir
5 clips from these various interviews snippets that he
6 puts into his production.

7 Some of those actual conversations Mr.
8 Moslehi did not have -- he wasn't there, nor did he
9 have a camera running to tape-record the rest of
10 what was said during that period of time. We're
11 stuck with what Mr. Bashir has pulled out to put in
12 his video. However, the rest of it is one big
13 ongoing conversation with Michael Jackson, and he
14 does take clips from the other -- from the other
15 tapes.

16 So I believe that -- and I'm disagreeing
17 with the Court directly, but I believe that anything
18 that's in 910 that is put in context or involves the
19 same subject matter that's on these tapes is fair
20 game for the jury. Now --

21 THE COURT: And the Bashir tape should come
22 in for the truth of the matter asserted because it's
23 all on the same subject matter.

24 MR. SANGER: Well, no, actually there's an
25 argument -- there would be an argument by the
26 District Attorney that anything that Michael Jackson
27 said on the same subject matter on that tape could

28 come in. And I think that that's true. If Michael 12630

1 Jackson said it on the Bashir tape, and it pertained
2 to the subject matter of children, it could be
3 considered. I think that that's basically the -- I
4 suppose you could put a sentence in to that effect
5 as well.

6 And it really takes us back -- I hate to
7 say, but it does take us back to the initial
8 approach where I suggested that on both the Bashir
9 tape and the outtakes, that any statements -- I
10 don't have it in front of me here, but I provided in
11 writing, any statements by Mr. Jackson on the
12 subject matter of his relationship with children can
13 be considered by the jury for the purpose of
14 determining whether or not it's an admission, and it
15 can be considered for the context of any such
16 alleged admissions.

17 See, if we try to parse it -- I mean, I do
18 agree with the Court --

19 THE COURT: I understand your argument.

20 MR. SANGER: I do agree with the Court that
21 the other statements by Mr. Jackson would come in,
22 but not the whole Bashir tape.

23 THE COURT: All right.

24 Do you want to be heard, Mr. Sneddon, on
25 this?

26 MR. SNEDDON: Only if the Court's going to
27 entertain this change, because I think it

28 substantially changes the situation that we all 12631

1 operated on from the very first day that this trial
2 started.

3 THE COURT: The --

4 MR. SNEDDON: I believe Mr. Sanger is wrong,
5 I believe the Court's analysis is correct, and I
6 think the instruction correctly states the state of
7 the law and the state of the evidence in this case
8 and should be given just as you proposed it.

9 THE COURT: I'm going to give it as I
10 proposed it, with this caveat, and I've invited you
11 to do this before: If there is specific -- that's
12 why, by the way, I asked him in the beginning to
13 provide us with the statements that he asserted were
14 admissions, was so that you could look at those
15 areas and see if you wanted to show me, and then the
16 jury, that, "Wait a minute, he's taken this out of
17 context. What was being discussed at that moment,
18 here's the whole discussion at that moment, at that
19 minute," not at that day or hour or -- you know.
20 So I feel I've given you the opportunity to do that.
21 And that was specifically the reason I --

22 MR. SANGER: As I indicated yesterday, we
23 had marked the transcripts of the outtakes to show
24 the portions that we believe are --

25 THE COURT: You --

26 MR. SANGER: But I'll tell the Court in
27 advance, they are substantial. So if the Court's

28 saying limit it to the minute -- 12632

1 THE COURT: Yeah, it's the same thing you're
2 saying, and that's not what I'm willing to accept.
3 I know you're not missing my point.

4 MR. SANGER: Okay.

5 MR. SNEDDON: Judge, I was just going to
6 make a comment about that. It's my recollection --
7 and Mr. Sanger and I disagree on this, but you have
8 the transcript. It's my recollection that the
9 outtakes end before the substantial part of the
10 discussion that are the subject of what would be
11 People's Exhibit --

12 THE COURT: I know you asserted that before,
13 and I don't have to make that determination because
14 it's up to Mr. Sanger to bring up those points and,
15 if he wants to bring them to my attention, to do so.

16 MR. SNEDDON: Okay.

17 THE COURT: So as -- with your noted
18 objection and reasoned argument, I will go ahead and
19 give Instruction No. C and C-1, and I'm going to put
20 the limiting instruction after 2.09 in the total
21 package.

22 And then 17.12 --

23 MR. SANGER: Your Honor, where did you say
24 C and C-1 go, if you recall?

25 THE COURT: It goes after 2.09.

26 MR. SANGER: All right. Thank you.

27 THE COURT: And did I tell you I placed 17.12

28 in front of 16.010? 12633

1 Now, the next item will be should 17.01 be

2 given when you consider 4.71.5 and 17.02?

3 MR. SNEDDON: Your Honor, what was the first

4 one, 4 what?

5 THE COURT: 4.71.5.

6 17.02 says, "Each count charges a distinct

7 crime. You must decide each count separately."

8 17.01 says, "The defendant is accused of

9 having committed the crime of lewd act upon a child

10 under 14 in Counts 2 through 5," and then it goes on

11 with the others. "The prosecution has introduced

12 evidence for the purpose of showing that there is

13 more than one act upon which a conviction may be

14 based."

15 So I'm asking you, do you need both of those

16 instructions?

17 MR. SANGER: Well, 17.02 does not cover the

18 subject matter in 17.01. And I'm looking at 4.71.5,

19 and the problem with 17 -- I'm sorry, the problem

20 with 4.71.5 is that that's really related to a time

21 period.

22 THE COURT: Uh-huh.

23 MR. SANGER: And it's not related to the

24 actual proof of the particular acts, and I think

25 17.01 does in fact address --

26 THE COURT: Different --

27 MR. SANGER: -- the issue.

28 Now, we submitted Special No. 3, which the 12634

1 Court was thinking about giving, and then -- which
2 attempted to cover the same issue.

3 THE COURT: Uh-huh.

4 MR. SANGER: And I think that issue has to
5 be covered directly. 17.01 seems to be a more
6 direct instruction on that subject matter. I don't
7 think the others really are -- really address it.
8 The only thing I'd add is I think Count 6
9 has to be in there, too, because even the Court had
10 to ask the prosecutor, "What was your contention as
11 to Count 6?"

12 THE COURT: Well, I guess the question I
13 would have is -- to the District Attorney is, under
14 17.01, we have Counts 2 through 5, lewd acts, and
15 Count 7 through 10, administering an intoxicating
16 agent. And then we say that the -- all jurors must
17 agree upon the same act or acts, which is what was
18 covered in No. 3 Special, somewhat, that Mr. Sanger
19 submitted.

20 And I guess I would ask the District
21 Attorney, what are the acts in Counts 2 through 5
22 that you're depending on, if you care to tell me?

23 MR. SNEDDON: Well, sure.

24 THE COURT: And -- okay.

25 MR. SNEDDON: I mean, I don't think there's
26 any mystery as to this. The -- two of the counts
27 are the incidents as viewed by Star Arvizo.

28 THE COURT: Right. 12635

1 MR. SNEDDON: And the other two counts are
2 the two counts that were testified to by Gavin
3 Arvizo.

4 THE COURT: I agree. That's what I -- I
5 don't think there's a mystery about that either.
6 But which one is on which count?

7 MR. SNEDDON: Which -- as to which count?
8 Well, that's --

9 THE COURT: That's the mystery.

10 MR. SNEDDON: Well, it's not a mystery, but
11 it's not delineated, that's correct.
12 In reading the use notes under 17.01, it
13 does look that 17.01 is directed to those situations
14 where there is a singular count but multiple acts
15 upon which the jury could derive a verdict of guilty
16 on the singular count. I think that's somewhat
17 different than the situation that we have here.

18 THE COURT: I don't think so.

19 MR. SNEDDON: Well, I was going to say, I
20 don't see -- I don't see a particular problem in
21 giving both, if the Court wants to give both.

22 THE COURT: The reason I don't think it's
23 different is as to each count there are multiple
24 acts that could be attributed to that count.

25 MR. SNEDDON: Because they're not
26 delineated.

27 THE COURT: Because they're not delineated.

28 MR. SNEDDON: All right. I -- I think 12636

1 that's correct. I think perhaps -- yeah. I mean, I
2 don't have a problem with giving the instruction. I
3 just think that our problem with the special given
4 by the defense was the particular set of facts, and
5 I indicated to the Court yesterday where I saw that
6 to be a problem. So --

7 THE COURT: Well, it actually -- their
8 language isn't much different, when you look at it,
9 than 17.01. "All jurors must agree that he
10 committed the same act or acts."

11 MR. SNEDDON: To me, that's substantially
12 different than a particular set of acts, but it
13 encompasses the entire -- it encompasses more than
14 the commission of the crime as defined by the Court.
15 And to me, that's -- to me, that's substantially
16 different, and particularly it's -- it eliminates
17 the mischief that can be made from arguing the kind
18 of thing that I pointed out to the Court. So if
19 you're asking me whether I think we should give
20 17.01, I see no problem in giving both of them.

21 THE COURT: I guess I'm asking you one thing
22 further, and that is, are you going to tell the jury
23 that Count 2 is when Star saw him the first time,
24 Count 3 is when Star saw him the second time, and
25 Count 4 is when Gavin said he was first touched, and
26 Count 5 is when he was -- you know, I don't want
27 to --

28 MR. SNEDDON: I have -- let me put it this 12637

1 way, Your Honor: I don't think we specifically
2 intended to do that in relating one to the other,
3 only because they're not mentioned. However, if the
4 Court is inviting us to make that election, and
5 there's no -- there's no objection from the defense,
6 we have no problem doing that. I just think to do
7 that in the middle of the argument, without prior
8 approval of the Court or counsel for the defense,
9 would be not right.

10 But if you're asking me to make an election,
11 that's a very simple thing for us to do, and if
12 counsel for the defense wants us to do that, and I
13 believe it would probably help the jury in their
14 deliberations, I'm more than glad to make that
15 election right now.

16 THE COURT: And --

17 MR. SNEDDON: And you can put that in the
18 verdict forms if you wanted.

19 THE COURT: And the same would be true on the
20 Count 7 through 10.

21 MR. SNEDDON: On the alcohol.

22 THE COURT: The alcohol.

23 MR. SNEDDON: Yes, sir.

24 THE COURT: Do you wish to be heard, Mr.
25 Sanger?

26 MR. SANGER: Yes. That is a point I wanted
27 to raise before we are through, so -- I think the

28 election should be made, and the problem we have is 12638

1 there is a good instruction, 6.23, on conspiracy
2 that lays out exactly what the charges are there,
3 and then there's really nothing else. There's the
4 introductory -- well, it's one -- I don't have the
5 number right here, but it's one of the first few
6 where you talk about what the charges are, and they
7 just list the charge by name. And then when you
8 have the actual substantive charges on lewd act,
9 10.41, for instance, and the other substance, it
10 simply says the defendant's charged. Nothing ties
11 it to particular acts.

12 THE COURT: But if we make him -- accept
13 his --

14 MR. SNEDDON: Offer.

15 THE COURT: -- offer to make an election,
16 then -- and to tell the jury in his argument the
17 election, then I think we -- that takes care of that
18 problem.

19 MR. SANGER: I think that that would take
20 care of it. The other way to do it would be to
21 instruct on it, or --

22 THE COURT: I think I'll -- because we're
23 pushing this, I think I'll go with the election.

24 MR. SANGER: We want to make sure we know
25 exactly what the election is.

26 THE COURT: He's going to do that right now.

27 MR. SANGER: Okay.

28 THE COURT: And then we can discuss -- he is 12639

1 willing to have it as a finding in the verdict also.

2 Would you like that?

3 MR. SANGER: I'd have to see what it looks

4 like. I get concerned about verdicts being too

5 factual.

6 THE COURT: We can discuss that. And it

7 doesn't have to be in the argument.

8 MR. SANGER: That's correct.

9 THE COURT: All right. Would you make your

10 election and --

11 MR. SNEDDON: Count 2 would be as to Gavin

12 Arvizo. Count 3 would be as to Gavin Arvizo. Count 4

13 would be the same victim, but the observations made

14 by Star Arvizo. And Count 5 would be the same

15 victim, but the observations made by Star Arvizo.

16 With regard to the intoxicating -- the

17 violations of 222, they would just mirror them. So

18 the first two would be as to -- well, the first two

19 would be as to those incidents, as to Count 2 and to

20 Count 3, and the last two would be as to Count 4 and

21 to Count 5.

22 THE COURT: Can you define the two --

23 you've -- now you've got it down to two. You still

24 have an ambiguity, which -- is there something you

25 can say further to select that Count 2 is as to

26 Arvizo -- as to Gavin is this, and Count 3 is that?

27 Is there some language?

28 MR. SANGER: First in time and second in 12640

1 time.

2 THE COURT: First in time, second in time?

3 MR. SNEDDON: I would not be willing to go
4 that way. Because I don't think there's any -- the
5 state of the evidence at this particular point is
6 open to the jury to make that decision on their own
7 basis.

8 THE COURT: But if they decide --

9 MR. SNEDDON: I don't think that's why we
10 alleged --

11 THE COURT: That's not that clear. Is that
12 what you're saying?

13 MR. SNEDDON: I'm saying the jury has the
14 option. His statement over and over again has been
15 it was towards the end, and so I'm not prepared to
16 say that one was before the other, and I don't think
17 we even have to.

18 And I am willing to say that, you know, the
19 first two were based upon -- solely upon -- or based
20 upon the testimony of Gavin Arvizo and the last two
21 were based upon the testimony of Star Arvizo, and I
22 think that makes it very clear for the jury during
23 that time period that that's exactly what we're
24 talking about.

25 THE COURT: Okay.

26 MR. SNEDDON: And if --

27 THE COURT: And will you have the person

28 arguing your case -- 12641

1 MR. SNEDDON: State that?

2 THE COURT: -- state that at some point in
3 their argument?

4 MR. SNEDDON: Yes, sir. I think -- I think
5 it's also important, however, at some point in
6 either in the verdict forms or in the instructions
7 that that also come from the Court.

8 MR. SANGER: Before we get to that -- go
9 ahead.

10 MR. SNEDDON: And I really feel that it
11 ought to be in the verdict forms. I really feel
12 that if we're going to make this kind of election
13 and we're going to tell this jury, "This count
14 applies to this and this count applies to this,"
15 that to simply have somebody get up and state in
16 final argument, "This is our election," doesn't help
17 the jury.

18 THE COURT: You don't have to say it's your
19 election. You can say, "This is what we're
20 maintaining."

21 MR. SNEDDON: I understand that. But what
22 I'm saying is, I think the jury needs the direction
23 that that is, in fact, what the verdict forms
24 reflect.

25 MR. SANGER: I do have a suggestion on this
26 when we get --

27 THE COURT: Yes.

28 MR. SANGER: I don't want to cut off Mr. 12642

1 Sneddon.

2 THE COURT: Yes. Let me hear your

3 suggestion.

4 MR. SANGER: My suggestion, first of all, is

5 if you take 1.06, that's where it's the

6 identification of the parties and the crimes

7 charged, and we use that instruction to simply add

8 some language after the description of the crime

9 charged -- in other words, it says, "Lewd act upon a

10 child," and you can say "to wit," if you want to be

11 archaic about it, but something to that effect, and

12 then indicate in brief form what Mr. Sneddon said.

13 Now, I do have a problem with the concept

14 that the jury can pick and choose even between the

15 two sets of -- or within the two sets of charges.

16 So I want to be heard on that --

17 THE COURT: No, go ahead now.

18 MR. SANGER: Just procedurally, first of

19 all, I think we can add the words right there in

20 that 1.06 and that should clarify for the jury

21 entirely. They have 6.23 to clarify the conspiracy,

22 and then they would have this to clarify the rest.

23 Now, on the substantive part, I don't

24 believe that, consistent with the case law that

25 we've been discussing, that the prosecution can say,

26 "Well, we have" -- "We have two or more acts, and

27 they could have occurred, and we don't know which

28 one is which." And if the prosecution can't even 12643

1 tell the jury which one is which, the jury certainly
2 can't discharge its duties, under Blakely, to
3 determine beyond a reasonable doubt whether or not a
4 person is guilty of that offense.

5 So if we're going to honor the commitment
6 which I think is reflected in 17.01, that the jury
7 has to actually decide on a -- on an act or acts for
8 a particular count, somebody's got to delineate what
9 those acts are. And it's not close enough to say,
10 "Well, there are two things that Gavin may have
11 testified to, two or more, and there's two or more
12 that Star may have testified to seeing, and that's
13 close enough for government work."

14 I think we have to make it very clear.

15 My recollection of the testimony was that
16 there was an effort on the part of the prosecution
17 to bring out from Gavin that there was a first
18 instance and a second instance. He was vague about
19 it. Clearly -- I'm clear in my recollection with
20 regard to Star's testimony, that he testified there
21 was a first instance and a second instance. So I
22 don't see why the prosecution should not be held to
23 that. I mean, the jury can't simply say, "Well, we
24 kind of think something may have happened on some
25 day or another." That's exactly what the problem is
26 that we're addressing.

27 THE COURT: What was the language --

28 MR. SNEDDON: I think my remarks were 12644

1 misconstrued.

2 THE COURT: What was the language that you

3 thought you could add in 1.06 that --

4 MR. SANGER: I would say, for instance, if

5 you go down 1.06 where it says, "In Count 2, the

6 crime alleged is lewd act upon a child," and then

7 you -- I said, "to wit," but you could say instead,

8 "The act alleged is the first act alleged to have

9 occurred in the testimony of Gavin Arvizo." I think

10 we have to also say Gavin Arvizo is the "alleged"

11 victim.

12 And then Count 3 would be the second act

13 alleged in the testimony of Gavin Arvizo. 4 would

14 be the first act alleged in the testimony of Star

15 Arvizo regarding Gavin, or however the Court wants

16 to put it. I'm trying to keep it short.

17 THE COURT: I understand. That's right.

18 MR. SANGER: And then 6 should also be

19 identified as the attempt. The Court asked about it

20 should be at least the attempt alleged with regard

21 to Gavin Arvizo. And then 7, 8, 9 and 10 would be

22 the same language.

23 THE COURT: Okay. What did you want to say,

24 Mr. Sneddon?

25 MR. SNEDDON: I have no problem with that.

26 That's what I was telling the Court.

27 THE COURT: Okay.

28 MR. SNEDDON: I have no problem telling -- 12645

1 making an election. In fact, if you want to be more
2 specific about it, you can say, with regard to Star
3 Arvizo, that the first incident involves the one
4 where the doors were locked, and the second one
5 involves the incident where the door was closed but
6 not locked.

7 THE COURT: That's --

8 MR. SNEDDON: I wasn't trying to not be
9 definitive. I mean, we made an election. There's
10 no secret here about what happened and I think
11 that's -- I was misconstrued, what I was offering to
12 do for the Court. Seems like the more I offer, the
13 worse it gets for me, so I'm willing to do that.

14 THE COURT: I misunderstood what you were
15 saying.

16 MR. SNEDDON: Well --

17 THE COURT: And I don't think it's getting
18 worse for you.

19 MR. SNEDDON: Well, okay. I'll just let it
20 go.

21 THE COURT: I think we're working out a
22 problem that exists in all of these cases. I've
23 never had a case involving a child molestation
24 allegation that didn't involve the same problem, the
25 children don't give dates and times, and you work
26 with a difficult scenario of trying to determine
27 when these things happened and to plead those items

28 in a good way, a way that's productive. So I 12646

1 sympathize with the problems the prosecution has.

2 And I think your agreement to elect is very helpful
3 to the Court. It would be very helpful to the jury.

4 MR. SNEDDON: I agree. I agree.

5 THE COURT: And, you know, I just don't see
6 this as a bad thing for anybody.

7 MR. SANGER: Maybe what the Court could
8 do --

9 THE COURT: I was thinking of taking the
10 break.

11 MR. SANGER: Maybe what the Court could do
12 is take a break.

13 THE COURT: But before you do, what was your
14 last suggestion?

15 MR. SANGER: I was just thinking that the
16 way to word this might be, "In Count 2, the crime
17 alleged is lewd act upon Gavin Arvizo," so you don't
18 have to repeat it.

19 THE COURT: Yeah.

20 MR. SANGER: And then say, "alleged in the
21 testimony" -- "the first event alleged in the
22 testimony of Gavin Arvizo," words to that effect.

23 THE COURT: Well, I think I -- I would go
24 with the language the D.A. is suggesting, so that --
25 "the first" is still a vague statement in terms of
26 the child's testimony, I think.

27 MR. SANGER: There are two --

28 THE COURT: If he wants to identify -- you 12647

1 know, put some identifying factor, "The door is
2 locked," "The door is unlocked," that's -- something
3 that clarifies each issue is fine with me.

4 MR. SANGER: He could do that in argument.

5 THE COURT: He could.

6 MR. SANGER: And I was just trying to think
7 of a generic way to address it, because these are
8 the Court's instructions, obviously.

9 THE COURT: Right.

10 MR. SANGER: And rather than have the Court
11 talk about too many facts, because you have to keep
12 saying "alleged," "alleged," "alleged," otherwise it
13 has the impression --

14 THE COURT: If you're satisfied with just
15 identifying that Gavin is the -- the first two are
16 Gavin's testimony and the second two are Star's, and
17 the District Attorney delineating which those acts
18 are in argument, I'm satisfied with that.

19 MR. SANGER: Okay. Well, I still think it
20 should be some delineation like the first and the
21 second. I thought --

22 THE COURT: If the D.A. opposes that, and I
23 understand why he opposes that, so considering that
24 that's not going to work, are you satisfied with the
25 way I've presented it just now?

26 MR. SANGER: Well, then -- no. Because I
27 think we do have to distinguish -- the problem is we

28 have to distinguish between Count 2 and Count 3. 12648

1 And I understand the District Attorney's saying he's
2 going to argue it that way, but I think there should
3 be something in the allegations so that the jury can
4 look at it and say, "This is what we're asked to
5 decide."

6 THE COURT: All right. We'll take a break.

7 (Recess taken.)

8 THE COURT: Okay.

9 MR. SANGER: May I address the Court on that
10 issue?

11 THE COURT: Yes.

12 MR. SANGER: Well, let me get to the point,

13 Your Honor: I'm right. How's that?

14 THE COURT: Good. We got all of that.

15 MR. SANGER: Here's why I'm right.

16 If you look at Counts 2, 3, 4 and 5 in the
17 indictment, they specifically refer to the first and
18 second incident testified to by the witness. The
19 first two say testified to by the witness. It says
20 "John Doe," but that referred to Gavin Arvizo. And
21 4 and 5 refer to the first and second incidents
22 testified to by Star Arvizo.

23 So I think the election has been made in the
24 indictment, and that's what he was indicted on. I
25 think the jury's entitled to be told that there's --
26 just that.

27 If you look at -- actually, the Count 2 does

28 not say "first," but Count 3 says, "The second 12649

1 molestation concerning which John Doe testified."

2 And then Count 4 says, "The first witnessed by James

3 Doe." And Count 5 says, "The second witnessed by

4 James Doe."

5 So it's been delineated that way, and what I

6 would say -- what I'd suggest the Court do, because

7 I think we're -- the defendant's entitled to have

8 this kind of certainty. That's what he was indicted

9 on. That's what we --

10 THE COURT: I think you have a very good

11 point.

12 Mr. Sneddon, do you want to say anything

13 about that? It seems like we could just take the

14 language from the indictment and attach it to the

15 counts, and that -- that's pretty close to what you

16 were saying anyway.

17 Do you have the indictment?

18 MR. SNEDDON: I do, and I'm reading it, and

19 either -- either I have a different copy of the

20 indictment than Mr. Sanger does or the Court, but my

21 indictment -- I was not present when the indictment

22 was returned, and --

23 THE COURT: It does. I have -- it does say

24 that.

25 MR. SNEDDON: Well, that's what I said.

26 They must have given me a different copy than the

27 copy --

28 THE COURT: Would you like to approach and 12650

1 look at --

2 MR. SANGER: It's up to you. I've got it.

3 This is a copy.

4 MR. SNEDDON: The copy that Mr. Sanger is

5 showing me is not the copy that I have.

6 THE COURT: Okay.

7 MR. SNEDDON: So it is not -- I have special

8 findings as to the -- as to the conspiracy, but my

9 copy has no special findings as to allegations. But

10 if that is what the Court has, and if those

11 elections have already been made, I don't have a

12 problem with them.

13 THE COURT: Okay. That's what I have, and --

14 MR. SNEDDON: Okay. And that's the

15 indictment that's filed with the Court?

16 THE COURT: Yes. This is --

17 MR. SNEDDON: All right

18 THE COURT: This is filed April 21st, 2004.

19 MR. SNEDDON: Then that should take care of

20 the problem.

21 THE COURT: I just had this printed off this

22 morning so I could deal with the lesser-included

23 issue.

24 MR. SNEDDON: All right.

25 MR. SANGER: One way to handle it, to keep

26 the number of words down to a minimum, would be to

27 indicate in the paragraph that immediately precedes

28 the list of Count 2, 3, 4, 5, where it starts, "The 12651

1 accusatory pleading also alleged the following
2 crimes to have been committed by the defendant," and
3 then put "against Gavin Arvizo," or some words to
4 that effect, so you don't have to say he's the
5 alleged victim in all --

6 THE COURT: That's a good point. Yes, let's
7 do it that way. And then as to each one, you just
8 use the indictment language.

9 MR. SANGER: So simply say, I think, to
10 economize on words, "The first alleged incident
11 testified to by Gavin Arvizo," and then the same
12 language, "the second," and then Count 4 would be,
13 "The first alleged incident testified to by Star
14 Arvizo," and "the second."

15 THE COURT: Okay. That's what we'll do.
16 Now, on --

17 MR. BEEBE: As to 7 through 10 --

18 THE COURT: 7 through 10 is the same
19 language there?

20 MR. SANGER: That should be -- my
21 understanding is those mirror the other counts, so
22 it would be the same language, I would take it.

23 THE COURT: Is that -- I agree.

24 MR. SNEDDON: (Nods head up and down.)

25 THE COURT: Yeah, okay. Same language.

26 MR. BEEBE: And do you want that language
27 spelled out, or would it be enough to refer to "as

28 described in Count 2," "as described in Count 3"? 12652

1 THE COURT: Yeah, I think that would be fine.

2 MR. SANGER: I think that would be good,

3 yes.

4 THE COURT: And then on 17.01, you suggested

5 that we should add Count 6, the attempt, the

6 language in there; is that right?

7 MR. SANGER: Yes, Your Honor.

8 THE COURT: So, did you get that, Jed?

9 MR. BEEBE: I'm sorry?

10 THE COURT: 17.01, we're going to add the

11 Count 6 language, a sentence involving Count 6.

12 MR. BEEBE: All right.

13 THE COURT: Between --

14 MR. BEEBE: Well, if we -- if we have these

15 identified, we could actually use 17.02.

16 THE COURT: Just use 17.02?

17 MR. SNEDDON: That's what I think. I don't

18 think you should be using 17.01.

19 THE COURT: All right. Then we don't need

20 17.01?

21 MR. SANGER: I still think we need 17.01.

22 Let me look at 17.02 again, but I don't think it

23 covers the same subject matter.

24 17.01 makes it clear --

25 THE COURT: Yeah, I agree with Mr. Sanger.

26 We need both. So put in the language on 6, just a

27 sentence after, the same sentence after.

28 Okay. Now what I propose to do is give you 12653

1 my rulings on your specials. I really think I've
2 taken care of all of the problems and issues that
3 you raised through your specials, and what I want to
4 do is give you my rulings and -- and then we need to
5 get these instructions printed so that when the jury
6 comes in, I can give them all copies.

7 MR. SANGER: One housekeeping matter.

8 THE COURT: Yes.

9 MR. SANGER: If the Court is inclined to do
10 it, based on prior experience, it would be very nice
11 if the pages could be numbered.

12 THE COURT: I'm not able to do that at this
13 point. We've pushed ourselves to the limit here, so
14 I'm going to take my package to be printed, with my
15 greasy prints on them and everything.

16 MR. SANGER: I was thinking maybe a
17 handwritten number on the bottom. It's up to the
18 Court.

19 THE COURT: Well, if we can do it, I will,
20 I've got staff standing by ready to make these
21 copies, and it's going to take a while.
22 The defense has submitted special
23 instructions, and basically I'm telling you that I
24 considered all of those in revamping the
25 instructions that we've all gone through up until
26 today, up until now, today.

27 But for the record, I will -- I reject

28 Special Instruction No. 1, because it's incorporated 12654

1 in the Court's Instruction C and C-1.
2 I will reject No. 2. I've already made a
3 ruling on that.
4 The next one, No. 3, I reject that, because
5 I now believe that it's covered by 17.01 and 4.71.5.
6 Special Instruction No. 4 I reject, as it is
7 adequately covered by CALJIC 2.50.01.
8 On Special Instruction No. 6, this is the
9 one about the sheriff's interview of Gavin, is
10 adequately covered by the Court's proposed -- or the
11 Court's Instruction C.
12 On Special Instruction No. 7 re Janet's
13 assertion of the Fifth Amendment, I am using CALJIC
14 2.25, and your proposal is contrary to that. So I
15 reject your special instruction and I will give
16 CALJIC 2.25.
17 As to Special Instruction No. 8 re evidence
18 of Janet's purported welfare fraud, I reject,
19 because that is covered under both CALJIC 2.20 and
20 2.23.1. The effect of using No. 8, if I did, which
21 I reject, would be to put an undue emphasis on this
22 evidence.
23 Special Instruction No. 9, the Court -- this
24 is the instruction considering Mrs. Montgomery's
25 grant of -- Miss Montgomery's grant of immunity.
26 This is adequately covered by CALJIC 2.20 and
27 2.23.1. Again, I reject this because it puts an

28 undue emphasis on this evidence. 12655

1 Special Instruction No. 10, which was a
2 request to have the jury not consider the invocation
3 of the attorney-client privilege by Geragos, I
4 reject that because CALJIC 2.26 is a better
5 instruction and does not unduly emphasize that
6 evidence.

7 And finally, Special Instruction No. 11
8 instructs -- is concerning possible discussion by
9 witnesses of their testimony out of court. And I
10 think that 2.20 instructs the jury to take into
11 account the attitude of the witness toward this
12 action or towards the giving of testimony, and I
13 therefore refuse No. 11.

14 Those are my rulings. And we're -- we will
15 now recess, print the instructions, and if the
16 attorneys will stand by, be available, let's say at
17 11:15, we have to get you copies and get a final
18 look at what we've got.

19 MR. SNEDDON: Are you deferring, for now,
20 the motion that we filed on the comment during
21 argument?

22 THE COURT: Oh.

23 MR. SNEDDON: I mean, we can take it up
24 after you instruct, when the jury's done. We're
25 probably going to have time.

26 THE COURT: That's a good thing, because I
27 need to get these instructions.

28 MR. SNEDDON: That's what I figured. 12656

1 MR. SANGER: I was going to say, I can make
2 it easy. The motion we're talking about is the
3 limitation on the instruction on arguing why --

4 THE COURT: Yeah.

5 MR. SANGER: -- the defendant did not take
6 the stand. And I don't think we disagree that it's
7 inappropriate to give specific reasons.

8 THE COURT: All right.

9 MR. SANGER: I don't think we disagree with
10 that, and that could be handled by an objection.
11 It's been briefed.

12 THE COURT: All right.

13 MR. SNEDDON: I'm trying to avoid that
14 objection, so --

15 MR. SANGER: I don't think it's going to
16 happen is what I'm saying.

17 THE COURT: All right.

18 MR. SNEDDON: Okay. I'll let you get --

19 THE COURT: There's an agreement that your
20 statement of the law is correct, and I will confirm
21 and they agree, and if something happens, object.

22 MR. SNEDDON: Sounds good.

23 THE COURT: Thank you.

24 MR. SANGER: I'm sorry, we're back -- we can
25 be off the record, but we're back at 11:15 to get
26 the instructions, and the jury's coming in at ten
27 minutes of 12:00?

28 THE COURT: Yes. 12657

1 MR. SANGER: Okay. Thank you.

2 THE COURT: And if I need something -- I'll
3 call you if something comes up, but I think we're
4 ready to go.

5 MR. SANGER: We're right here. We'll be
6 available.

7 (Recess taken.)

8

9 (The following proceedings were held in
10 open court in the presence and hearing of the
11 jury:)

12

13 THE COURT: Good afternoon.

14 MR. MESEREAU: Good afternoon, Your Honor.

15 MR. AUCHINCLOSS: Good afternoon.

16 THE COURT: (To the jury) Today I'm going to
17 instruct you on the law, and tomorrow and Friday you
18 will hear the arguments of counsel.

19 I'm giving you copies of the instructions.

20 There's one thing that is not in the instructions,
21 and I want to tell you now, and that is that
22 during -- from now and through the deliberations, to
23 the reaching of a verdict, you must leave your notes
24 and your instructions here at court when you go home
25 in the evening.

26 At the end of the trial, I will allow you to
27 take your notes and the instructions with you, but

28 you just can't take them home during deliberations. 12658

1 Everyone got that?

2 THE BAILIFF: You're going to have to talk
3 louder for --

4 THE COURT: Are you having trouble hearing
5 that? Why didn't I know that?

6 THE BAILIFF: This one picks up better.

7 THE COURT: I'll get my voice here in a
8 minute.

9 THE BAILIFF: Also, they have instructions,
10 but they're turned face down, so when you want them
11 to, you need to tell them to turn them over.

12 THE COURT: All right. Thank you.

13 You have your -- a copy of your
14 instructions, and so you can follow along and keep
15 them during your deliberations. You can look at
16 them as we go along.

17 Members of the jury:

18 You have heard all of the evidence and you
19 will hear the arguments of the attorneys, and it is
20 now my duty to instruct you on the law that applies
21 to this case. The law requires that I read the
22 instructions to you. You will have these
23 instructions in their written form in the jury room
24 to refer to during your deliberations.

25 You must base your decision on the facts and
26 the law.

27 You have two duties to perform. First, you

28 must determine what facts have been proved from the 12659

1 evidence received in the trial and not from any
2 other source. A fact is something proved by the
3 evidence or by stipulation. A stipulation is an
4 agreement between attorneys regarding the facts.
5 Second, you must apply the law that I state to you
6 to the facts, as you determine them, and in this way
7 arrive at your verdict and any finding you are
8 instructed to include in your verdict.
9 You must accept and follow the law as I
10 state it to you, regardless of whether you agree
11 with it. If anything concerning the law said by the
12 attorneys in their arguments or at any other time
13 during the trial conflicts with my instructions on
14 the law, you must follow my instructions.
15 You must not be influenced by pity for or
16 prejudice against a defendant. You must not be
17 biased against a defendant because he has been
18 arrested for the offense, charged with a crime, or
19 brought to trial. None of these circumstances is
20 evidence of guilt and you must not infer or assume
21 from any or all of them that a defendant is more
22 likely to be guilty than not guilty. You must not
23 be influenced by sentiment, conjecture, sympathy,
24 passion, prejudice, public opinion or public
25 feeling. Both the People and the defendant have a
26 right to expect that you will conscientiously
27 consider and weigh the evidence, apply the law, and

28 reach a just verdict regardless of the consequences. 12660

1 You each have a copy of the instructions
2 that I am now reading to you. You may take notes on
3 your copy, if you wish. An official copy of the
4 instructions will be provided to the jury for use
5 during deliberations. You should not make notes or
6 deface the official copy in any way.

7 If any rule, direction or idea is repeated
8 or stated in different ways in these instructions,
9 no emphasis is intended and you must not draw any
10 inference because of its repetition. Do not single
11 out any particular sentence or any individual point
12 or instruction and ignore the others. Consider the
13 instructions as a whole and each in light of all the
14 others.

15 The order in which the instructions are
16 given has no significance as to their relative
17 importance.

18 Statements made by the attorneys during the
19 trial are not evidence. However, if the attorneys
20 have stipulated or agreed to a fact, you must regard
21 that fact as proven as to the party or parties
22 making the stipulation.

23 If an objection was sustained to a question,
24 do not guess what the answer might have been. Do
25 not speculate as to the reason for the objection.

26 Do not assume to be true any insinuation
27 suggested by a question asked a witness. A question

28 is not evidence and may be considered only as it 12661

1 helps you to understand the answer. Do not consider
2 for any purpose any offer of evidence that was
3 rejected, or any evidence that was stricken by the
4 Court; treat it as though you had never heard of it.
5 You must decide all questions of fact in
6 this case from the evidence received in this trial
7 and not from any other source. When a witness has
8 testified through a Certified Court Interpreter, you
9 must accept the English interpretation of that
10 testimony even if you would have translated the
11 foreign language differently.

12 You must not independently investigate the
13 facts or the law or consider or discuss facts as to
14 which there is no evidence. This means, for
15 example, that you must not on your own visit the
16 scene, conduct experiments, or consult reference
17 works or persons for additional information.

18 You must not discuss this case with any
19 other person, including, but not limited to spouses,
20 spiritual leaders or advisors, or therapists, except
21 a fellow juror during deliberations when all 12 of
22 you are together in the jury room, and then only
23 after the case is submitted to you for your decision
24 and only when all 12 jurors are present in the jury
25 room.

26 Notes are only an aid to memory and should
27 not take precedence over recollection. A juror who

28 does not take notes should rely on his or her 12662

1 recollection of the evidence and not be influenced
2 by the fact that other jurors do take notes. Notes
3 are for the note-taker's own personal use in
4 refreshing his or her recollection of the evidence.
5 Finally, should any discrepancy exist
6 between a juror's recollection of the evidence and a
7 juror's notes, or between one juror's recollection
8 and that of another, you may request that the court
9 reporter read back the relevant testimony, which
10 must prevail.

11 The plaintiff in this matter is the People
12 of the State of California. The defendant is
13 Michael Joe Jackson.

14 The defendant is accused of having committed
15 the following crimes:

16 In Count 1, the crime alleged is conspiracy
17 to commit the crimes of extortion, false
18 imprisonment or child abduction;

19 The date of the alleged crime is between
20 February 1, 2003, and March 31, 2003;

21 The accusatory pleading also alleges the
22 following crimes to have been committed by the
23 defendant against Gavin Arvizo on or about and
24 between February 20th, 2003, and March 12th, 2003:

25 In Count 2, the crime alleged is lewd act
26 upon a child, the first alleged molestation
27 testified to by Gavin Arvizo;

28 In Count 2, the crime alleged is lewd act 12663

1 upon a child -- excuse me.

2 In Count 3, the crime alleged is lewd act
3 upon a child, the second alleged molestation
4 testified to by Gavin Arvizo;

5 In Count 4, the crime alleged is lewd act
6 upon a child, the first alleged molestation
7 witnessed by Star Arvizo;

8 In Count 5, the crime alleged is lewd act
9 upon a child, the second alleged molestation
10 witnessed by Star Arvizo;

11 In Count 6, the crime alleged is attempt to
12 commit a lewd act upon a child;

13 In Count 7, the crime alleged is
14 administering an intoxicating agent to assist in the
15 commission of a felony, as alleged in Count 2;

16 In Count 8, the crime alleged is
17 administering an intoxicating agent to assist in the
18 commission of a felony, as alleged in Count 3;

19 In Count 9, the crime alleged is
20 administering an intoxicating agent to assist in the
21 commission of a felony, as alleged in Count 4;

22 In Count 10, the crime alleged is
23 administering an intoxicating agent to assist in the
24 commission of a felony, as alleged in Count 5.

25 In addition to deciding if a defendant is
26 guilty of the crime or crimes with which he is
27 accused, you must also consider whether a defendant

28 is guilty of any crime that is lesser to that 12664

1 charged. You will be more fully instructed on this
2 subject later. However, in general, a defendant may
3 be found guilty of a lesser crime if the jury
4 unanimously concludes that the defendant, while not
5 guilty of the crime charged, is guilty of a lesser
6 crime.

7 In this case, the counts with lesser charges
8 are:

9 One: In the Counts 7 through 10, namely,
10 administering an intoxicating agent to assist in the
11 commission of a felony, the lesser crime is
12 furnishing alcohol to a minor, a misdemeanor.

13 The word "willfully" when applied to the
14 intent with which an act is done or omitted means
15 with a purpose or willingness to commit the act or
16 to make the omission in question. The word
17 "willfully" does not require any intent to violate
18 the law, or to injure another, or to acquire any
19 advantage.

20 The word "knowingly," means with knowledge
21 of the existence of the facts in question.
22 Knowledge of the unlawfulness of any act or omission
23 is not required.

24 To consent to an act or transaction, a
25 person, one, must act freely and voluntarily and not
26 under the influence of threats, force or duress;
27 two, must have knowledge of the true nature of the

28 act or transaction involved; and, three, must 12665

1 possess the mental capacity to make an intelligent
2 choice whether or not to do something proposed by
3 another person.

4 Merely being passive does not amount to
5 consent. Consent requires a free will and positive
6 cooperation in act or attitude.

7 Evidence consists of testimony of witnesses,
8 writings, material objects, or anything presented to
9 the senses and offered to prove the existence or
10 nonexistence of a fact.

11 Evidence is either direct or circumstantial.

12 Direct evidence is evidence that directly
13 proves a fact. It is evidence which, by itself, if
14 found to be true, establishes that fact.

15 Circumstantial evidence is evidence that, if found
16 to be true, proves a fact from which an inference of
17 the existence of another fact may be drawn.

18 An inference is a deduction of fact that may
19 logically and reasonably be drawn from another fact
20 or group of facts established by the evidence.

21 It is not necessary that facts be proved by
22 direct evidence. They also may be proved by
23 circumstantial evidence or by a combination of
24 direct and circumstantial evidence. Both direct and
25 circumstantial evidence are acceptable as a means of
26 proof. Neither is entitled to any greater weight
27 than the other.

28 However, a finding of guilt as to any crime 12666

1 may not be based on circumstantial evidence unless
2 the proved circumstance are not only, one,
3 consistent with the theory that the defendant is
4 guilty of the crime, but, two, cannot be reconciled
5 with any other rational conclusion.

6 Further, each fact which is essential to
7 complete a set of circumstances necessary to
8 establish the defendant's guilt must be proved
9 beyond a reasonable doubt. In other words, before
10 an inference essential to establish guilt may be
11 found to have been proved beyond a reasonable doubt,
12 each fact or circumstance on which the inference
13 necessarily rests must be proved beyond a reasonable
14 doubt.

15 Also, if the circumstantial evidence as to
16 any particular count permits two reasonable
17 interpretations, one of which points to the
18 defendant's guilt and the other to his innocence,
19 you must adopt that interpretation that points to
20 the defendant's innocence, and reject that
21 interpretation that points to his guilt.

22 If, on the other hand, one interpretation of
23 this evidence appears to you to be reasonable and
24 the other interpretation to be unreasonable, you
25 must accept the reasonable interpretation and reject
26 the unreasonable.

27 The specific intent or mental state with

28 which an act is done may be shown by the 12667

1 circumstances surrounding the commission of the act.

2 However, you may not find the defendant guilty of

3 the crimes charged unless the proved circumstances

4 are not only, one, consistent with the theory that

5 the defendant had the required specific intent or

6 mental state, but, two, cannot be reconciled with

7 any other rational conclusion.

8 Also, if the evidence as to any specific

9 intent or mental state permits two reasonable

10 interpretations, one of which points to the

11 existence of the specific intent or mental state and

12 the other to its absence, you must adopt that

13 interpretation which points to its absence. If, on

14 the other hand, one interpretation of the evidence

15 as to the specific intent or mental state appears to

16 you to be reasonable and the other interpretation to

17 be unreasonable, you must accept the reasonable

18 interpretation and reject the unreasonable.

19 Certain evidence was admitted for a limited

20 purpose.

21 At the time this evidence was admitted, you

22 were instructed that it could not be considered by

23 you for any purpose other than the limited purpose

24 for which it was admitted.

25 Do not consider this evidence for any

26 purpose except the limited purpose for which it was

27 admitted.

28 You have been shown four different 12668

1 videotapes during the course of this proceeding:
2 One, "Living with Michael Jackson," which has also
3 been referred to as the "Bashir video"; two, the
4 "outtakes video," comprised of footage taken by
5 Hamid Moslehi, Mr. Jackson's videographer; three,
6 the "rebuttal video," made in response to the Bashir
7 video and including comments from the Arvizo family;
8 and, four, the Sheriff's July 2003 interview with
9 Gavin Arvizo. These videos are offered for limited
10 purposes.

11 The video of "Living with Michael Jackson"
12 is not offered for the truth of anything said or
13 shown in the program, with the exception of certain
14 identified passages. You will receive additional
15 instruction with regard to these identified
16 passages. The rest of the video is hearsay and
17 cannot be considered by you to prove anything other
18 than the fact the program aired in February of 2003
19 and its likely impact, if any, on Mr. Jackson's
20 state of mind.

21 You should not be biased, prejudiced or
22 influenced in any way by the content of the video or
23 its commercial packaging. Except for the limited
24 specific statements that will be identified in
25 People's Exhibit 910, the remainder of the program
26 should only be considered for the fact that it aired
27 and its impact, if any, on Mr. Jackson.

28 The "outtakes video" was offered to provide 12669

1 context for the statements made in the Bashir video.
2 None of the statements in the outtakes video may be
3 considered for their truth, unless they are
4 identical to the identified passages you may
5 consider from the Bashir video.
6 The "rebuttal video" was offered by the
7 Defense to dispute the claim that Mr. Jackson or his
8 co-conspirators scripted the statements made by
9 members of the Arvizo family in that video. The
10 video was offered so that you could observe the
11 demeanor of the members of the Arvizo family and
12 determine whether their statements were scripted.
13 None of the statements made in the rebuttal video
14 may be considered for their truth.
15 The July 2003 interview of Gavin Arvizo was
16 offered to rebut the claim that Gavin Arvizo's
17 responses had been coached or scripted. The
18 interview video was offered for the purpose of
19 evaluating Gavin Arvizo's demeanor and assessing
20 whether his responses were coached or scripted.
21 None of the statements made in the interview video
22 by Gavin Arvizo or the interviewers may be
23 considered for their truth.
24 As I just told you, certain identified
25 passages from the video "Living with Michael
26 Jackson" have been offered for their truth as
27 admissions.

28 An admission is a statement made by the 12670

1 defendant which does not, by itself, acknowledge his
2 guilt of the crimes for which the defendant is on
3 trial, but which statement tends to prove his guilt
4 when considered with the rest of the evidence.

5 The statements that are being offered as
6 admissions from the video "Living with Michael
7 Jackson" will be identified for you as the People's
8 Exhibit No. 910.

9 You are the exclusive judges as to whether
10 the defendant made an admission, and if so, whether
11 the statement is true in whole or in part.

12 Evidence of an oral admission of the
13 defendant not made in court should be viewed with
14 caution.

15 Neither side is required to call as
16 witnesses all persons who may have been present at
17 any of the events disclosed by the evidence or who
18 may appear to have some knowledge of these events.

19 Neither side is required to produce all objects or
20 documents mentioned or suggested by the evidence.

21 There has been evidence in this case
22 indicating that a person other than a defendant was
23 or may have been involved in the crime for which the
24 defendant is on trial.

25 There may be many reasons why that person is
26 not here on trial. Therefore, do not speculate or
27 guess as to why the other person is not being

28 prosecuted in this trial or whether he has been or 12671

1 will be prosecuted. Your sole duty is to decide
2 whether the People have proved the guilt of the
3 defendant on trial.

4 Evidence that at some other time a witness
5 made statements that are inconsistent or consistent
6 with his or her testimony in this trial may be
7 considered by you not only for the purpose of
8 testing the credibility of the witness, but also as
9 evidence of the truth of the facts as stated by the
10 witness on that former occasion.

11 If you believe a witness's testimony that he
12 or she no longer remembers a certain event, that
13 testimony is inconsistent with a prior statement or
14 statements by him or her describing that event.

15 Every person who testifies under oath or
16 affirmation is a witness. You are the sole judges
17 of the believability of a witness and the weight to
18 be given the testimony of each witness.

19 In determining the believability of a
20 witness, you may consider anything that has a
21 tendency reasonably to prove or disprove the
22 truthfulness of the testimony of the witness,
23 including, but not limited to, any of the following:

24 The extent of the opportunity or ability of
25 the witness to see or hear or otherwise become aware
26 of any matter about which the witness has testified;
27 The ability of the witness to remember or to

28 communicate any matter about which the witness has 12672

1 testified;

2 The character and quality of that testimony;

3 The demeanor and manner of the witness while

4 testifying;

5 The existence or nonexistence of a bias,

6 interest, or other motive;

7 The existence or nonexistence of any fact

8 testified to by the witness;

9 The attitude of the witness toward this

10 action or toward the giving of testimony;

11 A statement previously made by the witness

12 that is consistent or inconsistent with his or her

13 testimony;

14 The character of the witness for honesty or

15 truthfulness or their opposites;

16 An admission by the witness of

17 truthfulness;

18 Past criminal conduct of a witness;

19 Whether the witness is testifying under a

20 grant of immunity.

21 Discrepancies in a witness's testimony, or

22 between a witness's testimony and that of other

23 witnesses, if there were any, do not necessarily

24 mean that any witness should be discredited.

25 Failure of recollection is common. Innocent

26 misrecollection is not uncommon. Two persons

27 witnessing an incident or a transaction often will

28 see or hear it differently. You should consider 12673

1 whether a discrepancy relates to an important matter
2 or only to something trivial.

3 A witness, who is willfully false in one
4 material part of his or her testimony, is to be
5 distrusted in others. You may reject the whole
6 testimony of a witness who willfully has testified
7 falsely as to a material point, unless, from all the
8 evidence, you believe the probability of truth
9 favors his or her testimony in other particulars.

10 You are not required to decide any issue of
11 fact in accordance with the testimony of a number of
12 witnesses, which does not convince you, as against
13 the testimony of a lesser number or other evidence
14 which you find more convincing. You may not
15 disregard the testimony of the greater number of
16 witnesses merely from caprice, whim or prejudice, or
17 from a desire to favor one side against the other.

18 You must not decide an issue by the simple process
19 of counting the number of witnesses who have
20 testified on the opposite sides. The final test is
21 not in the relative numbers of witnesses, but in the
22 convincing force of the evidence.

23 Evidence has been introduced for the purpose
24 of showing that a witness or witnesses engaged in
25 past criminal conduct. This evidence may be
26 considered by you only for the purpose of
27 determining the believability of that witness. The

28 fact that the witness engaged in past criminal 12674

1 conduct, if it is established, does not necessarily
2 destroy or impair a witness's believability. It is
3 one of the circumstances that you may consider in
4 weighing the testimony of that witness.

5 When a witness refuses to testify to any
6 matter, relying on the constitutional privilege
7 against self-incrimination, you must not draw from
8 the exercise of this privilege any inference as to
9 the believability of the witness or whether the
10 defendant is guilty or not guilty or any other
11 matter at issue in this trial.

12 When a witness refuses to testify to any
13 matter, relying upon the exercise of a lawful
14 privilege, you must not draw from that fact any
15 inference as to the believability of the witness or
16 whether the defendant is guilty or not guilty or any
17 other matter at issue in this trial.

18 You should give the uncorroborated testimony
19 of a single witness whatever weight you think it
20 deserves. Testimony concerning any fact by one
21 witness which you believe, whose testimony about
22 that fact does not require corroboration, is
23 sufficient for the proof of that fact. You should
24 carefully review all the evidence upon which the
25 proof of that fact depends.

26 Evidence has been introduced for the purpose
27 of showing that the defendant committed crimes other

28 than that for which he is on trial. 12675

1 Except as you will otherwise be instructed,
2 this evidence, if believed, may be considered by you
3 only for the limited purpose of determining if it
4 tends to show:

5 A characteristic method, plan or scheme in
6 the commission of criminal acts similar to the
7 method, plan or scheme used in the commission of the
8 offense in this case which would further tend to
9 show the existence of the intent which is a
10 necessary element of the crime charged;

11 The existence of the intent which is a
12 necessary element of the crime charged;

13 A motive for the commission of the crime
14 charged;

15 For the limited purpose for which you may
16 consider such evidence, you must weigh it in the
17 same manner as you do all other evidence in this
18 case.

19 Evidence has been introduced for the purpose
20 of showing that the defendant engaged in a sexual
21 offense on one or more occasions other than that
22 charged in the case.

23 "Sexual offense" means a crime under the
24 laws of a state or of the United States that
25 involves:

26 Any conduct made criminal by Penal Code
27 Section 288, and that should be a sub (a), with

28 parentheses on the "a." The elements of this crime 12676

1 is set forth elsewhere in these instructions.

2 If you find that the defendant committed a
3 prior sexual offense, you may not -- excuse me.

4 If you find that the defendant committed a
5 prior sexual offense, you may, but are not required
6 to, infer that the defendant had a disposition to
7 commit sexual offenses. If you find that the
8 defendant had this disposition, you may, but are not
9 required to, infer that he was likely to commit and
10 did commit the crime or crimes of which he is
11 accused.

12 However, if you find by a preponderance of
13 the evidence that the defendant committed a prior
14 sexual offense, or offenses, that is not sufficient
15 by itself to prove beyond a reasonable doubt that he
16 committed the crimes charged.

17 If you determine an inference properly can
18 be drawn from this evidence, this inference is
19 simply one item for you to consider, along with all
20 other evidence, in determining whether the defendant
21 has been proved guilty beyond a reasonable doubt of
22 the charged crime.

23 Within the meaning of the preceding
24 instructions, the prosecution has the burden of
25 proving by a preponderance of the evidence that a
26 defendant committed sexual offenses other than those
27 for which he is on trial.

28 You must not consider this evidence for any 12677

1 purpose unless you find by a preponderance of the
2 evidence that the defendant committed the other
3 sexual offenses.

4 If you find other crimes were committed by a
5 preponderance of the evidence, you are nevertheless
6 cautioned and reminded that before a defendant can
7 be found guilty of any crime charged in this trial,
8 the evidence as a whole must persuade you beyond a
9 reasonable doubt that the defendant is guilty of
10 that crime.

11 "Preponderance of the evidence" means
12 evidence that has more convincing force than that
13 opposed to it. If the evidence is so evenly
14 balanced that you are unable to find that the
15 evidence on either side of an issue preponderates,
16 your finding on that issue must be against the party
17 who had the burden of proving it.

18 You should consider all of the evidence
19 bearing upon every issue regardless of who produced
20 it.

21 Motive is not an element of the crime
22 charged and need not be shown. However, you may
23 consider motive or lack of motive as a circumstance
24 in this case. Presence of motive may tend to
25 establish the defendant is guilty. Absence of
26 motive may tend to show the defendant is not guilty.

27 A defendant in a criminal trial has a

28 constitutional right not to be compelled to testify. 12678

1 You must not draw any inference from the fact that a
2 defendant does not testify. Further, you must
3 neither discuss this matter nor permit it to enter
4 into your deliberations in any way.

5 In deciding whether or not to testify, the
6 defendant may choose to rely on the state of the
7 evidence and upon the failure, if any, of the People
8 to prove beyond a reasonable doubt every essential
9 element of the charge against him. No lack of
10 testimony on defendant's part will make up for a
11 failure of proof by the People so as to support a
12 finding against him on any essential element.

13 An admission is a statement made by the
14 defendant which does not, by itself, acknowledge his
15 guilt of the crimes for which the defendant is on
16 trial, but which statement tends to prove his guilt
17 when considered with the rest of the evidence.

18 You are the exclusive judges as to whether
19 the defendant made an admission, and if so, whether
20 the statement is true in whole or in part.

21 Evidence of an oral admission of the
22 defendant not made in court should be viewed with
23 caution.

24 Evidence has been received from which you
25 may find that an oral statement of intent was made
26 by the defendant before the offense with which he is
27 charged was committed.

28 It is for you to decide whether the 12679

1 statement was made by the defendant.

2 Evidence of an oral statement ought to be
3 viewed with caution.

4 No person may be convicted of a criminal
5 offense unless there is some proof of each element
6 of the crime independent of any admission made by
7 him outside the trial.

8 The identity of the person who is alleged to
9 have committed a crime is not an element of the
10 crime. The identity may be established by an
11 admission.

12 Witnesses who have special knowledge, skill,
13 experience, training or education in a particular
14 subject have testified to certain opinions. This
15 type of witness is referred to as an expert witness.
16 In determining what weight to give to any opinion
17 expressed by an expert witness, you should consider
18 the qualifications and believability of the witness,
19 the facts or materials upon which each opinion is
20 based, and the reasons for each opinion.

21 An opinion is only as good as the facts and
22 reasons on which it is based. If you find that any
23 fact has not been proved, or has been disproved, you
24 must consider that in determining the value of the
25 opinion. Likewise, you must consider the strengths
26 and weaknesses of the reasons on which it is based.
27 You are not bound by an opinion. Give each

28 opinion the weight you find it deserves. You may 12680

1 disregard any opinion if you find it to be
2 unreasonable.

3 In determining the weight to be given to an
4 opinion expressed by any witness who did not testify
5 as an expert witness, you should consider his or her
6 believability, the extent of his or her opportunity
7 to perceive the matters upon which his or her
8 opinion is based and the reasons, if any, given for
9 it. You are not required to accept an opinion, but
10 should give it the weight, if any, to which you find
11 it entitled.

12 In examining an expert witness, counsel may
13 ask a hypothetical question. This is a question in
14 which the witness is asked to assume the truth of a
15 set of facts, and to give an opinion based on that
16 assumption.

17 In permitting this type of question, the
18 Court does not rule and does not necessarily find
19 that all of the assumed facts have been proved. It
20 only determines that those assumed facts are within
21 the possible range of the evidence. It is for you
22 to decide from the evidence whether or not the facts
23 assumed in a hypothetical question have been proved.
24 If you should decide that any assumption in a
25 question has not been proved, you are to determine
26 the effect of that failure of proof on the value and
27 weight of the expert opinion based on the assumed

28 facts. 12681

1 In resolving any conflict that may exist in
2 the testimony of expert witnesses, you should weigh
3 the opinion of one expert against that of another.
4 In doing this, you should consider the
5 qualifications and believability of each witness,
6 the reasons for each opinion and the matter upon
7 which it is based.

8 A defendant in a criminal action is presumed
9 to be innocent until the contrary is proved, and in
10 case of a reasonable doubt whether his guilt is
11 satisfactorily shown, he is entitled to a verdict of
12 not guilty. This presumption places upon the People
13 the burden of proving him guilty beyond a reasonable
14 doubt.

15 "Reasonable doubt" is defined as follows:

16 It is not a mere possible doubt, because everything
17 relating to human affairs is open to some possible
18 or imaginary doubt. It is that state of the case
19 which, after the entire comparison and consideration
20 of all the evidence, leaves the minds of the jurors
21 in that condition that they cannot say they feel an
22 abiding conviction of the truth of the charge.

23 In the crimes charged in Counts 1 through 10,
24 there must exist a union or joint operation of act
25 or conduct and a certain specific intent in the mind
26 of the perpetrator. Unless this specific intent
27 exists, the crime to which it relates is not

28 committed. 12682

1 The specific intent required is included in
2 the definitions of the crimes set forth elsewhere in
3 these instructions.

4 The crime of conspiracy, as alleged in Count 1,
5 requires the specific intent to agree to commit a
6 crime and a further specific intent to commit that
7 crime.

8 The crime of lewd act with a child under
9 14 years of age, as alleged in Counts 2, 3, 4 and 5,
10 requires the specific intent to arouse, appeal to,
11 or gratify the lusts or passions or sexual desires
12 of the perpetrator or the child.

13 The crime of attempted lewd act with a child
14 under 14 years of age, as alleged in Count 6,
15 requires the specific intent to commit a lewd act
16 with a child under 14 years of age and the specific
17 intent to arouse, appeal to, or gratify the lusts or
18 passions or sexual desires of the perpetrator or the
19 child.

20 The crime of administering an intoxicating
21 agent to another, as alleged in Count 7, 8, 9 and
22 10, requires the specific intent thereby to enable
23 or assist the perpetrator to commit a felony.

24 In the crimes charged in Counts 1 through 10,
25 or lesser crimes thereto, there must exist a union
26 or joint operation of act or conduct and a certain
27 mental state in the mind of the perpetrator. Unless

28 this mental state exists, the crime to which it 12683

1 relates is not committed.

2 The mental states required are included in
3 the definitions of the crimes set forth elsewhere in
4 these instructions.

5 Defendant is accused in Count 1 of having
6 committed the crime of conspiracy, a violation of
7 Section 182 of the Penal Code, on or about a period
8 of time between February 1, 2003, and March 31,
9 2003.

10 Defendant is accused in Counts 2 through 5
11 of having committed the crime of lewd act upon a
12 child, a violation of Penal Code Section 288,
13 Subdivision (a), on or about a period of time
14 between February 20, 2003, and March 12, 2003.

15 Defendant is accused in Count 6 of having
16 attempted to commit the crime of lewd act upon a
17 child, a violation of Penal Code Section 664 and
18 288, Subdivision (a), on or about a period of time
19 between February 20, 2003, and March 12th, 2003.

20 Defendant is accused in Count 7 through 10
21 of administering an intoxicating agent to assist in
22 the commission of a felony, in violation of Penal
23 Code Section 222, on or about a period of time
24 between February 20, 2003, and March 12th, 2003.

25 In order to find the defendant guilty of the
26 crime charged against him in a particular count, it
27 is necessary for the prosecution to prove beyond a

28 reasonable doubt the commission of a specific act or 12684

1 acts constituting that crime within the period
2 alleged.

3 And, in order to find the defendant guilty
4 of the crime charged against him in a particular
5 count, you must unanimously agree upon the
6 commission of the same specific act or acts
7 constituting that crime within the period alleged.

8 It is not necessary that the particular act
9 or acts committed, so agreed upon, be stated in the
10 verdict.

11 An attempt to commit a crime consists of two
12 elements; namely, a specific intent to commit the
13 crime, and a direct but ineffectual act done toward
14 its commission.

15 In determining whether this act was done, it
16 is necessary to distinguish between mere preparation
17 on the one hand, and the actual commencement of the
18 doing of the criminal deed on the other. Mere
19 preparation, which may consist of planning the
20 offense or of devising, obtaining or arranging the
21 means for its commission, is not sufficient to
22 constitute an attempt. However, acts of a person
23 who intends to commit a crime will constitute an
24 attempt where those acts clearly indicate a certain,
25 unambiguous intent to commit that specific crime.
26 These acts must be an immediate step in the present
27 execution of the criminal design, the progress of

28 which would be completed unless interrupted by some 12685

1 circumstance not intended in the original design.

2 You know, I read to my wife at night so

3 she'll go to sleep. I'm not having that effect

4 here, huh?

5 (Laughter.)

6 THE COURT: Okay. A conspiracy, as charged

7 in Count 1 of the Indictment, is an agreement

8 entered into between two or more persons with the

9 specific intent to agree to commit the crime of

10 child abduction, false imprisonment, or extortion,

11 and with the further specific intent to commit that

12 crime or crimes, followed by an overt act committed

13 in this state by one or more of the parties for the

14 purpose of accomplishing the object of the

15 agreement.

16 Conspiracy is a crime.

17 In order to find a defendant guilty of

18 conspiracy, in addition to proof of the unlawful

19 agreement and specific intent, there must be proof

20 of the commission of at least one of the acts

21 alleged in the Indictment to be an overt act and

22 that the act found to have been committed was an

23 overt act. It is not necessary to the guilt of the

24 defendant that he personally committed an overt act

25 if he was one of the conspirators when the alleged

26 overt act was committed.

27 The term "overt act" means any step taken or

28 act committed by one or more of the conspirators 12686

1 which goes beyond mere planning or agreement to
2 commit a crime and which step or act is done in
3 furtherance of the accomplishment of the object of
4 the conspiracy.

5 To be an "overt act," the step taken or act
6 committed need not, in and of itself, constitute the
7 crime or even an attempt to commit the crime which
8 is the ultimate object of the conspiracy. Nor is it
9 required that the step or act, in and of itself, be
10 criminal or an unlawful act.

11 Each member of a criminal conspiracy is
12 liable for each act and bound by each declaration of
13 every other member of the conspiracy if that act or
14 declaration is in furtherance of the object of the
15 conspiracy.

16 The act of one conspirator pursuant to or in
17 furtherance of the common design of the conspiracy
18 is the act of all conspirators.

19 A member of a conspiracy is not only guilty
20 of the particular crime that to his knowledge his
21 confederates agreed to and did commit, but is also
22 liable for the natural and probable consequences of
23 any crime or act of a co-conspirator to further the
24 object of the conspiracy, even though that crime or
25 act was not intended as a part of the agreed-upon
26 objective and even though he was not present at the
27 time of the commission of that crime or act.

28 You must determine whether the defendant is 12687

1 guilty as a member of a conspiracy to commit the
2 originally agreed-upon crime or crimes, and, if so,
3 whether the crimes alleged in Count 1 was
4 perpetrated by co-conspirators in furtherance of
5 that conspiracy and was a natural and probable
6 consequence of the agreed-upon criminal objective of
7 that conspiracy.

8 In determining whether a consequence is
9 "natural and probable," you must apply an objective
10 test based on what the defendant actually
11 intended -- excuse me.

12 In determining whether a consequence is
13 "natural and probable," you must apply an objective
14 test based not on what the defendant actually
15 intended, but on what a person of reasonable and
16 ordinary prudence would have expected would be
17 likely to occur. The issue is to be decided in
18 light of all of the circumstances surrounding the
19 incident. A "natural consequence" is one which is
20 within the normal range of outcomes that may be
21 reasonably expected to occur if nothing unusual has
22 intervened. "Probable" means likely to happen.

23 The formation and existence of a conspiracy
24 may be inferred from all circumstances tending to
25 show that -- the common intent and may be proved in
26 the same way as any other fact may be proved, either
27 by direct testimony of the fact or by circumstantial

28 evidence, or by both direct and circumstantial 12688

1 evidence. It is not necessary to show a meeting of
2 the alleged conspirators or the making of an express
3 or formal agreement.

4 Evidence that a person was in the company of
5 or associated with one or more other persons alleged
6 or proved to have been members of a conspiracy is
7 not, in itself, sufficient to prove that person was
8 a member of the alleged conspiracy.

9 It is not a defense to the crime of
10 conspiracy that an alleged conspirator did not know
11 all the other conspirators. The members of a
12 conspiracy may be widely separated geographically,
13 and yet may be in agreement on a criminal design and
14 may act in concert in pursuit of that design. The
15 adoption by a person of the criminal design and
16 criminal intent entertained in common by others and
17 of its object and purposes is all that is necessary
18 to make that person a co-conspirator when the
19 required elements of a conspiracy are present.

20 Where a conspirator commits an act or makes
21 a declaration which is neither in furtherance of the
22 object of the conspiracy nor the natural and
23 probable consequence of an attempt to attain that
24 object, he alone is responsible for and bound by
25 that act or declaration, and no criminal
26 responsibility therefor attaches to any of his
27 confederates.

28 The act or declaration of a person who is 12689

1 not a member of a conspiracy is not binding upon the
2 members of the conspiracy, even if the act or
3 declaration tended to promote the object of the
4 conspiracy.

5 Evidence of the commission of an act which
6 furthered the purpose of an alleged conspiracy is
7 not, in itself, sufficient to prove that the person
8 committing the act was a member of the alleged
9 conspiracy.

10 Every person who joins a conspiracy after
11 its formation is liable for and bound by the acts
12 committed and declarations made by other members in
13 pursuance and furtherance of the conspiracy during
14 the time that he is a member of the conspiracy.

15 A person who joins a conspiracy after its
16 formation is not liable or bound by the acts of the
17 co-conspirators or for any crime committed by the
18 co-conspirators before that person joins and becomes
19 a member of the conspiracy.

20 Evidence of any acts done or declarations
21 made by other conspirators prior to the time that
22 person becomes a member of the conspiracy may be
23 considered by you in determining the nature,
24 objectives and purposes of the conspiracy, but for
25 no other purpose.

26 A member of a conspiracy is liable for the
27 acts and declarations of his co-conspirators until

28 he effectively withdraws from the conspiracy or the 12690

1 conspiracy has terminated.

2 In order to effectively withdraw from a
3 conspiracy, there must be an affirmative and
4 good-faith rejection or repudiation of the
5 conspiracy which must be communicated to the other
6 conspirators of whom he has knowledge.

7 If a member of a conspiracy has effectively
8 withdrawn from the conspiracy, he is not thereafter
9 liable for any act of the co-conspirators committed
10 after his withdrawal from the conspiracy, but he is
11 not relieved of responsibility for the acts of his
12 co-conspirators committed while he was a member.

13 No act or declaration of a conspirator
14 committed or made after the conspiracy has been
15 terminated is binding upon co-conspirators, and they
16 are not criminally liable for that act.

17 The defendant in this case is entitled to,
18 and must receive, your determination whether he was
19 a member of the alleged conspiracy. You must
20 determine whether he was a conspirator by deciding
21 whether he willfully, intentionally and knowingly
22 joined with any other or others in the alleged
23 conspiracy.

24 Before you may return a guilty verdict of
25 the crime of conspiracy as charged in Count 1, you
26 must unanimously agree and find beyond a reasonable
27 doubt that, one, there was a conspiracy to commit

28 more -- excuse me -- there was a conspiracy to 12691

1 commit one or more of the crimes of extortion, child
2 abuse and false imprisonment; and two, the defendant
3 willfully, intentionally and knowingly joined with
4 any other or others in the alleged conspiracy.

5 You must also unanimously agree and find
6 beyond a reasonable doubt that an overt act was
7 committed by one of the conspirators. You are not
8 required to unanimously agree as to who committed an
9 overt act, or which overt act was committed, so long
10 as each of you finds beyond a reasonable doubt that
11 one of the conspirators committed one of the acts
12 alleged in the Indictment to be overt acts.

13 In this case the defendant is charged with
14 conspiracy to commit the following public crimes:

15 One, a violation of Penal Code Section 278,
16 child abduction, a felony;

17 Two, a violation of Penal Code Section 236,
18 false imprisonment, a felony;

19 Three, a violation of Penal Code Section
20 518, extortion, a felony.

21 It is alleged that the following acts were
22 committed in this state by one or more of the
23 defendants and were overt acts and committed for the
24 purpose of furthering the object of the conspiracy.

25 Overt Act No. 1: On or about February 4th,
26 2003, Michael Joe Jackson told Janet Arvizo that the
27 lives of her children, Gavin, Star and Davellin

28 Arvizo, were in danger due to the recent broadcast 12692

1 on British television of the documentary "Living
2 with Michael Jackson," in which Gavin Arvizo appears
3 with Michael Joe Jackson. Michael Joe Jackson did
4 tell Janet Arvizo that she and her three children
5 would be flown to Miami to participate in a press
6 conference, which press conference never took place.

7 Overt Act No. 2: On and between February
8 4th, 2003, and February 5th, 2003, the documentary
9 "Living with Michael Jackson," in which Gavin Arvizo
10 appears, was broadcast in the United States.

11 Michael Joe Jackson did personally prevent the
12 Arvizo family from viewing the program while at the
13 Turnberry Resort Hotel in Miami, Florida.

14 Overt Act No. 3: On and between February
15 7th, 2003, and February 8th, 2003, Michael Joe
16 Jackson did return the Arvizo family to Santa
17 Barbara in a private jet. On the flight, Michael
18 Joe Jackson did sit with Gavin Arvizo and did give
19 him an alcoholic beverage, concealed in a soft drink
20 can. Michael Joe Jackson did then present Gavin
21 Arvizo with a wristwatch. Michael Joe Jackson did
22 tell Gavin Arvizo that the watch was worth \$75,000.
23 Michael Joe Jackson did tell Gavin Arvizo not to
24 tell anyone about them drinking alcoholic beverages
25 together.

26 Overt Act No. 4: On or about February 8th,
27 2003, Michael Joe Jackson brought the Arvizo family

28 to Jackson's Neverland Ranch, where Gavin, Star, 12693

1 Davellin and Janet Arvizo remained for approximately
2 five days.

3 Overt Act No. 5: On and between February 6,
4 2003, and February 12th, 2003, in both Miami,
5 Florida, and at Neverland Ranch in Santa Barbara
6 County, Ronald Konitzer and Dieter Weizner did tell
7 Janet Arvizo that there were death threats made
8 against her and her children by unknown individuals.
9 They did further tell Janet Arvizo that the only way
10 to assure the safety of her family was for the
11 Arvizos to participate in the making of a "rebuttal"
12 video favorable to Michael Joe Jackson.

13 Overt Act No. 6: On and between February
14 12th, 2003, and February 15th, 2003, after the
15 Arvizo family had departed Neverland Ranch in the
16 night, Frank Cascio, aka Frank Tyson, did telephone
17 Janet Arvizo and urge her to return with her
18 children to Neverland Ranch and did say, "I know
19 Michael would love for you to come back to the
20 ranch, for the safety of all concerned," and "Now is
21 not the right time to be out there alone," and
22 "Never turn your back on Michael," and "Michael
23 wants to see you and the family," and "You need to
24 go back to the ranch and see Michael, because he is
25 very concerned," and "Even staying another night
26 alone is not safe."

27 Frank Cascio, aka Frank Tyson, did tell

28 Janet Arvizo that, "We would love for you to go on 12694

1 tape and just say something beautiful about
2 Michael." Frank Cascio did assure Janet Arvizo and
3 Gavin Arvizo that Ronald Konitzer and Dieter Weizner
4 would no longer be present at the ranch if they
5 returned. He did state, "They are not there; I know
6 that for a fact."

7 Overt Act No. 7: On and between February
8 2003 and March 2003, at Neverland Ranch, Frank
9 Cascio, aka Frank Tyson, did threaten Star Arvizo
10 that Cascio did have ways to make Star Arvizo's
11 grandparents "disappear." Frank Cascio did tell
12 Gavin Arvizo, "I could have your mother killed."

13 Overt Act No. 8: On or about February 14th,
14 2003, and February 15th, 2003, Michael Joe Jackson's
15 personal chauffeur, Gary Hearn, did drive to Janet
16 Arvizo's Los Angeles residence and did transport her
17 and her children back to Neverland Ranch in Santa
18 Barbara County.

19 Overt Act No. 9: On and between February
20 14th, 2003, and February 15th, 2003, upon the Arvizo
21 family's return to Neverland Ranch, Ronald Konitzer
22 and Dieter Weizner were, in fact, present; whereupon
23 Janet Arvizo asked to leave with her children.

24 Ronald Konitzer and Dieter Weizner did tell Janet
25 Arvizo that she was free to depart; however, her
26 children must remain at the ranch.

27 Overt Act No. 10: During the month of

28 February 2003, in Santa Barbara County, California, 12695

1 Michael Joe Jackson's personal security staff was
2 directed in writing not to allow Gavin Arvizo to
3 leave Neverland Ranch.

4 Overt Act No. 11: During the month of
5 February 2003, Frederic Marc Schaffel, Christian
6 Robinson and an unknown attorney did prepare a
7 script of questions to be asked of the Arvizo family
8 during the filming of the "rebuttal" video by Hamid
9 Moslehi.

10 Gee. I need a drink - of water.

11 I'll try that one again.

12 During the month of February 2003, Frederic
13 Marc Schaffel, Christian Robinson, and an unknown
14 attorney did prepare a script of questions to be
15 asked of the Arvizo family during the filming of the
16 "rebuttal" video by Hamid Moslehi, Michael Joe
17 Jackson's personal videographer.

18 Overt Act No. 12: On or about February
19 19th, 2003, the Arvizo children were transported by
20 Hamid Moslehi from Neverland Ranch to Moslehi's home
21 in the San Fernando Valley, and on the same date,
22 Vinnie Amen did transport Janet Arvizo to Hamid
23 Moslehi's residence for the filming of the
24 "rebuttal" video.

25 Overt Act No. 13: On or about February
26 19th, 2003, and February 20th, 2003, in Los Angeles
27 County, between 11 p.m. and 1 a.m., the employees

28 and associates of Michael Joe Jackson did tape the 12696

1 "rebuttal" video, an interview of the Arvizo family,
2 in the presence of Vinnie Amen and Bradley Miller, a
3 licensed private investigator. During the taping,
4 previously scripted questions were asked of the
5 Arvizo family.

6 Overt Act No. 14: On or about February
7 20th, 2003, Vinnie Amen did transport Janet Arvizo
8 to Norwalk, in Los Angeles County, to obtain birth
9 certificates of the Arvizo family for the purpose of
10 obtaining passports and visas to travel to Brazil.

11 Overt Act No. 15: On and between February
12 25th, 2003, and March 2nd, 2003, Vinnie Amen did
13 take the Arvizo family from Neverland Ranch to the
14 Country Inn & Suites in Calabasas, Los Angeles
15 County. Vinnie Amen did transport Janet Arvizo to
16 public offices in Los Angeles County where passports
17 showing the destinations of Italy and France and
18 visas for the entrance to Brazil for the Arvizo
19 family were obtained. Frederic Marc Schaffel,
20 business partner of Michael Joe Jackson and
21 president of Neverland Valley Entertainment, did pay
22 expenses in connection with this activity.

23 Overt Act No. 16: On or about February 25,
24 2003, Frederic Marc Schaffel did make airline
25 reservations for the Arvizo family to travel to
26 Brazil on March 3rd, 2003.

27 Overt Act No. 17: On or about February

28 26th, 2003, Frederic Marc Schaffel paid Frank 12697

1 Cascio, aka Frank Tyson, \$1,000 in connection with
2 "vacation" expenses for the Arvizo family.

3 Overt Act No. 18: On or about February
4 27th, 2003, Frederic Marc Schaffel did pay Vinnie
5 Amen the sum of \$500 cash for costs related to the
6 Brazilian visas of the Arvizo family.

7 Overt Act No. 19: On and between February
8 2003 and March 2003, at the Neverland Ranch, Michael
9 Joe Jackson did have Gavin Arvizo sleep in his
10 bedroom and in his bed.

11 Overt Act No. 20: On and between February
12 2003 and March 2003, at Neverland Ranch, Michael Joe
13 Jackson did house Janet and Davellin Arvizo in a
14 guest cottage on Neverland Ranch, where Janet and
15 Davellin Arvizo slept.

16 Overt Act No. 21: On and between February
17 2003 and March 2003, at Neverland Ranch, Michael Joe
18 Jackson did show sexually explicit materials to
19 Gavin and Star Arvizo.

20 Overt Act No. 22: On and between February
21 2003 and March 2003, at Neverland Ranch, Michael Joe
22 Jackson did drink alcoholic beverages in the
23 presence of Gavin and Star Arvizo and provided
24 alcoholic beverages to them.

25 Overt Act No. 23: On and between February
26 2003 and March 2003, Michael Joe Jackson did monitor
27 and maintain control over the activities at

28 Neverland Ranch by means of multiple interior door 12698

1 locks, proximity sensor alarm devices, and a keypad
2 combination lock, as well as video and telephone
3 surveillance equipment. Michael Joe Jackson did
4 personally monitor telephone conversations of Janet
5 Arvizo without her knowledge or permission.

6 Overt Act No. 24: On or about March 1,
7 2003, Vinnie Amen did pay the rent on the residence
8 of the Arvizo family in Los Angeles County and moved
9 their belongings into storage.

10 Overt Act No. 25: On or about March 6th,
11 2003, Vinnie Amen did go to John Burroughs Middle
12 School in Los Angeles County and he did withdraw
13 Gavin and Star Arvizo from their enrollment there,
14 telling school authorities that the children were
15 relocating to Phoenix, Arizona.

16 Overt Act No. 26: On or about March 9th,
17 2003, Michael Joe Jackson was told by Gavin Arvizo
18 that Gavin Arvizo had a medical appointment the
19 following day, at which time he was to give the
20 medical staff a 24-hour-long urine collection
21 specimen for laboratory analysis. Michael Joe
22 Jackson, in Santa Barbara County, did tell Gavin
23 Arvizo to cancel the appointment, because the sample
24 would reveal that Gavin Arvizo had been consuming
25 alcoholic beverages while staying at Neverland
26 Ranch.

27 On or about March 10th, 2003, in Los Angeles

28 County, after Janet Arvizo refused to cancel the 12699

1 medical appointment and while on the way to the
2 medical appointment, Vinnie Amen did destroy most of
3 Gavin Arvizo's collected urine specimen, intended
4 for laboratory analysis in connection with Gavin
5 Arvizo's follow-up treatment for the disease of
6 cancer.

7 Overt Act No. 27: On and between February
8 2003 and March 2003, in Los Angeles County, and as
9 revealed by a surveillance videotape located on
10 November 18th, 2003, in the office of Private
11 Investigator Bradley Miller, an unknown
12 co-conspirator conducted video surveillance of Gavin
13 Arvizo and various members of Gavin Arvizo's family,
14 including his grandmother and grandfather, his
15 mother, his mother's boyfriend, his brother and his
16 sister, at and near their respective residences and
17 elsewhere.

18 Overt Act No. 28: On or about March 31st,
19 2003, Michael Joe Jackson did direct Frederic Marc
20 Schaffel to pay Frank Cascio, aka Frank Tyson, the
21 sum of one million dollars from "Petty Cash" of
22 Neverland Valley Entertainment on behalf of Michael
23 Joe Jackson.

24 Evidence of a statement made by one alleged
25 conspirator other than at this trial shall not be
26 considered by you as against another alleged
27 conspirator unless you determine by a preponderance

28 of the evidence: 12700

1 One, that from other independent evidence
2 that at the time the statement was made a conspiracy
3 to commit a crime existed;

4 Two, that the statement was made while the
5 person making the statement was participating in the
6 conspiracy and that the person against whom it was
7 offered was participating in the conspiracy before
8 or during that time;

9 And, three, that that statement was made in
10 furtherance of the objective of the conspiracy.

11 The word "statement" as used in this
12 instruction includes any oral or written verbal
13 expression or the nonverbal conduct of a person
14 intended by that person as a substitute for oral or
15 written verbal expression.

16 Defendant is charged in Count 1 with
17 conspiracy to commit the crime of extortion, in
18 violation of Penal Code Section 518, the crime of
19 child abduction, in violation of Penal Code Section
20 278, and the crime of false imprisonment, in
21 violation of Penal Code Section 236.

22 In order to find the defendant guilty of the
23 crime of conspiracy, you must find beyond a
24 reasonable doubt that the defendant conspired to
25 commit one or more of the crimes, and you also must
26 unanimously agree as to which particular crime or
27 crimes he conspired to commit.

28 If you find the defendant guilty of 12701

1 conspiracy, you will then include a finding on the
2 question as to which such alleged crimes you
3 unanimously agree the defendant conspired to commit.
4 A form will be supplied to you for that purpose.
5 Defendant is accused in Count 1 of having
6 conspired to commit the crime of false imprisonment
7 by violence or menace, a violation of Section 236 of
8 the Penal Code.

9 Every person who, by violence or menace,
10 violates the liberty of another person by
11 intentionally and unlawfully restraining, confining
12 or detaining that person and compelling that person
13 to stay or go somewhere without his or her consent
14 is guilty of the crime of false imprisonment by
15 violence or menace, in violation of Penal Code
16 Section 236.

17 "Violence" means the exercise of physical
18 force used to restrain over and above the force
19 reasonably necessary to effect the restraint.

20 "Menace" means a threat of harm, express or
21 implied, by word or act.

22 False imprisonment does not require that
23 there be confinement in a jail or prison.

24 In order to prove this crime, each of the
25 following elements must be proved:

26 One, a person intentionally and unlawfully
27 restrained, confined, or detained another person,

28 compelling him or her to stay or go somewhere; 12702

1 Two, the other person did not consent to the
2 restraint, confinement, or detention;
3 And, three, the restraint, confinement or
4 detention was accomplished by violence or menace.
5 In the crime of false imprisonment, there
6 must exist a union or joint operation of act or
7 conduct and general criminal intent. General
8 criminal intent does not require an intent to
9 violate the law. When a person intentionally does
10 that which the law declares to be a crime, he is
11 acting with general criminal intent, even though he
12 may not know that his act or conduct is unlawful.
13 However, before a person can be convicted
14 of conspiracy to commit false imprisonment, the
15 specific intents to commit conspiracy must be
16 proved.
17 Defendant is accused in Count 1 of having
18 conspired to commit the crime of child abduction, a
19 violation of Section 278 of the Penal Code.
20 Every person, not having a right of custody,
21 who maliciously takes and entices away, keeps,
22 withholds or conceals any child with the specific
23 intent to detain or conceal the child from a lawful
24 custodian is guilty of the crime of child abduction,
25 in violation of Penal Code Section 278.
26 In order to prove this crime, each of the
27 following elements must be proved:

28 One, a person took, enticed away, kept, 12703

1 withheld, or concealed a child;

2 Two, that person did not have a right of

3 custody of the child;

4 Three, that person acted maliciously;

5 And four, with the specific intent to detain

6 or conceal the child from a lawful custodian.

7 As used in the crime of child abduction:

8 "Child" means a person under the age of 18.

9 "Maliciously" means with intent to vex,

10 annoy or injure another person, or to do a wrongful

11 act.

12 "Fraudulently" includes all surprise, trick,

13 cunning, and unfair ways by which one person

14 deceives or attempts to deceive another.

15 "Keeps" or "withholds" means retains

16 physical possession of a child whether or not the

17 child resists or objects.

18 "To entice" means to allure, to attract, to

19 draw on, or to lead astray by exciting hope or

20 desire. It does not necessarily include any

21 domination over the child's will.

22 "Detain" means to delay, to hinder, or to

23 retard. It does not necessarily include force or

24 menace.

25 "Lawful custodian" means a person, guardian

26 or public agency having a right to custody of a

27 child.

28 "Abduct" means take, entice away, keep, 12704

1 withhold, or conceal.

2 The fact that a minor child decided to go,
3 or to stay, or decided voluntarily to accompany an
4 adult is not a defense to the crime of unlawfully
5 taking, obtaining, concealing, or enticing away a
6 minor child.

7 Defendant is accused in Counts 2, 3, 4 and 5
8 of having committed the crime of lewd act with a
9 child, in violation of Section 288, Subdivision (a),
10 of the Penal Code.

11 Every person who willfully commits any lewd
12 or lascivious act upon or with the body, or any part
13 or member thereof, of a child under the age of 14
14 years, with the specific intent of arousing,
15 appealing to, or gratifying the lust or passions or
16 sexual desires of that person or that child, is
17 guilty of the crime of committing a lewd or
18 lascivious act upon the body of a child, in
19 violation of Penal Code Section 288, Subdivision (a).

20 A "lewd or lascivious act" is defined as any
21 touching of the body of a child under the age of 14
22 years with the specific intent to arouse, appeal to,
23 or gratify the sexual desires of either party. To
24 constitute a lewd or lascivious act, it is not
25 necessary that the bare skin be touched. The
26 touching may be through the clothing of the child.
27 The law does not require as an essential

28 element of the crime that the lust, passions, or 12705

1 sexual desires of either of such persons be actually
2 aroused, appealed to, or gratified.

3 It is no defense to this charge that a child
4 under the age of 14 years may have consented to the
5 alleged lewd or lascivious act.

6 In order to prove this crime, each of the
7 following elements must be proved:

8 A person touched the body of a child;

9 The child was under 14 years of age;

10 And, three, the touching was done with the
11 specific intent to arouse, appeal to, or gratify the
12 lust, passions or sexual desires of that person or
13 the child.

14 It is not essential to a finding of guilt on
15 a charge of lewd acts with a child under the age of
16 14 years that the testimony of the witness with whom
17 the sexual relations is alleged to have been
18 committed be corroborated by other evidence.

19 Is it time for a break? I think so. We're
20 very close, but let's take a break.

21 (Recess taken.)

22 THE COURT: All right.

23 Evidence has been presented to you
24 concerning Child Sexual Abuse Accommodation
25 Syndrome. This evidence is not received and must
26 not be considered by you as proof that the alleged
27 victim's molestation claim is true.

28 Child Sexual Abuse Accommodation Syndrome 12706

1 research is based upon an approach that is
2 completely different from that which you must take
3 to this case. The syndrome research begins with the
4 assumption that a molestation has occurred and seeks
5 to describe and explain common reactions of children
6 to that experience. As distinguished from the
7 research approach, you are to presume the defendant
8 innocent. The People have the burden of proving
9 guilt beyond a reasonable doubt.

10 You should consider the evidence concerning
11 the syndrome and its effect only for the limited
12 purpose of showing, if it does, that the alleged
13 victim's reactions, as demonstrated by the evidence,
14 are not inconsistent with him having been molested.

15 Defendant is accused in Count 1 of having
16 conspired to violate 518 of the Penal Code.

17 Every person who obtains property or other
18 things of value from another with his or her
19 consent, which consent has been induced by a
20 wrongful use of fear, is guilty of the crime of
21 extortion, in violation of Penal Code Section 518.

22 In order to prove this crime, each of the
23 following elements must be proved:

24 One, a person obtained property or something
25 of value from the alleged victim;

26 Two, the property or thing of value was
27 obtained with the consent of the alleged victim;

28 Three, the alleged victim's consent was 12707

1 induced by the wrongful use of fear;

2 And, four, the person who wrongfully used

3 fear did so with the specific intent to induce the

4 alleged victim to consent to the giving up of his or

5 her property or thing of value.

6 The terms "property" and "something of

7 value," as used in the law of extortion, include

8 both tangible and intangible property to which a

9 monetary value can be found. Intangible property

10 includes every benefit and legal right belonging to

11 a person and susceptible of being enjoyed, exercised

12 or disposed of by him or her. Examples include a

13 person's personal identification number, PIN number,

14 for access to his or her bank account, or a person's

15 right to pursue available legal remedies, and a

16 person's exclusive right to make use of his or her

17 name or likeness for commercial purposes.

18 Fear may be induced by a threat to inflict

19 an unlawful injury on the person threatened or a

20 third person.

21 The words "unlawful injury" mean an injury

22 which, if inflicted, would create civil liability

23 against the person doing it and would support a

24 civil action against the person. A threat to do

25 that which one has a legal right to do is not a

26 threat to do an unlawful injury.

27 To constitute extortion, the fear induced by

28 the threat must be the operating or inducing cause 12708

1 which produces consent and results in the property
2 or other thing of value being delivered to another.
3 If some other cause is the primary and controlling
4 cause for the consent to the property or thing of
5 value being delivered to another, the crime of
6 extortion has not been proved.

7 As used in the law of extortion, "consent"
8 is obtained from the person threatened when property
9 or other thing of value is turned over to another
10 with the understanding that the person threatened
11 will be saved from injury to the person threatened
12 or a third person.

13 The delivery of the property or other thing
14 of value is the lesser of two unpleasant
15 alternatives. Consent, as used in the law of
16 extortion, exists under these circumstances
17 notwithstanding the fact that the person threatened
18 may violently protest in his or her own mind against
19 the circumstances which compel the choice.

20 A coerced and unwilling consent compelled by
21 the wrongful use of force or fear constitutes
22 consent in extortion.

23 Defendant is accused in Count 7, 8, 9 and 10
24 of having committed the crime of administering an
25 intoxicating agent to assist in the commission of a
26 felony.

27 Any person who administers to another any

28 intoxicating agent with the intent to enable or 12709

1 assist himself or any other person to commit a
2 felony is guilty of the crime of administering an
3 intoxicating agent to assist in the commission of a
4 felony.

5 In order to prove this crime, each of the
6 following elements must be proved:

7 One, administers to another any intoxicating
8 agent;

9 Two, with the specific intent to enable or
10 assist himself or any other person to commit a
11 felony.

12 If you are not satisfied beyond a reasonable
13 doubt that the defendant is guilty of the crime
14 charged, you may nevertheless convict him of any
15 lesser crime if you are convinced beyond a
16 reasonable doubt that the defendant is guilty of the
17 lesser crime.

18 The crime of furnishing alcohol to a minor
19 is lesser to that of administering an intoxicating
20 agent as charged in Count 7 through 10.

21 Thus, you are to determine whether the
22 defendant is guilty or not guilty of the crimes
23 charged in 7 through 10 or of any lesser crimes. In
24 doing so, you have discretion to choose the order in
25 which you evaluate each crime and consider the
26 evidence pertaining to it. You may find it
27 productive to consider and reach a tentative

28 conclusion on all charges and lesser crimes before 12710

1 reaching any final verdict. However, the Court
2 cannot accept a guilty verdict on a lesser crime
3 unless you have unanimously found the defendant not
4 guilty of the charged greater crime.

5 If you are not satisfied beyond a reasonable
6 doubt that the defendant is guilty of the crime of
7 which is he accused in Count 7, 8, 9 and 10, and you
8 unanimously so find, you may convict him of any
9 lesser crime provided you are satisfied beyond a
10 reasonable doubt that he is guilty of that crime.

11 You will be provided with guilty and not
12 guilty verdict forms for the crime charged in Count
13 7, 8, 9 and 10, and the lesser crime thereto. The
14 crime of furnishing an alcoholic beverage to a
15 person under 21 years is a lesser crime to that of
16 administering an intoxicating agent to assist in the
17 commission of a felony.

18 Thus, you are to determine whether the
19 defendant is guilty or not guilty of the crime
20 charged in Count 7, 8, 9 or 10 or of any lesser
21 crime. In doing so, you have discretion to choose
22 the order in which you evaluate each crime and
23 consider the evidence pertaining to it. You may
24 find it to be productive to consider and reach
25 tentative conclusions on all charged and lesser
26 crimes before reaching any final verdicts.

27 Disregard the instructions previously given

28 which requires that you return but one verdict form 12711

1 as to Counts 6, 7, 8, 9 and 10.

2 Before you return any final or formal
3 verdict, you must be guided by the following:

4 One, if you unanimously find the defendant
5 guilty of the crime of which he is accused in Count
6 7, 8, 9 and 10, your foreperson shall sign and date
7 the corresponding verdict form. All other verdict
8 forms as to Count 7, 8, 9 and 10 must be left
9 unsigned;

10 Two, if you are unable to reach a unanimous
11 verdict as to the crime of which the defendant is
12 accused in Count 7, 8, 9 or 10, do not sign any
13 verdict form as to the count or counts as to which
14 you are in disagreement and report your disagreement
15 to the Court;

16 Three, the Court cannot accept a guilty
17 verdict on a lesser crime unless the jury also
18 unanimously finds and returns a signed verdict form
19 of not guilty as to the charged greater crime;

20 Four, if you unanimously agree and find the
21 defendant not guilty of the crime with which he is
22 charged in Count 7, 8, 9 or 10, but cannot reach a
23 unanimous agreement as to the lesser crime, your
24 foreperson should sign and date the not guilty
25 verdict form as to the charged crime and report your
26 disagreement as to the lesser crimes to the Court.

27 Every person who unlawfully sells,

28 furnishes, gives or causes to be sold, furnished or 12712

1 given away any alcoholic beverage to any person
2 under the age of 21 is guilty of a violation of
3 Business & Professions Code Section 25658,
4 Subdivision (a), a misdemeanor.

5 In order to prove this crime, each of the
6 following elements must be proved:

7 One, Defendant Michael Jackson furnished,
8 gave or caused to be furnished or given away an
9 alcoholic beverage to Gavin Arvizo;

10 And, two, Gavin Arvizo was under the age of
11 21 years.

12 In the crime of furnishing an alcoholic
13 beverage to a person under 21 years, which is a
14 lesser crime of the crime charged in Count 7, 8, 9
15 and 10 of the Indictment, there must exist a union
16 or joint operation of act or conduct and general
17 criminal intent. General criminal intent does not
18 require an intent to violate the law. When a person
19 intentionally does that which the law declares to be
20 a crime, he is acting with general criminal intent
21 even though he may not know that his act or conduct
22 is unlawful.

23 The defendant is accused of having committed
24 the crime of a lewd act upon a child under 14 in
25 Counts 2 through 5. Similarly, the defendant is
26 accused in Count 6 of having attempted to commit the
27 crime of a lewd act upon a child. Also, the

28 defendant is accused in Count 7 through 10 of having 12713

1 committed the crime of administering an intoxicating
2 agent to assist in the commission of a felony or the
3 lesser-included offense of furnishing alcohol to a
4 minor.

5 The prosecution has introduced evidence for
6 the purpose of showing that there is more than one
7 act upon which a conviction for each count may be
8 based. Defendant may be found guilty if the proof
9 shows beyond a reasonable doubt that he committed
10 any one or more of the acts. However, in order to
11 return a verdict of guilty as to any individual
12 count, all jurors must agree that he committed the
13 same act or acts. It is not necessary that the
14 particular act agreed upon be stated in your
15 verdict.

16 Each count charges a distinct crime. You
17 must decide each count separately. The defendant
18 may be found guilty or not guilty of any or all of
19 the crimes charged in Counts 1 through 10. Your
20 finding as to each count must be stated in a
21 separate verdict.

22 It is further alleged that at the time of
23 the commission of the crimes charged in Counts 2
24 through 5, that the victim in the above offenses,
25 Gavin Arvizo, was under the age of 14 years and that
26 the defendant had substantial sexual conduct with
27 Gavin Arvizo. If you find the defendant guilty of

28 the crimes charged in Counts 2 through 5, you must 12714

1 determine whether or not the truth of this
2 allegation has been proved.
3 "Substantial sexual conduct" means
4 masturbation of either the victim or the defendant.
5 The People have the burden of proving the
6 truth of this allegation. If you have a reasonable
7 doubt that it is true, you must find it to be not
8 true. Include a special finding on that question
9 using a form that will be supplied to you.
10 In your deliberations, do not discuss or
11 consider the subject of penalty or punishment. That
12 subject must not in any way affect your verdict.
13 The purpose of the Court's instructions is
14 to provide you with the applicable law so that you
15 may arrive at a just and lawful verdict. Whether
16 some of the instructions apply will depend upon what
17 you find to be the facts. Disregard any instruction
18 which applies to facts determined by you not to
19 exist. Do not conclude that because an instruction
20 has been given, I am expressing an opinion as to the
21 facts.
22 All right. That's all of the instructions
23 you're going to hear today. And after argument, I
24 have just three or four or six, you know, a very
25 small summary of concluding instructions, which I
26 will provide you copies of at that time.
27 So I'm going to excuse you now, have you

28 return at 8:30, and we will hear the final 12715

1 arguments. Have a good evening.

2 Is there any reason not to recess for today?

3 MR. MESEREAU: No, Your Honor.

4 THE COURT: All right. Court's in recess.

5 (The proceedings adjourned at 1:47 p.m.)

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1 REPORTER'S CERTIFICATE

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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 12612 through 12716

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 June 1, 2005, and thereafter

19 reduced to typewriting by computer-aided

20 transcription under my direction.

21 DATED: Santa Maria, California,

22 June 1, 2005.

23

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25

26

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

