

1 Thomas A. Mesereau, Jr. (SBN 91182)
Susan C. Yu (SBN 195640)
2 COLLINS, MESEREAU, REDDOCK & YU
1875 Century Park East, 7th Floor
3 Los Angeles, CA 90067
Telephone: 310-284-3120
4 Facsimile: 310-284-3133

5 Robert M. Sanger (SBN 58214)
SANGER & SWYSEN
6 233 E. Carrillo Street, Suite C
Santa Barbara, California 93101
7 Telephone: 805-962-4887
Facsimile: 805-963-7311

8 Brian Oxman (SBN 072172)
9 Oxman & Jaroscak
14126 East Rosecrans
10 Santa Fe Springs, CA 90670
Telephone: 562-921-5058
11 Facsimile: 562-921-2298

12 Attorneys for Defendant
MICHAEL JOSEPH JACKSON
13

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF SANTA BARBARA
16 SANTA MARIA DIVISION
17

18 THE PEOPLE OF THE STATE OF CALIFORNIA,)
19 Plaintiff,)
20 vs.)
21 MICHAEL JOSEPH JACKSON)
22 Defendant.)
23

CASE NO. 1133603

MR. JACKSON'S REPLY TO
OPPOSITION TO MOTION TO DISMISS
AND MOTION TO PERMIT
BROADCAST RESPONSE

TIME: 8:30 a.m.
DATE: March 11, 2005
PLACE: Department SM-2

24
25 Mr. Michael Jackson submits this Reply to the Opposition to his Motion for Order to Show Cause
26 re: Contempt. Mr. Jackson's motion is based on the following grounds:

27 (1) An exception to the January 23, 2004, Protective Order was made, specifically for and only for

28 Witness Bashir;

MR. JACKSON'S REPLY TO OPPOSITION TO MOT TO DISMISS AND MOT TO PERMIT BROADCAST RESPONSE

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

MAR - 9 2005

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

1 (2) If there was no exemption for Witness Bashir, then an Order to Show Cause should have been
2 issued by this court;

3 (3) If the Court will not issue an Order to Show Cause re: Contempt, Mr. Jackson must be entitled
4 to respond in kind,

5 (4) The prosecution's opposition is pure speculation and conclusion, which should prompt this
6 court to issue an Order to Show Cause to take evidence and make a determination on this issue.

7 **A. The Court Made an Exception to the Gag Order for Witness Bashir.**

8 **1. The Protective Order.**

9 The prosecution argues that Mr. Jackson does not understand what transpired with Witness Bashir's
10 motion to quash the subpoena for his attendance as a witness at trial and exempting him from the
11 restrictions of the "Gag Order" imposed on all other witnesses. It points out that the court denied Bashir's
12 motion for a protective order, but "he is not prevented from reporting or giving commentary to the same
13 extent that a non-witness journalist could." (Minute Order, p.5, Exhibit "B" to the Motion). However, it is
14 the prosecution who chooses to blind itself from the court's ruling on Witness Bashir's motion and the
15 practical effects of the ruling.

16 The fact is the court effectively modified the January 23, 2004, "Gag Order" when it felt the need to
17 explain, condone, and justify any conduct Bashir might engage in. The prosecution acknowledges the
18 modification when it states "...the Court quite properly deemed it appropriate to state what a practicing
19 television journalist who is also under subpoena as a witness may say and not say in the course of his
20 employment..." (Opp. to Motion to Dismiss, p.5, lns. 9-11). The January 23, 2004, Protective Order is
21 quite explicit as to who and what subject matter it covers and any order which expands, or otherwise
22 changes the plain meaning of the order, is by definition, a modification.

23 **2. Witness Bashier's Violation of the Order.**

24 Witness Bashir has taken the court's Minute Order and has run away with it. He has flaunted it in
25 everyone's face by his interview and appearances on ABC 20/20 and ABC Primetime which were
26 conveniently timed to immediately precede his testimony as the first witness in this case. What better way
27 to attract attention to himself and the prosecution's case than to appear on two (2) highly advertised
28 television specials and discuss the piece of evidence he was to be asked to authenticate.

1 The prosecution failed to read the transcript of the programs where Witness Bashir discusses the
2 case, the witnesses, the allegations of the indictment, the supplying of alcohol, exposures to allegedly
3 pornographic materials, and his own creation of the video Living with Michael Jackson which was
4 introduced into evidence and testified to by Witness Bashir. Witness Bashir interviews others who are on
5 the witness list in this case. Witness Bashir's conduct is intentional, flagrant, and this court should be
6 troubled by such conduct.

7 **B. Mr. Jackson's Application for Order to Show Cause re: Contempt.**

8 **1. Denial of First Application for Order to Show Cause without Prejudice.**

9 On February 14, 2005, Mr. Jackson filed an Application for Order to Show Cause re: Contempt
10 against Witness Bashir. The application was filed following the airing of ABC's program 20/20 on
11 February 11, 2005, and prior to ABC's program Primetime on February 17, 2005. On February 17, 2005,
12 the court denied the application for order to Show Cause without prejudice, allowing Mr. Jackson the
13 opportunity to refile.

14 The January 23, 2004, Protective order specifically provides that:

15 "It is the Order of this Court that no attorney connected with this case as Prosecutor or Defense
16 Counsel, ..., nor the defendant, Michael Jackson, ..., nor any other persons subpoenaed or expected to
17 testify in this matter, shall do any of the following:

18 ...
19 4. Express outside of court an opinion or make any comment for public dissemination as to
20 the weight, value, or effect of any evidence as tending to establish guilt or innocence;

21 5. Make any statement outside of court as to the content, nature, substance, or effect of any
22 statements or testimony that have been given, is expected to be given, in any proceeding in
23 or relating to this matter;

24 ...
25 7. Make any out of court statement as to the nature, source, or effect of any purported
26 evidence alleged to have been accumulated as a result of the investigation of this matter.

27 ..." (Emphasis added).
28

1 **2. If there was No Exemption for Bashir, an Order to Show Cause Should have**
2 **been Issued.**

3 The transcript from the February 10, 1005, ABC 20/20 interview between Witness Bashir and
4 Corey Feldman is filled with discussion of the relationship between Mr. Jackson and Corey Feldman.
5 Corey Feldman is also identified as a witness in the case on the joint witness list which is acknowledged in
6 the transcript. Witness Bashir goes on to discuss with Feldman the issues his interview with the
7 prosecution in this case (Pg. 1, Exhibit "C," Motion to Dismiss), along with alleged pornographic materials
8 (Pgs. 6-9, Exhibit "C," Motion to Dismiss), a clear violation of the January 23, 2004, Protective Order, and
9 the court's January 28, 2005, Minute Order by Bashir.

10 The transcript of the February 17, 2004, ABC Primetime program is filled with quotations from the
11 "accuser," Witness Bashir's comments on the case evidence, and solicitations of comments on the case
12 from others. (Pgs. 38-41, Exhibit "D," Motion to Dismiss). It concludes with Bashir's comment that
13 "Michael Jackson's representatives declined to comment on tonight's broadcast, saying that they are
14 prohibited by the judge's gag order..."(Pg. 41, Exhibit "D," Motion to Dismiss). There is no question that
15 Witness Bashir's conduct is far beyond the parameters of the January 28, 2004, Protective order, and the
16 January 28, 2005, Minute Order.

17 **C. Mr. Jackson Should Be Allowed to Respond In Kind.**

18 Since this court is unwilling to issue an Order to Show Cause to Witness Bashier, the only equitable
19 solution is to allow Mr. Jackson to respond in kind. It is unfair to allow Witness Bashir, whether or not he
20 is a journalist, to comment on this case, to speak about what was the evidence that he was called to testify
21 to, and to continue to do so in the name of investigation, when Mr. Jackson is precluded from saying one (1)
22 single word without the approval of this court. This is not an issue of journalistic rights under the First
23 Amendment but an issue of discrimination and denial of rights to Mr. Jackson.

24 The prosecutions' arguments that Witness Bashier's broadcasts and comments are protected under
25 his investigative rights is pure, unadulterated, nonsense. Nothing in Witness Bashir's interviews is newly
26 investigated no new material nor does it go to the "fruits of his investigation of the case" as the prosecution
27 contends. Bashir's "investigation" is nothing more than reiteration of his personal involvement in this case
28 and should not be protected by any journalistic privilege nor condoned by this court.

MR. JACKSON'S REPLY TO OPPOSITION TO MOT TO DISMISS AND MOT TO PERMIT BROADCAST RESPONSE

1 **D. The Prosecution's Response is Non-Responsive.**

2 The prosecution's opposition to Mr. Jackson's Motion to Dismiss and Motion to Permit Broadcast
3 Response is non-responsive at best. The pleading is full of summary conclusions, "The Defendant does not
4 appear to understand," (p.5, Opposition), "Virtually everything about Defendant's Motion is wrong," (p. 4,
5 Opposition, and "the court properly deemed it appropriate" (p. 5, Opposition). But conclusions are not
6 argument nor are conclusions persuasive nor do conclusions undo the protections afford Mr. Jackson by the
7 United States Constitution..

8 The prosecution fails to cite one case in its stance that Witness Bashir's pursuit of "investigation"
9 justifies his blatant violation of the Protective Order. This court was obviously disturbed by Witness
10 Bashir's continuing conduct when on March 1, 2005, it ordered Witness Bashir to respond to defense
11 counsel, Thomas Mesereau's, cross-examination about the making and circumstances surrounding the
12 video "Living with Michael Jackson" which was admitted into evidence. For Witness Bashir to refuse to
13 be cross-examined, to claim a First Amendment privilege, on materials which he testified to for the
14 prosecution and which he produced television specials to air prior to his trial appearance, is outrageous, and
15 cannot continue to be countenanced by this court.

16 **E. Conclusion.**

17 For the foregoing reasons, Mr. Jackson requests his Motion to Dismiss and Motion to Permit
18 Broadcast Response be granted.

19 DATED: March 9, 2005

Respectfully submitted,

20 Thomas A. Mesereau, Jr.
21 Susan Yu
22 COLLINS, MESEREAU, REDDOCK & YU

23 Robert M. Sanger
24 SANGER & SWYSEN

25 Brian Oxman
26 OXMAN & JAROSCAK

27 By: 

28 R. Brian Oxman
Attorneys for defendant
Mr. Michael Jackson

MR. JACKSON'S REPLY TO OPPOSITION TO MOT TO DISMISS AND MOT TO PERMIT BROADCAST RESPONSE

PROOF OF SERVICE BY MAIL AND FAX

I, Maureen Jaroscak declare and say:

I am an attorney at law admitted to practice before all the courts of the state of California and I am an attorney for Mr. Michael Jackson in the above-entitled action. My business address is 14126 East Rosecrans Blvd., Santa Fe Springs, California 90670. I am over 18 years and not a party to the above-entitled action. On March 9, 2005, I served the following:

MR. JACKSON'S REPLY TO OPPOSITION TO MOTION TO DISMISS AND MOTION TO PERMIT BROADCAST RESPONSE

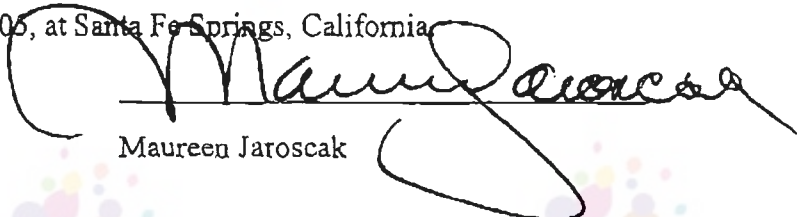
on the interested parties by placing a true copy of the document in a sealed envelope, and depositing it in the United States Mail with first class postage prepaid at La Mirada, California, and addressed as follows:

Thomas Sneddon
1112 Santa Barbara Street
Santa Barbara, CA 93101
Fax No. 805 568-2453

In addition, on this same date, I served a copy of the document by fax to the above-indicated number by transmitting a true copy of it by facsimile pursuant to Rule 2003 of the California Rules of Court.

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

Executed this 9th day of March, 2005, at Santa Fe Springs, California



Maureen Jaroscak

MR. JACKSON'S REPLY TO OPPOSITION TO MOT TO DISMISS AND MOT TO PERMIT BROADCAST RESPONSE