

MAY 25 2005

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

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 J. 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  
Santa Barbara, CA 93101  
6 Telephone: (805) 568-2300  
FAX: (805) 568-2398  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SANTA BARBARA  
10 SANTA MARIA DIVISION  
11

12 THE PEOPLE OF THE STATE OF CALIFORNIA, ) No. 1133603  
13 Plaintiff, )  
14 v. ) PLAINTIFF'S REQUEST THAT  
15 MICHEAEL JOE JACKSON, ) COURT CLARIFY THE HEARSAY  
16 Defendant. ) NATURE OF DEFENDANT'S  
17 ) STATEMENTS IN THE "OUTTAKES  
18 ) VIDEO" OFFERED BY HIM AND  
19 ) INSTRUCT THE JURY  
20 ) ACCORDINGLY  
21 )  
22 ) DATE: TBA  
23 ) TIME: TBA  
24 ) DEPT: SM-2 (Melville)  
25 )  
26 )  
27 )  
28 )

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

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

