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7 Network LLC; The Associated Press, *Los*
Angeles Times; and The New York Times
8 Company

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY OF SANTA BARBARA

FEB 11 2004

GARY M. BLAIR, EXEC. OFFICER
By *Alicia Alcocer*
ALICIA ALCOCER, Deputy Clerk

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

12
13 THE PEOPLE OF THE STATE OF
14 CALIFORNIA,

15 Plaintiff,

16 vs.

17 MICHAEL JOE JACKSON,

18 Defendant.

19 Case No.: 1133603

20 **OPPOSITION OF THE ACCESS
PROONENTS TO PLAINTIFF'S MOTION
FOR ORDER DIRECTING THAT SEARCH
WARRANT NO. SW 4915, ITS
SUPPORTING AFFIDAVIT AND RETURN
BE FILED AND MAINTAINED UNDER
CONDITIONAL SEAL UNTIL FURTHER
ORDER OF COURT**

21 Date: Friday, February 13, 2004

22 Time: 8:30 a.m.

23 Place: Department SM9,
24 Judge Rodney S. Melville

25 [VIA FACSIMILE]

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1 For the reasons stated in their Opposition, filed February 6, 2004, to the District Attorney's
2 Motion to Seal the Telephone Warrant Records and the District Attorney's Request to File Under
3 Seal the Bradley Miller Warrant Records, the Access Proponents¹ hereby oppose the District
4 Attorney's Motion for Order Directing That Search Warrant No. SW 4915, Its Supporting Affidavit
5 and Return Be Filed and Maintained Under Conditional Seal Until Further Order of Court, which was
6 filed on February 6, 2004, but not made available on this Court's special website for this case until
7 the afternoon of February 10, 2004.²

8 The District Attorney's latest Motion, along with his companion Motion regarding records
9 related to Search Warrant No. SW 4912, rely on cursory, conclusory, and boilerplate assertions of
10 privileges, but these assertions do not exempt his office from providing this Court with the specific
11 factual basis that it would need to make the kind of "express[]" factual findings mandated by Rule of
12 Court 243.1. None of the vague references to "confidential information gained by investigators in the
13 course of the ongoing investigation" come close to satisfying the Federal and California
14 Constitution's requirements of "findings specific enough that a reviewing court can determine
15 whether the closure order was properly entered," *NBC Subsidiary (KNBC-TV), Inc. v. Superior*
16 *Court*, 20 Cal. 4th 1178, 1204 (1999) (citation omitted)—i.e., findings specific enough to establish a
17 compelling interest sufficient to override the public's right of access to these records and to the
18 exclusion of more narrowly tailored and less restrictive means such as selective redaction of the
19 records in question.

20 As the Access Proponents explained more fully in their Opposition, filed Feb. 6, 2004, the
21 District Attorney's continued citation of the "official information" privilege of Evidence Code
22

23 ¹ The "Access Proponents" refer to National Broadcasting Company, Inc.; CBS Broadcasting Inc.;
24 Fox News Network L.L.C.; ABC, Inc.; Cable News Network LP, LLLP; Courtroom Television
25 Network LLC; The Associated Press; *Los Angeles Times*; and The New York Times Company.

26 ² Given the understandable time delays in this Court's posting to its website of motions to seal by
27 the District Attorney and other motions and/or requests that implicate the public's constitutional
28 right of access to the records and proceedings of this case, the Access Proponents respectfully
submit that henceforth, the District Attorney and Defendant Jackson's lawyers serve (or be
directed to serve) by facsimile any such motions and requests on the attorneys of record for the
Access Proponents as well.

1 §§ 1040(a) and 1042(b), as well as the entirety of the Child Abuse and Neglect Reporting Act, is
2 unavailing because surely neither provision authorizes the prosecutor in a case alleging child abuse of
3 some sort to cloak in secrecy everything that the government uses in obtaining any search warrant in
4 that case, or obtains as a result of executing any search warrant in that case. Again, the "official
5 information" privilege is an evidentiary privilege that covers, at most, information *confided* in
6 government officials, rather than anything and everything that the government somehow obtains in
7 the course of a criminal investigation. And again, at most, the Child Abuse and Neglect Reporting
8 Act protects the *identity* of "mandated reporters" under the Act, and there is no indication here that
9 anything connected with Search Warrant No. SW 4915 derives from a report of suspected child abuse
10 from anyone who is a "mandated reporter" under the Act. Penal Code §§ 11167, 11165.7. And,
11 irrespective of any state-law privileges that arguably may be implicated, these judicial records are
12 subject to the First Amendment's presumption of openness and can only be kept secret to the extent
13 these federal constitutional standards are satisfied.

14 Finally, as the Access Proponents observed in their Opposition, filed Feb. 6, 2004, the fact of
15 the search of F. Marc Schaffel's Calabasas residence is already widely publicly known and has been
16 publicly confirmed by a Los Angeles County Sheriff's spokesman. Consequently, any compelling
17 interests in keeping the fact or details of this search secret are vastly diminished and outweighed by
18 the weighty First Amendment values at stake. *See, e.g., In re Motions of Dow Jones & Company,*
19 *Inc.*, 142 F.3d 496, 505 (D.C. Cir. 1998) (citations omitted); *In re North*, 16 F.3d 1234, 1245 (D.C.
20 Cir. 1994).

21 For these reasons, the District Attorney's latest efforts to keep the warrant records in this case
22 sealed in their entirety should be rejected as a matter of law under the First Amendment to the United
23 States Constitution, Article I, Section 2 of the California Constitution, Penal Code §1534(a), the
24 common law, and California Rules of Court 243.1 and 243.2.

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1 DATED: February 11, 2004

2 Respectfully submitted,

3 GIBSON, DUNN & CRUTCHER LLP
4 Theodore J. Boutros, Jr.
5 Julian W. Poon

6 By:


Theodore J. Boutros, Jr.

7 Attorneys for National Broadcasting Company, Inc.;
8 CBS Broadcasting Inc.; Fox News Network L.L.C.;
9 ABC, Inc.; Cable News Network LP, LLLP; Courtroom
10 Television Network LLC; The Associated Press; *Los Angeles Times*; and The New York Times Company

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1 **CERTIFICATE OF SERVICE**

2 **MAIL, COMMERCIAL OVERNIGHT MESSENGER, FAX, HAND DELIVERY**

3 I, Lindie S. Joy, hereby certify as follows:

4 I am employed in the County of Los Angeles, State of California; I am over the age of
5 eighteen years and am not a party to this action; my business address is 333 South Grand Avenue,
6 Los Angeles, California 90071, in said County and State; I am employed in the office of Julian W.
7 Poon, a member of the bar of this Court, and at his/her direction, on February 11, 2004, I served the
8 following:

9 **OPPOSITION OF THE ACCESS PROPONENTS TO PLAINTIFF'S MOTION FOR**
10 **ORDER DIRECTING THAT SEARCH WARRANT NO. SW 4915, ITS**
11 **SUPPORTING AFFIDAVIT AND RETURN BE FILED AND MAINTAINED**
12 **UNDER CONDITIONAL SEAL UNTIL FURTHER ORDER OF COURT**

13 on the interested parties in this action, by:

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

16 Thomas W. Sneddon
17 District Attorney
18 Santa Barbara County
19 1105 Santa Barbara Street
20 Santa Barbara, CA 93101-2007

21 Mark John Geragos
22 Geragos & Geragos
23 350 S. Grand Avenue, Suite 3900
24 Los Angeles, CA 90071-3480

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

28 **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:

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

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

3 **Attorney Name & Address**

Fax and Callback Number

4 Thomas W. Sneddon
5 District Attorney
6 Santa Barbara County
7 1105 Santa Barbara Street
8 Santa Barbara, CA 93101-2007

Facsimile: (805) 568-2398
Telephone: (805) 568-2306

9 Mark John Geragos
10 Geragos & Geragos
11 350 S. Grand Avenue, Suite 3900
12 Los Angeles, CA 90071-3480

Facsimile: (213) 625-1600
Telephone: (213) 625-3900

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

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

16 to a messenger or messengers for personal delivery.

17 I certify under penalty of perjury that the foregoing is true and correct, that the foregoing
18 document(s), and all copies made from same, were printed on recycled paper, and that this Certificate
19 of Service was executed by me on February 11, 2004 at Los Angeles, California.

20 

21 Lindie S. Joy

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