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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

MAR - 1 2005

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

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

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

16 THE PEOPLE OF THE STATE OF
17 CALIFORNIA,

18 Plaintiff,

19 vs.

20 MICHAEL JOE JACKSON,

21 Defendant.

Case No.: 1133603

**ACCESS PROPONENTS' NOTICE OF
MOTION AND MOTION REQUESTING
TIMELY ACCESS TO COPIES OF ALL
VIDEOTAPES THAT HAVE BEEN AND
WILL BE PLAYED IN OPEN COURT AND
FOR PUBLIC RELEASE OF SUCH
VIDEOTAPES AND OTHER EXHIBITS
INTRODUCED AS EVIDENCE
THROUGHOUT THE TRIAL**

Date: TBD
Time: TBD
Place: Department SM-8,
Judge Rodney S. Melville

[VIA FACSIMILE]

22 TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

23 PLEASE TAKE NOTICE that as soon as possible in the above-entitled Court, located at
24 312-C East Cook Street, Santa Maria, California 93456-5369, NBC Universal, Inc.;
25 CBS Broadcasting Inc.; Fox News Network L.L.C.; ABC, Inc.; Cable News Network LP, LLLP;
26 The Associated Press; *Los Angeles Times*; The New York Times Company, *USA Today*; and Agence
27 France-Press (collectively, the "Access Proponents") will, and hereby do, move this Court to pro-
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**ACCESS PROPONENTS' NOTICE OF MOTION AND MOTION REQUESTING TIMELY ACCESS TO COPIES OF ALL
VIDEOTAPES THAT HAVE BEEN OR WILL BE PLAYED IN OPEN COURT AND FOR PUBLIC RELEASE OF SUCH
VIDEOTAPES AND OTHER EXHIBITS INTRODUCED AS EVIDENCE THROUGHOUT THE TRIAL**

Gibson, Dunn &
Crutcher LLP


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vide to the public copies of all videotapes that have been and will be played in open court and for public release of such videotapes and other exhibits introduced as evidence throughout the criminal trial of Michael Jackson. This Motion is made pursuant to California Rules of Court 243.1-243.2, the First Amendment of the United States Constitution, Article I, Section 2 of the California Constitution, and the common-law right of access to judicial records.

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

DATED: March 1, 2005

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

By: 
Theodore J. Boutros, Jr.

Attorneys for 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; *USA Today*; Agence France-Presse

MEMORANDUM OF POINTS AND AUTHORITIES

I INTRODUCTION

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4 The Access Proponents, a group of media organizations,¹ respectfully move this Court pursu-
5 ant to the California Rules of Court 243.1-243.2² to grant timely public access to all videotapes that
6 have been or will be played in open court and for public release of copies of such videotapes and
7 other exhibits introduced as evidence throughout Michael Jackson's trial. Such videotapes and
8 documents are judicial records to which the public may not be denied access absent explicit, nar-
9 rowly-tailored findings that are issued *before* they are sealed. See Cal. R. Ct. 243.1(c). In addition,
10 the Court's practice of allowing a courthouse visitor to inspect the judicial records at issue, but pre-
11 venting that same visitor from obtaining a copy of those records, is insufficient because "[t]he exis-
12 tence of the common law right to inspect *and copy* judicial records is beyond dispute." *In re Applica-*
13 *tion of National Broadcasting Co.*, 635 F.2d 945, 949 (2d Cir. 1980) (emphasis added).

14 A "presumption of openness inheres in the very nature of a criminal trial under our system of
15 justice." *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4th 1178, 1200 (1999) (quot-
16 ing *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980) (plurality)). And because of
17 "the critical importance of *contemporaneous* access . . . to the public's role as overseer of the crimi-
18 nal justice process," *Washington Post v. Robinson*, 935 F.2d 282, 287 (D.C. Cir. 1991), copies of the
19 tapes aired during past hearings and throughout the trial, as well as other exhibits, must be made
20 available to the public as soon as possible. The entire public, not just select reporters, has a right to
21 see what is aired and admitted during these open proceedings in order to truly satisfy the principle
22 that "what transpires in the court room is public property." *NBC Subsidiary*, 20 Cal. 4th at 1197
23 (quoting *Craig v. Harney*, 331 U.S. 367, 374 (1947)); *Nixon v. Warner Communications*, 435 U.S.

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25 ¹ NBC Universal, Inc.; CBS Broadcasting Inc.; Fox News Network L.L.C.; ABC, Inc.; Cable News
26 Network LP, LLLP; The Associated Press; *Los Angeles Times*; The New York Times Company;
and *USA Today*; and Agence France-Presse.

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

589, 597 (1978) ("It is clear that the courts of this country recognize a general right to inspect *and copy* public records and documents, including judicial records and documents.") (emphasis added, footnote omitted). The argument that prospective jurors might be so influenced by seeing these materials as to threaten Mr. Jackson's right to a fair trial, an argument with which the Access Proponents vigorously disagree, no longer applies. There is simply no basis for denying the entire public the ability to see what is now available only to the select few who can secure a place in the crowded courtroom.

II ARGUMENT

Videotapes played in Court already, and those to be played in the future, must be released and made available for copying. These tapes, which have been and will be introduced as exhibits and aired in open court, are clearly judicial records within the meaning of Rule 243.1 of the California Rules of Court, which defines "record" to include "all or a portion of any document, paper, exhibit, transcript, or other thing filed or lodged with the court." Cal. R. Ct. 243.1(b)(1); *see also United States v. Graham*, 257 F.3d 143, 151 n.3 (2d Cir. 2001) (noting that the word "documents" "has been held to apply to audio and video tapes"). As judicial records, the tapes are subject to the presumption of openness established by the Rule and the First Amendment. Cal. R. Ct. 243.1(c) ("Unless confidentiality is required by law, court records are presumed to be open"); *see also Copley Press, Inc. v. Superior Court*, 6 Cal. App. 4th 106, 111 (1992) ("in general" the First Amendment provides "broad access rights to judicial hearings and records . . . both in criminal and civil cases"). To deny or delay public access to the tapes already aired in court, or to any tapes to be aired in the future, "impermissibly reverse[s] the presumption of openness that characterizes criminal proceedings under our system of justice." *Associated Press v. United States Dist. Court*, 705 F.2d 1143, 1147 (9th Cir. 1983) (internal citations omitted).

In addition, there is no basis for preventing members of the public from being able to exercise their right to *obtain copies* of these judicial records. *Nixon v. Warner Communications*, 435 U.S. 589, 597 (1978) ("It is clear that the courts of this country recognize a general right to inspect *and*

1 copy public records and documents, including judicial records and documents.”) (emphasis added,
2 footnote omitted).³ Indeed, as the Second Circuit held in *In re Application of National Broadcasting*
3 *Co.*, 635 F.2d 945 (2d Cir. 1980), “there is a presumption in favor of public inspection and copying
4 of any item entered into evidence at a public session of a trial.” *Id.* at 952 (emphasis added). In that
5 case, relating to the “Abscam” scandal of the early 1980s, the court affirmed a decision allowing
6 news organizations to have copies of audio and videotapes aired in open court showing
7 the defendants, including members of Congress, accepting alleged bribes from undercover operatives.
8 *Id.* at 947-48. According to the court, “[o]nce the evidence has become known to the members of
9 the public, including representatives of the press, through their attendance at a public session of
10 court, it would take the most extraordinary circumstances to justify restrictions on the opportunity
11 of those not physically in attendance at the courtroom to see and hear the evidence” *Id.* (em-
12 phasis added).
13
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15 Here there is no reason to prevent the public from obtaining copies of the materials entered
16 into the public record in this case.⁴ Indeed, no matter what the tapes show, “[t]he media already en-
17 joy an incontestable first amendment right to publicize and editorialize on the contents of the tapes
18 whether or not copies are available for transmission.” *Valley Broad. Co. v. United States*, 798 F.2d
19 1289, 1295, 1297 (9th Cir. 1986) (ordering access to duplicate tapes and access to new tapes on the
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22 ³ While the *Nixon* Court ultimately rejected public copying of the Watergate tapes, it did so be-
23 cause Congress had modified the right to copy these materials with legislation specifically re-
24 stricting public access to the Watergate tapes. *See Nixon*, 435 U.S. at 603-04; *see also In re Ap-*
25 *plication of National Broadcasting Co.*, 635 F.2d at 950 (discussing this aspect of *Nixon* and fur-
26 ther noting that “[t]he existence of the common law right to inspect and copy judicial records is
27 beyond dispute”).

28 ⁴ The Access Proponents believe that arrangements for copying the videotapes aired at past and
future proceedings, as well as other exhibits, can be addressed with the Pool Coordinator.
Of course, the Access Proponents will make their best efforts in working with the Court to mini-
mize any burdens on court personnel.

1 day they are received in evidence). Without the ability to obtain copies of these materials, however,
2 the videotapes and other exhibits cannot be considered truly "public."

3 Indeed, even in high-profile cases where a jury has not yet been empanelled, the Second Cir-
4 cuit recently has held that "while the events surrounding the instant case have gained some notoriety,
5 the possibility that the jury pool will become so tainted as to prevent the defendants here from obtain-
6 ing fair trials is too speculative to justify denial of the public's right to inspect and copy evidence pre-
7 sented in open court." *Graham*, 257 F.3d at 155. Here, a jury already has been selected and there is
8 not even an arguable risk to Mr. Jackson's right to a fair trial. Moreover, releasing copies in a timely
9 manner will prevent any errors in the translation from the few people who are in the courtroom dur-
10 ing presentation of the evidence to everyone else that is unable to attend. This transparency, the abil-
11 ity to see exactly what the jurors could see, is the surest way to ensure the public will accept the
12 jury's eventual verdict in this case, whatever it may be. "People in an open society do not demand
13 infallibility from their institutions, but it is difficult for them to accept what they are prohibited from
14 observing." *Press-Enterprise II*, 478 U.S. at 13 (quoting *Richmond Newspapers*, 448 U.S. at 572
15 (plurality)).

18 III 19 CONCLUSION


20 The First Amendment to the United States Constitution, Article I, Section 2 of the California
21 Constitution, the common law, and California Rule of Court 243.1 dictate that the public must have
22 the ability to review and obtain copies of videotapes and other exhibits introduced into evidence at
23 the Court's past and future proceedings. Accordingly, this Court should grant this motion in its en-
24 tirety and allow the Access Proponents to work with the Pool Coordinator and court personnel to cre-
25 ate and obtain copies of the materials introduced into evidence.

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DATED: March 1, 2005

Respectfully submitted.

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

By: 
Theodore J. Boutros, Jr.

Attorneys for NBC Universal, Inc.; CBS
Broadcasting Inc.; Fox News Network
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Los Angeles Times; The New York Times
Company; *USA Today*; Agence France-
Presse

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VIDEOTAPES AND OTHER EXHIBITS INTRODUCED AS EVIDENCE THROUGHOUT THE TRIAL

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

I, Christopher Ginnaven, 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 a member of the bar of this Court, and on March 1, 2005, I served the following:

ACCESS PROPONENTS' NOTICE OF MOTION AND MOTION REQUESTING TIMELY ACCESS TO COPIES OF ALL VIDEOTAPES THAT HAVE BEEN OR WILL BE PLAYED IN OPEN COURT AND FOR PUBLIC RELEASE OF SUCH VIDEOTAPES AND OTHER EXHIBITS INTRODUCED AS EVIDENCE THROUGHOUT THE TRIAL

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.

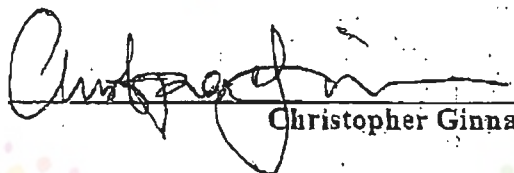
Thomas W. Sneddon District Attorney Santa Barbara County 1105 Santa Barbara Street Santa Barbara, CA 93101-2007 Attorneys for Plaintiffs	Tel.: (805) 568-2300 Fax: (805) 568-2398
Thomas A. Mesereau, Jr. Collins, Mesereau, Reddock & Yu LLP 1875 Century Park East, 7th Floor Los Angeles, CA 90067 Attorneys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

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

7 Thomas W. Sneddon 8 District Attorney 9 Santa Barbara County 10 1105 Santa Barbara Street 11 Santa Barbara, CA 93101-2007 12 Attorneys for Plaintiffs	Tel.: (805) 568-2300 Fax: (805) 568-2398
13 Thomas A. Mesereau, Jr. 14 Collins, Mesereau, Reddock & Yu LLP 15 1875 Century Park East, 7th Floor 16 Los Angeles, CA 90067 Attorneys for Defendant Michael Jackson	Tel.: (310) 284-3120 Fax:
17 Robert Sanger 18 Sanger & Swysen, Lawyers 19 233 E. Carrillo Street, Suite C 20 Santa Barbara, CA 93101 21 Co-Counsel for Defendant Michael Jack- 22 son	Tel.: (805) 962-4887 Fax: (805) 963-7311

23 I certify under penalty of perjury under the laws of the State of California that the foregoing is
24 true and correct, that the foregoing document(s), and all copies made from same, were printed on re-
25 cycled paper, and that this Certificate of Service was executed by me on March 1, 2005, at Los Ange-
26 les, California.

27 
28 Christopher Ginnaven

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