

1 GIBSON, DUNN & CRUTCHER LLP  
2 THEODORE J. BOUTROUS, JR., SBN 132099  
3 DOMINIC LANZA, SBN 225989  
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

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

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

AUG 11 2004

GARY M. BLAIR, Executive Officer  
BY *Garry M. Blair*  
GARRIE L. WAGNER, Deputy Clerk

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

**OPPOSITION TO MOTIONS TO FILE  
UNDER SEAL FILED SINCE THE JULY 27,  
2004 HEARING**

Date: August 16, 2004

Time: 8:30 a.m.

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

[VIA FACSIMILE]

22 The Access Proponents, a group of media organizations,<sup>1</sup> respectfully file this opposition to  
23 any and all motions to file under seal that have been filed or will be filed following the July 27, 2004  
24 hearing. Neither Mr. Jackson's celebrity status nor the intense public and media interest in this case  
25 defeat the public's presumptive rights of access to these judicial records. *See, e.g., NBC Subsidiary*  
26 *(KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4th 1178, 1225 (1999) ("The First Amendment right of  
27 access cannot be overcome by the conclusory assertion that publicity *might* deprive the defendant of

28 <sup>1</sup> 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 *USA Today*.

1 th[e] right [to a fair trial].”)) (quoting *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 15 (1986))  
2 (italics added by California Supreme Court); *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 565  
3 (1976) (“[P]retrial publicity, even if pervasive and concentrated, cannot be regarded as leading  
4 automatically and in every kind of criminal case to an unfair trial.”); *ABC, Inc. v. Stewart*, 360 F.3d  
5 90, 102 (2d Cir. 2004) (“The mere fact that the [Martha Stewart] suit has been the subject of intense  
6 media coverage is not . . . sufficient to justify closure. To hold otherwise would render the First  
7 Amendment right of access meaningless; the very demand for openness would paradoxically defeat  
8 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.”) (emphasis added).

10 The Access Proponents have previously briefed to this Court the federal and California  
11 authority that establishes a strong presumption against sealing such judicial records, and the parties’  
12 latest submissions once again fail to overcome that presumption.<sup>2</sup> The Access Proponents hereby

13 <sup>2</sup> See, e.g., Notice of Motion and Motion, Filed by the Access Proponents; Seeking to Unseal  
14 Certain Court Records Related to Search Warrant #884686 (filed Jan. 7, 2004); Opposition of the  
15 Access Proponents to Plaintiff’s Request for Protective Order (filed Jan. 12, 2004); Reply of the  
16 Access Proponents to Defendant’s Opposition to the Access Proponents’ Motion to Unseal  
17 Certain Court Records Related to Search Warrant #884686 (filed Jan. 13, 2004); Opposition of  
18 the Access Proponents to Plaintiff’s Motions to Seal Certain Search Warrants and Related  
19 Documents, as Well as Certain Items to be Lodged by the Sheriff with the Court (filed Feb. 6,  
20 2004); Opposition of the Access Proponents to Plaintiff’s Motion to Seal Computer Hard-Drives  
21 Search Warrants and Related Documents (filed Feb. 9, 2004); Opposition of the Access  
22 Proponents to Plaintiff’s Motion to Seal Search Warrant No. SW 4912 and Its Related Documents  
23 (filed Feb. 11, 2004); Opposition of the Access Proponents to Plaintiff’s Motion to Seal Search  
24 Warrant No. SW 4915 and Its Related Documents (filed Feb. 11, 2004); Opposition of the Access  
25 Proponents to Plaintiff’s and Defendant’s Motions to Seal Briefs re Attorney-Client and  
26 Attorney-Work-Product Privileges (filed Feb. 13, 2004); Response of the Access Proponents to  
27 Defendant’s Consolidated Response Re Computer Hard-Drives Search Warrant, Seven Telephone  
28 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); 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 (filed April 26, 2004); Access  
Proponents’ Notice of Motion and Motion to Unseal Grand Jury Indictment (filed May 18, 2004);  
Access Proponents’ Notice of Motion and Motion to Unseal Transcripts of Grand Jury  
Proceedings (filed May 18, 2004); Opposition to Motions to File Under Seal and Objections to  
Procedure for Sealing Records, Including Docket Sheets, and Holding Ex Parte Hearings (filed

[Footnote continued on next page]

1 incorporate their prior arguments by reference and request that the Court unseal, to the maximum  
2 extent possible, any and all motions to seal that have been or will be filed following the July 27, 2004  
3 hearing. The First Amendment to the United States Constitution, the California Constitution, Rule  
4 243.1 of the California Rules of Court, and the common law dictate that abstract notions of the  
5 Defendant's fair trial right cannot be invoked to create a presumption of secrecy. The materials  
6 currently under seal, therefore, must be disclosed and open to the public.

7 In addition, for these same reasons, the Access Proponents object to the sealing of the  
8 transcripts of the August 6, 2004 telephonic hearing (and reassert their objections to closure of that  
9 hearing). The Court's minute order relating to that hearing cannot cure the constitutional deficiencies  
10 of closure or sealing and, in fact, that order provides no information concerning what actually  
11 transpired during that hearing.

12  
13 DATED: July 6, 2004

Respectfully submitted,

14 GIBSON, DUNN & CRUTCHER LLP  
15 Theodore J. Boutrous, Jr.  
16 Dominic Lanza  
17 Michael H. Dore

By: 

Theodore J. Boutrous, Jr.

18 Attorneys for NBC Universal, Inc.; CBS  
19 Broadcasting Inc.; Fox News Network L.L.C.;  
20 ABC, Inc.; Cable News Network LP, LLLP; The  
21 Associated Press; *Los Angeles Times*; The New  
22 York Times Company; and *USA Today*

23  
24  
25 [Footnote continued from previous page]

26 June 21, 2004); Supplement to Opposition to Motions to File Under Seal and Objections to  
27 Procedure for Sealing Records, Including Docket Sheets, and Holding Ex Parte Hearings (filed  
28 June 23, 2004); Opposition to Motions To File Under Seal Filed Since the June 25, 2004 Hearing  
(filed July 6, 2004).

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

I, **Barbara Cruz**, 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 August 11, 2004, I served the following:

**OPPOSITION TO MOTIONS TO FILE UNDER SEAL FILED SINCE  
THE JULY 27, 2004 HEARING**

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 93001 Co-Counsel for Defendant Michael Jackson	Tel.: (805) 962-4887 Fax: (805) 963-7311

- BY FACSIMILE:** From facsimile number (213) 229-7520, I caused each such document to be transmitted by facsimile machine, to the parties and numbers indicated below. No error was reported by the machine.

1 Thomas W. Sneddon 2 District Attorney 3 Santa Barbara County 4 1105 Santa Barbara Street 5 Santa Barbara, CA 93101-2007 6 Attorneys for Plaintiffs	Tel.: (805) 568-2300 Fax: (805) 568-2398
7 Thomas A. Mescreau, Jr. 8 Collins, Mescreau, Reddock & Yu LLP 9 1875 Century Park East, 7th Floor 10 Los Angeles, CA 90067 11 Attorneys for Defendant Michael Jackson	Tel.: (310) 284-3120 Fax:
12 Robert Sanger 13 Sanger & Swysen, Lawyers 14 233 E. Carrillo Street, Suite C 15 Santa Barbara, CA 93001 16 Co-Counsel for Defendant Michael Jackson	Tel.: (805) 962-4887 Fax: (805) 963-7311

- 17  I am employed in the office of Theodore J. Boutrous, Jr., a member of the bar of this court, and  
 18 that the foregoing document(s) was(were) printed on recycled paper.
- 19  (STATE) I declare under penalty of perjury under the laws of the State of California that  
 20 the foregoing is true and correct.
- 21  (FEDERAL) I declare under penalty of perjury that the foregoing is true and correct.

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

25   
 26 \_\_\_\_\_  
 27 Barbara Cruz

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