CAUSE NO. 067-203396-03 4/14/04

GAMAL ABDEL-HAFIZ	§	IN THE DISTRICT COURT
	§	
vs.	§	
	§	
ABC, INC., ABC NEWS, INC., ABC	§	
NEWS HOLDING COMPANY, INC.,	§	TARRANT COUNTY, TEXAS
DISNEY ENTERPRISES, INC.,	§	
WFAA-TV, L.P., WFAA OF TEXAS,	§	
INC., BELO CORP., CHARLES GIBSON,	§	
BRIAN ROSS, ROBERT WRIGHT, AND	§	
JOHN VINCENT	§	67th JUDICIAL DISTRICT

ROBERT WRIGHT'S FIRST AMENDED SPECIAL APPEARANCE OBJECTING TO JURISDICTION

COMES NOW, Robert Wright ("Wright"), a named Defendant in this cause, and makes his Special Appearance under the authority of Texas Rule of Civil Procedure 120a, for the purpose of objecting to the jurisdiction of this Court over his person and/or property and would show as follows:

This First Amended Special Appearance is made with respect to the entire proceeding and its filing relates back to the original Special Appearance filed by Wright prior to any other plea, pleading or motion herein.

BACKGROUND

This action originally arose pursuant to allegations of defamation related to an interview of Wright conducted in Chicago, Illinois, and subsequently published by ABC. In response, Wright, along with two other defendants, John Vincent and Disney Enterprises, Inc., filed their respective Special Appearances. A hearing on all three special appearances was set and noticed

for March 26, 2004. On or about March 18, 2004, Plaintiff filed his Responses to the Special Appearances filed by Wright and John Vincent, along with his First Amended Original Petition.

Plaintiff presented entirely new allegations requiring further response from Wright and John Vincent on jurisdictional issues. As a result, Wright and John Vincent passed on the March 26, 2004, hearing. Disney Enterprises, Inc. also passed on its hearing apparently being dismissed by agreement. Wright now responds to the new allegations and addresses the jurisdictional issues in this matter.

JURISDICTIONAL FACTS

Rule 120a

Although Texas Rule of Civil Procedure 120a provides that no determination of any issue of fact in connection with the special appearance is a determination of the merits of the case or any aspect thereof, this does not prevent the court from touching upon defensive issues that are so intertwined with the jurisdictional analysis that they must necessarily be addressed. *See e.g. Nat'l Indus. Sand Ass'n v. Gibson*, 897 S.W.2d 769, 774 (Tex. 1995)(orig. proceeding);[1] *Runnels v. Firestone,* 746 S.W.2d 845, 851 (Tex. App. – Houston [14th Dist.]), *writ denied*, 760 S.W.2d 240 (Tex. 1988)(per curiam).[2] Nevertheless, it bears repeating that Wright does not hereby seek a ruling on the merits of this case in the *general appearance* sense. Rather, Wright seeks only to defeat jurisdiction by proving that he did not commit the alleged tort.

Ultimate Liability

Pursuant to the tort provisions of the Texas long-arm statute,[3] a plaintiff meets his jurisdictional burden only when he alleges that the defendant is the author of an act or omission

[1] No jurisdiction because no tort committed.
[2] Court impliedly found no basis for jurisdictional allegations because it found that no contract existed.
[3] Texas Civil Practice & Remedies Code § 17.042

within this state; and his petition states a cause of action in tort arising from such conduct. *French v. Glorioso,* 94 S.W.3d 739, 746 (Tex. App – San Antonio 2002, no pet.). And where jurisdiction rests upon the fact that the defendant committed a tortious act, the specially appearing defendant can defeat the exercise of jurisdiction by proving that he did not do the act alleged. *Id.* The fact that the showing of an absence of the factual basis for exercise of jurisdiction also tends to show the absence of liability is irrelevant and cannot in any way limit the right of the defendant to establish the nonexistence of the essential jurisdictional fact. *Meriwether & Assoc., Inc. v. Aulbach,* 686 S.W.2d 730, 732 (Tex. App.--San Antonio 1985, no writ).

Defamation Requires Identification

To prove an action for defamation it must be established that the defamatory statement referred to the plaintiff. *Huckabee v. Time Warner*, 19 S.W.3d 413, 429 (Tex. 2000). Thus, the plaintiff must either be named, or those who know him must understand that the statement referred to him. *Newspapers, Inc. v. Matthews*, 339 S.W.2d 890, 893-94 (Tex.1960). Indeed, the false statement must point to the plaintiff and to no one else. *Id.* at 894. And whether a plaintiff is referenced in the statement is a question of law. *See id.* at 893.

To satisfy this standard, it must be shown that at least some listeners reasonably understood an indirect reference to the plaintiff. *Davis v. Davis,* 734 S.W.2d 707, 711 (Tex. App. – Houston [1st Dist.] 1987, writ ref'd n.r.e.). In this regard, a defamatory statement must refer to an identifiable person; not merely to members of a class or group. *Eskew v. Plantation Foods,* 905 S.W.2d 461, 462-63 (Tex. App. – Waco 1995, no writ). That is, a member of a particular group is not defamed when a statement refers to less than all of the group, so long as nothing in the statement singles out the plaintiff. *Id; Texas Beef Group v. Winfrey,* 11 F.

Supp.2d 858, 864 (N.D. Tex. 1998).[4] And so it is in the instant case – there are millions of "Muslims" in the United States.

Plaintiff was Never Identified

At no time did Wright identify Plaintiff by name or refer to the State of Texas. *Exhibit A.* In fact, Plaintiff's own pleadings refer to the underlying investigation of the "unnamed Muslim agent" who would not record fellow Muslims. It was only after third parties received Plaintiff's identity from other sources that his name was publicly released by them. *Id.* Nevertheless, Plaintiff maintains that he was identified by Wright because the "Defendants" and/or Plaintiff's "co-workers" somehow "knew" that Plaintiff "was the only Muslim special agent working for the FBI." This of course begs the following questions: (1) how did the defendants *know* this to be true; and (2) how would any listeners (ostensibly Plaintiff's co-workers) *know* this to be true – such that they could *reasonably* understand Wright's statement as an indirect reference to Plaintiff? Plaintiff cannot answer these questions.

A "Muslim" is defined as one who surrenders to God; or an adherent of Islam. MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (10th Edition 2002). As such, to be a Muslim is akin to being a Christian in that it is a religious preference. It is not a race or ethnicity. And someone's status as a "Muslim" cannot be determined merely by their appearance. Indeed, unless told by him or her, one could never know that any given person *is* a "Muslim" – much less that they were the *only* Muslim in a given group. To be sure, one would have to inquire into the religious preference of every single member of any given group before it could be determined that any given member was the *only* Muslim in that group. There are over 10,000 agents in the FBI.

[4] For example, Texas cattlemen had no claim against Oprah Winfrey when TV program on "Dangerous Food"did not mention the State of Texas or Texas cattlemen, no plaintiffs were named, and there were over one million cattlemen in the country.

Wright does not now, nor has he ever known the exact religious make-up of all agents in the FBI. *Exhibit A.* Wright has no knowledge, nor the means to acquire any knowledge, that would identify the number of "Muslim" agents in the FBI. *Id.* To Wright's knowledge, the FBI does not even keep statistics related to its agents' religious preferences. *Id.* And, not surprisingly, Wright is personally unable to identify a "Muslim" by merely looking at him or her. *Id.* The fact is that Wright did not "know" that Plaintiff was the "only" Muslim agent in the FBI.

Indeed no one, including Plaintiff or his co-workers, could ever know this. Therefore, it would be unreasonable to conclude that any listener to the alleged defamatory statements understood that the phrase "Muslim agent" referred directly to Plaintiff. As a matter of law, Plaintiff was not identified by Wright. Therefore, it cannot be said that Wright committed the necessary act in, or directed any conduct toward, the State of Texas. And without this necessary jurisdictional fact, the Texas long-arm statute is of no avail to Plaintiff. Quite simply, no tort was "committed." Moreover, This Court lacks personal jurisdiction over Wright because he is not amenable to process issued by the courts of this State.

PERSONAL JURISDICTION

Due Process

The Due Process Clause of the U.S. Constitution limits the power of a state court to exert personal jurisdiction over nonresident defendants. *Asahi Metal Industry Co. v. Superior Court,* 480 U.S. 102, 108, (1987). Indeed, a Texas court's primary consideration in the assertion of long-arm jurisdiction is whether the court's assertion of jurisdiction over a nonresident defendant is consistent with the federal Constitutional requirements of due process. *Guardian Royal Exch. v. English China,* 815 S.W.2d 223, 226 (Tex. 1991). And although factual questions exist,

personal jurisdiction is a question of law. *BMC Software Belgium, N.V. v. Marchand,* 83 S.W.3d 789, 793 (Tex. 2002).

Due process requires that the exercise of personal jurisdiction over nonresidents meet a two-prong test; first, the defendant must have purposefully established "minimum contacts" with the forum; and second, the exercise of jurisdiction must satisfy traditional notions of "fair play and substantial justice." *Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 472-474, (1985). It is the quality and nature of the defendant's contacts with the forum that are determinative. *International Shoe Co. v. Washington,* 326 U.S. 310, 319 (1945). And a plaintiff bears the initial burden of pleading sufficient allegations to bring a nonresident defendant within the provisions of the long-arm statute and due process principles. *McKanna v. Edgar,* 388 S.W. 2d 927, 930 (Tex. 1965).

Under the minimum contacts analysis, personal jurisdiction exists only if the defendant's contacts with the forum give rise to either *general* or *specific* jurisdiction. *Marchand,* 83 S.W.3d at 795(emphasis added). If the litigation does not arise from the defendant's contacts with the forum, but his contacts are "continuing and systematic," then the exercise of general jurisdiction may be proper; otherwise, when the litigation does arise out of or relate to the defendant's contacts with the forum, the exercise of specific jurisdiction may be considered. *Id.* Wright will address the jurisdictional issues herein under both recognized theories – *general and specific.*

General Jurisdiction

Again, general jurisdiction applies when a controversy does *not* grow out of a defendant's *specific* contacts with Texas, but rather when a defendant's contacts with Texas are *continuing and systematic* such that the constitutional test of minimum contacts is satisfied. *Guardian Royal,* 815 S.W.2d at 230(emphasis added). And since the cause of action need not arise from

the contacts with the forum, general jurisdiction requires a more demanding minimum contacts analysis than would specific jurisdiction. *Marchand,* 83 S.W.3d at 797.

The minimum contacts analysis asks whether the nonresident defendant has purposefully availed himself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws. *Guardian Royal,* 815 S.W. 2d at 226. This ensures that a nonresident defendant will not be haled into a jurisdiction based solely upon random, fortuitous or attenuated contacts. *Id.* Indeed, an essential goal of the analysis is to protect the defendant. *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 292 (1980).

Therefore, a plaintiff must make a more particularized showing of the defendant's contacts with Texas in order to establish general jurisdiction. *American Type Culture Collection v. Coleman,* 83 S.W.3d 801, 807 (Tex. 2002). And a defendant need only negate any bases for personal jurisdiction that a plaintiff has actually alleged. *Kawasaki Steel Corp. v. Middleton,* 669 S.W.2d 199, 203 (Tex. 1985). Thus, in the absence of sufficient jurisdictional allegations, a defendant meets his burden of proof by merely presenting evidence that he is a nonresident. *Siskind v. Villa Found. for Educ., Inc.,* 642 S.W. 2d 434, 437-38 (Tex. 1982). Wright has gone above and beyond this burden.

Plaintiff has not specifically pled that Wright has had any continuing and systematic contacts with Texas. And, as set forth in Wright's Affidavit, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by reference, Wright is a nonresident of Texas. Further, Wright has no continuing or systematic contacts with the State of Texas and has not availed himself of the privileges, benefits or protections of Texas law. *Exhibit A.* As such, this Court is without general jurisdiction over Wright.

Specific Jurisdiction

Recall that specific jurisdiction arises *directly from* the defendant's contacts with the

forum. Therefore, when specific jurisdiction is alleged the inquiry has two parts; first, the defendant's activities must have been purposefully directed to the forum; and second, the litigation must result from injuries that arise out of or relate to those activities. *Zac Smith & Co. v. Otis Elevator Co.*, 734 S.W.2d 662, 663 (Tex. 1987). And even though a single contact may be sufficient to establish specific jurisdiction, the contact must have resulted from the defendant's purposeful conduct, not the unilateral activity of the plaintiff or others. *Guardian Royal,* 815 S.W.2d at 227.

For example, specific jurisdiction may be established by some act whereby a defendant purposefully takes advantage of the privilege of conducting activities within the forum state. *CSR Ltd. v. Link,* 925 S.W.2d 591, 594-95 (Tex. 1996). So long, that is, as the contacts are purposely directed at the forum and have a *substantial connection* that results in the alleged injuries. *Guardian Royal,* 815 S.W.2d at 226 (emphasis added). As such, in analyzing minimum contacts, it is not merely the number of the nonresident defendant's contacts with the forum state that is important. Rather, to satisfy due process, the appropriate analysis must focus upon the quality and nature of the contacts with the forum. *International Shoe Co. v. Washington,* 326 U.S. 310, 319 (1945). That is, a certain nexus is necessary for the assertion of jurisdiction in those instances in which a nonresident defendant has maintained few contacts with the forum. *Memorial Hosp. Sys. v. Fisher Ins. Agency, Inc.*, 835 S.W.2d 645, 650 (Tex. App. – Houston [14th Dist.] 1992, no writ). It is this "nexus" that creates the requisite "substantial connection" with the forum.

In this regard, foreseeability is an important consideration in deciding whether a nonresident defendant has purposefully established minimum contacts. *Marchand,* 83 S.W.3d at 795. This is so because individuals must have fair warning that a particular activity may subject them to the jurisdiction of a foreign state. *SITQ E.U., Inc. v. Reata Restaurants, Inc.*, 111

S.W.3d 638, 646 (Tex. App. – Fort Worth 2003, pet. denied). And although foreseeability provides the necessary fair warning, it alone will not support personal jurisdiction. *CSR,* 925 S.W.2d at 595.[5] Thus, foreseeability is but one aspect of the requisite "substantial connection."

Defamation Cases

In defamation cases, *knowledge* of the *particular* forum in which a potential plaintiff *will* bear the brunt of the harm, *and* an *intentional direction* of conduct toward *that* forum, as distinguished from any other, form *essential parts* of the Constitutional exercise of jurisdiction. *Revell v. Lidov*, 317 F.3d 467, 475 (5th Cir. 2002)(emphasis added). In *Revell,* a case strikingly similar to the instant proceeding, one of the defendants, Mr. Lidov, posted an article on Columbia University's website in which he expressly singled out and named the plaintiff, Mr. Revell. *Id.* at 469. The article charged Mr. Revell, then Associate Deputy Director of the FBI, with prior knowledge of the bombing of Pan Am Flight 103 and accused him of complicity in an alleged cover-up. *Id.* At the time, Mr. Lidov was a resident of Massachusetts and was unaware that Mr. Revell resided in Texas. *Id.* Mr. Revell brought a defamation suit in Texas against both Mr. Lidov and Columbia University. *Id.*

The district court dismissed the case for lack of personal jurisdiction and Mr. Revell appealed. *Id.* On appeal, the Fifth Circuit looked to precedent related to the passivity/interactivity of websites and found that, while the Columbia University website may, in a sense, constitute a presence everywhere in the world, the contacts with Texas were not "substantial." *Id.* at 471. Therefore, there was no basis for general jurisdiction. The court then turned to the issue of specific jurisdiction and found that, while the website was "interactive" on some level, when considering the focus of the article, any contacts with Texas by the defendants

[5] For example, a defendant's awareness that the stream of commerce may or even will sweep a product into the forum state does not convert the mere act of placing that product into the stream of commerce into an act purposefully directed toward the forum state.

were simply insufficient to satisfy the "effects test" as established by the U.S. Supreme Court. *Id.* at 471-73.

The "Effects Test"

Indeed, the "effects test" as created by the Supreme Court in *Calder,* turns on the notion that a defendant has knowledge of the particular forum in which a potential plaintiff will bear the brunt of the harm coupled with the intentional direction of the defamatory material toward that forum. *Calder v. Jones,* 465 U.S. 783, 789 (1984). In *Calder,* the Court stated as follows:

> The allegedly libelous story concerned the California activities of a California resident. It impugned the professionalism of an entertainer whose television career was centered in California. The article was drawn from California sources, and the brunt of the harm, in terms both of respondent's emotional distress and the injury to her professional reputation, was suffered in California. In sum, California is the focal point both of the story and of the harm suffered. Jurisdiction over petitioners is therefore proper in California based on the "effects" of their Florida conduct in California.

Id. at 788-89.

Moreover, the defendants knew the plaintiff resided in California; they were employees of the publisher who enjoyed a greater circulation in California than any other state; and they aimed the defamatory material at a California audience. *Id.* at 789-90. In fact, in light of these facts, the Court determined that the defendants' conduct was "calculated" to cause injury in California. *Id.* at 791. That is, the defendants intentionally aimed their defamatory material at a particular forum. Without question then, the "effects test" looks to a defendant's knowledge as well as his specific intent to obtain the desired "effect" in a particular forum.

By contrast, when a defendant does not know where the plaintiff resides it cannot be said that the defamatory harm was purposely directed to that forum. *Revell,* 317 F.3d at 475. One simply cannot avail oneself of some forum someplace. *Id.* Likewise courts must consider

whether the defendant acted pursuant to some prearranged plan and whether a "contact" with the forum is initiated for the very purpose of committing the tort. *Wilson v. Belin,* 20 F.3d 644, 649 (5th Cir. 1994). In this regard, unsolicited questions from reporters in the forum state are insufficient to support specific jurisdiction in a defamation case. *Id.* Indeed, the defendant must have purposefully caused the contact with the forum and calculated the injury therein.

Calculated Injury

Thus, it is simply irrelevant to ask where the alleged harm *occurred.* Rather, the proper jurisdictional inquiry in a defamation case looks to where the harm was *aimed. See Calder,* 465 U.S. at 791. And this truth must be considered in the context of the companion rule that causing injury in Texas cannot, by itself, establish the minimum contacts necessary for the Constitutional exercise of jurisdiction over a nonresident. *City of Riverview, MI v. American Factors,* 77 S.W. 3d 855, 858 (Tex. App. – Dallas 2002, no pet.); *Laykin v. McFall,* 830 S.W.2d 266, 271 (Tex. App. –Amarillo 1992, no writ).

In other words, that a tort is deemed to have been committed in a particular forum is simply not dispositive of whether jurisdiction is appropriate. *World-Wide Volkswagen,* 444 U.S. 286, 288-89 (1980). This is so because both the United States and Texas Supreme Courts have rejected the notion that personal jurisdiction might be determined by mechanical tests. *Burger King,* 471 U.S. at 478; *Schlobohm,* 784 S.W.2d at 358-59. And to hold that the requisite minimum contacts are automatically established when a tortfeasor, even if knowingly, causes an injury in the forum state, would reduce the analysis to little more than the forbidden mechanical test. *Laykin,* 830 S.W.2d at 271. To be sure, all of these jurisdictional standards have one common denominator – knowledge of, and the purposeful, calculated direction of harm toward, the plaintiff's forum of residency.

"Residency"

While intent is necessary to establish residence, it alone is not sufficient. *Mills v. Bartlett*, 377 S.W.2d 636, 637 (Tex. 1964). In fact, "[n]either bodily presence alone nor intention alone will suffice to create the residence, but when the two coincide at that moment the residence is fixed and determined." *Id.* That is, a permanent residence in Texas requires a home and fixed place of habitation to which a person intends to return when away. *Owens Corning v. Carter,* 997 S.W.2d 560, 571 (Tex. 1999). Therefore, physical presence, along with a home and fixed place of habitation in Texas, are indispensable for the creation of residency in this State. Intent alone will not suffice.

As such, contrary to Plaintiff's March 18, 2004, Affidavit, he has not "maintained [his] residency in the State of Texas from February 1996 through the present date." Plaintiff's assertion is nothing more than a legal conclusion. It is undisputed that, as Wright understood the facts, Plaintiff was physically absent from Texas at the time of the ABC interview in December 2002. *See Exhibit A.* Moreover, according to Plaintiff's own Affidavit, "[he] had a home in the State of Texas from February 1996 through March 2000 and [has] currently [] had a home in the State of Texas since 2003." *Notably,* Plaintiff failed to include the exact dates.

By his own admission, Plaintiff did not have a home in Texas at the time of the May 30, 2002, press conference. And it remains undisputed that in December 2002 Plaintiff was *not* physically present, and had no home, in Texas. Therefore, it cannot be said that Wright purposefully aimed any of the alleged defamatory material toward Texas at the relevant times. Plaintiff's "address for tax purposes" is simply irrelevant to that inquiry.

Further, unless Plaintiff obtained his "home" on or before March 5, 2003 – and at that time was physically present in Texas with the intent to reside in Texas – he could not have established residency in Texas at the time of the Dallas press conference. And even if all of

these conditions were shown to be met, it would also have to be shown that Wright was chargeable with such knowledge – an impossible task. Wright was not even present at the Dallas press conference.

The Washington, D.C. Press Conference

With respect to the May 30, 2002, press conference, the copy of the so-called "signed sworn statement" that was released had been received by Wright from the FBI pursuant to a request under the Freedom of Information Act. *Exhibit A.* The statement was originally prepared by Wright in connection with Plaintiff's discrimination claim. *Id.* When received, the statement had already been redacted by the FBI to protect Plaintiff's identity. *Id.* In fact, Plaintiff's own pleading refers to the "unnamed Muslim agent."

At no time did Wright disclose Plaintiff's identity in connection with, or for purposes of, the press conference. *Id.* And at no time did Plaintiff's personal identity become the subject of the press conference. *Id.* Wright never planned to, and, did not connect Plaintiff's identity to the press conference in any manner. In fact, to Wright's knowledge, it was not until November 26, 2002, that the *Wall Street Journal* published Plaintiff's name in connection with the statement. *Id.* Plaintiff's identity was never released to the media by Wright in connection with the statement. *Id.* Indeed, the *Wall Street Journal* article speaks for itself. Plaintiff's identity was disclosed by third parties. No harm was ever aimed at Texas.

The ABC Interview

Wright was simply not aware of any connections to the State of Texas with respect to the ABC interview. *Exhibit A.* Wright never identified Plaintiff by name and was never aware that Plaintiff allegedly resided in Texas in December 2002. *Id.* Rather, at the time of the ABC interview, the purpose of which was to shed light upon the FBI's activities with respect to the

issue of international terrorism, Wright understood that Plaintiff was assigned to, and resided in, Saudi Arabia. *Id. Notably,* this has not been disputed by Plaintiff.

No statements were ever directed toward a Texas audience, as distinguished from an audience of any other forum. *Id.* Wright did not purposefully direct his comments toward Texas. *Id.* Therefore, Wright could not have foreseen that any alleged harm, arising from his statements about the FBI generally, might occur in Texas. *Id.* Texas simply has no unique relationship with the FBI that would, without more, distinguish it from any other state. *Id.*

Furthermore, Wright had no control over the editing and ultimate publication of excerpts from the interview. *Id.* Wright had no control over where, if at all, the story might air. *Id.* And even if Wright did possess the knowledge that a story may be available in Texas, this would not convert the mere act of giving an interview in Illinois, into a purposeful direction of that story into Texas. No harm was ever aimed at Texas.

The Dallas Press Conference

Contrary to Plaintiff's allegations with respect to what appears to be a typographical oversight, Wright did not travel to Texas in March 2003 and has no connection with the March 5, 2003, Judicial Watch, Inc. press conference held in Dallas. *Exhibit A.* Moreover, Wright had no knowledge in March 2003, that, as has been alleged, "[i]n March of 2003, Plaintiff ... was working in the Dallas office as an FBI agent." *Id.* Again, there is no intentional direction of harm toward the State of Texas.

The Frontline Story

The story itself specifically states that Wright was unable to comment. *Id.* At no time did Wright release Plaintiff's identity to *Frontline.* *Id.* Furthermore, Plaintiff's whereabouts and/or the location of his residence were still unknown to Wright at that time. *Id.* Again, the

requisite "substantial connections" with Texas do not exist. Furthermore, any connections with Texas that may now exist are the direct result of Plaintiff's unilateral activities.

Plaintiff's Actions

Recall that any "contact" with the forum must have resulted from the defendant's purposeful conduct, *not* the unilateral activity of the plaintiff or others. *See Guardian Royal,* 815 S.W.2d at 227. In this regard, one must look to Plaintiff's activities as they relate to any alleged contacts with the Texas forum. It is undisputed that in 1999, when the recording of Muslims first became an issue, Plaintiff was assigned to the Dallas office of the FBI. Soon thereafter, Plaintiff was reassigned and transferred to Saudi Arabia. And it was not until Plaintiff was suspended by the FBI in 2003 that he allegedly returned to "reside" in Texas.

Wright cannot reasonably be charged with the knowledge that Plaintiff would be suspended by the FBI, removed form Saudi Arabia, then fired by the FBI, and ultimately reinstated to the Dallas office. Moreover, if this Court were to hold that Plaintiff's unilateral decision to move to Texas after the fact allows for the assertion of jurisdiction over Wright, the jurisdictional analysis would simply be reduced to a mechanical test. Indeed, there would be no need to ever consider minimum contacts. Instead, courts would simply look to where a plaintiff resides, regardless of when, and find that due process is satisfied. This is simply not the law.

This Court Lacks Specific Jurisdiction

Wright never released Plaintiff's identity in connection with the May 30, 2002, press conference. And in any event, it is clear that Plaintiff did not have a home in Texas at that time. It is also clear that Plaintiff was not present in Texas and did not have a home in this State at the time of the December 2002 ABC Interview. Plaintiff did not "reside" in Texas at the relevant times. Moreover, Plaintiff was never identified by Wright. And Wright had no connections with the March 5, 2003, press conference in Dallas, nor did he comment for the *Frontline* story.

Quite simply, Wright is not chargeable with knowledge of Plaintiff's state of residency at any relevant time. Wright has no substantial connections to Texas with respect to this matter. No harm was ever aimed at the State of Texas. Texas is not uniquely tied to the FBI. And even if the alleged harm "occurred" in Texas – this alone is not sufficient for the exercise of jurisdiction over Wright. There is simply no nexus between Wright's limited Texas contacts and Plaintiff's alleged injuries. Therefore, this Court also lacks specific jurisdiction over Wright. Moreover, the assumption of jurisdiction over Wright would offend traditional notions of fair play and substantial justice.

Fair Play and Substantial Justice

As mentioned above, the second prong of the due process analysis requires that the assumption of jurisdiction by the forum state not offend traditional notions of fair play and substantial justice. *Burger King,* 471 U.S. at 472-474. And although the first prong also includes fairness considerations, the jurisdictional analysis requires a separate determination of whether the assertion of personal jurisdiction complies with traditional notions of fair play and substantial justice. *Guardian Royal,* 815 S.W.2d at 226-28. That is, consideration must be given to the quality, nature, and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation. *Franklin v. Geotechnical Services, Inc.,* 819 S.W.2d 219, 221 (Tex. App. – Fort Worth 1991, writ denied).

In this regard, courts consider the following factors: (1) the burden on the nonresident to litigate in a distant forum; (2) the forum state's interest in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and (5) the shared interest of

the several states in furthering fundamental substantive social policies. *Guardian Royal,* 815 S.W.2d at 28.

These considerations may sometimes also serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required. *Burger King,* 471 U.S. at 477. Conversely, considerations of fair play and substantial justice may affect the strength of the minimum contacts that the court may require. However, regardless of these factors, it must always be established that the nonresident defendant purposely established the requisite minimum contacts with the forum state. *Guardian Royal,* 815 S.W.2d at 28. And even if the nonresident has purposely established minimum contacts with the forum, the exercise of jurisdiction may not be fair and reasonable under the facts of any particular case. *Burger King,* 471 U.S. at 477-78. The instant facts reveal that, in all fairness, Wright should be dismissed from this case.

Even if this Court were to find that Wright has some tangential contact with the State of Texas, and that such contacts rise to the level of "minimum contacts," the undue burden that would be placed upon Wright to litigate in this distant forum would still require dismissal. *Exhibit A.* Moreover, Texas has no particular interest in adjudicating a dispute that arises out of activity occurring outside of this State and involving nonresidents. And even if Plaintiff *now* "resides" in Texas – at the relevant times he did not.

Further, Plaintiff's interest in obtaining an efficient resolution of this matter would more reasonably be served in another forum with more direct contacts to the subject matter of this action. Plaintiff did not reside in Texas at the relevant times; Wright is not present in Texas; Defendants, John Vincent, Charles Gibson and Brian Ross are not present in Texas; Plaintiff was not present in Texas at the time of the Washington, D.C. press conference or the ABC interview; the ABC interview did not take place in Texas; the interview was not directed at Texas; it had no

connection to Texas; and with the possible exception of Plaintiff, no other material witnesses are likely to be found in Texas.

Likewise, the March 5, 2003, press conference has no connection with this matter and the *Frontline* story has no contacts with the State of Texas. And in any event, Wright was involved with neither occurrence. Therefore, the judicial system's interest in the efficient resolution of this controversy is not being well served. And any substantive social policies could be equally served in a more convenient and efficient forum. Therefore, the exercise of jurisdiction over Wright in this matter would offend traditional notions of fair play and substantial justice.

CONCLUSION

Wright never identified Plaintiff and never "committed" a tort in Texas. Wright has no continuous or systematic contacts with Texas that would support general jurisdiction. And Wright has not purposefully availed himself of the privileges, benefits or protections of Texas law and could not reasonably have foreseen being haled into a Texas court in this matter. It was not reasonably foreseeable that Wright's remarks would uniquely impact upon Texas or cause any alleged harm to Plaintiff therein. Plaintiff's purported claims simply do not arise from any conduct by Wright that was purposefully directed at the State of Texas.

Therefore, in the absence of meaningful contacts with Texas generally, and the further absence of any foreseeable relationship between Plaintiff and the State of Texas, or the direction of conduct towards a Texas audience, the exercise of jurisdiction over Wright and/or his property would not comport with Constitutional standards of due process thereby offending traditional notions of fair play and substantial justice. Wright is not amenable to process issued by the courts of this State and this Court should dismiss the entire proceeding as it relates to any and all claims against Wright.

WHEREFORE, premises considered, Robert Wright, prays that the Court set this motion for hearing and that, upon proper notice thereof, it sustain this Special Appearance and order that all claims against Wright be dismissed for want of jurisdiction.

Respectfully submitted,

JUDICIAL WATCH, INC.

Todd W. Hutton
State Bar No. 24012880
5735 Pineland Drive, Suite 275
Dallas, Texas 75231
Telephone: (214) 739-7188
Facsimile: (214) 739-8873

ATTORNEY FOR ROBERT WRIGHT

OF COUNSEL:

JUDICIAL WATCH, INC.
Paul Orfanedes
D.C. Bar No. 429716
501 School Street, S.W., Suite 725
Washington, D.C. 20024
Telephone: (202) 646-5172
Facsimile: (202) 646-5199

CERTIFICATE OF SERVICE

Pursuant to the Texas Rules of Civil Procedure, I hereby certify that a true and correct copy hereof was served on all counsel of record via certified mail return receipt requested on April _____, 2004.

Todd W. Hutton