

FILED

SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

MAY 25 2005

GARY M. BLAIR, Executive Officer

Carrie L. Wagner

CARRIE L. WAGNER, Deputy Clerk

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

12 THE PEOPLE OF THE STATE OF CALIFORNIA,)	No. 1133603
13)	
14 Plaintiff,)	PLAINTIFF'S REQUEST THAT
15)	COURT CLARIFY THE HEARSAY
16 v.)	NATURE OF DEFENDANT'S
17 MICHEAEL JOE JACKSON,)	STATEMENTS IN THE "OUTTAKES
18)	VIDEO" OFFERED BY HIM AND
19 Defendant.)	INSTRUCT THE JURY
20)	ACCORDINGLY
21)	DATE: TBA
22)	TIME: TBA
23)	DEPT: SM-2 (Melville)

21 **1. Introduction:**

22 As part of the case for the defense, Defendant was allowed to present a two-hour
 23 presentation (the "Outtakes video") consisting of portions of Defendant's interview by Martin
 24 Bashir filmed by Hamid Moslehi while Martin Bashir was filming his "Living with Michael
 25 Jackson" video program which had been screened for the jury as part of the People's case in
 26 chief. The "Outtakes video" apparently was presented by Defendant to corroborate his position
 27 that Martin Bashir had unfairly edited the interview footage he made in the course of filming
 28 "Living with Michael Jackson."

1 Much of what Defendant said about himself, his interactions with young boys and his
2 motivation for those interactions in both "Living with Michael Jackson" and the "Outtakes video"
3 was hearsay -- and self-serving hearsay into the bargain -- and so was inadmissible if offered for
4 the truth of the matters asserted.

5 To the extent Defendant's statements may be determined by the jury to constitute
6 admissions against his penal interest, they were and are admissible as an exception to the hearsay
7 rule, which is why "Living with Michael Jackson" was admitted as part of Plaintiff's case in
8 chief.)

9 2. The Need For A Cautionary Instruction:

10 "Unless it falls within an exception to the general rule, hearsay is not admissible.
11 ([Evid. Code, § 1200], subd. (b.) 'The chief reasons for this general rule of inadmissibility are
12 that the statements are not made under oath, the adverse party has no opportunity to cross-
13 examine the declarant, and the jury cannot observe the declarant's demeanor while making the
14 statements.' [Citations.]" (*People v. Duarte* (2000) 24 Cal.4th 603, 610.)

15 As noted above, much of what defendant said about himself and his relationship with
16 young boys was self-serving hearsay. "Few rights are more fundamental than that of an accused
17 to present witnesses in his own defense. [Citations.] [But i]n the exercise of this right, the
18 accused, as is required of the State, must comply with established rules of procedure and
19 evidence designed to assure both fairness and reliability in the ascertainment of guilt and
20 innocence.' (*Chambers v. Mississippi* [(1973)] 410 U.S. 284, 302 [93 S.Ct. 1038, 1049]. Thus,
21 '[a] defendant does not have a constitutional right to the admission of unreliable hearsay
22 statements.' [Citations.]" (*People v. Ayala* (2000) 23 Cal.4th 225, 269.)

23 The "Outtake video" was presented to the jury in this case without a cautionary
24 instruction as to the limited relevant purposes for which it could be considered. Plaintiff
25 respectfully requests that the Court instruct the jury, when appropriate, as follows:

26 3. Proposed Cautionary Instruction:

27 As part of their case in chief, and in connection with the testimony of
28 Martin Bashir, Plaintiff introduced a videotaped film entitled "Living with

1 Michael Jackson,” narrated by Mr. Bashir and broadcast in the United
2 Kingdom and later in the United States in February, 2003.

3 At the time “Living with Michael Jackson” was shown to you, you
4 were cautioned that the video was “not offered for the truth of anything
5 said or shown in the program, with the exception of certain passages that
6 will later be identified. You will receive additional instruction with
7 regard to these identified passages. The rest of the contents of the video
8 is hearsay and cannot be considered by you to prove anything other than
9 the fact that the program was aired in February of 2003.”

10 As part of Defendant’s case, you were shown a videotape made by
11 Hamid Moslehi while Martin Bashir was videotaping his interview of
12 Michael Jackson. Strictly for the sake of convenience, Mr. Moslehi’s
13 videotape is referred to here as the “Outtakes video.”

14 The “Outtakes video” was admitted for the relevance it may have on
15 the issue of the fairness of Martin Bashir’s editing of his interview of
16 Defendant in the program aired as “Living with Michael Jackson.”

17 “Hearsay evidence” is evidence of a statement that was made other
18 than by a witness while testifying at the hearing and that is offered to
19 prove the truth of the matter stated. With certain exceptions, such as
20 admissions by a defendant, hearsay statements generally are inadmissible
21 at trial, primarily because they are not subject to cross-examination.

22 An admission is a statement made by the defendant which does not
23 itself acknowledge his guilt of the crimes for which the defendant is on
24 trial, but which statement tends to prove his guilt when considered with
25 the rest of the evidence.

26 You are the exclusive judges as to whether the defendant made an
27 admission, and if so, whether that statement is true in whole or in part.


28 The statements made by persons other than defendant in “Living with
Michael Jackson” or in the “Outtakes video” are hearsay and may not be
considered by you for the truth of the matters stated. Statements by the
defendant in “Living with Michael Jackson” and the “Outtakes video” are
likewise hearsay and must not be considered for the truth of the matters
asserted unless you find a given statement of the defendant to be an
admission.

1 Evidence of an oral admission of the defendant not made in court
2 should be viewed with caution.

3 DATED: May 24, 2005

4 Respectfully submitted

5 THOMAS W. SNEDDON, JR.
6 District Attorney

7 By: 
8 Gerald McC. Franklin, Senior Deputy District Attorney

9 Attorneys for Plaintiff

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3 **PROOF OF SERVICE**

4 STATE OF CALIFORNIA }
5 COUNTY OF SANTA BARBARA } SS

6 I am a citizen of the United States and a resident of the County aforesaid; I am over
7 the age of eighteen years and I am not a party to the within-entitled action. My business address
8 is: District Attorney's Office; Courthouse; 1112 Santa Barbara Street, Santa Barbara, California
9 93101.

10 On May ____, 2005, I served the within PLAINTIFF'S REQUEST THAT COURT
11 CLARIFY THE HEARSAY NATURE OF DEFENDANT'S STATEMENTS IN THE
12 "OUTAKES VIDEO" OFFERED BY HIM AND INSTRUCT THE JURY ACCORDINGLY on
13 Defendant, by THOMAS A. MESEREAU, JR. and ROBERT SANGER, his counsel in this
14 matter, by personally delivering a true copy thereof to defense counsel in open court. I declare
15 under penalty of perjury that the foregoing is true and correct.

16 Executed at Santa Maria, California on this 25 day of May, 2005.

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