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6 Network L.L.C.; ABC, Inc.; Cable News
Network LP, LLLP; Courtroom Television
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

APR 26 2004

GARY M. BLAIR, Executive Officer
BY Sheryl L. Edwards
SHERYL L. EDWARDS

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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.

Case No.: 1133603

**OPPOSITION OF THE ACCESS
PROponents TO MOTION FOR ORDER
DIRECTING THAT SEARCH WARRANT
NOS. SW 4977 AND 4977A, THEIR
SUPPORTING AFFIDAVITS AND ANY
RETURN BE FILED AND MAINTAINED
UNDER CONDITIONAL SEAL UNTIL
FURTHER COURT ORDER; RENEWED
REQUEST TO UNSEAL THE PEOPLE'S
APPLICATION FOR AN ORDER TO
SHOW CAUSE RE CONTEMPT**

Date: Friday, April 30, 2004

Time: 8:30 a.m.

Place: Department SM9,
Judge Rodney S. Melville

[VIA FACSIMILE]

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OPPOSITION OF THE ACCESS PROponents TO MOTION FOR ORDER DIRECTING THAT SEARCH WARRANT NOS. SW 4977 AND
4977A, THEIR SUPPORTING AFFIDAVITS AND ANY RETURN BE FILED AND MAINTAINED UNDER CONDITIONAL SEAL UNTIL
FURTHER COURT ORDER; RENEWED REQUEST TO UNSEAL THE PEOPLE'S APPLICATION FOR AN ORDER TO SHOW
CAUSE RE CONTEMPT

1 The Access Proponents¹ respectfully file this Opposition to the District Attorney's Motion for
2 Order Directing that Search Warrant Nos. SW 4977 and 4977A, Their Supporting Affidavits and Any
3 Return Be Filed and Maintained Under Conditional Seal Until Further Court Order. The Access
4 Proponents also renew their previous request that the Court unseal the People's Application for an
5 Order to Show Cause re Contempt.

6 **1. Search Warrant Numbers SW 4977 and SW 4977A and Other Warrants**

7 The District Attorney's motion to seal Warrant Numbers SW 4977 and SW 4977A simply
8 repeats his earlier arguments regarding other warrants and makes conclusory assertions about the
9 need for secrecy. The Access Proponents have previously briefed to this Court the federal and
10 California authority that establishes a strong presumption against sealing such judicial records, and
11 the District Attorney's latest submission fails to overcome that presumption.² The Access
12 Proponents hereby incorporate their prior arguments by reference and request that the Court unseal,
13 to the maximum extent possible, Warrant Numbers SW 4977 and SW 4977A and all related warrant
14

15 ¹ The "Access Proponents" refer to National Broadcasting Company, Inc.; CBS Broadcasting Inc.;
16 Fox News Network L.L.C.; ABC, Inc.; Cable News Network LP, LLLP; Courtroom Television
17 Network LLC; The Associated Press; *Los Angeles Times*; and The New York Times Company.
18 ² See, e.g., Notice of Motion and Motion, Filed by the Access Proponents; Seeking to Unseal
19 Certain Court Records Related to Search Warrant #884686 (filed Jan. 7, 2004); Opposition of the
20 Access Proponents to Plaintiff's Request for Protective Order (filed Jan. 12, 2004); Reply of the
21 Access Proponents to Defendant's Opposition to the Access Proponents' Motion to Unseal
22 Certain Court Records Related to Search Warrant #884686 (filed Jan. 13, 2004); Opposition of
23 the Access Proponents to Plaintiff's Motions to Seal Certain Search Warrants and Related
24 Documents, as Well as Certain Items to be Lodged by the Sheriff with the Court (filed Feb. 6,
25 2004); Opposition of the Access Proponents to Plaintiff's Motion to Seal Computer Hard-Drives
26 Search Warrants and Related Documents (filed Feb. 9, 2004); Opposition of the Access
27 Proponents to Plaintiff's Motion to Seal Search Warrant No. SW 4912 and Its Related Documents
28 (filed Feb. 11, 2004); Opposition of the Access Proponents to Plaintiff's Motion to Seal Search
Warrant No. SW 4915 and Its Related Documents (filed Feb. 11, 2004); Opposition of the Access
Proponents to Plaintiff's and Defendant's Motions to Seal Briefs re Attorney-Client and
Attorney-Work-Product Privileges (filed Feb. 13, 2004); Response of the Access Proponents to
Defendant's Consolidated Response Re Computer Hard-Drives Search Warrant, Seven Telephone
Service Providers Search Warrants, and Search Warrant No. SW 4912 (filed Feb. 13, 2004);
Objections of the Access Proponents To the Sealing 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 materials and renew their requests that the Court unseal the affidavits (including the original 82-page
2 affidavit, as well as SW 4912, which remains under seal in toto) and all other warrant-related
3 materials.

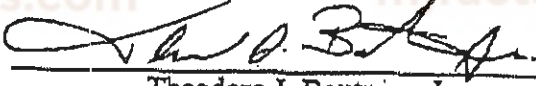
4 2. The People's Application for an Order to Show Cause re Contempt

5 At the April 2 hearing, in response to the Access Proponents' request that the Court unseal the
6 People's Application for an Order to Show Cause re Contempt ("the Application"), the Court noted
7 that the Access Proponents "bring home a point that deserves attention," April 2, 2004 RT at 44-45
8 (attached as Exhibit A), and ordered the District Attorney to submit a redacted version of the
9 Application so that the Court might be able to release it to the public. The District Attorney
10 apparently has not done so, and the Application remains under seal. The Access Proponents
11 respectfully renew their request that the Application be unsealed immediately because of "the *critical*
12 *importance of contemporaneous access . . . to the public's role as overseer of the criminal justice*
13 *process.*" *Washington Post v. Robinson*, 935 F.2d 282, 287 (D.C. Cir. 1991) (emphases added)
14 (citing *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 592 (1980) (Brennan, J., concurring));
15 *see also Associated Press v. United States Dist. Ct.*, 705 F.2d 1143, 1147 (9th Cir. 1983) (holding
16 that even a 48-hour delay in unsealing documents was "a total restraint on the public's first
17 amendment right of access even though the restraint is limited in time"). As one United States Court
18 of Appeals has explained, "[t]imeliness of publication is the hallmark of 'news' and the difference
19 between 'news' and 'history' is merely a matter of hours." *United States v. Dickinson*, 465 F.2d 496,
20 512 (5th Cir. 1972).

21 Dated: April 26, 2004

22 Respectfully submitted,

23 GIBSON, DUNN & CRUTCHER LLP
24 Theodore J. Boutros, Jr.
25 Julian W. Poon

26 By: 
27 Theodore J. Boutros, Jr.

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EXHIBIT A



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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF SANTA BARBARA
3 SANTA MARIA BRANCH; COOK STREET DIVISION
4 DEPARTMENT SM-2 HON. RODNEY S. MELVILLE, JUDGE
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10 THE PEOPLE OF THE STATE OF)
CALIFORNIA,)
11 Plaintiff,)
12 -vs-)
13 MICHAEL JOE JACKSON,)
14 Defendant,)

No. 1133603

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18 REPORTER'S TRANSCRIPT OF PROCEEDINGS

19
20 FRIDAY, APRIL 2, 2004

21 8:30 A.M.
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27 REPORTED BY: MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304
Official Court Reporter

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COPY
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1 become, I would ask that the Court maintain the
2 order that you've signed and not vary from it.

3 Thank you, sir.

4 MR. FRANKLIN: Again, we join Mr. Brafman
5 in that comment'.

6 THE COURT: Well, the protective order
7 speaks for itself. I don't intend to enlarge it
8 by anything I say in court. If you thought I did,
9 you know, that's not true.

10 But you did bring -- you did bring home a
11 point that deserves attention. I will order that
12 the District Attorney go back and look at the --
13 even though I have refused to issue the contempt
14 citation requested, that the District Attorney
15 make a request that that be filed under seal, and
16 that they prepare a proposed redacted order that
17 the Court might be able to release that would
18 not -- would not breach the protective order.

19 MR. FRANKLIN: All right.

20 THE COURT: And I think that was the -- I
21 had believed that was how things were going to be
22 done some time ago.

23 MR. FRANKLIN: Let me understand. The
24 Court asks the District Attorney to prepare a
25 request that the -- that a redacted version of the
26 earlier request for Order to Show Cause be
27 prepared for the Court's submission and
28 consideration.

1 THE COURT: I'm requesting that you file a
2 request to seal the order that I sealed without
3 your request, and that you submit, with that
4 request, a proposed redacted copy that I could
5 release.

6 MR. FRANKLIN: Yes.

7 THE COURT: So that I can -- you can help
8 me deal with the volume of material that I'm
9 trying to deal with.

10 MR. FRANKLIN: I'll do that.

11 MR. BOUTROUS: There was one other issue,
12 Your Honor, and I want to address that last point.

13 We do appreciate that the Court released
14 more materials last week and know that going
15 through the materials and doing the redactions is
16 time-consuming. I appreciate that. But I wanted
17 to renew our request, just for the record, because
18 some of the materials apparently include the 82-
19 page affidavit and other things that have served
20 as the predicate that all --

21 THE COURT: They're incorporated in some
22 of the other affidavits.

23 MR. BOUTROUS: And I can -- just one last
24 point, just to respond to Mr. Brafman.

25 Of course there are provisions of
26 California law that keep certain things secret
27 involving a minor, but we cited the Martha Stewart
28 case where similar arguments were made; that

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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 April 26, 2004, I served the following:

OPPOSITION OF THE ACCESS PROPONENTS TO MOTION FOR ORDER DIRECTING THAT SEARCH WARRANT NOS. SW 4977 AND 4977A, THEIR SUPPORTING AFFIDAVITS AND ANY RETURN BE FILED AND MAINTAINED UNDER CONDITIONAL SEAL UNTIL FURTHER COURT ORDER; RENEWED REQUEST TO UNSEAL THE PEOPLE'S APPLICATION FOR AN ORDER TO SHOW CAUSE RE CONTEMPT

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

Mark J. Geragos
Geragos & Geragos
350 S. Grand Avenue, Suite 3900
Los Angeles, CA 90071-3480

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:


5	Attorney Name & Address	Fax and Callback Number
6	Thomas W. Sneddon	Facsimile: (805) 568-2398
7	District Attorney	Telephone: (805) 568-2306
8	Santa Barbara County	
9	1105 Santa Barbara Street	
10	Santa Barbara, CA 93101-2007	
11	Mark J. Geragos	Facsimile: (213) 625-1600
12	Geragos & Geragos	Telephone: (213) 625-3900
13	350 S. Grand Avenue, Suite 3900	
14	Los Angeles, CA 90071-3480	
15	Thomas A. Mesereau, Jr.	Facsimile: (310) 284-3133
16	Collins, Mesereau, Reddock & Yu, LLP	Telephone: (310) 284-3120
17	1875 Century Park East, 7th Floor	
18	Los Angeles, CA 90067	
19	Steve Cochran	Facsimile: (310) 712-8455
20	Katten, Muchin, Zavis & Rosenman	Telephone: (310) 788-4455
21	2029 Century Park East	
22	Suite 2600	
23	Los Angeles, CA 90067-3012	

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 April 26, 2004 at Los Angeles, California.


Cynthia Altounian

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