

1 GIBSON, DUNN & CRUTCHER LLP
 2 THEODORE J. BOUTROUS, JR., SBN 132099
 3 WILLIAM E. THOMSON, SBN 187912
 4 MICHAEL H. DORE, SBN 227442
 5 333 South Grand Avenue,
 6 Los Angeles, CA 90071-3197
 7 Telephone: (213) 229-7000
 8 Facsimile: (213) 229-7520

FILED
 SUPERIOR COURT of CALIFORNIA
 COUNTY of SANTA BARBARA

MAY 18 2004

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

9 Attorneys for NBC Universal, Inc.; CBS Broad-
 10 casting Inc.; Fox News Network L.L.C.; ABC,
 11 Inc.; Cable News Network LP, LLLP; The As-
 12 sociated Press; *Los Angeles Times*; The New
 13 York Times Company; and *The Washington*
 14 *Post*

15 SUPERIOR COURT, STATE OF CALIFORNIA
 16 FOR THE COUNTY OF SANTA BARBARA

17 THE PEOPLE OF THE STATE OF
 18 CALIFORNIA,

Case No.: 1133603

Plaintiff,

ACCESS PROPONENTS' NOTICE OF
 MOTION AND MOTION TO UNSEAL
 GRAND JURY INDICTMENT;
 DECLARATION OF
 WILLIAM E. THOMSON

vs.

19 MICHAEL JOE JACKSON,

Date: Friday, May 28, 2004
 Time: 8:30 a.m.
 Place: Department SM-2,
 Judge Rodney S. Melville

Defendant.

20 TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

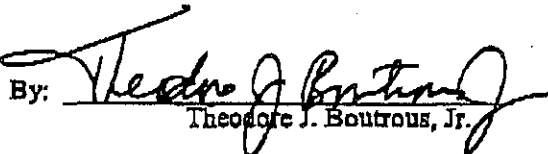
21 PLEASE TAKE NOTICE that on May 28, 2004, at 8:30 a.m., or as soon thereafter as the
 22 matter may be heard before the above-entitled Court, located at 312-C East Cook Street, Santa Maria,
 23 California 93456-5369, NBC Universal, Inc.; CBS Broadcasting Inc.; Fox News Network L.L.C.;
 24 ABC, Inc.; Cable News Network, Inc.; The Associated Press; *Los Angeles Times*; The New York
 25 Times Company, and *The Washington Post* (collectively, the "Access Proponents") will, and hereby
 26 do, move this Court to unseal the Grand Jury Indictment in the above matter, which was filed on
 27 April 21, 2004, and which this Court ordered redacted pending a hearing on the issue on May 28,
 28 2004. This Motion is made pursuant to California Rules of Court 243.1-243.2, the First Amendment

1 of the United States Constitution, Article I, Section 2 of the California Constitution, and the common-
2 law right of access to judicial records.

3 This Motion is based upon this Notice, the attached Memorandum of Points and Authorities,
4 the Declaration of William E. Thomson and the Exhibits attached thereto, all pleadings, records and
5 papers on file herein, all matters of which the Court may properly take judicial notice, and upon such
6 further argument and evidence as may be presented at the hearing on this Motion.

7 DATED: May 18, 2004

GIBSON, DUNN & CRUTCHER LLP
Theodore J. Boutros, Jr.
William E. Thomson
Michael H. Dore

10
11 By: 
Theodore J. Boutros, Jr.

12
13 Attorneys for NBC Universal, Inc.; CBS Broadcasting
14 Inc.; Fox News Network L.L.C.; ABC, Inc.; Cable News
15 Network LP, LLLP; The Associated Press; *Los Angeles*
16 *Times*; The New York Times Company; and *The Wash-*
17 *ington Post*

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I
INTRODUCTION

The Access Proponents, a group of media organizations,¹ respectfully move this Court pursuant to California Rules of Court 243.1-243.2² to unseal the Indictment in this case, portions of which this Court ordered provisionally redacted on April 30, 2004, pending a hearing on the issue. See Declaration of William E. Thomson. ("Thomson Decl."), Exh. A (Hearing Tr., Apr. 30, 2004, at 15:27-16:4). Indictments are judicial records that have historically been open to the public and that are subject to the First Amendment presumption of openness. See *United States v. Smith*, 776 F.2d 1104, 1112 (3d Cir. 1985); see also *Smith v. Doe*, 538 U.S. 84, 98-99 (2003) (noting that "our criminal law tradition insists on public indictment, public trial, and public imposition of sentence"). This "presumption of openness inheres in the very nature of a criminal trial under our system of justice." *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4th 1178, 1200 (1999) (quoting *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980) (plurality)).

This strong and constitutionally-based presumption "may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *NBC Subsidiary*, 20 Cal. 4th at 1204 (quoting *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 510 (1984) (emphasis in original)); see also Cal. R. Ct. 243.1(d) (codifying First Amendment and California standards and specifying that records may be filed under seal "only if [the court] expressly finds facts that establish" several conditions—including the "exist[ence of] an overriding interest that overcomes the right of public access to the record"—have been satisfied) (emphases added). The court must also find that a "substantial probability" exists that such an overriding interest will be prejudiced if the record is not sealed, see Cal. R. Ct. 243.1(d)(3), and that any

¹ NBC Universal, Inc.; CBS Broadcasting Inc.; Fox News Network L.L.C.; ABC, Inc.; Cable News Network LP, LLLP; Courtroom Television Network LLC; The Associated Press; *Los Angeles Times*; The New York Times Company, and *The Washington Post*.

² California Rule of Court 243.2(h)(2) provides in relevant part: "A party or member of the public may move, apply, or petition, or the court on its own motion may move, to unseal a record."

1 "proposed sealing is narrowly tailored." Cal. R. Ct. 243.1(d)(4). The court must further find that
2 "there is no less restrictive means of achieving the overriding interest." *NBC Subsidiary*, 20 Cal. 4th
3 at 1217-18; *see also* Cal. R. Ct. 243.1(d) (5). Such express findings must be "specific enough that a
4 reviewing court can determine whether the closure order was properly entered." *NBC Subsidiary*, 20
5 Cal. 4th at 1204, 1181, 1217-18 (internal quotations omitted). No showing in support of such find-
6 ings has been or can be made here, and the Indictment should be unsealed in its entirety, or to a much
7 greater extent, as soon as possible.

8 II 9 ARGUMENT

10 A. Grand Jury Indictments Are Traditionally Open To The Public And Are Subject 11 To The Presumption Of Openness Established By The First Amendment And 12 California Law

13 Grand jury indictments are traditionally, and presumptively, open to the public. "[O]ur crimi-
14 nal law tradition insists on public indictment, public trial, and public imposition of sentence. Trans-
15 parency is essential to maintaining public respect for the criminal justice system, ensuring its integ-
16 rity, and protecting the rights of the accused." *Smith v. Doe*, 538 U.S. 84, 99 (2003). Thus, both
17 "historical tradition" and "the specific structural value of access in the circumstances" demonstrate
18 that the First Amendment and California law presumption of openness applies to the Indictment. *See*
19 *NBC Subsidiary*, 20 Cal. 4th at 1201 (reviewing U.S. Supreme Court jurisprudence and explaining
20 "two principles . . . that may be used to confirm the existence and scope of a [First Amendment] right
21 of access: (i) historical tradition, and (ii) the specific structural value of access in the circumstances");
22 *see also id.* at 1218-19. "Because of our historic experience and the societal interest served by public
23 access to indictments and informations, . . . such access is protected by the First Amendment." *United*
24 *States v. Smith*, 776 F.2d 1104, 1112 (3d Cir. 1985). Rule 243.1, by its plain terms, also applies to the
25 Indictment, because it is a judicial record and its "confidentiality" is not required by law."³

26 ³ *See* Cal. R. Ct. 243.1(a)(1) ("Rules 243.1-243.4 apply to records sealed or proposed to be sealed
27 by court order."); Cal. R. Ct. 243.1(b)(1) (defining "record" as "all or a portion of any document,
28 paper, exhibit, transcript, or other thing filed or lodged with the court"); Cal. R. Ct. 243.1(a)(2)
("These rules do not apply to records that are required to be kept confidential by law. These rules
also do not apply to discovery motions and records filed or lodged in connection with discovery
[Footnote continued on next page]

1 Indeed, while the California Legislature has enacted a comprehensive statutory scheme re-
2 garding grand jury secrecy, there is no statutory authorization giving courts the power to keep all or
3 any parts of indictments under seal, let alone mandating that they must do so. The California Su-
4 preme Court has recognized that the Legislature in effect has "occupied the field" with its "extensive
5 rules defining [the grand jury] and governing its formation and proceedings," including "grand jury
6 secrecy." *Daily Journal Corp. v. Superior Court*, 20 Cal. 4th 1117, 1122, 1124-25 (1999). But no-
7 where in the dozens of statutes regulating the grand jury's function is there any statute authorizing a
8 court to keep an indictment under seal. See Cal. Pen. Code §§ 888-945.⁴

9 It is instructive that federal law likewise treats indictments as public records. See *Los Angeles*
10 *Times v. Superior Court*, 114 Cal. App. 4th 247, 261-262 (2003) (finding, in the context of proceed-
11 ings ancillary to the grand jury, that applicable provisions under Federal Rule of Criminal Procedure
12 6(e) were "relevant, reasonable, and persuasive," and that the Rule "provide[d] an excellent model for
13 our guidance in this matter"). "The authority of the court to maintain the secrecy of the indictment is
14 conferred by Rule 6(e)(4) of the Federal Rules of Criminal Procedure," which provides that "[t]he
15 federal magistrate to whom an indictment is returned may direct that the indictment be kept secret
16 until the defendant is in custody or has been released pending trial." *United States v. Sruulowitz*, 819
17 F.2d 37, 40 (2d Cir. 1987) (quoting Fed. R. Crim. Proc. 6(e)(4)) (emphasis added). Once the defen-
18 dant is in custody, the indictment must be unsealed. See, e.g., *United States v. Walker*, No. 96-
19 00053-C, 1996 U.S. Dist. LEXIS 21565, at *2 (W.D. Va. Oct. 21, 1996) ("Because defendants cur-
20 rently are in custody, the plain language of Rule 6(e)(4) requires the Magistrate Judge to order the
21 unsealing of the indictment.") (emphasis added).

22
23 [Footnote continued from previous page]

24 motions or proceedings. The rules do apply to discovery materials that are used at trial or submit-
25 ted as a basis for adjudication of matters other than discovery motions or proceedings.").

26 ⁴ The only provision even remotely germane holds merely that "Every grand juror who willfully
27 discloses the fact of an information or indictment having been made for a felony, until the defen-
28 dant has been arrested, is guilty of a misdemeanor." Cal. Pen. Code § 924. This in no way au-
thorizes a court to file an indictment under seal, and, in any event, Mr. Jackson already has been
arrested and arraigned, and the fact of the Indictment and some of its contents disclosed to the
public.

1 Public access to indictments furthers the purposes of the First Amendment because it "plays
2 an important and specific structural role in the conduct of such proceedings." *NBC Subsidiary*
3 (*KNBC-TV, Inc.*, 20 Cal. 4th at 1219. Grand jury indictments are the product of a secret, one-sided
4 process and reflect the crucial act of charging a citizen with a crime. But to balance this secrecy there
5 is a "historic tradition of public access to the charging document in a criminal case" that "reflects the
6 importance of its role in the criminal trial process and the public's interest in knowing its contents."
7 *United States v. Smith*, 776 F.2d at 1112. As the Third Circuit noted in *Smith*,

8 Knowledge of the charge or charges is essential to an understanding of the trial, essen-
9 tial to an evaluation of the performance of counsel and the court, and, most impor-
tantly, essential to an appraisal of the fairness of the criminal process to the accused.

10 *Id.* Public access to indictments thus serves "to (i) demonstrate that justice is meted out fairly,
11 thereby promoting public confidence in such governmental proceedings; (ii) provide a means by
12 which citizens scrutinize and check the use and possible abuse of judicial power; and (iii) enhance the
13 truthfinding function of the proceeding." *NBC Subsidiary (KNBC-TV), Inc.*, 20 Cal. 4th at 1219.

14 Keeping any part of an indictment under seal contradicts the core values of the First Amend-
15 ment and Article I, section 2 of the California Constitution because it prevents the public from scruti-
16 nizing the basic charges being leveled by elected prosecutors against a citizen:

17 "[T]he public has a legitimate interest in access to . . . court documents If public
18 court business is conducted in private, it becomes impossible to expose corruption, in-
19 competence, inefficiency, prejudice, and favoritism. For this reason traditional Anglo-
American jurisprudence distrusts secrecy in judicial proceedings and favors a policy of
maximum public access to proceedings and records of judicial tribunals."

20 *Id.* at 1211 n.28 (quoting *Estate of Hearst*, 67 Cal. App. 3d 777, 784 (1977)).

21 The Supreme Court of the United States has used similar language in describing the value of
22 public access to criminal proceedings: "People in an open society do not demand infallibility from
23 their institutions, but it is difficult for them to accept what they are prohibited from observing."
24 *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 13 (1986) (quoting *Richmond Newspapers, Inc.*
25 *v. Virginia*, 448 U.S. 555, 572 (1980) (plurality)). Thus, the right of public access "plays a particu-
26 larly significant role in the functioning of the judicial process and the government as a whole[,] . . .
27 enhance[ing] the quality and safeguard[ing] the integrity of the factfinding process," fostering an "ap-
28 pearance of fairness," "heightening public respect for the judicial process," and serving "as a check

1 upon the judicial process—an essential component in our structure of self-government.” *Globe*
2 *Newspapers Co. v. Superior Court*, 457 U.S. 596, 606 (1982) (footnotes omitted); *see also Nebraska*
3 *Press Ass’n v. Stewart*, 427 U.S. 539, 559-60 (1976) (quoting *Sheppard v. Maxwell*, 384 U.S. 333,
4 350 (1966)) (“A responsible press has always been regarded as the handmaiden of effective judicial
5 administration Its function in this regard is documented by an impressive record of service over
6 several centuries.”). “Openness thus enhances both the basic fairness of the criminal trial and the ap-
7 pearance of fairness so essential to public confidence in the system.” *Press-Enterprise Co. v. Super-*
8 *rior Court*, 464 U.S. 501, 508 (1984).

9 As shown below, these principles require further unsealing of the Indictment.

10 **B. The First Amendment, Article I, Section 2 of the California Constitution, And**
11 **Rule 243.1 Require That The Court Unseal The Remaining Portions of The In-**
12 **dictment**

13 The sealing of large portions of the Indictment in this case violates the “first principle that
14 the people have the right to know what is done in their courts.” *Copley Press, Inc. v. Superior*
15 *Court*, 63 Cal. App. 4th 367, 373 (1998) (quoting *In re Shortridge*, 99 Cal. 526, 530 (1893) (issuing a
16 writ of mandate directing the superior court to vacate its order denying the motion to unseal the court
17 record). At the April 30 hearing, the Court identified two grounds for provisionally redacting por-
18 tions of the Indictment, including all 28 of the overt acts that comprise Count I for conspiracy, pend-
19 ing a further hearing: (1) “to protect the minor, alleged victim’s identity in this case until the trial”
20 and (2) “to try and ensure a jury venire that would be able to be fair and impartial to the defendant in
21 the trial against him here.” Thomson Decl., Exh. A (Hearing Tr., Apr. 30, 2004, at 14:16-25); *id.*,
22 Exh. B (Criminal Minute Order, Apr. 30, 2004, at 2). But these grounds do not justify sealing por-
23 tions of the Indictment.

24 The alleged victim’s identity is already widely known (although the Access Proponents and
25 other news organizations in the United States refrain from mentioning it in their stories). In any
26 event, if the Defendant or the District Attorney can make the requisite showing, the Court could eas-
27 ily redact the names of the alleged victim and his family from the Indictment before release. Cal. R.
28 Ct. 243.1(c)(1) (“An order sealing the record must . . . direct the sealing of only those documents and
pages, or, if reasonably practicable, portions of those documents and pages, that contain the material

1 that needs to be placed under seal. All other portions of each document or page must be included in
2 the public file.”). The redacted Indictment itself indicates that it uses the “pseudonym ‘John Doe’ . .
3 .for purposes of protecting the privacy of the alleged victim.” Redacted Indictment at 13.

4 There is no basis, let alone the kind of specific, overriding interest required by the First
5 Amendment and Rule 243.1, for maintaining secrecy as to the names and allegations regarding adults
6 who are discussed in the indictment. See Cal. R. Ct. 243.1(d) (specifying that records may be filed
7 under seal “only if [the court] expressly finds facts that establish” several conditions—including the
8 “exist[ence] of an *overriding interest* that overcomes the right of public access to the record”—have
9 been satisfied) (emphases added). This case does not raise any of the issues that have traditionally been
10 invoked to seal or partially seal indictments, such as the need to protect the lives of witnesses, to ensure
11 the defendant or other potential targets did not flee, or the need to protect innocent persons from injury.
12 See *United States v. Smith*, 776 F.2d at 1112 (noting that while indictments presented in open court
13 “are sometimes temporarily sealed by the court, this is the exception rather than the rule and occurs
14 only when there is an overriding concern such as the well-grounded fear of flight by the accused to
15 avoid apprehension”). Here, there is a well known universe of potential co-conspirators and witnesses,
16 and everyone remotely connected with the events no doubt is well aware that the Indictment has been is-
17 sued, including Mr. Jackson and the unindicted and unnamed co-conspirators.

18 Moreover, the Count I conspiracy allegations relate to claims of child abduction, false imprison-
19 ment, and extortion purportedly involving Mr. Jackson and his associates. These are clearly of a
20 less sensitive nature than the allegations contained in Counts II through VI, which allege lewd acts
21 upon a child. See Redacted Indictment at 1-2. Thus, it is seems unlikely that the overt act allegations
22 of Count I would present significant issues concerning the privacy of the alleged victim and his fam-
23 ily that would justify sealing those portions of the Indictment.

24 Even if the Indictment did implicate the kind of overriding and compelling interests that
25 might overcome the strong presumption of openness and right of public access, a six-page redaction,
26 sealing the alleged 28 overt acts in their entirety, is not “narrowly tailored” to that interest. See Cal.
27 R. Ct. 243.1(d)(4); see also Cal. R. Ct. 243.1(e)(1); *NBC Subsidiary*, 20 Cal. 4th at 1203 (explaining
28 that in *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982), the high court “found that one

1 asserted state interest—protection of minor victims of sex crimes from further trauma and embar-
2 rassment—was compelling, but also found the chosen means of effectuating that interest (*mandatory*
3 closure during a child's testimony) to be overbroad and insufficiently tailored to the circumstances of
4 each case, some of which might not warrant closure") (emphasis in original).

5 As for Mr. Jackson's right to a fair trial, it is unlikely that disclosing the details of the Indict-
6 ment, including the 28 overt acts of the Count I conspiracy charge, would be sufficient to demon-
7 strate the requisite level of prejudice under Rule 243.1. The burden is on Mr. Jackson to make a de-
8 tailed, specific showing of prejudice based on the release of the Indictment many months before the
9 likely trial date.⁵ Rule 243.1 requires proof of more than *possible* severe prejudice—it mandates
10 proof that such harm is *substantially probable* and unavoidable through more narrowly tailored, less
11 restrictive measures. See Cal. R. Ct. 243.1(d)(3)-(5); see also *In re Willon*, 47 Cal. App. 4th 1080,
12 '1098 (1996) (noting that the "substantial probability" test is "a more demanding level of scrutiny than
13 the 'reasonable likelihood' test").

14 This high threshold cannot be satisfied merely by generically invoking the defendant's right to
15 a fair trial. The Supreme Court of the United States has rejected such an approach, holding that
16 "[t]he First Amendment right of access cannot be overcome by the conclusory assertion that publicity
17 might deprive the defendant of th[e] right [to a fair trial]." *Press-Enterprise Co. v. Superior Court*,
18 478 U.S. 1, 15 (1986). By definition, an "indictment" always casts the defendant in a negative light,
19 and, indeed, the California Penal Code defines an indictment as "an accusation in writing, presented
20 by the grand jury to a competent court, charging a person with a public offense." Cal. Pen. Code
21 § 889. To find a substantial probability of prejudice here would effectively reverse the presumption
22 of openness, allowing every defendant in a case of public interest to argue an indictment should be
23 sealed so the world will not learn of his or her alleged bad acts. See *Nebraska Press Ass'n v. Stuart*,

24
25 ⁵ At the April 30 hearing, Mr. Jackson's counsel, without providing any reason whatsoever, re-
26 quested that the Court redact lines 11 and 12 of page 2 of the original redacted version that the
27 Court provided for review. Thomson Decl., Exh. A (Hearing Tr., Apr. 30, 2004, at 9:21-22).
28 While the Court conditionally granted this request pending further briefing on the redaction is-
sues, *id.* at 9:23-10:11, it should now reject that request and at a minimum unseal that portion of
the Indictment.

1 427 U.S. 539, 565 (1976) (“[P]retrial publicity, even if pervasive and concentrated, cannot be re-
2 garded as leading automatically and in every kind of criminal case to an unfair trial.”).

3 Finally, the “mere fact of intense media coverage of a celebrity defendant, without further
4 compelling justification, is simply not enough to justify closure.” *ABC, Inc., et al. v. Martha Stewart*,
5 360 F.3d 90, 105-06 (2d Cir. 2004); *id.* at 102 (“The mere fact that the suit has been the subject of
6 intense media coverage is not . . . sufficient to justify closure. To hold otherwise would render the
7 First Amendment right of access meaningless; the very demand for openness would paradoxically
8 defeat its availability. We take very seriously the fair trial rights of defendants, . . . [b]ut, in general,
9 openness acts to *protect*, rather than to threaten, the right to a fair trial.”). “Our national experience
10 instructs us that except in rare circumstances openness preserves, indeed, is essential to, the realiza-
11 tion of that right and to public confidence in the administration of justice. The burden is heavy on
12 those who seek to restrict access to the media, a vital means to open justice.” *Id.* at 105-106.

13
14 **III.**
CONCLUSION

15 The First Amendment to the United States Constitution, Article I, Section 2 of the California
16 Constitution, the common law, and California Rule of Court 243.1 all mandate the unsealing of the
17 rest of the Indictment in this case. Accordingly, this Court should grant this motion in its entirety, or,
18 at a minimum, more narrowly tailor what is kept under seal to protect only those overriding, compel-
19 ling interests that are specifically shown to be threatened with a substantial probability of prejudice
20 through public disclosure.

21 DATED: May 18, 2004

Respectfully submitted,

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

26 By: 
Theodore J. Boutros, Jr.

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

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

DECLARATION OF WILLIAM E. THOMSON

I, William E. Thomson, declare:

1. I am an attorney duly licensed to practice before this Court. I am an associate with Gibson, Dunn & Crutcher LLP, which has been retained by movants NBC Universal, Inc.; CBS Broadcasting Inc.; Fox News Network L.L.C.; ABC, Inc.; Cable News Network LP, LLLP; The Associated Press; *Los Angeles Times*; The New York Times Company and *The Washington Post* in this case. The following facts are true of my own personal knowledge and, if called as a witness, I could and would testify thereto.

2. Attached hereto as Exhibit "A" is a copy of the relevant portion of the Reporter's Transcript of Proceedings from the April 30, 2004, hearing held by this Court in *People of the State of California v. Michael J. Jackson*, Case No. 1133603.

3. Attached hereto as Exhibit "B" is a copy of the Criminal Minute Order entered by this Court in *People of the State of California v. Michael J. Jackson*, Case No. 1133603, on April 30, 2004.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 18th day of May, 2004, at Los Angeles, California.


William E. Thomson

10786771_1.DOC

MAY. 18. 2004 2:55PM

GD&C LA

NO. 4141 P. 14

EXHIBIT A

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA BARBARA
SANTA MARIA BRANCH; COOK STREET DIVISION
DEPARTMENT SM-2 HON. RODNEY S. MELVILLE, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
-vs-
MICHAEL JOE JACKSON,
Defendant.

No. 1133603

REPORTER'S TRANSCRIPT OF PROCEEDINGS

FRIDAY, APRIL 30, 2004

8:30 A.M.

REPORTED BY: MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304
Official Court Reporter

COPY

1 APPEARANCES OF COUNSEL:

2
 3 For Plaintiff: THOMAS W. SNEDDON, JR.,
 4 District Attorney
 -and-
 5 RONALD J. ZONEN,
 Sr. Deputy District Attorney
 -and-
 6 GERALD McC. FRANKLIN,
 7 Sr. Deputy District Attorney
 -and-
 8 GORDON AUCHINCLOSS,
 Sr. Deputy District Attorney
 9 1105 Santa Barbara Street
 Santa Barbara, California 93101

10
 11 For Defendant: COLLINS, MESEREAU, REDDOCK & YU
 12 BY: THOMAS A. MESEREAU, JR., ESQ.
 -and-
 13 SUSAN C. YU, ESQ.
 14 1875 Century Park East, Suite 700
 Los Angeles, California 90067

15 -and-
 16 KATTEN, MUCHIN, ZAVIS, ROSENMAN
 17 BY: STEVE COCHRAN, ESQ.
 2029 Century Park East
 Suite 2600
 18 Los Angeles, California 90067

19 -and-
 20 SANGER & SWYSEN
 21 BY: ROBERT M. SANGER, ESQ.
 22 233 East Carrillo Street, Suite C
 Santa Barbara, California 93101

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

APPEARANCES OF COUNSEL (Continued):

For National Broadcasting Company, Inc.; CBS Broadcasting, Inc.; Fox News Network, LLC; ABC, Inc.; Cable News Network, LP, LLP; The New York Times Company; The Los Angeles Times, Courtroom Television Network; and The Associated Press:

GIBSON, DUNN & CRUTCHER, LLP
BY: THEODORE J. BOUTROUS, JR., ESQ.
333 South Grand Avenue
Los Angeles, California 90071

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

Santa Maria, California

Friday, April 30, 2004

8:30 a.m.

THE COURT: Good morning, ladies and gentlemen.

MR. SNEDDON: Good morning, Your Honor.

MR. SANGER: Good morning, Your Honor.

MR. MESEREAU: Good morning, Your Honor.

THE COURT: I have opened the Indictment. The Indictment generally consists of the following charges:

Count 1 is a felony, alleged violation of Penal Code Section 182, which is a felony conspiracy charge. The conspiracy alleges 28 individual overt acts, and the conspiracy alleges the purpose to be violation of Penal Code Section 278, child abduction, Penal Code Section 236, false imprisonment, Penal Code Section 518, extortion.

Counts 2 through 5, alleged violations of Penal Code Section 288(a), that being lewd act upon a child.

Count 6 alleges a violation of Penal Code Section 664/288(a), which is an attempted lewd act upon a child.

Count 7 through 10, alleged violation of Penal Code Section 222, a felony, which generally

1 THE COURT: All right. Then in addition
2 to that, there has been a 997 [sic] waiver entered
3 in this proceeding. I am going to ask that a new
4 997 [sic] waiver be entered specifically relating
5 to the Indictment, and if you would, do you have a
6 997 [sic] waiver for me?

7 MR. MESEREAU: We have one, Your Honor.
8 Your staff has been kind enough to provide us with
9 one and we have filled it out, we have executed
10 it. Mr. Jackson signed it; I have signed it.

11 THE COURT: Did Mr. Jackson sign it in
12 court here today?

13 MR. MESEREAU: Yes, he did, Your Honor.

14 THE COURT: I'll order that entered.

15 Now we may address the redaction issues
16 which you had asked to address.

17 MR. MESEREAU: Yes, Your Honor. I'm
18 referring specifically in the redacted version to
19 page two.

20 THE COURT: Yes.

21 MR. MESEREAU: We would ask that lines 11
22 through 12 be redacted.

23 THE COURT: You know, at this time I am
24 willing to add that redaction, because I think
25 this -- since I'm ordering the entire Indictment
26 redacted in the form that I have presented it, I'm
27 sure there's going to be a motion on behalf of the
28 news media to unseal the redacted version of the

1 Indictment, and at that time we could all more
2 carefully examine the Court's proposed
3 redactions.

4 So for today -- Mr. Sneddon, you have no
5 objection to that at this point?

6 MR. SNEDDON: No. That's fine.

7 THE COURT: I will add, in addition to the
8 redactions that I had proposed, that. And I think
9 you should be more specific. Did you want to
10 take -- the redaction to take place after -- at
11 line 11 or line 12? At what word, Mr. Mesereau?

12 MR. MESEREAU: Your Honor, line 11, after
13 the hyphen.

14 THE COURT: Okay.

15 MR. MESEREAU: And extending entirely
16 through line 12.

17 THE COURT: Through the first word in line
18 13.

19 MR. MESEREAU: Yes, please, Your Honor.

20 THE COURT: All right. I'll order that
21 redacted, and then the staff -- and the proposed
22 redacted copy that you have cannot be released
23 until we have redacted those, that line.

24 MR. MESEREAU: Thank you for your
25 consideration, Your Honor.

26 THE COURT: Now --

27 MR. SNEDDON: Judge, we had a comment
28 about another part of the redacted version.

1 grand jury transcript for May 28th, which is our
2 next furlough day. This will allow -- this will
3 allow either side who wishes to seal, unseal,
4 whatever your desires are, whatever you wish to
5 urge on the Court, to proceed with that hearing so
6 that I can make a proper ruling at that point.

7 Counsel, I see you're -- did you want to
8 say something?

9 MR. MESEREAU: No. I'm okay, Your Honor.

10 THE COURT: No, I'm looking behind you.
11 The media attorney is --

12 MR. BOUTROUS: Yes, Your Honor. Just I
13 had two or three things. One, we will be filing a
14 motion to unseal the indictment, and I appreciate
15 the Court's -- the procedure the Court is
16 following.

17 It's my understanding that once we file
18 our motion and the parties would make their
19 arguments, and the Court at that point would make
20 findings concerning whether or not it should
21 remain under seal and which portions, so we'll
22 proceed under that procedure.

23 There were two other sealing issues that I
24 wanted to raise and get out of the way for the
25 Court. One was the People's request to keep under
26 seal Search Warrants 49 --

27 THE COURT: We're going to take that up
28 next.

1 MR. BOUTROUS: Thank you, Your Honor.

2 THE COURT: I just wanted to -- when I
3 said I was sealing the Indictment and sealing the
4 transcript of the grand jury proceedings, I wanted
5 to be sure that you had your opportunity to say
6 something. I knew you wanted to.

7 MR. BOUTROUS: Thank you, Your Honor.

8 THE COURT: The next issue is the very
9 issue counsel's raised, which is to consider
10 whether there remains a need to seal the affidavit
11 in support of the search warrant on Search
12 Warrants 4977 and 4977-A.

13 The issue -- there are two issues on that
14 at this point. The first issue being the issue
15 raised by counsel for the media, and that is
16 whether they should be sealed at all; and the
17 second issue is, these search warrant affidavits
18 have not been turned over to the defense, and I
19 did not make the order, as I had previously, that
20 they should be immediately turned over to the
21 defense because of representations made in court
22 at the time that I made the last order.

23 It would be my view at this time that
24 there's no reason not to turn over the search
25 warrant affidavits and search warrants on 4977 and
26 4977-A to the defense at this time.

27 MR. SNEDDON: We have no objection, Your
28 Honor.

1 THE COURT: All right. I'm going to order
2 those released to the defense immediately.

3 The second issue is the issue addressed a
4 moment ago, is whether or not the redacted version
5 should be released to the public. And it is the
6 Court's intent to issue a redacted version of
7 those search warrants so that part of them will be
8 sealed, because they continue -- the affidavits in
9 those search warrants continue to incorporate all
10 of the previous affidavits, which I've sealed
11 previously and made findings on.

12 And so the findings that I'll make on the
13 new sealing orders on 4977 and 4977-A will be the
14 same essential findings that I've made sealing all
15 of the search warrants.

16 Now, it's -- you know, I just want to
17 reiterate that the reason for the sealing of the
18 indictment, portions of the indictment, the grand
19 jury transcript, the search warrants, remains to
20 be twofold: One, to protect the minor, alleged
21 victim's identity in this case until the trial;
22 and, two, to try and ensure a jury venire that
23 would be able to be fair and impartial to the
24 defendant in the trial against him here. We need
25 to always keep in mind why this is -- why the
26 Court is making the rulings that it's making.

27 I think, Counsel, after I release the
28 redacted versions next week, I'll allow you then

1 at that time, if you wish, to file an unsealing
2 motion on that for all or part. You may do that.
3 And we will hear that also on the May 28th
4 furlough.

5 MR. BOUTROUS: That sounds fine. Thank
6 you, Your Honor.

7 THE COURT: The next issue that comes
8 before the Court is, the media had requested a
9 release of the OSC Re Contempt that was filed by
10 the prosecution and which OSC I refused to issue.

11 The Court previously had ordered at the
12 last hearing -- Mr. Sneddon, you weren't present,
13 but I ordered the District Attorney to prepare a
14 sealing motion on that OSC Re Contempt. It was my
15 opinion it should have been filed under seal to
16 start with, and I sealed it on my own motion, and
17 no motion had been received from the District
18 Attorney. And I'm going to ask you if you have an
19 explanation as to why the order that I made wasn't
20 complied with.

21 MR. SNEDDON: My only explanation, Your
22 Honor, is that that wasn't the message that was
23 delivered to me. The message that was delivered
24 to me, and there was some uncertainty as to that,
25 was that there was something that the Court wished
26 me to redact from that. And as you know, I've
27 been in trial, and so I didn't -- I was hoping to
28 actually get some direction from the Court this

1 morning as to what it is you wanted me to redact,
2 because Mr. Franklin wasn't clear about that.

3 But I never got any message about sealing
4 anything. That was not what I heard. That was
5 not what I was told. I apologize. I mean, I know
6 I'm responsible. I'm the lead person. And I'm
7 not trying to make excuses, but I guarantee you,
8 if that's what you want, you'll have it done by
9 the end of next week.

10 MR. FRANKLIN: I understood from the Court
11 when we were in court last, that the Court wished
12 Mr. Sneddon, our office, to prepare a redacted
13 version of the -- of the request.

14 THE COURT: That is true. What I --

15 MR. SNEDDON: And I didn't understand what
16 could be -- what you wanted redacted, so I was
17 going to seek clarification on that.

18 THE COURT: Well, what I -- what I want is
19 that I have made an order previously that requires
20 that whenever you are making a motion that
21 includes sensitive material, which at least you
22 can -- you would know what is sensitive based on
23 my prior rulings, that you file the request or the
24 motion under seal and with a proposed redacted
25 version, because it takes me quite a bit of time
26 to work with my staff to get to a redacted
27 version, so I've asked both sides to do that.

28 So what I'll do is, I'll ask you again,

REPORTER'S CERTIFICATE

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

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)
Plaintiff,)
-vs-) No. 1133603
MICHAEL JOE JACKSON,)
Defendant.)

I, MICHELE MATTSON McNEIL, RPR, CRR,
CSR #3304, Official Court Reporter, do hereby
certify:

That the foregoing pages 4 through 25
contain a true and correct transcript of the
proceedings had in the within and above-entitled
matter as by me taken down in shorthand writing at
said proceedings on April 30, 2004, and thereafter
reduced to typewriting by computer-aided
transcription under my direction.

DATED: Santa Maria, California,
May 6, 2004.

Michele Mattson McNeil

MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304

MAY. 18. 2004 2:58PM

GD&C LA

NO. 4141 P. 27

EXHIBIT B

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA**

Dated & Entered: APRIL 30, 2004	Time: 8:30 A.M.	F	
Honorable RODNEY S. MELVILLE		CC	
Deputy Clerk: L. FREY/P. BLAYLOCK	Dept: SMTWO	CA	
Deputy Sheriff: T. AVILA		AC	
Court Reporter: M. MC NEIL	Case No.: 1133603	SR	
Plaintiff: THE PEOPLE OF THE STATE OF CALIFORNIA		ST	
vs.		DOC	X
Defendant(s): MICHAEL JOE JACKSON			
District Attorney: THOMAS W. SNEDDON, JR.			
Defense Counsel: THOMAS A. MESEREAU, JR.			
Probation Officer:	Interpreter:		

NATURE OF PROCEEDINGS: PRELIMINARY HEARING SETTING; HEARING ON MOTION TO SEAL SEARCH WARRANTS; ARRAIGNMENT ON THE INDICTMENT

Felony Complaint Filed December 18, 2003 charging the Defendant with Counts 1 thru 7: 288(a) P.C. a Felony, Counts 8 and 9: 222 P.C. a Felony, Enhancements on Counts 1 through 7: 1192.7(c)(6) P.C. and 1203.066(a)(8) P.C.

Indictment filed April 21, 2004 charging the Defendant with Count 1: 182 P.C., a Felony, Counts 2 through 5: 288(a) P.C., Felonies, Count 6: 664/288(a) P.C., a Felony, Counts 7 through 10: 222 P.C., Felonies, Special Allegations on Counts 2 through 5: 1197.7(c)(6) P.C. and 1203.066(a)(8)

The Court made orders re: Defendant Arraigned and Not Guilty Pleas Entered, Bench Warrant Recalled and Unsealed, 977 Waiver, Redacted Indictment, Demurrer, Reporter's Transcripts, Search Warrants, Filing of Motions, Bail

Counsel present for the People are: Thomas W. Sneddon, Gerald M. Franklin, Ronald J. Zonen and Gordon Auchincloss.

Counsel present for the Defendant are: Thomas A. Mesereau, Jr. Robert M. Sanger, Steve Cochran and Susan C. Yu.

Counsel present for the Media is: Theodore Boutsous.

At 8:30 A.M. with Court, Counsel and Defendant present, hearing proceeded.

1133603
PEOPLE OF THE STATE OF CALIFORNIA
VS
MICHAEL JOE JACKSON
APRIL 30, 2004
PAGE TWO

The Defendant was advised of his constitutional rights and he waived formal reading of the indictment. The Court arraigned the Defendant on the indictment filed April 21, 2004. The Court advised the Defendant of the charges against him and the Defendant entered not guilty pleas to Counts 1 through 10. Defendant denies the Special Allegations.

The Court authorizes the Defendant to release his proposed statement.

The Court further orders that the Bench Warrant issued and held on April 21, 2004 for Michael Joe Jackson shall be recalled.

The Court orders that the terms and conditions of the existing bond shall remain in effect.

The Defendant was further advised of his constitutional rights to be personally present at all stages of the proceedings and signed a 977 P.C. waiver of his personal presence.

The indictment was served on all Counsel. A redacted version of the indictment was also given to Counsel. The Court made further redactions as requested by Counsel. All Counsel approved the redacted version of the indictment and said redacted version shall be placed on the internet.

The Court grants the Defendant the right to Demurder even though a plea has been entered.

The Court Reporter for the Grand Jury proceedings shall call Attorney Sanger's office and the District Attorney on Monday afternoon, May 3, 2004 as soon as the transcripts of the Grand Jury proceedings are completed and Counsel shall receive copies of said transcript.

The Court further orders that the entire Grand Jury transcript shall remain sealed and this matter shall be continued to May 28, 2004, 8:30 A.M. for the hearing re: sealing of the transcript.

The Court further orders that Search Warrants 4977 and 4977A shall be released to Counsel for the Defendant immediately; that a redacted version of said Warrants shall be released to the public; that findings are the same as made in sealing of all search warrants.

The Court stated the reasons as to why the redacted copies of the indictment shall be sealed are for the protection of the minor alleged victims and to try and insure that a Jury Venire shall remain impartial; that after the redacted versions on the warrants are filed, a motion may be made for further unsealing of the warrants and a hearing shall be held on May 28, 2004, 8:30 A.M.

1133603
PEOPLE OF THE STATE OF CALIFORNIA
VS
MICHAEL JOE JACKSON
APRIL 30, 2004
PAGE THREE

The Court further advised Counsel that the OSC re: Contempt was sealed under the Court's own motion as the District Attorney did not request filing under seal; that a motion that includes sensitive material shall be filed under seal with a proposed redaction; that on May 28, 2004 the District Attorney shall make a request to filing the OSC re: Contempt under seal along with a proposed redacted version.

The Court further orders that upon the return of a Search Warrant, a request to file under seal shall be made at that time.

The Court further orders that any moving papers in this case shall be filed no later than 10 days prior to the hearing; that an opposition shall be filed and served no later than 5 days prior to the hearing; that a reply to the opposition shall be filed no later than 2 days prior to the hearing; that any proposed order after hearing shall be submitted under separate cover and not in the body of the motion.

The Court further advised Attorney Bourous that two In-Camera hearings were held on April 27, 2004 and April 28, 2004 and the minutes for said hearings shall be released today and that the Court Reporter's transcripts for said hearings were ordered sealed pursuant to the protective order and findings previously made by the Court and shall not be transcribed without further order of the Court; that said hearings included substitution of counsel, news release and some additional subjects; that the Court will determine a way to notify Counsel for the media regarding any further phone conferences.

The Defendant was further advised of his constitutional rights and the Defendant waived time for trial through September 30, 2004.

At 9:10 A.M. Court adjourned.

Following the Court session, the Bail Bondsman, David Perez, was present and posted a new bail bond in the sum of \$3,000,000.00. The new bond number is A3000-00202181. The Court further ordered that bond number A3000-0182296 shall be exonerated.

Defendant released on the posted bail.

CLERK OF THE SUPERIOR COURT

BY: 
LORNA FREY, DEPUTY CLERK

**CERTIFICATE OF SERVICE
BY FAX AND REGULAR MAIL**

I, Cynthia C. 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 Gibson, Dunn & Crutcher LLP, 333 South Grand Avenue, Los Angeles, California 90071, in said County and State; I am employed in the office of Theodore J. Boutros, Jr., a member of the bar of this Court, and at his direction, on May 18, 2004, I served the following:

ACCESS PROPONENTS' NOTICE OF MOTION AND MOTION TO UNSEAL GRAND JURY INDICTMENT; DECLARATION OF WILLIAM E. THOMSON

on the interested parties in this action, by the following means of service:

BY MAIL: I placed a true copy in a sealed envelope addressed as indicated below, on the above-mentioned date. I am familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Thomas W. Sneddon District Attorney Santa Barbara County 1105 Santa Barbara Street Santa Barbara, CA 93101-2007 Attorneys for Plaintiffs	Tel.: (805) 568-2300 Fax: (805) 568-2398
Thomas A. Mesereau, Jr. Collins, Mesereau, Reddock & Yu LLP 1875 Century Park East, 7th Floor Los Angeles, CA 90067 Attorneys for Defendant Michael Jackson	Tel.: (310) 284-3120 Fax: (310) 284-3133
Robert Sanger Sanger & Swyson, Lawyers 233 E. Carrillo Street, Suite C Santa Barbara, CA 93001 Co-Counsel for Defendant Michael Jackson	Tel.: (805) 962-4887 Fax: (805) 963-7311

1 2 3 4 5	Steve Cochran, Esq. Katten, Muchin, Zavis & Rosenman, Lawyers 2029 Century Park East, Suite 2600, Los Angeles, CA 90067-3012 Co-Counsel for Defendant Michael Jack- son	Tel.: (310) 788-4455 Fax: (310) 712-8455
-----------------------	---	---

- 6 **BY PERSONAL SERVICE:** I placed a true copy in a sealed envelope addressed to each per-
7 son[s] named at the address[es] shown and giving same to a messenger for personal delivery be-
8 fore 5:00 p.m. on the above-mentioned date.
- 9 **BY FACSIMILE:** From facsimile number (213) 229-7520, I caused each such document to be
10 transmitted by facsimile machine, to the parties and numbers indicated below, pursuant to
11 Rule 2008. The facsimile machine I used complied with Rule 2003(3) and no error was reported
12 by the machine. Pursuant to Rule 2008(e)(4), I caused the machine to print a transmission record
13 of the transmission, a copy of which is attached to the original of this declaration.

12 13 14 15	Thomas W. Sneddon District Attorney Santa Barbara County 1105 Santa Barbara Street Santa Barbara, CA 93101-2007 Attorneys for Plaintiffs	Tel.: (805) 568-2300 Fax: (805) 568-2398
16 17 18 19	Thomas A. Mescreau, Jr. Collins, Mescreau, Reddock & Yu LLP 1875 Century Park East, 7th Floor Los Angeles, CA 90067 Attorneys for Defendant Michael Jackson	Tel.: (310) 284-3120 Fax: (310) 284-3133
20 21 22 23	Robert Sanger Sanger & Swysen, Lawyers 233 E. Carrillo Street, Suite C Santa Barbara, CA 93001 Co-Counsel for Defendant Michael Jack- son	Tel.: (805) 962-4887 Fax: (805) 963-7311

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

<p>Steve Cochran, Esq. Katten, Muchin, Zavis & Rosenman, Lawyers 2029 Century Park East, Suite 2600, Los Angeles, CA 90067-3012 Co-Counsel for Defendant Michael Jack- son</p>	<p>Tel.: (310) 788-4455 Fax: (310) 712-8455</p>
--	---

- BY UPS NEXT DAY AIR:** On the above-mentioned date, I placed a true copy of the above mentioned document(s) in a sealed envelope or package designated by the United Parcel Service with delivery fees paid or provided for, addressed to the person(s) as indicated above and deposited same in a box or other facility regularly maintained by United Parcel Service or delivered same to an authorized courier or driver authorized by United Parcel Service to receive documents.
- I am employed in the office of Theodore J. Boutros, Jr., a member of the bar of this court, and that the foregoing document(s) was(were) printed on recycled paper.
- (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- (FEDERAL) I declare under penalty of perjury that the foregoing is true and correct.

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 18, 2004, at Los Angeles, California.


Cynthia C. Altounian

10786771_1.DOC