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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION**

15 **THE PEOPLE OF THE STATE OF**  
16 **CALIFORNIA,**

17 Plaintiffs,

18 vs.

19 **MICHAEL JOSEPH JACKSON,**

20 Defendant.

Case No. 1133603

MR. JACKSON'S MEMORANDUM IN  
SUPPORT OF ORDER TO SHOW  
CAUSE RE; CONTEMPT AGAINST  
MARTIN BASHIR

Honorable Rodney S. Melville  
Date: TBD  
Time: 8:30 a.m.  
Dept.: SM-2

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

**MAR 09 2005**

GARY M. BLAIR, Executive Officer

*Carrie L. Wagner*  
CARRIE L. WAGNER, Deputy Clerk

MEMO IN SUPPORT OF ORDER TO SHOW CAUSE RE: CONTEMPT AGAINST MARTIN BASHIR

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1 I.

2 INTRODUCTION

3 Mr. Michael Jackson submits this Memorandum in Support of his Motion for Order to Show Cause  
4 re: Contempt. Mr. Jackson's motion is based on the following grounds:

5 (1) Contemnor Bashir is guilty of a direct civil contempt of court by refusing to testify when the  
6 court overruled all of Contemnor's claims of privilege, and Contemnor's refusal to testify was a willful  
7 violation of the of Code of Civil Procedure sections 1209(a)(5) and (9);

8 (2) Neither the California Shield Law nor the First Amendment apply to Contemnor Bashir because  
9 he is a percipient witness who waived all privileges by publishing the information to third parties.

10 (3) Mr. Jackson's rights to cross-examination and confrontation outweigh Contemnor Bashir's  
11 Shield Law and First Amendment privileges and Contemnor should be held in contempt.

12 A. Statement of the Case.

13 1. Plaintiff's Complaint.

14 Plaintiff filed this action on December 18, 2003, charging Mr. Jackson with seven (7) counts of  
15 Lewd Acts Upon a Child in violation of Penal Code section 288a and two (2) counts of administering an  
16 intoxicant to a minor in violation of Penal Code section 222. Plaintiff soon abandoned the Complaint and  
17 sought a Grand Jury Indictment which not only changed the nature of the claims, but also changed the dates  
18 on which they took place. The April 26, 2004, Indictment charged Mr. Jackson with a vast conspiracy to  
19 falsely imprison, abduct, and extort the complaining witness family along with unindicted co-conspirators  
20 including Mr. Jackson's attorneys, employees, and friends of friends Mr. Jackson hadn't ever met.

21 Plaintiff claims the vast conspiracy was precipitated by the television program "Living with Michael  
22 Jackson" which aired in England on February 3, 2003, and in the United States on February 7, 2003.  
23 according to plaintiff, this program, which was an interview with Mr. Jackson conducted by Witness  
24 Martin Bashir, was supposed to be so devastating to him that he decided to kidnap a family depicted in the  
25 program, extort them, and falsely imprison them from February 4, 2003, to March 13, 2003. In addition,  
26 despite a very public investigation being launched by the Santa Barbara District Attorney's Office into Mr.  
27 Jackson's possible child molestation on February 6, 2003, Mr. Jackson is alleged to have molested the  
28

1 children, not before the events of February 3-6, 2003, but rather only afterward, in an apparent effort to  
2 hand the District Attorney a case which never existed before, and in fact has never existed at all.

3 On January 18, 2005, plaintiff filed a Motion for Admission of Martin Bashir's Documentary  
4 "Living with Michael Jackson" as Evidence of Defendant's Motive and Intent in Conspiring with Others to  
5 Commit the Crimes Alleged in Count One of the Indictment. (Exhibit "A"). The Motion sought to  
6 introduce not only the entire film as the basis for Mr. Jackson kidnaping the family, but also various  
7 statements recorded in September, 2002, at a time no molestation had ever occurred. Plaintiff claimed  
8 some of the statements by Mr. Jackson in that program constituted "admissions" (Plaintiff's Memo, p. 13,  
9 lines 4-5). and that Mr. Jackson's "admissions to sleeping with young boys are independently admissible  
10 under Evidence Code section 1220." (Exhibit "A," Plaintiff's 1-18-05 Memo, p. 17, lines 26-27).

11 **2. Plaintiff obtained Court approval to introduce the statements as "admissions."**

12 However, not only does the Bashir Program not contain any such "admissions," but also plaintiff  
13 sought to misconstrue the actual language where Mr. Jackson and the complaining witness denied any such  
14 conduct. Undaunted nevertheless by the truth, on February 10, 2005, plaintiff filed a Motion for Admission  
15 of Certain Statements by Defendant on "Living with Michael Jackson" and "60 Minutes" as exceptions to  
16 the Hearsay Rule. (Exhibit "B"). Plaintiff claimed the statements made in September, 2002, constituted  
17 "admissions" within the exceptions to the hearsay rule that Mr. Jackson "shared his bed" with the  
18 complaining witness, (Exhibit "B," Plaintiff's 2-10-05 Memo, p. 3, lines 11-24).<sup>11</sup>

19 On January 28, 2005, the court granted plaintiff's motion to admit the Bashir Program into  
20 evidence. On February 21, 2005, the Court also granted plaintiff's motion to admit the hearsay statements  
21 contained in the Bashir Program as "admissions" and exceptions to the hearsay rule. The Court required  
22 the Bashir Program be authenticated as a prerequisite to its admission into evidence.

23 On December 21, 2004, plaintiff obtained a certification from this Court permitting plaintiff to issue  
24 a Subpoena to Witness Martin Bashir in New York. That certificate was entered in the New York Supreme  
25

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26 <sup>11</sup> Plaintiff's first motion to introduce the Bashir Program filed January 18, 2005, was not designed  
27 to assert the truth of the matters contained in the program, but only to establish the occurrence of an event.  
28 However, this second motion filed February 10, 2005, sought to introduce the statements in the program for  
the truth of the matter as "admissions" and as exceptions to the hearsay rule.

1 Court for the County of New York on January 18, 2005, and Witness Bashir was thereafter served with the  
2 Subpoena. (Exhibit "C"). On January 18, 2005, Witness Martin Bashir filed a Motion for Protective Order  
3 Precluding Martin Bashir from Being Required to Testify and for Certification that "Gag Order" Does Not  
4 Apply to Martin Bashir. (Exhibit "D").

5 **3. Witness Bashir claimed he would not testify.**

6 Witness Bashir's Motion stated the First Amendment and the California Shield Law in Evidence  
7 Code section 1070 protected him against forced disclosure of any information before the Court. (Exhibit  
8 "D," Bashir 1-18-05 Motion, p. 2, lines 3-9). He claimed that he could not be compelled to be a witness  
9 nor to provide any testimony before the court. (Exhibit "D," Bashir 1-18-05 Memo, p. 7, lines 1-3).

10 On January 27, 2005, the Court denied Witness Bashir's Motion. However, the Court modified the  
11 "gag" order of January 23, 2004, and thereby permitted Witness Bashir to engage in conduct which  
12 defamed Mr. Jackson in two and one-half (2 ½) hours of national television broadcasts which are the  
13 subject Mr. Jackson's separate Motion to Dismiss for invidious discrimination. (See Motion to Dismiss  
14 and Motion to Permit Broadcast Response filed 2-23-05).

15 Witness Bashir then communicated with the District Attorney's Office stating that despite the  
16 Court's ruling, he intended to assert his privileges under the First Amendment and the California Shield  
17 Law and refuse to testify to anything not published in the television program itself. On March 2, 2005,  
18 Witness Bashir's attorney, Theodore Boutros, stated to the Court:

19 "The defense has known for several weeks that the prosecutors had subpoenaed Mr. Bashir. And  
20 they had indicated they had put Mr. Bashir on their witness list, and I argued that the defense had  
21 not made the showing. I put them on notice that I planned to invoke the shield law and the First  
22 Amendment that there were standards for them to meet. And they knew Mr. Bashir was going to be  
23 here." (Exhibit "E," 3-01-05 Tr., p. 275, lns 5-13).

24 **4. Witness Bashir refused to be cross-examined despite appearing and testifying.**

25 Knowing that Witness Bashir would invoke a First Amendment privilege and the California Shield  
26 Law, plaintiff called Witness Bashir on March 2, 2005, as its first trial witness. Witness Bashir testified  
27 concerning his professional background, that he had done a series of interviews with Michael Jackson in  
28 late 2002, and early 2003, and that the program "Living with Michael Jackson" broadcast in England on

1 February 3, 2003, and the U.S. on February 6, 2003, were the result of his efforts. Contemnor Bashir  
2 testified that Mr. Jackson's videographer filmed the filming of the video program and that the program was  
3 thereby filmed with the intent it be published to third parties.<sup>21</sup> Contemnor Bashir then viewed the program  
4 played in court and stated the program was the program he had made regarding Michael Jackson.

5 When Mr. Jackson sought to cross-examine the witness, Witness Bashir refused to answer  
6 questions regarding misrepresents he made to Mr. Jackson, how the television program was made, the  
7 number of hours of film that was taken, what statements he made to Mr. Jackson to obtain permission to  
8 film the program, who was present during the filming, what the process was whereby the film was edited,  
9 and a host of other questions regarding the depictions in the film. Witness Bashir invoked the First  
10 Amendment and the California Shield Law as the basis for his refusal to testify. When the Court overruled  
11 the objection and instructed the witness to answer the questions, Witness Bashir continued his recalcitrant  
12 refusal to testify just as he had informed plaintiff he would do before he was called as a witness.

13 Attached to this Memorandum is the Order to Show Cause re: Contempt against Contemnor Bashir  
14 that outlines each of the questions Mr. Jackson asked of the witness, Contemnor Bashir's objection to the  
15 questions, the Court's overruling of the objections, and the witnesses' refusal to answer. In the face of such  
16 recalcitrance, the Court stated that it would review the transcript and determine whether an Order to Show  
17 Cause re: Contempt should be issued against the witness. (Exhibit "E," 3-1-05 Tr. p. 276, ln 18-21). Mr.  
18 Jackson hereby requests the Court to issue the Contempt Citation because Witness Bashir refused to answer  
19 the questions without justification, and that refusal has destroyed Mr. Jackson's rights to a fair trial.

20 ///

21 ///

22  
23  
24 <sup>21</sup> "Q. During the time you were in production of the video 'Living with Michael Jackson,' were you  
25 aware of the fact that Mr. Jackson also had one of his videographers accompanying you during the filming of  
26 the footage?

27 "....

28 "THE WITNESS: The answer to the question is yes, but the individual concerned -  
MR MESEREAU: Objection.

THE WITNESS: - only filmed on two occasions.

THE COURT: Wait. You answered the question, and there's an objection. The questions is answered."  
Exhibit "E," 3-1-05 Tr., p. 221, ln 26, to p. 224, ln 15)

1                   **5. The Court Overruled the Objections Because Contemnor is a Percipient Witness.**

2                   Contemnor Bashir was a witness to the events of September, 2002, when Mr. Jackson made  
3 statements to him which the prosecution now wishes to introduce as so-called "admissions." Contemnor  
4 Bashir was the one who induced Mr. Jackson to make the statements, and any trickery, deception,  
5 misrepresentations, playacting, coercion, or other numerous possible types of conduct which were  
6 perpetrated against Mr. Jackson at the time are not only relevant, but also essential to determine the  
7 authenticity, voluntariness, and trustworthiness of the recorded statements. As a percipient witness to the  
8 events, Contemnor Bashir does not qualify for Shield Law protection. Delaney v. Superior Court, 50 Cal.  
9 3d 785, 805-06 (1990) Delaney v. Superior Court, 50 Cal. 3d 785, 805-06 (1990)(journalist that witnesses  
10 events must disclose unpublished information regarding events); Rancho Publications v. Superior Court, 68  
11 Cal. App. 4<sup>th</sup> 1538, 1545 (1999)(journalists who are witnesses to the events which are relevant to  
12 proceeding may not claim benefits of the Shield Law).

13                   Without justification, Contemnor Bashir refused to answer the question of what other statements  
14 Mr. Jackson made to him during the filming (Exhibit "E," 3-01-05 Tr. p. 259, ln 28 to p. 260, ln 19). He  
15 refused not because of his feigned constitutional privilege, but rather because Mr. Jackson told Contemnor  
16 Bashir that Frank Casio was present in the bedroom at all times the complaining boy was present. The  
17 information was deliberately edited out of the Bashir Program, and the statements contained in the Bashir  
18 Program were fraudulently edited as a misrepresentation of Mr. Jackson's statement.

19                   Contemnor Bashir refused to answer the question of how Mr. Jackson signed the interview  
20 agreement with him or if an attorney was present. (Exhibit "E," 3-01-05 Tr., p. 242, ln 21, to p. 243, ln  
21 26). The fact is Contemnor Bashir forged Mr. Jackson's signature to obtain the interview with him.<sup>3/</sup>  
22 While Contemnor Bashir claims he agreed to be fair, the truth is to the contrary. Attached as Exhibit "F" is  
23

24                   <sup>3/</sup> Witness Bashir was previously sanctioned before by British Broadcast Complaints Commission for  
25 engaging in misrepresentation to obtain an interview in the case of Yusof v. Granada Television and Martin  
26 Bashir. (Exhibit "E," 3-01-05 Tr. p. 235, ln 13 to p. 238, ln 12). In the Yusof case, Witness Bashir  
27 misrepresented that he was investigating the involvement of the authorities into the disappearance of plaintiff's  
28 daughter, a 16-year old run away. The representations were found to be false and made for the purpose of  
obtaining the interview. (Exhibit "G"). There were numerous instances of misrepresentations during Mr.  
Jackson's interview, and Witness Bashir's refusal to be cross-examined has resulted in a fraudulent video being  
introduced before the Jury precisely as the prosecution planned for it to happen.

1 the forged document witness Bashir produced to Mr. Jackson's management and to Independent Television  
2 in London claiming it was Michael Jackson's signature in order to obtain what would become a  
3 fraudulently edited interview with Mr. Jackson

4 **6. Contemnor Bashir waived all privileges by publishing statements about what he**  
5 **agreed to with Mr. Jackson and that he was honest and fair.**

6 Mr. Jackson's questions inquired into the making of the contract, what Contemnor Bashir promised,  
7 and what statements Contemnor made to Mr. Jackson to get him to do the interview. Contemnor's  
8 objection that the information is unpublished is disingenuous. Contemnor Bashir not only allowed third  
9 parties to video record the interview, but also in an Online Chat for ITV.UK.CO on February 12, 2003,  
10 Contemnor published information stating, "I agreed that we would make an honest film about his life."  
11 (Exhibit "H," p. 3, ln 14). Contemnor claims, "There was no betrayal," and that "The film was fair."  
12 (Exhibit "H," p. 3, lns18-21) Mr. Jackson has every right to ask Contemnor all of the questions he asked  
13 because Contemnor has published statements to the world which waive any claims of the Shield Law or  
14 First Amendment privilege.

15 The February 12, 2003, On Line Chat stated:

16 "Seth Mason: Do you feel that his statement saying that you betrayed him or his children is true or  
17 reasonable in any way?

18 ->Martin Bashir replies: Not at all. I agreed that we would make an honest film about his life. It was  
19 almost 2 hours of television which is an unprecedented length of time for a single factual  
20 documentary and over that period, there were aspects of Michael which were wonderfully charming.  
21 At the end of the day, we stand firmly by the film. There was no betrayal at all. A number of articles  
22 have drawn on allegations in the past, what happened in 1993 when he was accused but never found  
23 guilty of abusing a child. A number of people said to me he came across in a fair way. The film was  
24 fair to his musical achievement and gave him every opportunity to explain himself. He was never  
25 prevented from explaining what he was doing." (Exhibit "H," p. 3 lns 12-21).

26 The Shield Law only permits a journalist to maintain "unpublished" information confidential.  
27 Contemnor Bashir has published claims about agreeing to be fair, that he was honest, that there was no  
28 betrayal. Mr. Jackson's questions at trial inquired into these claims and Contemnor may not make such

1 statements to the public and then refuse to answer questions about them. Contemnor waived his Shield  
2 Law and First Amendment privileges and he could be held in contempt of court.

3 **B. Basis for Motion for Order to Show Cause re: Contempt.**

4 Contemnor Bashir is guilty of a direct civil contempt of court by refusing to testify when the court  
5 overruled Contemnor's claims of privilege, and Contemnor's refusal to testify was a willful violation of the  
6 of Code of Civil Procedure sections 1209(a)(5) and (9). Neither the California Shield Law nor the First  
7 Amendment apply to Contemnor because he is a percipient witness who waived all privileges by publishing  
8 the information to third parties. Mr. Jackson's rights to cross-examination and confrontation outweigh  
9 Contemnor's Shield Law and First Amendment privileges and Contemnor should be held in contempt.

10 **II.**

11 **CONTEMNOR BASHIR WILLFULLY REFUSED TO ANSWER PROPER**  
12 **QUESTIONS AND SHOULD BE HELD IN CIVIL CONTEMPT**

13 **A. Contemnor Bashir has No Privilege to Refuse to Testify.**

14 **1. Neither the California Shield Law nor the First Amendment apply to Contemnor**

15 The California Shield Law provides a journalist (1) cannot be held in contempt for failure to  
16 disclose their unpublished source of information procured while employed in news gathering, and (2)  
17 cannot be held in contempt for failure to disclose any unpublished information obtained while engaged in  
18 news gathering. Article I, sections 2(b) of the California Constitution; Evidence Code sec. 1070.  
19 However, none of Mr. Jackson's questions sought to have Contemnor Bashir disclose his sources because  
20 Mr. Jackson was the source, and that information was already published. Mr. Jackson did not seek  
21 unpublished information of any kind because all of the information sought had been published to the  
22 witness who were present during the news gathering, including Mr. Jackson, Hamid Mosheli, Paul Hugo,  
23 Mark Adams, and Ray Dominguez, all of whom worked for Mr. Jackson.

24 The California Shield Law adopted by the voters in 1980, was incorporated into the California  
25 Constitution, article I, section 2(b), which provides:

26 "A publisher, editor, reporter, or other person connected with or employed upon a  
27 newspaper, magazine, or other periodical publication, or by a press association or wire service, or  
28 any person who has been so connected or employed, shall not be adjudged in contempt by a judicial.



1 legislative, or administrative body, or any other body having the power to issue subpoenas, for  
2 refusing to disclose the source of any information procured while so connected or employed for  
3 publication in a newspaper, magazine or other periodical publication, or for refusing to disclose any  
4 unpublished information obtained or prepared in gathering, receiving or processing of information  
5 for communication to the public.”

6 “ ...

7 “As used in this subdivision, 'unpublished information' includes information not  
8 disseminated to the public by the person from whom disclosure is sought, whether or not related  
9 information has been disseminated and includes, but is not limited to, all notes, outtakes,  
10 photographs, tapes or other data of whatever sort not itself disseminated to the public through a  
11 medium of communication, whether or not published information based upon or related to such  
12 material has been disseminated.”

13 The provisions of the Shield Law were codified by the Legislature into Evidence Code section  
14 1070, which is virtually identical to the Constitutional provision and provides:

15 “(a) A publisher, editor, reporter, or other person connected with or employed upon a  
16 newspaper, magazine, or other periodical publication, or by a press association or wire service, or  
17 any person who has been so connected or employed, cannot be adjudged in contempt by a judicial,  
18 legislative, administrative body, or any other body having the power to issue subpoenas, for refusing  
19 to disclose, in any proceeding as defined in Section 901, the source of any information procured  
20 while so connected or employed for publication in a newspaper, magazine or other periodical  
21 publication, or for refusing to disclose any unpublished information obtained or prepared in  
22 gathering, receiving or processing of information for communication to the public.

23 “(b) Nor can a radio or television news reporter or other person connected with or employed  
24 by a radio or television station, or any person who has been so connected or employed, be so  
25 adjudged in contempt for refusing to disclose the source of any information procured while so  
26 connected or employed for news or news commentary purposes on radio or television, or for  
27 refusing to disclose any unpublished information obtained or prepared in gathering, receiving or  
28 processing of information for communication to the public.

1           “(c) As used in this section, "unpublished information" includes information not  
2 disseminated to the public by the person from whom disclosure is sought, whether or not related  
3 information has been disseminated and includes, but is not limited to, all notes, outtakes,  
4 photographs, tapes or other data of whatever sort not itself disseminated to the public through a  
5 medium of communication, whether or not published information based upon or related to such  
6 material has been disseminated.

7           As discussed below, the Shield Law affords Contemnor Bashir no protection. All of the  
8 information involved in the questions asked the witness during cross-examination was published to third  
9 parties. None of it required disclosure of an unpublished source, and above all else, Contemnor Bashir was  
10 a percipient witness who does not qualify for privilege under the Shield Law or First Amendment.

11           **2. Contemnor Bashir waived all privileges by publishing information to third parties.**

12           The television program was filmed in the presence of Hamid Moselehi, who was Mr. Jackson's  
13 videographer, along with employees Paul Hugo, Mark Adams, and Ray Dominguez, who independently  
14 filmed Contemnor making of the entire interview. The filming was done with Contemnor's knowledge and  
15 consent in order to produce the "making" of the documentary would be published worldwide. The  
16 information was disclosed to a third party, and thereby published, with Contemnor's express approval, and  
17 the publication of in the ITV On Line Chat waived all claims of privilege..

18           Making statements in the known presence of unnecessary third parties who can overhear is  
19 considered a manifestation of intent to make a confidential communication. People v. Gomez, 134 Cal.  
20 app. 3d 874, 879 (1982). Where third parties are present, privilege regarding the subject or the  
21 communications is lost because the information is thereby published to the third party. Horwitz v. Sacks,  
22 89 Cal. App. 336, 334 (1928). Where a witness or a party discloses otherwise privileged information in the  
23 presence of a third party, all claims of privilege, including attorney-client, self-incrimination, and other  
24 privileges are waived. People v. Poulin, 27 Cal. App. 3d 54, 64 (1972).

25           Contemnor published the entire filming of his program to third parties. He has no basis to claim  
26 privilege because there is no unpublished material. Contemnor Bashir waived all privileges.

27 ///

28 ///

1                   **3. Contemnor Bashir violated Evidence Code Section 356, and Mr. Jackson is entitled**  
2                   **to have his entire statement before the Jury.**

3                   Contemnor Bashir appeared, answered questions about Mr. Jackson making the so-called  
4 "admissions," and then refused to answer questions about the entirety of Mr. Jackson's statements. He  
5 admitted the tape was an edited version of Mr. Jackson's statements. By Contemnor Bashir refusing to  
6 testify about portions of the conversation that were not included in the tape played to the Jury, he  
7 voluntarily presented a statement from Mr. Jackson that was incomplete, out of context, fraudulently edited,  
8 and a deliberate distortion. The admission into evidence of only part of the statements is reversible error,  
9 and there is no cure for the misconduct. People v. Hamilton, 48 Cal. 3d 1142, 1174 (1989).

10                  Evidence Code section 356 provides:

11                         "Where part of an act, declaration, conversation, or writing is given in evidence by one  
12 party, the whole on the same subject may be inquired into by an adverse party; when a letter is read,  
13 the answer may be given; and when a detached act, declaration, conversation, or writing is given in  
14 evidence, any other act, declaration, conversation, or writing which is necessary to make it  
15 understood may also be given in evidence."

16                  In Rosenberg v. Wittenborn, 178 Cal. App. 2d 846, 852 (1960), the court stated:

17                         "If a statement is admissible in evidence as an admission or declaration, it is admissible as an  
18 entirety, including parts that are unfavorable, as well as those that are favorable, to the party  
19 offering it in evidence. In the event a statement admitted in evidence constitutes part of a  
20 conversation or correspondence, the opponent is entitled to have placed in evidence all that was said  
21 or written by or to the declarant in the course of such conversation or correspondence, provided the  
22 other statements have some bearing upon, or connection with, the admission or declaration in  
23 evidence ...."

24                  The purpose of section 356 is to avoid distortion of acts or statements which should be viewed in  
25 their proper context. People v. Williams, 13 Cal. 3d 559, 565 (1975). A defendant is entitled to have the  
26 whole of an admission presented to the jury and to point out any contradictory, inconsistent, or explanatory  
27 information contained in the entirety of the statement. People v. Ketchel, 59 Cal. 2d 503, 536 (1963). It is  
28 error to present only part of a defendant's statement, admission, or confessions to the jury where the

1 entirety of the statement contains information that is either helpful, explanatory, or beneficial to the  
2 defendant. People v. Douglas, 234 Cal. App. 3d 273, 285 (1991).

3 Mr. Jackson was entitled to inquire into the entirety of his statements made to Contemnor Bashir.  
4 Contemnor Bashir voluntarily introduced and authenticated the edited version of the statement, and by so  
5 doing, he waived any Shield Law or First Amendment privilege for Mr. Jackson's inquiry into the entirety  
6 of the statement. He should be held to the requirements of Evidence Code section 356, and his recalcitrant  
7 refusal to be cross-examined as to the entirety of Mr. Jackson's statement violates section 356.<sup>4/</sup>

8 **4. Contemnor Bashir is a percipient witness to the so-called "admissions."**

9 Contemnor Bashir acknowledges he witnessed Mr. Jackson's so-called "admissions." He is a  
10 percipient witness to the events that gave rise to this case, including the so-called "admissions" and the  
11 making of the television program that the prosecution calls the central event of the case. As a percipient  
12 witness, he cannot withhold unpublished information regarding the events he witnessed, and the fact that  
13 his television program also published information concerning those events does not immunize, protect, or  
14 privilege him from disclosing his percipient knowledge of the events of this case.

15 In Delancy v. Superior Court, 50 Cal. 3d 785 (1990), defendant was charged with possession of  
16 brass knuckles in violation of Penal code section 12020(a). He was arrested by police officers who were  
17 accompanied by a Los Angeles Times reporter and photographer who witnessed the entire arrest where  
18 defendant, who was seated on a park bench, was approached by the police officer who asked his permission  
19 to search his person. The police claimed defendant consented while defendant claimed he did not. Four  
20 days following the arrest, the reporter published an article concerning her research and gathered news of the  
21 Long Beach Police Department task force that was responsible for defendant's and other suspect's arrest.  
22 Their article did not include any information on whether defendant had consented to the search. The  
23 defendant moved to suppress the search, and he subpoenaed the newspaper reporters to testify at the  
24 suppression hearing. The journalists moved to quash contending they could not be forced to answer  
25

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26 <sup>4/</sup> The statement played to the jury was incomplete, contradicted by other portions of the statement,  
27 and taken out of context. The section 356 violation deprives Mr. Jackson of a right to a fair trial, and plaintiff  
28 and deliberately mislead the Jury with an incomplete presentation, rendering the jury irreversibly tainted by both  
an Evidence Code section 356 error, and a Sixth Amendment error.

1 questions regarding whether the defendant consented to the search citing the Shield Law that made  
2 privileged any unpublished information from disclosure. The court denied the motion to quash. The  
3 reporters took the witness stand, but refused to testify about their observations of the search or whether  
4 defendant consented to the search. The court cited both reporters for contempt. The Court of Appeals  
5 granted a petition for writs of habeas corpus and found the shield law provided immunity for the  
6 journalists. The Supreme Court agreed with the trial court and reversed the Court of Appeal, finding the  
7 reporters were witnesses to an event, and a criminal defendant's right to a fair trial outweighs the reporter's  
8 right to withhold unpublished observations of a relevant event or crime. Id. at 805-06.

9 "The reporters themselves concede, as the must, that the shield law's protection is overcome  
10 in a criminal proceeding on a showing that non-disclosure would deprive the defendant of his  
11 federal constitutional right to a fair trial. Although this court has not decided a case involving  
12 application of the shield law in a criminal prosecution, the principle is beyond question. (CBS, inc.  
13 v. Superior Court, supra, 85 Cal. App. 3d 241, 151; Hallissy v. Superior Court, supra, 200 Cal.App.  
14 3d 1038; Playboy Enterprises, Inc. v. Superior Court, supra, 154 Cal. App.3d 14, 25-25 (defendant  
15 seeking identity of anonymous informant). The incorporation of the shield law into the California  
16 Constitution cannot restrict a criminal defendant's federal constitutional right to a fair trial.  
17 (Mulkey v. Redman (1966) 64 Cal.2d 529, 533, aff'd (1967) 387 U.S. 369 (explaining the  
18 California constitutional amendment adopted by ballot must conform to the United States  
19 Constitution). " Id. at 805-06.

20 The courts should apply a test that requires a criminal defendant to demonstrate a reasonable possibility that  
21 evidence sought will materially assist his defense. Id. at 808. The needs of a criminal defendant to develop  
22 all relevant facts in the adversary system is both fundamental and comprehensive, and the court should not  
23 unreasonably preclude a defendant from developing all facts, within the framework of the rules of evidence.  
24 Id. The defendant's showing need not be detailed or specific, but it must rest on more than mere  
25 speculation. He need not show the evidence will lead to his exoneration, but only that there is a reasonable  
26 possibility the information will materially assist his defense. Id. at 809.

27 Contemnor Bashir is a witness to so-called "admissions" in "Living with Michael Jackson." As a  
28 witness he cannot hide behind the Shield Law and Mr. Jackson's rights to a fair trial outweigh his efforts to

1 keep relevant and material evidence away from Mr. Jackson. Mr. Jackson has made a showing there is a  
2 reasonable possibility that the evidence sought will materially assist his defense, and the court should  
3 require Contemnor Bashir to answer questions on cross-examination or be held in contempt of court.

4 **B. Mr. Jackson's Rights to Cross-examination and a Fair Trial Outweigh Contemnor**  
5 **Bashir's Shield Law Privilege.**

6 Contemnor Bashir has, under the guise of refusal to be cross-examined, put before the Jury what is  
7 tantamount to irrational, yet devastating, direct testimony against Mr. Jackson. People v. Shipe, 49 Cal.  
8 App. 3d 343, 349 (1979). By authenticating the video tape and then refusing to answer questions about  
9 how it was made, whether it was edited, or whether he deceived Mr. Jackson into making it, Witness Bashir  
10 personally violated Mr. Jackson's Sixth Amendment rights to confrontation and cross-examination. This  
11 recalcitrant witness offered part testimony and half-truth for the deliberate purpose of placing evidence  
12 before the Jury he knew would not be subject to cross-examination in order to violate Mr. Jackson's rights  
13 to a fair trial. People v. Barajas, 145 Cal. App. 3d 804, 810-11 (1983).

14 When a witness gives testimony and thereafter refuses to answer questions on cross-examination,  
15 the defendant's right to confrontation and cross-examination is violated. People v. Bolton, 23 Cal. 3d 208,  
16 214-15 (1979). If a witness testifies without the benefit of cross-examination, the defendant's Sixth  
17 Amendment rights are violated. People v. Barajas, 145 Cal. App. 3d 804, 810-11 (1983). The right to  
18 confront witnesses requires an opportunity for meaningful cross-examination. Chambers v. Mississippi,  
19 410 U.S. 284, 296 (1973).

20 In California v. Green, 399 U.S. 149 (1970), the United States Supreme Court defined the three-fold  
21 purpose of the confrontation requirement: (1) to insure reliability by means of the oath, (2) to expose the  
22 witness to the probe of cross-examination, and (3) to permit the trier of fact to weigh the demeanor of the  
23 witness. Id. at 158. See also People v. Green, 3 Cal. 3d 981, 989 (1971).

24 In People v. Stritzinger, 34 Cal. 3d 505, 515 (1983), the court stated:

25 "The United States Supreme Court has established that a defendant's Sixth Amendment right  
26 to confrontation is a fundamental right, applicable to the states through the Fourteenth Amendment.  
27 (Pointer v. Texas (1965) 380 U.S. 400 ....) The California Constitution now provides a specific  
28 guarantee of the right to confrontation: 'The defendant in a criminal cause has the right ... to be

1 confronted with the witnesses against the defendant.' (Cal. Const., art. I, § 15.) A similar guarantee  
2 is codified in section 686, subdivision 3, of the Penal Code, which provides that in a criminal action  
3 the defendant is entitled 'to produce witnesses on his behalf and to be confronted with the witnesses  
4 against him, in the presence of the court ....."

5 Witness Bashir deliberately violated Mr. Jackson's right to cross-examination and confrontation of  
6 a witness against him by testifying about making a video tape and then refusing to be cross-examined.  
7 Contemnor Bashir deliberately presented an incomplete, fraudulently obtained, and improperly edited  
8 statement to the Jury knowing Mr. Jackson would never be able to refute the fraud because the witness  
9 would assert The Shield Law and First Amendment privileges after presenting the fraudulent information.  
10 Contemnor Bashir should be required to answer Mr. Jackson's questions or be held in contempt.

11 **C. Contemnor Bashir is Guilty of a Direct Civil Contempt of Court**

12 **1. The Court overruled Contemnor's objections.**

13 Contemnor Bashir's Motion to Quash the Subpoena was denied on January 27, 2005, and the court  
14 directed he appear and testify. On March 1, 2005, the Court directed Contemnor Bashir to answer the  
15 questions put to him by Mr. Jackson, and after knowing of and deliberating over the Court's instruction,  
16 Contemnor Bashir willfully refused to answer the questions. Instead, he claimed the existence of a non-  
17 existence privilege that he knew was not applicable to the circumstances of this case.

18 Once a court has determined a witness does not have a valid privilege to refuse to testify, they must  
19 answer questions put to them or they are subject to being held in contempt. People v. Lopez, 71 Cal. App.  
20 4th 1550, 1556-57 (1999). The trial court has the authority to order a witness to testify when it determines  
21 the witness has no valid privilege or basis for refusal. In re Marriage of Sachs, 95 Cal. App. 4th 1144,  
22 1151 (2002). A witness may not employ the privilege to avoid giving testimony that he simply would  
23 prefer not to give." Roberts v. United States, 445 U.S.552, 560, fn. 7 (1980).

24 A party may not decide for themselves whether or not they have a privilege to refuse to testify. In re  
25 Marriage of Sachs, 95 Cal. App. 4th 1144, 1151 (2002). The question is for the court to decide after  
26 conducting "a particularized inquiry, deciding, in connection with each specific area that the questioning  
27 party seeks to explore, whether or not the privilege is well-founded." Warford v. Medeiros, 160 Cal. App.  
28 3d 1035, 1045 (1984). The burden is on the party or witness invoking the privilege to show that the

1 testimony or other evidence is subject to a privilege. Evidence Code sec. 404; In re Marriage of Sachs, 95  
2 Cal. App. 4th 1144, 1152 (2002); Warford v. Medeiros, 160 Cal. App. 3d 1035, 1045 (1984); Weil &  
3 Brown, Cal. Practice Guide, Civil Procedure Before Trial par. 8:139, at 8c-24.2 (The Rutter Group 2001).

4 Mr. Jackson requests the court to bring civil contempt proceedings under code of Civil Procedure  
5 section 1209(a)(5) and (9) against Contemnor Bashir because the Contemnor had the present ability to  
6 comply with the court's order and the court should coerce him through contempt to comply with his  
7 obligation to be cross-examined. In re Lieum, 273 Cal. App. 2d 135, 142 (1969). He deliberately made a  
8 mockery of this court's authority by presenting a film in which the prosecution claims Mr. Jackson made  
9 "admissions of guilt" and then refused to testify to the circumstances under which the film was made.  
10 Brown v. United States, 256 U.S. 148, 157 (1957)(refusal to answer proper questions before the court  
11 constitute contempt of court). Nothing, including the First Amendment nor the Shield Law prevented  
12 Contemnor from testifying to the circumstances under which the so-called "admission" was obtained, and  
13 Contemnor should be held in contempt. Noorthoek v. Superior Court, 269 Cal. App. 2d 600, 608  
14 (1969)(present ability coupled with a failure to perform a court order constitutes a contempt of court).

15 **2. The Court Should Hold Contemnor in civil contempt and award attorney's fees.**

16 Mr. Jackson recognizes that contempt is a drastic remedy, should be used only when necessary as a  
17 last resort, and not be used for purposes of settling differences of opinion on close questions of law. Uhler  
18 v. Superior Court, 117 Cal. App. 2d 147, 156 (1953). This matter was discussed in open court with  
19 Contemnor's counsel and Contemnor was ordered to answer the questions. He deliberately refused and  
20 thereby necessitated the bringing of this Order to Show Cause.

21 Civil contempt is available to enforce a valid order of a court of law. Code of Civil Procedure  
22 section 1209(a)(5) and (9); Share v. Casiano Bel-Air Homeowners Assn, 215 Cal. App. 3d 515, 523 (1989);  
23 8 Witkin, California Procedure, Enforcement of Judgments, sec. 331, at 284 (3d ed. 1985). Disobedience of  
24 any lawful order or judgment of the court constitutes contempt. Garcia v. McCutchen, 16 Cal. 4th 469, 480  
25 (1997); In re Young, 9 Cal. 4th 1053, 1053 (1995); Ex Parte Smith, 53 Cal. 204, 207 (1878)(Code of Civil  
26 Procedure section 1209 dealing with civil contempt is applicable to criminal proceedings). The punishment  
27 for contempt may be a fine not exceeding \$1,000 or imprisonment not exceeding 5 days or both, or in the  
28



1 case of a recalcitrant witnesses' refusal to testify, imprisonment until compliance is made. Code of Civil  
2 Procedure section 1218; In re Gould, 195 Cal. App. 2d 172, 175-77 (1961).

3 Code of Civil Procedure section 1218(a) provides:

4 "In addition, a person who is subject to a court order as a party to the action, or any agent of this  
5 person, who is adjudged guilty of contempt for violating that court order may be ordered to pay to  
6 the party initiating the contempt proceeding the reasonable attorney's fees and costs incurred by this  
7 party in connection with the contempt proceeding."

8 This is an appropriate case in which to hold Contemnor in contempt and award attorneys fees against  
9 him. For no reason he has flaunted this court's authority and made a mockery of the court's [REDACTED]  
10 Order. He has caused Mr. Jackson to incur fees of \$7,200.00 to file this proceeding. The court should issue  
11 a contempt order and require <sup>Contemnor</sup> [REDACTED] to pay attorney's fees under Code of Civil Procedure 1218(a).

12  
13 III.

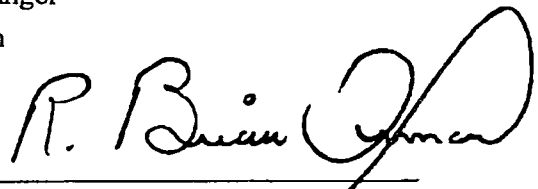
14 CONCLUSION

15 For the foregoing reasons, Mr. Michael Jackson requests that his Motion for Order to Show Cause  
16 re: Contempt be granted.

17 DATED: March 7, 2005

18 Thomas A. Mesereau, Jr.  
19 Susan Yu  
20 Robert M. Sanger  
21 Brian Oxman

22 By: \_\_\_\_\_



23 R. Brian Oxman  
24 Attorneys for Mr. Michael Jackson