

1 GIBSON, DUNN & CRUTCHER LLP
Theodore J. Boutros, Jr., SBN 132099
2 Michael H. Dore, SBN 227442
3 333 South Grand Avenue,
Los Angeles, CA 90071-3197
4 Telephone: (213) 229-7000
Facsimile: (213) 229-7520

5 Attorneys for NBC Universal, Inc.; CBS
Broadcasting Inc.; Fox News Network L.L.C.;
6 ABC, Inc.; Cable News Network LP, LLLP;
The Associated Press, *Los Angeles Times*; The
7 New York Times Company; *The Washington*
Post; and USA TODAY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

MAY 24 2004

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

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

12
13 THE PEOPLE OF THE STATE OF
CALIFORNIA,

14 Plaintiff,

15 vs.

16 MICHAEL JOE JACKSON,

17 Defendant.

Case No.: 1133603

**OPPOSITION OF THE ACCESS
PROONENTS TO (1) MICHAEL
JACKSON'S APPARENT FILING UNDER
SEAL OF HIS MOTION TO REDUCE BAIL;
(2) THE PEOPLE'S MOTION FOR ORDER
DIRECTING THAT A CERTAIN REQUEST
FOR AN ORDER TO SHOW CAUSE RE:
CONTEMPT BE MAINTAINED UNDER
SEAL**

Date: Friday, May 28, 2004

Time: 8:30 a.m.

Place: Department SM9,
Judge Rodney S. Melville

[VIA FACSIMILE]

22
23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

OPPOSITION OF THE ACCESS PROONENTS TO (1) MICHAEL JACKSON'S APPARENT FILING UNDER SEAL OF HIS MOTION TO REDUCE BAIL; (2) THE PEOPLE'S MOTION FOR ORDER DIRECTING THAT A CERTAIN REQUEST FOR AN ORDER TO SHOW CAUSE RE: CONTEMPT BE MAINTAINED UNDER SEAL

1 The Access Proponents, a group of media organizations,¹ respectfully file this Opposition to
2 Michael Jackson's apparent effort to file his motion seeking a reduction of bail under seal. There is
3 no indication on the Court's website that Mr. Jackson filed such a motion to reduce bail, or that he
4 followed the detailed procedures mandated by Rules 243.1 and 243.2 of the California Rules of Court
5 for seeking permission to file judicial records under seal. The District Attorney has filed his
6 opposition to the motion to reduce bail on the public record, however, and nothing in that opposition
7 suggests that there is any basis for keeping Mr. Jackson's motion under seal. The presumption of
8 openness to judicial records and proceedings, established by the First Amendment to the United
9 States Constitution, Article I, section 2 of the California Constitution, the common law and the
10 California Rules of Court, requires that Mr. Jackson's motion and any related materials be unsealed
11 immediately. *See, e.g., NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4th 1178 (1999);
12 Cal. R. Ct. 243.1 (codifying First Amendment and California standards); Cal. R. Ct. 243:2
13 (mandating procedures for seeking to file and maintain judicial records under seal). To the extent
14 Mr. Jackson has filed any other materials under seal without following Rules 243.1 and 243.2, the
15 Court should unseal those materials as well.

16 In addition, for the reasons set forth in their submissions on April 26, 2004 and March 26,
17 2004,² the Access Proponents oppose the District Attorney's Motion For Order Directing that a
18 Certain Request For An Order to Show Cause Re: Contempt Be Maintained Under Seal ("Show
19 Cause Application"). The only ground given for sealing portions of the Show Cause Application is
20 that the Show Cause Application "discloses the names of other persons whose identities have been
21 kept confidential throughout the public proceedings in this matter" and it supposedly would

22
23 ¹ The "Access Proponents" refer to NBC Universal, Inc.; CBS Broadcasting Inc.; Fox News
24 Network L.L.C.; ABC, Inc.; Cable News Network LP, LLLP; The Associated Press, *Los Angeles Times*;
The New York Times Company; *The Washington Post*; and USA TODAY.

25 ² See Opposition Of The Access Proponents to Motion for Order Directing that Search Warrant
26 Nos. SW 4977 and 4977A, Their Supporting Affidavits and Any Return Be Filed and Maintained
27 Under Conditional Seal Until Further Court Order; Renewed Request To Unseal The People's
28 Application For An Order To Show Cause Re Contempt (filed April 26, 2004); Objections of the
Access Proponents to the or Conditional Sealing of: (1) the People's Application for an Order to
Show Cause re Contempt; and (2) Documents and Records Related to the Additional Search
Warrants Referred to in the Court's March 24, 2004 Order (filed March 26, 2004).

1 "enhance" the parties' fair trial rights to keep those names secret. Franklin Decl. at ¶¶ 2-3. But this
2 type of generic assertion is insufficient to override the presumption of openness. *See NBC Subsidiary*
3 *(KNBC-TV)*, 20 Cal. 4th at 1203. As the Supreme Court of the United States declared in *Press-*
4 *Enterprise Co. v. Superior Court*, "[t]he First Amendment right of access cannot be overcome by the
5 conclusory assertion that publicity might deprive the defendant of th[e] right [to a fair trial]."
6 478 U.S. 1, 15 (1986) (citation omitted). In its May 6 Interim Order conditionally sealing the Show
7 Cause Application, this Court also mentioned the need to protect "the privacy of individuals alleged
8 to be victims in the Indictment," but it is not apparent from either the Court's Interim Order or the
9 District Attorney's motion to seal how such privacy interests would be implicated by unsealing the
10 Show Cause Application. In any event, the Access Proponents respectfully request that the Court
11 immediately release the redacted version of the Show Cause Application, so that they will be able to
12 fully address the arguments for sealing any portions of the Application.

13 Finally, the Access Proponents respectfully submit that it violates the First Amendment and
14 California law to require, as a matter of course in this case, that the parties file essentially all briefs
15 that mention witnesses or matters of substance under seal and then to place the burden on the press
16 and public to seek to unseal the records. The parties are offering only the barest and most general,
17 conclusory explanations (if any) in support of sealing. This practice reverses the presumption of
18 openness and imposes a presumption of secrecy in violation of the First Amendment, of the
19 California Constitution, the common law, and Rule 243.1.

20 Dated: May 24, 2004

21 Respectfully submitted,

22 GIBSON, DUNN & CRUTCHER LLP
23 Theodore J. Boutros, Jr.
24 Michael H. Dore

25 By: 

26 Theodore J. Boutros, Jr.
27
28

10789147_1.DOC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

MAIL, COMMERCIAL OVERNIGHT MESSENGER, FAX, HAND DELIVERY

I, Cynthia Altounian, hereby certify as follows:

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 333 South Grand Avenue, Los Angeles, California 90071, in said County and State; I am employed in the office of Theodore J. Boutrous, Jr., a member of the bar of this Court, and at his/her direction, on May 24, 2004, I served the following:

**OPPOSITION OF THE ACCESS PROPONENTS TO (1) MICHAEL JACKSON'S
APPARENT FILING OF MOTION TO REDUCE BAIL UNDER SEAL;
(2) THE PEOPLE'S MOTION FOR ORDER DIRECTING THAT A CERTAIN
REQUEST FOR AN ORDER TO SHOW CAUSE RE: CONTEMPT
BE MAINTAINED UNDER SEAL**

on the interested parties in this action, by:

Service by Mail: placing true and correct copy(ies) thereof in an envelope addressed to the attorney(s) of record, addressed as follows:

Thomas W. Sneddon
District Attorney
Santa Barbara County
1105 Santa Barbara Street
Santa Barbara, CA 93101-2007

Robert Sanger
Sanger & Swysen
233 E. Carrillo Street, Suite C
Santa Barbara, CA 93001

Thomas A. Mesereau, Jr.
Collins, Mesereau, Reddock & Yu, LLP
1875 Century Park East, 7th Floor
Los Angeles, CA 90067

Steve Cochran
Katten, Muchin, Zavis & Rosenman
2029 Century Park East
Suite 2600
Los Angeles, CA 90067-3012

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business.

Service by Commercial Overnight Messenger: placing true and correct copy(ies) thereof in an envelope addressed to the attorney(s) of record, addressed as follows:

1 and after sealing said envelope I caused same to be delivered to the aforementioned attorney(s) by
2 qualified commercial overnight messenger.

3 **Service by Fax:** causing a true copy thereof to be sent via facsimile to the attorney(s) of
4 record at the telecopier number(s) so indicated, addressed as follows:

Attorney Name & Address	Fax and Callback Number
5 6 Thomas W. Sneddon 7 District Attorney 8 Santa Barbara County 9 1105 Santa Barbara Street 10 Santa Barbara, CA 93101-2007	Facsimile: (805) 568-2398 Telephone: (805) 568-2306
11 Thomas A. Mesereau, Jr. 12 Collins, Mesereau, Reddock & Yu, LLP 13 1875 Century Park East, 7th Floor 14 Los Angeles, CA 90067	Facsimile: (310) 284-3133 Telephone: (310) 284-3120
15 Steve Cochran 16 Katten, Muchin, Zavis & Rosenman 17 2029 Century Park East 18 Suite 2600 19 Los Angeles, CA 90067-3012	Facsimile: (310) 712-8455 Telephone: (310) 788-4455
20 Robert Sanger 21 Sanger & Swysen 22 233 E. Carrillo Street, Suite C 23 Santa Barbara, CA 93001	Facsimile: (805) 962-4887 Telephone: (805) 963-7311

24 and that the transmission was reported as completed and without error.

25 **Service by Hand Delivery:** delivering true and correct copy(ies) thereof and sufficient
26 envelope(s) addressed to the attorney(s) of record, addressed as follows:

27 to a messenger or messengers for personal delivery.

28 I certify under penalty of perjury that the foregoing is true and correct, that the foregoing
document(s), and all copies made from same, were printed on recycled paper, and that this Certificate
of Service was executed by me on May 24, 2004 at Los Angeles, California.


Cynthia Altounian

10789147_1.DOC