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casting Inc.; Fox News Network L.L.C.; ABC,  
6 Inc.; Cable News Network LP, LLLP; The As-  
sociated Press; *Los Angeles Times*; The New  
7 York Times Company; and *USA Today*

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

SEP 24 2004

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

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

11  
12 THE PEOPLE OF THE STATE OF  
13 CALIFORNIA,

14 Plaintiff,

15 vs.

16 MICHAEL JOE JACKSON,

17 Defendant.

Case No.: 1133603

ACCESS PROPONENTS' SUPPLEMENTAL  
MEMORANDUM REQUESTING  
IMMEDIATE PUBLIC RELEASE OF  
VIDEOTAPES PLAYED IN OPEN COURT  
AND INTRODUCED AS EVIDENCE AT  
HEARINGS HELD ON JULY 27, 2004,  
AUGUST 16-17, 19-20, AND 23, 2004, AND  
SEPTEMBER 16 AND 17, 2004

Date: October 14, 2004

Time: 8:30 a.m.

Place: Department SM-2,  
Judge Rodney S. Melville

[VIA FACSIMILE]

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22 The Access Proponents, a group of media organizations,<sup>1</sup> respectfully file this supplement to  
23 their August 23, 2004 Motion requesting this Court to grant public access to the videotapes and other  
24 evidence introduced during hearings addressing Mr. Jackson's motions to quash the indictment and  
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26 <sup>1</sup> NBC Universal, Inc.; CBS Broadcasting Inc.; Fox News Network L.L.C.; ABC, Inc.; Cable News  
27 Network LP, LLLP; The Associated Press; *Los Angeles Times*; The New York Times Company,  
28 and *USA Today*.

1 suppress evidence. During the hearing held on September 16, 2004, this Court stated that in the fu-  
2 ture it would play all videotapes in open court so the public could view those tapes contemporane-  
3 ously with their airing in court, and the Court has in fact followed that practice with respect to virtu-  
4 ally all such videotapes introduced into evidence.<sup>2</sup> The Court also asked the parties to submit spe-  
5 cific explanations as to which portions, if any, of the approximately 50 exhibits admitted into evi-  
6 dence during this series of hearings should remain under seal and scheduled arguments on those is-  
7 sues for October 14. But the content of the videotapes played in open court fall into a special cate-  
8 gory and the Access Proponents request the immediate release of these materials.

9 Unlike the other exhibits, such as documents, these videotapes were aired in open court, and  
10 the press and public have already viewed their contents. There is simply no conceivable basis for  
11 keeping such material under seal. *See NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal.  
12 4th 1178, 1222 n.47 (1999) (questioning the threat of prejudice to fair trial rights once information  
13 was made public). Moreover, transcription cannot capture the videotaped evidence and, other than  
14 the tapes themselves, there is no real record of such evidence for the public to scrutinize.  
15 Thus, there is no reason to wait for the parties to make additional submissions regarding whether  
16 these videotapes should remain under seal, and all factors militate strongly in favor of immediate re-  
17 lease.

18 Indeed, as the Second Circuit has observed regarding videotapes played in open court, “[o]nce  
19 *the evidence has become known to the members of the public, including representatives of the*  
20 *press, through their attendance at a public session of court, it would take the most extraordinary*  
21 *circumstances to justify restrictions on the opportunity of those not physically in attendance at the*  
22 *courtroom to see and hear the evidence . . . .” In re Application of Nat’l Broad. Co.*, 635 F.2d 945,  
23 952 (2d Cir. 1980) (emphasis added); *see also United States v. Graham*, 257 F.3d 143, 151 (2d Cir.  
24 2001) (holding that “while the events surrounding the instant case have gained some notoriety, the  
25 possibility that the jury pool will become so tainted as to prevent the defendants here from obtaining

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27 <sup>2</sup> Counsel for the Access Proponents has requested, but not yet obtained, a transcript of these hear-  
28 ings.


1 fair trials is too speculative to justify denial of the public's right to inspect and copy evidence pre-  
2 sented in open court").<sup>3</sup> There are no such circumstances here, and for all of these reasons, the Court  
3 should immediately release all videotapes introduced into evidence and played in open court without  
4 waiting for the parties' submissions in connection with the October 14 hearing.

5  
6 DATED: September 24, 2004

Respectfully submitted,

7 GIBSON, DUNN & CRUTCHER LLP  
8 Theodore J. Boutros, Jr.  
9 Michael H. Dore

10 By: \_\_\_\_\_

  
Theodore J. Boutros, Jr.

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

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27 <sup>3</sup> The Access Proponents will make their best efforts in working with the Court to minimize the  
28 potential burdens on court personnel of copying the videotapes aired at the proceedings.

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

I, **Jess Fernandez**, 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 Michael H. Dore, a member of the bar of this Court, and at his direction on September 24, 2004, I served the following:

**ACCESS PROponents' SUPPLEMENTAL MEMORANDUM REQUESTING IMMEDIATE PUBLIC RELEASE OF VIDEOTAPES PLAYED IN OPEN COURT AND INTRODUCED AS EVIDENCE AT HEARINGS HELD ON JULY 27, 2004, AUGUST 16-17, 19-20, AND 23, 2004, AND SEPTEMBER 16 AND 17, 2004**

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

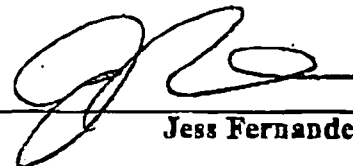
**BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated below, on the above-mentioned date. I am familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. 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.

|                      |   |   |
|----------------------|---|---|
| 17<br>18<br>19<br>20 | Thomas W. Sneddon<br>District Attorney<br>Santa Barbara County<br>1105 Santa Barbara Street<br>Santa Barbara, CA 93101-2007<br><br>Attorneys for Plaintiffs                 | Tel.: (805) 568-2300<br>Fax: (805) 568-2398 |
| 21<br>22<br>23       | Thomas A. Mesereau, Jr.<br>Collins, Mesereau, Reddock & Yu LLP<br>1875 Century Park East, 7th Floor<br>Los Angeles, CA 90067<br><br>Attorneys for Defendant Michael Jackson | Tel.: (310) 284-3120<br>Fax:                |
| 24<br>25<br>26<br>27 | Robert Sanger<br>Sanger & Swysen, Lawyers<br>233 E. Carrillo Street, Suite C<br>Santa Barbara, CA 93001<br><br>Co-Counsel for Defendant Michael Jackson                     | Tel.: (805) 962-4887<br>Fax: (805) 963-7311 |

1  **BY FACSIMILE:** From facsimile number (213) 229-7520, I caused each such document to be  
2 transmitted by facsimile machine, to the parties and numbers indicated below, pursuant to  
3 Rule 2008. The facsimile machine I used complied with Rule 2003(3) and no error was reported  
4 by the machine. Pursuant to Rule 2008(e)(4), I caused the machine to print a transmission record  
of the transmission, a copy of which is attached to the original of this declaration.

|  |   |
|--|---|
| 5 Thomas W. Sneddon<br>6 District Attorney<br>7 Santa Barbara County<br>8 1105 Santa Barbara Street<br>9 Santa Barbara, CA 93101-2007<br>10 Attorneys for Plaintiffs                   | Tel.: (805) 568-2300<br>Fax: (805) 568-2398 |
| 11 Thomas A. Mesereau, Jr.<br>12 Collins, Mesereau, Reddock & Yu LLP<br>13 1875 Century Park East, 7th Floor<br>14 Los Angeles, CA 90067<br>15 Attorneys for Defendant Michael Jackson | Tel.: (310) 284-3120<br>Fax:                |
| 16 Robert Sanger<br>17 Sanger & Swysen, Lawyers<br>18 233 E. Carrillo Street, Suite C<br>19 Santa Barbara, CA 93001<br>20 Co-Counsel for Defendant Michael Jackson                     | Tel.: (805) 962-4887<br>Fax: (805) 963-7311 |

21 I certify under penalty of perjury under the laws of the State of California that the foregoing is  
22 true and correct, that the foregoing document(s), and all copies made from same, were printed on re-  
23 cycled paper, and that this Certificate of Service was executed by me on September 24, 2004, at  
24 Los Angeles, California.

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Jess Fernandez