

**FILED**  
SUPERIOR COURT of CALIFORNIA  
COUNTY of SANTA BARBARA

NOV 08 2004

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

\* unsealed pursuant  
to 611605 court  
order

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7  
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF SANTA BARBARA

11 COOK DIVISION

12 THE PEOPLE OF THE STATE OF CALIFORNIA, ) Case No.: 1133603

13 Plaintiff,

14 vs.

15 MICHAEL JACKSON,

16 Defendant.

THIRD PARTY, RAYMOND CHANDLER'S  
REPLY TO DEFENDANT'S OPPOSITION TO  
MOTION TO QUASH

**SEALED** *in camera*

[Assigned for All Purposes to the Honorable  
Rodney S. Melville]

Date: November 10, 2004

Time: 1:30

Dept: SM-2

17  
18  
19  
20 I. THE CALIFORNIA SHIELD LAW APPLIES

21 A. Evidence Code §1070 Must Be Interpreted To Conform to the U.S. Constitution.

22 Defendant argues that Raymond Chandler is not a journalist under *Evid. Code §1070* (the  
23 California Shield law) because "the critical factor is the employment in the news media as a journalist  
24 engaged in news gathering activities. . . and petitioner . . . has no documents showing any compensation  
25 or remuneration for his activities as a journalist." (Opp. at p.7).

26 The supremacy clause of the United States Constitution requires that all state laws conform to  
27 federal constitutional standards (*Mulkey v. Reitman* (1966) 64 Cal.2d 529, 533). While no California  
28 court has decided if a non-fiction book author is entitled to shield law protection, nine federal appellate

1 circuits including the Ninth Circuit have held that the under the U.S. Constitution such laws apply to  
2 investigative book authors as well as print and broadcast journalists (Shoen v. Shoen 5 F.3d 1289, 1293  
3 (9th Cir. (AZ.) 1993).

4 The critical question is whether the author intended to disseminate the information to the public  
5 and whether such intent existed at the inception of the newsgathering process (Id., at 1293-1294).  
6 "[T]he test emphasizes the intent behind the newsgathering process rather than the mode of  
7 dissemination" (Rancho Publications v. Superior Court (1999) 68 Cal.App.4th 1538, 1545; quoting In  
8 re Madden 151 F.3d 125 (3d Cir., 1998).) Raymond Chandler meets all of the requirements of Shoen  
9 (See Motion to Quash, Section III).

10 The protections of the California shield law are not restricted to a journalist "employed" by a  
11 media outlet. The Code uses the phrase "or other person connected with or employed (by the media)"  
12 (underline added), and it specifically includes publishers as well as reporters (Evid. Code §1070).  
13 Defendant has incorrectly identified the publisher of Raymond Chandler's book as Windsong Press Ltd.  
14 of Gurnee, Illinois. (Opp. p.8; Exh. 3). The correct publisher is a Nevada Corporation (doing business  
15 in California) that is also named Windsong Press. Raymond Chandler is the sole owner of this  
16 publishing company, which holds the copyright to his book (Decl. of Raymond Chandler ¶1). As such  
17 Chandler is not only a journalist by way of his authorship of a non-fiction book, he is also "connected  
18 with or employed by" the publisher.

19 Further, at no point does Evid. Code §1070 mention compensation or remuneration. Raymond  
20 Chandler has publicly stated that all profits from the publication of the book will be donated to charity.  
21 (Decl. of Raymond Chandler ¶2). Therefore defendant's claim that Chandler has no documents showing  
22 compensation or remuneration has no relevance in determining Chandler's status as a journalist.

23 *B. Raymond Chandler Is Not A Witness To Relevant Claims or Defenses And Has Not Been*  
24 *Subpoenaed To Testify To Such Matters.*

25 Defendant argues that Raymond Chandler is a witness to events that occurred in 1993 and 1994  
26 and thus, even as a journalist, he is not entitled to the protection of the shield law (Opp. p.7).

27 Defendant relied on Delaney v. Superior Court (1990) 50 Cal.3d 785 and Rancho Publications v.  
28 Superior Court (1999) 68 Cal.App.4th 1538 as authority for the proposition that a journalist who is also

1 a witness is not entitled to the protection of the shield law. These cases are highly distinguishable from  
2 the instant case. In *Delaney* the journalists were off-duty eyewitnesses to an arrest and were called to  
3 testify whether the defendant had consented to a search (*Delaney, supra, at 794*). In fact, the reporters  
4 “were the only two possible disinterested witnesses” (*Id., at 786*).

5 Defendant is well aware that Raymond Chandler was not, and has never claimed to be, a witness  
6 to either the molestation of Jordan Chandler or the alleged extortion attempt by Evan Chandler against  
7 Michael Jackson (Decl. of Raymond Chandler ¶3). This explains why defendant has subpoenaed  
8 Raymond Chandler only as a custodian of records, and not as a percipient witness.

9 In his book and public appearances Raymond Chandler has stated that he did not become  
10 involved in the 1993 matter until *after* the scandal became public. At that point all communications  
11 between Jackson and the Chandler’s had ceased. Raymond Chandler has claimed only to be a witness  
12 to the trials and tribulations of his family as the focus of media scrutiny.

13 *Rancho Publications* involved a defamation action brought by a hospital against anonymous  
14 persons who placed a paid commercial advertisement-editorial (“advertorial”) in a newspaper. The  
15 hospital issued a subpoena requiring the newspaper to reveal the names of the persons who placed the  
16 advertorial. The *Rancho* court granted the newspaper’s motion to quash on privacy grounds but not  
17 under the shield law, holding that under the shield law such paid advertorials do not qualify as  
18 newsgathering (*Rancho, supra, at 1545*). The case at hand involves no paid commercial advertisement  
19 by a third party. Raymond Chandler gathered, authored and published the information in his book  
20 (Decl. of Raymond Chandler ¶4).

21 C. *Defendant’s Claim That Chandler is Promoting His Brother and Nephew Are Unfounded.*

22 Defendant has claims that Raymond Chandler “has never been involved in the news gathering  
23 business and does not do so today” (Opp. 3:18), that he was merely “an uncle who happened to be  
24 present when events took place” (Opp. 8:12), and that he is “glorifying” and “promoting his brother and  
25 nephew” (Opp. 3:21; 4:28; 5:16; 7:6; 8:12). These claims are unfounded.

26 Chandler has been actively involved since August of 1993 in gathering information regarding the  
27 molestation of his nephew by Michael Jackson, and Chandler purposefully placed himself in the position  
28 to gather such information with the intent to disseminate it (See Motion to Quash, Section III B). That

1 Chandler is related to some of the principles involved, and that those persons allowed him to get close  
2 enough to gather information, is irrelevant to the core issue of whether Chandler had the intent to  
3 disseminate the information. Neither Evid. Code §1070, nor Article I §2b of the California Constitution,  
4 nor the First Amendment to the United States Constitution withhold protection because a journalist is  
5 related to the subject of his report.

6 Further, defendant's claim that Chandler's book is merely a promotion of his brother and nephew  
7 is unfounded. First, neither of those persons have any financial stake in the book, nor do they have any  
8 legal action pending against defendant (Decl. of Raymond Chandler ¶5). Second, the book contains  
9 several unflattering comments about Evan Chandler made by himself, by the author and by others (See  
10 Exh. A to Motion (the book), at pp. 26, 34, 57, 101, 154, 248). Third, but certainly not least, the book  
11 discusses issues of significant public concern other than the 1993 molestation and extortion charges.  
12 These issues include unethical and possibly criminal activities among members of the bar and other  
13 state-licensed professionals, unethical and possibly criminal activities on the part of certain media, and  
14 information regarding child abuse.

15 While the *evidence* reported in the book overwhelmingly suggests that Michael Jackson is a  
16 pedophile who molested Jordan Chandler in 1993, such evidence was gathered by, not created by, the  
17 author. It is irrelevant to the application of the journalist's privilege that defendant Jackson chooses to  
18 define this evidence as a promotion of Evan and Jordan Chandler.

19 In addition, defendant's claim that Raymond Chandler is not currently engaged in the process of  
20 newsgathering is incorrect (Opp. 7). Even after the publication of his book Chandler has continued to  
21 gather information regarding the molestation of his nephew (Decl. of Raymond Chandler ¶6).

## 22 II. *IN CAMERA* REVIEW IS REQUIRED

23 Defendant opines that an *in camera* review of the subpoenaed documents would be "a  
24 tremendous waste of time." (Opp. at 12:10) Nevertheless third party records are to be produced only to  
25 the court until a judicial determination has been made that defendant is legally entitled to receive them  
26 (People v. Superior Court (2000) 80 Cal.App.4th 1305, 1316). The court must apply a two-part test: are  
27 the subpoenaed documents relevant, and if so is there "a reasonable possibility" that they will materially  
28 assist the defense (Delaney, supra, 50 Cal.3d at 809).

1 One of the ways - and in this case the only way - that the documents sought may reasonable  
2 assist the defense is to "impeach the credibility of a prosecution witness" (*Id.*, at 790). The fact that  
3 Evan or Jordan Chandler's voice may appear on a tape recording is not in and of itself evidence that the  
4 document will materially assist in the defense. There must be statements that might impeach Jordan  
5 Chandler's testimony that he was molested by Michael Jackson, or might impeach Evan Chandler's  
6 testimony that he did not attempt to extort Michael Jackson. No such statements will be found, and  
7 these documents must be subject to *in camera* review.

8 Defendant argues that documents related to the printing, distribution, promotion or sale of  
9 Chandler's book are relevant because "it demonstrates that petitioner is not engaged in any legitimate  
10 journalistic activity" (Opp. 15:26-28). (As shown in section IA above, the fact that Chandler is a self-  
11 employed, non-fiction author and publisher as opposed to being on the payroll of a specific media outlet  
12 is irrelevant to his status as a journalist). But Raymond Chandler's status as a journalist is not the  
13 determining factor for production of such documents to the defense. They must still pass the two-part  
14 test described above.

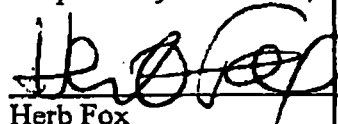
15 Neither Evan Chandler, Jordan Chandler nor any other person or entity is a party to or  
16 beneficiary of any contract involving the printing, distribution, promotion or sale of the book. Such  
17 contracts contain only the financial and other private information of third-party Raymond Chandler and  
18 defendant is not entitled to *carte blanche* review of such information (Decl. of Raymond Chandler ¶7).  
19 This underscores the need for an *in camera* review of all documents.

20 Defendant's agreement that newspaper and magazine articles and court pleadings need not be  
21 produced (Opp. 12:3) will significantly reduce the time required for *in camera* review.

22 III. NO VIOLATION OF PROTECTIVE ORDER

23 Defendant alleges that Chandler has violated this Court's January 23, 2004 Protective Order  
24 (Opp. p.5:16). Presumably this is a reference to the so-called "gag" order that has been reported in the  
25 media. No such order has been served on Raymond Chandler.

26 Respectfully submitted,

27   
28 Herb Fox



**Exhibit I**

# Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Marybeth Peters*

Register of Copyrights, United States of America

**Form TX**  
For a Mechanical Library Work  
UNITED STATES COPYRIGHT OFFICE

TX 5-977-462



EFFECTIVE DATE OF REGISTRATION

09 20 2004  
Month Day Year

DO NOT WRITE ABOVE THIS LINE IF YOU NEED MORE SPACE USE A SEPARATE CONTINUATION SHEET

**1** TITLE OF THIS WORK ▼  
All That Glitters

PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, journal, or collection, give information about the collective work in which the contribution appeared Title of Collective Work ▼

If published in a periodical or serial give Volume ▼ Number ▼ Issue Date ▼ On Page ▼

**2** a NAME OF AUTHOR ▼ Raymond Chandler DATES OF BIRTH AND DEATH  
Year Born ▼ 1946 Year Died ▼ N/A

Was this contribution to the work a work made for hire?  Yes  No  
AUTHOR'S NATIONALITY OR DOMICILE Name of Country OR { Citizen of ▼ United States  No  Domiciled in ▼   
 WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK Anonymouse?  Yes  No If the answer to either of these questions is "Yes" see detailed instructions   
 Pseudonymous?  Yes  No

NATURE OF AUTHORSHIP Briefly describe nature of material created by the author in which copyright is claimed ▼ Entire text of the book.

**NOTE**

Under the law the author of a work made for hire is generally the employer and the employee (see section 101). For any part of this work that was made for hire check "Yes" in the space provided give the employer (or other person for whom the work was prepared) as Author of that part and leave the space for dates of birth and death blank.

b NAME OF AUTHOR ▼ DATES OF BIRTH AND DEATH  
Year Born ▼ Year Died ▼

Was this contribution to the work a work made for hire?  Yes  No  
AUTHOR'S NATIONALITY OR DOMICILE Name of Country OR { Citizen of ▼  No  Domiciled in ▼   
 WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK Anonymouse?  Yes  No If the answer to either of these questions is "Yes" see detailed instructions   
 Pseudonymous?  Yes  No

NATURE OF AUTHORSHIP Briefly describe nature of material created by the author in which copyright is claimed ▼

c NAME OF AUTHOR ▼ DATES OF BIRTH AND DEATH  
Year Born ▼ Year Died ▼

Was this contribution to the work a work made for hire?  Yes  No  
AUTHOR'S NATIONALITY OR DOMICILE Name of Country OR { Citizen of ▼  No  Domiciled in ▼   
 WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK Anonymouse?  Yes  No If the answer to either of these questions is "Yes" see detailed instructions   
 Pseudonymous?  Yes  No

NATURE OF AUTHORSHIP Briefly describe nature of material created by the author in which copyright is claimed ▼

**3** a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED 2004 b DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK Month ▼ September Day ▼ 12 Year ▼ 2004  
This information must be given in all cases OR, if the work has been published, USA

**4** COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2 ▼  
Windsong Press LLC  
1350 E. Flamingo Road #768  
Las Vegas NV 89119

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2 give a brief statement of how the claimant(s) obtained ownership of the copyright ▼  
Assignment

APPLICATION RECEIVED  
SEP 20 2004  
THE DEPOSIT RECEIVED  
SEP 20 2004  
FUNDS RECEIVED



EXAMINED BY <i>JL</i>	FORM TX
CHECKED BY	
<input type="checkbox"/> CORRESPONDENCE Yes	FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE IF YOU NEED MORE SPACE USE A SEPARATE CONTINUATION SHEET

**PREVIOUS REGISTRATION** Has registration for this work, or for an earlier version of the work, already been made in the Copyright Office?

Yes  No If your answer is Yes, why is another registration being sought? (Check appropriate box) ▼

a  This is the first published edition of a work previously registered in unpublished form

b  This is the first application submitted by this author as copyright claimant

c  This is a changed version of the work as shown by space 6 on this application

If your answer is Yes, give Previous Registration Number ▶ Year of Registration ▶

5

**DERIVATIVE WORK OR COMPIATION** Processing Material Identify any preexisting work or works that this work is based on or incorporates ▼

Material Added to This Work Give a brief general statement of the material that has been added to this work and in which copyright is claimed ▼

a 6

See Instructions before completing this space

**DEPOSIT ACCOUNT** If the registration fee is to be charged to a Deposit Account established at the Copyright Office, give name and number of Account Name ▼ Account Number ▼

a 7

**CORRESPONDENCE** Give name and address to which correspondence about this application should be sent Name / Address / Apt / City / State / ZIP ▼

Herb Fox Esq. Law Office of Herb Fox  
15 West Carrillo Street Suite 211  
Santa Barbara CA 93101

Area code and daytime telephone number ▶ 805 899-4777 Fax number ▶ 805 899 2121

Email ▶ [hfox@herbfoxlaw.com](mailto:hfox@herbfoxlaw.com)

b

**CERTIFICATION** I, the undersigned, hereby certify that I am the

Check only one ▶  author  
 other copyright claimant  
 owner of exclusive rights)  
 authorized agent of Window Pro LLC

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Name of author or other copyright claimant or owner of exclusive rights) A

Type or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date

Herb Fox Date ▶ 9/14/04

8

Handwritten signature (X) ▼

*x - No. of Fox*

Certificate will be mailed in window envelope to this address	Name ▼ Law Office of Herb Fox	Complete all necessary forms Sign your application in space 8 1. Application form 2. Microfilmable copy (to check or convey) 3. Deposit material Library of Congress Copyright Office TX 101 Independence Avenue S.E. Washington, D.C. 20540-4202	9
	Name/Street/Apt ▼ 15 West Carrillo Street Suite 211		
	City/State ▼ Santa Barbara CA 93101		

(7 U.S.C. § 502(a)) Any person who knowingly makes a false representation of a material fact in this application for copyright registration provided for by section 402, or in any written statement filed in connection with this application, shall be fined not more than \$50,000.

1 PROOF OF SERVICE

2 (CCP §§1013(a)(1)(3), 1013(c))

3 STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

4 I am a citizen of the United States of America and a resident of the county aforesaid. I am  
5 employed in the County of Santa Barbara, State of California. I am over the age of 18 and not a party to  
6 the within action. My business address is 15 West Carrillo Street, Suite 211, Santa Barbara, California  
93101.

7 On November 8, 2004, I served a copy of the attached *Application to File Under Seal; Proposed*  
8 *Order; Third Party Raymond Chandler's Reply to Defendant's Opposition to Motion to Quash* on the  
9 interested parties in this action as follows:

10 Brian Oxman, Esq.  
11 14126 E. Rosecrans  
12 Santa Fe Springs, CA 90670  
13 Telephone (562) 921-5058

10 Robert M. Sanger, Esq.  
11 Sanger & Swysen  
12 233 E. Carrillo Street #C  
13 Santa Barbara, CA 93101

13 Thomas A. Mesereau, Jr., Esq.  
14 1875 Century Park East, Suite 700  
15 Los Angeles, CA 90067

16 [ ] MAIL: By placing true copies thereof enclosed in a sealed envelope with postage fully prepaid,  
17 in the United States Postal Service mail box in the City of Santa Barbara, addressed as above. That  
18 there is delivery service by the Unites States Postal Service at the place so addressed or that there is a  
19 regular communication by mail between the place of mailing and the place so addressed.

19 ~~[ ]~~ FACSIMILE TRANSMISSION: By faxing true copies thereof to the receiving fax numbers:  
20 Brian Oxman (562) 921-2298; Tom Mesereau (310) 284-3133; Robert Sanger (805) 963-7311. Said  
21 transmission was reported complete and without error, the transmission report was properly issued by  
22 the transmitting facsimile machine and is attached hereto.

22 [ ] OVERNIGHT DELIVERY: By depositing true copies thereof in a box or other facility regularly  
23 maintained by the express service carrier, or delivered to an authorized courier or driver authorized by  
24 the express service carrier to receive documents, in an envelope or package designated by the express  
25 service carrier with delivery fees paid or provided for, addressed to the person on whom it is served, at  
26 the office address as last given by that person on any document filed in the cause and served on that  
27 party making service; otherwise at that party's place of residence.

26 I certify under penalty of perjury under the laws of the State of California that the foregoing is  
27 true and correct. Executed November 8, 2004 at Santa Barbara, California.

28   
Kristyne Alfjan

TRANSMISSION VERIFICATION REPORT

TIME : 11/08/2004 14:06  
NAME : HERB FOX  
FAX : 8058994777  
TEL : 8058992121

DATE, TIME  
FAX NO. / NAME  
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STANDARD  
ECM

*Tom  
Meyer*

TRANSMISSION VERIFICATION REPORT

TIME : 11/08/2004 13:57  
NAME : HERB FOX  
FAX : 8058994777  
TEL : 8058992121

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STANDARD  
ECM

*Robert  
Sanger*

TRANSMISSION VERIFICATION REPORT

TIME : 11/08/2004 13:47  
NAME : HERB FOX  
FAX : 8058994777  
TEL : 8058992121

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ECM

*Herb Fox*