

JAN 24 2005

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

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY
County of Santa Barbara
2 By: RONALD J. ZONEN (State Bar No. 85094)
Senior Deputy District Attorney
3 J. GORDON AUCHINCLOSS (State Bar No. 150251)
Senior Deputy District Attorney
4 GERALD McC. FRANKLIN (State Bar No. 40171)
Senior Deputy District Attorney
5 1112 Santa Barbara Street
Santa Barbara, CA 93101
6 Telephone: (805) 568-2300
FAX: (805) 568-2398

*Unsealed pursuant
to 6/16/05 court
order*

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA BARBARA
10 SANTA MARIA DIVISION

RECEIVED
05 JAN 24 PM 3:30
SUPERIOR COURT
SANTA BARBARA, CALIF.
MILLER DIVISION

11 THE PEOPLE OF THE STATE OF CALIFORNIA,
12 Plaintiff.

No. 1133603

PLAINTIFF'S RESPONSE TO
MARTIN BASHIR'S MOTION
FOR PROTECTIVE ORDER
PRECLUDING HIM FROM
BEING REQUIRED TO TESTIFY
AS A WITNESS IN THIS CASE

13 MICHAEL JOE JACKSON,

14 Defendant.

DATE: January 28, 2005
TIME: 9:30 a.m.
DEPT: TBA (Melville)

FILED UNDER SEAL

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20 A. Introduction

21 Access Proponents seek an order barring the People's effort to have Martin Bashir,
22 the author and producer of a documentary entitled "Living with Michael Jackson" and
23 presently employed as a journalist and commentator by ABC, testify concerning the
24 circumstances of his filming that documentary. They argue that "The videotape of the
25 documentary speaks for itself and provides all the evidence that may be properly elicited from
26 Mr. Bashir under California law, the First Amendment and New York law." (P&A 1:19-20.)
27 And assuming Bashir might properly be asked about certain matters not constituting
28 "unpublished information obtained during newsgathering" (e.g., the foundation for the

1 admissibility of the documentary, which could be provided by other ABC employees), the
2 prosecution's need for that information from him is outweighed by his concern as a journalist
3 not to be popularly regarded as a snitch or tool of one side or the other in this case. "[I]t would
4 unduly burden and seriously interfere with his newsgathering activities in connection with this
5 case . . . and, more generally, damage the 'autonomy of the press' to gather and disseminate
6 information on behalf of the public." (P&A 9:17-20.) "[T]he compelled disclosure of non-
7 confidential information harms the press' ability to gather information "by converting the press
8 in the public's mind into an investigative arm of prosecutors and the courts If perceived
9 as an adjunct of the police or the courts, journalists might well be shunned by persons who
10 might otherwise have given them information without a promise of confidentiality." *Shoen v.*
11 *Shoen*, 5 F.3d 1289, 1295 (9th Cir. 1993)" (P&A 10:1-15.)

12 Our Response

13 The People are mindful of the protection afforded a journalist by California's
14 "shield law" and the First Amendment.

15 Nevertheless, there are issues concerning the production of "Living with Michael
16 Jackson" which the People believe are relevant to our prosecution of this matter. We believe
17 Mr. Bashir is the only person competent to discuss those issue, and we do not believe the shield
18 law may be asserted by Mr. Bashir to preclude him from answering them.

19 A. Personal Information:

20 The People intend to ask Mr. Bashir about his professional background, education
21 and experience in the production of documentaries similar to "Living with Michael Jackson."

22 B. Background of Production of "Living with Michael Jackson"

23 The People intend to inquire of Mr. Bashir concerning the locations filmed by his
24 staff under his direction. We would like to know if any of the incidents (e.g., the "shopping
25 spree" footage) were "staged" or truly spontaneous;

26 The People would like to know, as a general matter, how the rough footage was
27 edited into its final form as broadcast on the BBC;

28 The People would like to determine whether Mr. Bashir was aware that Hamid

1 Moslehi was also filming some or all of the events captured by Mr. Bashir in his footage.

2 C. Michael Jackson's Statements

3 We would like to establish that the words that apparently were spoken by Michael
4 Jackson, on camera and as a voice-over in "Living with Michael Jackson," were actually
5 spoken by him;

6 D. Origination of Idea for Documentary

7 The People would like to know whose idea it was, originally, for the documentary.
8 Was Mr. Jackson paid for his participation in the program.

9 E. Broadcast of "Living with Michael Jackson"

10 When "Living with Michael Jackson" was telecast in the United Kingdom, was it
11 also broadcast in Europe?

12 Is the version of "Living with Michael Jackson" that was incorporated in ABC's
13 "20/20" broadcast on February 6, 2003 and again on February 17th the same as the program
14 earlier broadcast in the United Kingdom ("between-scenes" commentary by Bashir and Barbara
15 Walters aside)?

16 How were the rights to broadcast and rebroadcast "Living with Michael Jackson"
17 acquired by entities other than the BBC?

18 F. Bashir's Opinion of the Subject of "Living With Michael Jackson"

19 When did Mr. Bashir form the opinions he expressed in "Living with Michael
20 Jackson"? Did his opinions change as production of the documentary progressed? Has Mr.
21 Bashir seen Mr. Jackson's own production, "Living with Michael Jackson (The Footage You
22 Were Never Meant to See)"? What is his reaction to it?

23 G. Releases from Arvizos

24 Were releases obtained from the Arvizo family members who appeared in "Living
25 with Michael Jackson"? If not, why not? Was Gavin Arvizo paid for his appearance? To Mr.
26 Bashir's knowledge, have the Arvizos instituted civil litigation arising out of the appearance of
27 some of them on "Living with Michael Jackson."

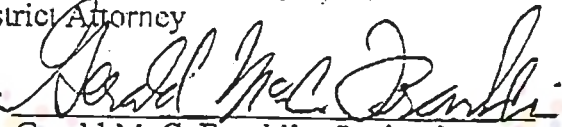
28 Some of the information sought by the questions outlined above may be protected as

1 "unpublished information obtained during newsgathering." Some of it plainly is not. The
2 People respectfully request that Access Media's counsel indicate in their reply, or on July 28th,
3 which of those areas and questions Mr. Bashir will claim will implicate the protection of the
4 "shield law."

5
6 DATED: January 24, 2005

7 Respectfully submitted.

8 THOMAS W. SNEDDON, JR.
9 District Attorney

10 By: 
11 Gerald McC. Franklin, Senior Deputy

12 Attorneys for Plaintiff

13 mjfacts.com

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PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA) SS

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and I am not a party to the within-entitled action. My business address is: District Attorney's Office; Courthouse; 1112 Santa Barbara Street, Santa Barbara, California 93101.

On January 25, 2005, I served the within PLAINTIFF'S RESPONSE TO MARTIN BASHIR'S MOTION FOR PROTECTIVE ORDER PRECLUDING HIM FROM BEING REQUIRED TO TESTIFY AS A WITNESS IN THIS CASE on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER and BRIAN OXMAN, and on ACCESS PROPONENTS, by Thomas Boutrous, Jr., by delivering a true copy to Attorney Sanger's officer and causing a true copy to be transmitted to Mr. Mescreau at the facsimile number given us by counsel and to Mr. Boutrous, and then causing that copy to be mailed to Mr. Mesereau and Mr. Boutrous at the addresses shown on the Service List.

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

Executed at Santa Barbara, California on this 24th day of January, 2005.

Gerald McC. Franklin

Gerald McC. Franklin



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GIBSON, DUNN & CRUTCHER, LLP
Theodore J. Boutrous, Jr., Esq.
William E. Thomson, Esq.
Julian Poon, Esq.
333 S. Grand Avenue
Los Angeles, CA 90071-3197
FAX: (213) 229-6758

Attorneys for Access Proponents



mjfacts.com

THOMAS A. MESEREAU, JR.
Collins, Mescreau, Reddock & Yu, LLP
1875 Century Park East, No. 700
Los Angeles, CA 90067
FAX: [CONFIDENTIAL]

Attorney for Defendant Michael Jackson



mjfacts.com



mjfacts.com



mjfacts.com

ROBERT SANGER, ESQ.
Sanger & Swysen, Lawyers
233 E. Carrillo Street, Suite C
Santa Barbara, CA 93001
FAX: (805) 963-7311

Co-counsel for Defendant



mjfacts.com

BRIAN OXMAN, ESQ.
Oxman & Jaroscak, Lawyers
14126 E. Rosecrans Blvd.,
Santa Fe Springs, CA 90670

Co-counsel for Defendant



mjfacts.com



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