

1 Innocence Legal Team  
1600 S. Main St., Suite 195  
2 Walnut Creek, CA 94596  
3 Tel: 925 948-9000

4 Attorney for Defendant

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6 SUPERIOR COURT OF CALIFORNIA, COUNTY OF

7 THE PEOPLE OF THE STATE OF ) Case No.  
8 CALIFORNIA, )  
9 ) MOTION IN LIMINE:  
Plaintiff,) TO BAR PROSECUTION  
10 vs. ) ARGUING  
11 ) WHAT CONSEQUENCES OF  
12 ) ACQUITTAL MIGHT BE  
13 )  
14 Defendant. ) Trial:  
Time:  
Dept:

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15  
16 The defense moves for a protective order that: (select  
17 those that are appropriate or insert others applicable to your  
18 case)  
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20 1. The prosecution cannot argue that an acquittal would  
21 allow the defendant to resume teaching children again.

22 2. The prosecution cannot argue that an acquittal would  
23 put the defendant on the streets and as a consequence, put  
24 children at risk of molestation.  
25



1 obtain a conviction by appealing to jurors to prevent future  
2 crimes by finding present guilt."].)

3 In People v. Mendoza (1974) 37 Cal.App.3d 717,727, the  
4 defendant was charged with committing a lewd act upon a child  
5 under 14 years of age. During closing argument, the prosecutor  
6 asked the jury to 'take the defendant off the streets.' The  
7 Court of Appeal reversed the conviction, finding that said  
8 comment by the prosecutor coupled with several other  
9 objectionable ones was not harmless error. In finding the  
10 prosecutor's exhortation to the jurors to take the defendant off  
11 the streets error, the Court explained that " California law  
12 gives the responsibility for determining punishment in criminal  
13 cases to the judge and the Adult Authority. The jury's  
14 responsibility is limited to the determination of the  
15 defendant's guilt or innocence of the charge against him. "  
16 (Id., at p. 726.) Similarly, in People v. Duckworth (1984) 162  
17 Cal.App.3d 1115, 1123-1124, the prosecutor's argument during the  
18 sanity phase of trial which implied that the defendant would be  
19 on the streets and would thus pose a danger to society if he  
20 were found sane was reversible error.

22 It is likewise improper for the prosecution to argue that  
23 the jury has a moral obligation to protect society from the  
24 defendant, or that if the defendant is acquitted, he will commit  
25 more crimes. In People v. Whitehead (1957) 148 Cal.App.2d 701,

1 the prosecution argued improperly in a child molest trial that  
2 men of the defendant's age commit offenses of this character and  
3 his [the prosecutor's] office's experience is that if such men  
4 are acquitted, they will repeat the same character of offense.  
5 (Id., at p. 705.) The reviewing court found such argument  
6 "highly inflammatory" and reversed the defendant's conviction.  
7 (Id., at p. 705-706.)

8  
9 Furthermore, it is improper for the prosecution to argue  
10 that the jury should consider what the reaction of their  
11 neighbors would be if they were to acquit the defendant. In  
12 People v. Purvis (1963) 60 Cal.2d 323, 342, (overruled on other  
13 grounds in People v. Morse (1964) 60 Cal.2d 631) the court  
14 reversed a first degree murder conviction based on prosecutorial  
15 misconduct which included a comment from the prosecutor  
16 following trial publicity in the Oakland Tribune newspaper which  
17 " threatened the jury with the statement that 'those outside  
18 that are not part of this jury have their eyes focused upon you  
19 just to see what you are going to do \* \* \*.' The court held " A  
20 warning of probable consequences of failure to convict, and of  
21 the unfavorable reactions of neighbors is improper (48  
22 Cal.Jur.2d, Trial, s 439, p. 446). "

23 **II.**

24 **CONCLUSION**

1           Therefore, any argument by the prosecution that an  
2 acquittal of the defendant would have consequences involving  
3 allowing the defendant to teach again, have contact with  
4 children again, turn the defendant loose on the streets and be a  
5 threat to children again, or that neighbors would disapprove of  
6 such an acquittal are improper. The defendant seeks a pretrial  
7 admonition to the prosecution to refrain from any such argument.  
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9           Dated:

10                                 Respectfully submitted,

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14                                 Attorney for Defendant  
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