

1 **CLANCY LITIGATION GROUP**  
Patrick E. Clancy, SBN 60805  
2 Dr. Demosthenes Lorandos, SBN 177644  
1600 S. Main St., Suite 185  
3 Walnut Creek, CA 94596  
Tel: (925) 256-4600  
4 eFax: (888) 802-5089

5 Attorneys for Defendant

6 SUPERIOR COURT OF CALIFORNIA, COUNTY OF

7 PEOPLE OF THE STATE OF CALIFORNIA, ) Case No.  
8 ) Motion In Limine  
9 Plaintiff, ) Bad Acts of Third Parties  
"Guilt by Association"  
10 vs. )  
11 )  
12 Defendant. ) Date:  
Time:  
13 ) Dept:

14 TO: All parties and to their attorneys of record, and to the  
15 Honorable Judge of the Superior Court.

16 The Defense moves for a protective order that the  
17 prosecution not be allowed to introduce or comment on the  
18 following alleged bad acts of third parties. Further, that the  
19 prosecution be ordered to admonish their witnesses not to  
20 volunteer evidence/testimony on the following alleged bad acts of  
21 third parties.

22 1.  
23  
24  
25  
26  
27  
28



1 prepared to refute charges against  
2 another. Conceding that had Lee  
3 been tried jointly with defendant,  
4 the other crimes would have been  
5 admissible to prove Lee's intent,  
6 and that defendant could have been  
7 found guilty as an aider and  
8 abettor of Lee, this does not make  
9 the evidence of other crimes of Lee  
10 admissible where defendant alone is  
11 on trial. Defendant cannot be  
12 called upon to prove Lee's  
13 innocence of other crimes." (Id.,  
14 at p. 659-660.)

15 The court concluded:

16 ". . . conviction of a felony  
17 cannot rest upon the tenuous  
18 evidence of other crimes of a third  
19 person, not because an essential  
20 element of the crime charged is  
21 inferred from circumstantial  
22 evidence derived from the third  
23 person's commission of other  
24 crimes, though subtle proof indeed,  
25 but because evidence of crimes  
26 committed by a third person who is  
27 not on trial saddles a defendant  
28 with the burden of proving the  
innocence of another. Such a  
burden violates the fundamental  
principles of due process of the  
law." (Id., at p. 660.)

(Also see People v. Long (1970) 7 Cal.App.3d 586, 591.)

Evidence of [ ] 's] bad acts and bad character are  
simply not relevant to any disputed issue in defendant's case.

The prejudicial effect of the evidence of [ ] 'S]  
transgressions was monumental in the scheme of the case. Such  
evidence invited the jurors to find defendant guilty because he  
was his [father's son,] i.e. guilt by association. In People v.  
Chambers (1964) 231 Cal.App.2d 23, the defendant and his co-  
defendant were charged with and jointly tried for assaulting a  
patient at a rest home. Evidence was admitted at trial of

1 additional attacks by the co-defendant upon other patients. In  
2 finding a joint trial improper under such circumstances, the  
3 appellate court counseled:

4 "Guilt by association is a  
5 thoroughly discredited doctrine;  
6 personal guilt on the other hand,  
7 is a fundamental of American  
8 jurisprudence, inhabiting a central  
9 place in the concept of due  
10 process. . .The record impresses us  
11 with the belief that Chambers was  
12 probably fastened with vicarious  
13 responsibility for the long-  
14 continued brutality of [the co-  
15 defendant] in the absence of any  
16 conspiratorial action. . .The  
17 record. . .was inflated by  
18 extensive evidence of the brutality  
19 by [the co-defendant], tending to  
20 fasten Chambers, as her employer,  
21 with moral responsibility for the  
22 acts of his employee." (Id., at  
23 p.p. 28-30.)

24 Similarly, the inflammatory effect of evidence of [ 's] bad  
25 acts and character allowed the jurors to conclude that the apple  
26 had not fallen far from the tree and doomed defendant, [as his  
27 son], to conviction.

#### 28 CONCLUSION

Evidence of third party bad acts is "guilt by association"  
evidence and is not admissible. The Defendant should not be  
placed in the position of having to defend against the acts of  
other third party when said acts are not relevant to the alleged  
acts in the instant case. Further, the prejudicial effect  
greatly outweighs and probative value no the guilt of the  
Defendant. (Evid. Code § 352).

29 Dated:

\_\_\_\_\_  
Attorney for Defendant