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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

JUN 13 2005

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

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

11 THE PEOPLE OF THE STATE OF
12 CALIFORNIA,

13 Plaintiff,

14 vs.

15 MICHAEL JOE JACKSON,

16 Defendant.

Case No.: 1133603.

**SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF ACCESS PROPONENTS'
REQUESTS FOR PUBLIC ACCESS TO
RECORDS AND PROCEEDINGS
RELATING TO JURY DELIBERATIONS**

Date: June 16, 2005

Time: 8:30 a.m.

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

[VIA FACSIMILE]

19 "A trial is a public event" and "[w]hat transpires in the court room is public property."
20 *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4th 1178, 1198 (1999) (quoting *Craig v.*
21 *Harney*, 331 U.S. 367, 374 (1947)); Cal. Code Civ. Proc. § 124 ("the sittings of every court shall be
22 public"). This, of course, includes interactions among the Court, the lawyers and the jury during jury
23 deliberations. *Cf. People v. Thompson*, 50 Cal. 3d 134, 173 (1990) ("Any private communication
24 between judge and jury is improper."). Such communications, including questions posed by the jury
25 and requests for read-backs of testimony, are at the very heart of the trial and absolutely essential to
26 understanding what is transpiring. But it appears that the Court, without making any findings to
27 override the presumption of openness and justify secrecy under *NBC Subsidiary*, is continuing to
28 convene unannounced closed-door hearings to address such issues. *See* "Jackson Jury Adjourns For

1 Weekend," www.cnn.com (June 10, 2005) (reporting that "jurors asked a number of questions and
2 also asked to have portions of the testimony of Jackson's 15-year-old accuser read back to them . . .
3 At least three meetings were held involving Santa Barbara County Superior Court Judge Rodney
4 Melville and attorneys in the case"). This clandestine approach patently violates the First
5 Amendment and Article I, section 2 of the California Constitution. *NBC Subsidiary*, 20 Cal. 4th at
6 1178-1226.

7 There is no conceivable basis for keeping these proceedings hidden from public view – except
8 to prevent news coverage and public discussion, which is plainly not a constitutionally acceptable
9 reason for holding secret judicial proceedings. The need to ensure an untainted jury pool is obviously
10 no longer at issue since the jury was long ago selected and is now deliberating, and public
11 proceedings regarding jury inquiries pose no discernible threat to the sanctity of the jury deliberations
12 because *the jurors themselves are the ones posing the questions* and, in any event, have been
13 admonished to avoid media coverage of the case. This Court "must presume that jurors generally
14 follow instructions to avoid media coverage, and to disregard coverage that they happen to hear or
15 see," *id.* at 1223-24, and the Court apparently is doing just that because it has not ordered that the
16 jury be sequestered.

17 Barring the public from these final, pivotal stages of this case is, from a constitutional
18 standpoint, simply intolerable. The parties' arguments, and the Court's rulings regarding these jury
19 inquiries, could very well be dispositive of the result. To have the lawyers in this case apparently
20 entering into the courthouse through a side door to attend secret hearings which produce secret
21 communications to a deliberating jury in a criminal trial seriously risks undermining public
22 confidence in whatever verdict the jury ultimately reaches. "People in an open society do not
23 demand infallibility from their institutions, but it is difficult for them to accept what they are
24 prohibited from observing." *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 13 (1986);

1 see *NBC Subsidiary*, 20 Cal. 4th at 1219 (emphasizing that openness is intended to foster public
2 confidence in the system).¹

3 For all of these reasons, Access Proponents respectfully request that the Court immediately
4 release judicial records and transcripts of all proceedings relating to jury questions and read-backs
5 that have occurred thus far and to allow contemporaneous public access to any such future records
6 and proceedings.² Since time is of the essence and these requests could be mooted absent prompt
7 relief, Access Proponents again ask that the Court grant their requests, without a hearing, or re-
8 calendar the currently scheduled June 16 hearing for the soonest possible time.

9 DATED: June 13, 2005

Respectfully submitted,

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

12
13 By: *Theodore J. Boutros, Jr.* /MD
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16 L.L.C.; ABC, Inc.; Cable News Network
17 LP, LLLP; The Associated Press;
18 *Los Angeles Times*; The New York Times
19 Company; and *USA Today*

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25 ¹ The legal requirements of openness apply with equal force to telephonic hearings, which could be
covered by a pool reporter.

26 ² The Pool Coordinator has proposed use of a simple form that would allow the Court to disclose
27 what portions of the transcript the jury has asked to have read back to them. The Pool
28 Coordinator and Access Proponents stand ready to assist the Court in any way to ensure
maximum public access in a manner that imposes the least possible burdens on the Court.

CERTIFICATE OF SERVICE

BY FAX AND REGULAR MAIL

I, Michael Dore, 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 June 13, 2005, I served the following:

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF ACCESS PROPONENTS' REQUESTS FOR PUBLIC ACCESS TO RECORDS AND PROCEEDINGS RELATING TO JURY DELIBERATIONS

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.

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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

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 6 7	Stephen Underwood Chief Assistant County Counsel 105 East Anapamu, Suite 201 Santa Barbara, CA 93101	Tel.: (805) 568-2950 Fax: (805) 568-2982
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19
20 I certify under penalty of perjury under the laws of the State of California that the foregoing is
21 true and correct, that the foregoing document(s), and all copies made from same, were printed on
22 recycled paper, and that this Certificate of Service was executed by me on June 13, 2005, at
23 Los Angeles, California.

24 

25 **Michael Dore**

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