

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

FEB 17 2005

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA BARBARA

THE PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff,

vs.

MICHAEL JOE JACKSON,

Defendant.

Case No.: 1133603

Order for Release of Redacted Documents

[Plaintiff's Opposition to Defendant's Request  
that Plaintiff be Required to Present the  
Hearsay Evidence of Defendant's Response to  
"Living with Michael Jackson" as Part of its  
Case in Chief]

The redacted form of the Plaintiff's Opposition to Defendant's Request that Plaintiff be Required to Present the Hearsay Evidence of Defendant's Response to "Living with Michael Jackson" as Part of its Case in Chief attached to this order shall be released and placed in the public file. The court finds that there is more material in the motion that should be redacted than that contained in the proposed redacted version. The unredacted originals shall be maintained conditionally under seal pending the hearing.

Dated: FEB 17 2005

*Rodney S. Melville*  
RODNEY S. MELVILLE  
Judge of the Superior Court

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 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  
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 6 Telephone: (805) 568-2300  
 FAX: (805) 568-2398

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

11 [PROPOSED] REDACTED VERSION

12 THE PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 v.

15 MICHAEL JOE JACKSON,

16 Defendant.

No. 1133603

17 PLAINTIFF'S OPPOSITION TO  
 18 DEFENDANT'S REQUEST THAT  
 PLAINTIFF BE REQUIRED TO  
 19 PRESENT THE HEARSAY  
 EVIDENCE OF DEFENDANT'S  
 20 RESPONSE TO "LIVING WITH  
 MICHAEL JACKSON" AS PART  
 OF ITS CASE IN CHIEF

DATE: ~~February 21, 2005~~  
 TIME: ~~8:30 a.m.~~  
 DEPT: SM 2 (Melville)

~~FILED UNDER SEAL~~

21 Introduction:

22 Plaintiff moved the Court to allow it to present Martin Bashir's documentary  
 23 "Living with Michael Jackson" to the jury as part of its case in chief, as evidence of the single,  
 24 catastrophic event that motivated Defendant and others to conspire to commit the crimes  
 25 alleged in Count One of the indictment. Plaintiff acknowledged that though much of that  
 26 documentary is hearsay, it would be offered for a non-hearsay purpose: to illuminate

27 [REDACTED]  
 28 [REDACTED], as

1 : alleged in Count One of the Indictment.

2 The Court granted Plaintiff's motion but limited the proposed evidence to the  
3 version of "Living with Michael Jackson" that aired in the United Kingdom on February 3,  
4 2003, rather than the more expansive presentation of that documentary in the United States by  
5 ABC on February 6th, with its added commentary by Mr. Bashir and Barbara Walters.

6 At the hearing of Plaintiff's motion, Defendant's counsel urged the Court to require  
7 Plaintiff to "balance" the prejudicial effect of "Living with Michael Jackson" by presenting,  
8 immediately thereafter, "The Michael Jackson Interview: The Footage You Were Never Meant  
9 To See" film narrated by Maury Povich ("Footage"). Defendant argued that the Bashir  
10 documentary was edited to present facts in a misleading fashion and to deliberately show  
11 Michael Jackson in a false light. He urged that "Footage" reveals the true context of Mr.  
12 Jackson's several statements – a context suppressed by the editing of "Living with Michael  
13 Jackson" – and that his right to a fair trial obliged the People to present "Footage" as part of its  
14 case in chief.

15 Summary of Plaintiff's Response

16 "Footage" is purest hearsay. Because it is hearsay, it is not admissible unless it  
17 comes within an exception to the hearsay rule.

18 Defendant has not identified any exception to the hearsay rule that would support  
19 the admission of "Footage" in this case. That fawning tribute would not be admissible even if  
20 Defendant proposed to offer it on his own behalf. In the circumstances, Defendant may not  
21 oblige Plaintiff to tender Defendant's proposed hearsay as part of Plaintiff's case-in-chief.

22 Argument

23 I

24 THE DEFENSE MAY NOT COMPEL THE PROSECUTION  
25 TO PRESENT INADMISSIBLE HEARSAY EVIDENCE  
26 DURING ITS CASE IN CHIEF.

27 The People moved to introduce the documentary "Living with Michael Jackson" as  
28 evidence of the event – the airing of that documentary around the world – that prompted the



1 frenzied response alleged in Count One of the indictment. Most of it is hearsay, but it is  
2 nevertheless admissible under the "operative fact" doctrine. The Court has so ruled.

3 Defendant's public position was that "Living with Michael Jackson" portrayed him  
4 in a false light. He sought to counter that portrayal with a "puff-piece" of his own creation:  
5 "The Michael Jackson Interview: The Footage You Were Never Meant To See."

6 "Living with Michael Jackson" is relevant and admissible on the issue of  
7 Defendant's motive to commit the acts alleged in Count One. Evidence of defendant's  
8 creation and broadcast of "Footage" has no relevance to any issue framed by the indictment.  
9 For that reason alone, Plaintiff may not be required to exhibit it to the jury as part of its case in  
10 chief.

11 If Defendant believes it would be prudent to introduce admissible evidence that  
12 offsets the prejudicial effect of "Living with Michael Jackson," he is free to do so as part of his  
13 case. The operative word is "admissible." Hearsay is inadmissible. "Footage" is purest  
14 hearsay.

15 If there is authority for the proposition that a defendant may counter admissible  
16 relevant and prejudicial evidence with inadmissible, irrelevant and fawning tributes to him, he  
17 has not cited it.

## 18 II

### 19 THE "FOOTAGE" FILM IS NOT JUST HEARSAY, IT IS 20 INACCURATE, FAWNING AND IRRELEVANT HEARSAY

21 The title, "Living with Michael Jackson: The Footage You Were Never Meant To  
22 See" suggests that there was footage made in the course of the production of "Living with  
23 Michael Jackson" that was edited out before the documentary was aired. Defense counsel  
24 represented to the court that "Footage" served to correct the false impression created by  
25 Bashir's editing by putting Defendant's controversial statements in their larger context. The  
26 suggestion was that by presenting "the rest of the story," Defendant's statements would be  
27 heard and understood as innocuous.

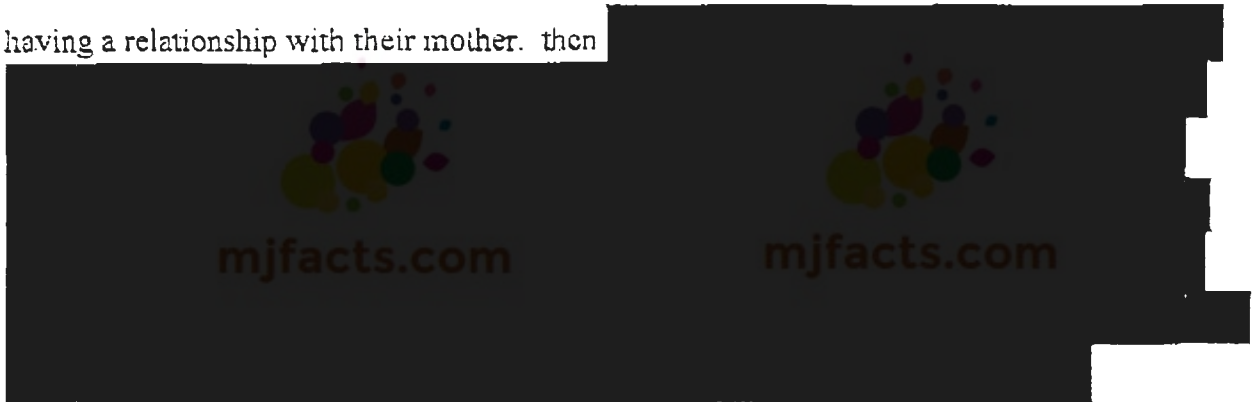
28 In fact, however, rather little footage made contemporaneously with the filming of

1 "Living with Michael Jackson" was seen in "The Footage You Were Never Meant To See."  
 2 Instead, "Footage" is a Hollywood production that contains a collection of film clips from  
 3 Defendant's old performances from childhood to early adulthood, interviews with the  
 4 defendant, members of his family (including his father, who denies that he beat his children)  
 5 and friends. It contains scenes of children frolicking about Neverland, and carefully scripted  
 6 commentary designed to place the Defendant in a favorable if not entirely truthful light.

7 A. Debbie Rowe

8 "The Footage You Were Never Meant To See" film prominently features Debbie  
 9 Rowe, Defendant's ex-wife and mother of his first two children. She is recorded as saying she  
 10 happily conceived these two children for him in the traditional way because of her desire that  
 11 he become a father. Her commentary in the film neither confirms nor denies Jackson's earlier  
 12 quotes that she did not want her children to know their mother.

13 If Defendant is suggesting that "Footage" offers the viewer a larger and accurate  
 14 context to Defendant's statements in "Living with Michael Jackson" about his children not  
 15 having a relationship with their mother, then



22 B. Sleeping With Boys

23 The most devastating part of "Living with Michael Jackson" is Bashir's discussion  
 24 with Defendant of Michael Jackson's habit and custom of sleeping with adolescent boys.



28 There would have been no additional outtakes from

1 the Neverland interview that would have shown that the Bashir interview was somehow  
2 distorted or altered to present Defendant in a false light.

3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]

8 There is nothing in "Footage" that puts Defendant's admissions in a different or  
9 more agreeable context. "Footage" does not include any additional statements by Defendant  
10 that would suggest that his admission, "I've slept in a bed with many children. I slept in the  
11 bed with all of them" - including [REDACTED] - as a "very loving" and  
12 "very right" thing, means something other than that he sleeps with young boys not his own and  
13 it is not wrong to do so.

14 CONCLUSION

15 Defendant's request that the People be ordered to present inadmissible evidence to  
16 offset the prejudicial effect of admissible evidence should be denied.

17 DATED: February 10, 2005

18 Respectfully submitted,

19 THOMAS W. SNEDDON, JR.  
20 District Attorney

21 By: 151  
22 Gerald McC. Franklin, Senior Deputy

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 February 10, 2005, I served the within REDACTED VERSION OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S REQUEST THAT PLAINTIFF BE REQUIRED TO PRESENT THE HEARSAY EVIDENCE OF DEFENDANT'S RESPONSE TO "LIVING WITH MICHAEL JACKSON" AS PART OF ITS CASE IN CHIEF on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER, and BRIAN OXMAN by personally delivering a true copy thereof to Mr. Sanger's office in Santa Barbara, by personally serving a true copy thereof to defense counsel in open court.

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

Executed at Santa Barbara, California on this 10th day of February, 2005.

*Gerald M. L. Brantley*



SERVICE LIST

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Co-counsel for Defendant

OPPOSITION TO DEFENDANT'S REQUEST THAT THE PROSECUTION INCLUDE DEFENDANT'S HEARSAY AS PART OF ITS CASE IN CHIEF

LOCATION:805 560 1078

RX TIME 02/10 '05 13:50



PROOF OF SERVICE

1013A(1)(3), 1013(c) CCP

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA:

I am a citizen of the United States of America and a resident of the county aforesaid. I am employed by the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action. My business address is 312-H East Cook Street, Santa Maria, California.

On FEBRUARY 17, 2005, I served a copy of the attached ORDER FOR RELEASE OF REDACTED DOCUMENTS (PLAINTIFF'S OPPOSITION TO DEFENDANT'S REQUEST THAT PLAINTIFF BE REQUIRED TO PRESENT THE HEARSAY EVIDENCE OF DEFENDANT'S RESPONSE TO "LIVING WITH MICHAEL JACKSON" AS PART OF ITS CASE IN CHIEF) addressed as follows:

THOMAS A. MESEREAU, JR.  
COLLINS, MESEREAU, REDDOCK & YU, LLP  
1875 CENTURY PARK EAST, 7<sup>TH</sup> FLOOR  
LOS ANGELES, CA 90067

THOMAS W. SNEDDON, JR.  
DISTRICT ATTORNEY'S OFFICE  
1112 SANTA BARBARA STREET  
SANTA BARBARA, CA 93101

X FAX

By faxing true copies thereof to the receiving fax numbers of: (805) 456-0699 (Thomas Mesereau, Jr.); (805) 568-2398 (Thomas Sneddon). Said transmission was reported complete and without error. Pursuant to California Rules of Court 2005(i), a transmission report was properly issued by the transmitting facsimile machine and is attached hereto.

\_\_\_ MAIL

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

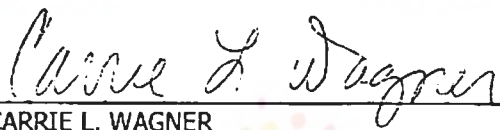
\_\_\_ PERSONAL SERVICE

By leaving a true copy thereof at their office with the person having charge thereof or by hand delivery to the above mentioned parties.

\_\_\_ EXPRESS MAIL

By depositing such envelope in a post office, mailbox, sub-post office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with express mail postage paid.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 17<sup>TH</sup> day of FEBRUARY, 2005, at Santa Maria, California.

  
CARRIE L. WAGNER