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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY OF SANTA BARBARA

APR 19 2005

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BY *Carrie L. Wagner*
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5 Attorneys for NBC Universal, Inc.; CBS
6 Broadcasting Inc.; Fox News Network L.L.C.;
7 ABC, Inc.; Cable News Network LP, LLLP;
8 The Associated Press; *Los Angeles Times*; The
9 New York Times Company; *USA Today*; The
10 Washington Post; and Agence France-Press

11
12 SUPERIOR COURT, STATE OF CALIFORNIA
13 FOR THE COUNTY OF SANTA BARBARA

14 THE PEOPLE OF THE STATE OF
15 CALIFORNIA,

16 Plaintiff,

17 vs.

18 MICHAEL JOE JACKSON,

19 Defendant.

Case No.: 1133603

**ACCESS PROPONENTS' REQUEST FOR
IMMEDIATE RELEASE OF IN CAMERA
HEARING TRANSCRIPT**

Date: Not set

Time: Not set

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

[VIA FACSIMILE]

20 Access Proponents¹ understand that today, April 19, 2005, the Court cut short testimony in
21 the criminal prosecution of Michael Jackson and conducted an in camera hearing, transcribed by a
22 court reporter, without making express findings that would justify this restriction on public access.
23 Access Proponents respectfully submit that this procedure is improper, and request that the Court
24 immediately release a full version of the transcript, or a redacted version with findings explaining
25 why the hearing was closed to the public and the basis for the redactions. In addition,

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

1 Access Proponents renew their request for the Court to provide meaningful notice to the public before
2 conducting closed proceedings and to issue detailed findings explaining why closure is warranted.

3 In *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal. 4th 1178, the California
4 Supreme Court recognized that “traditional Anglo-American jurisprudence distrusts secrecy in
5 judicial proceedings and favors a policy of maximum public access to proceedings and records of
6 judicial tribunals.” 20 Cal. 4th at 1211 n.28 (quoting *Estate of Hearst*, 67 Cal. App. 3d 777, 784
7 (1977)). Accordingly, there is a strong presumption, rooted in the First Amendment, that everything
8 that happens in the courtroom will be open to public view and scrutiny. *See id.* at 1200 (noting that a
9 “presumption of openness inheres in the very nature of a criminal trial under our system of justice”)
10 (quoting *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980) (plurality)); *see also* Cal.
11 Code Civ. Proc. 124 (noting that with limited exceptions, “the sittings of every court shall be
12 public”).

13 The *NBC Subsidiary* Court held that the “presumption of openness may be overcome only by
14 an *overriding interest* based on findings that closure is essential to preserve higher values and is
15 narrowly tailored to serve that interest. *The interest is to be articulated along with findings specific*
16 *enough that a reviewing court can determine whether the closure order was properly entered.”*
17 20 Cal. 4th at 1204 (quoting *Press-Enterprise I*, 464 U.S. at 510) (emphasis added by California
18 Supreme Court); *see also Globe Newspaper*, 457 U.S. at 606-07 (“Where . . . the state attempts to
19 deny the right of access in order to inhibit the disclosure of sensitive information, it must be shown
20 that the denial is necessitated by a compelling governmental interest, and is narrowly tailored to serve
21 that interest.”) (emphasis omitted).

22 In making these determinations, the trial court must first provide “notice to the public of the
23 contemplated closure.” *NBC Subsidiary*, 20 Cal. 4th at 1217. Moreover, “before substantive
24 courtroom proceedings are closed or transcripts are ordered sealed,” *id.*, the court “must hold a
25 hearing and expressly find” that

26 (i) there exists an overriding interest supporting closure and/or sealing; (ii) there is a
27 substantial probability that the interest will be prejudiced absent closure and/or
28 sealing; (iii) the proposed closure and/or sealing is narrowly tailored to serve the
overriding interest; and (iv) there is no less restrictive means of achieving the
overriding interest.

1 *Id.* at 1217-18 (emphasis in original) (footnotes omitted).

2 Regarding today's in camera hearing, the Court provided neither the notice nor the findings
3 that are required before proceedings may be closed to the public. Accordingly, the transcript of the
4 proceedings should be released immediately, with findings that explain why the hearing was closed.
5 *See NBC Subsidiary*, 20 Cal. 4th at 1211, 1219 (emphasizing right to "contemporaneous access," and
6 rejecting argument that delayed release of transcripts could remedy improper closure of hearings); *see*
7 *also Sammartino v. First Judicial Dist. Court*, 303 F.3d 959, 973 (9th Cir. 2002) (noting that
8 the "Supreme Court has made clear that '[t]he loss of First Amendment freedoms, for even minimal
9 periods of time, unquestionably constitutes irreparable injury'" (quoting *Elrod v. Burns*, 427
10 U.S. 347, 373, 96 S. Ct. 2673; 49 L. Ed. 2d 547 (1976)). If the Court believes that the transcript
11 contains information that should not be disclosed to the public, it should immediately issue a redacted
12 version of the transcript, with detailed findings that explain why the hearing was closed and why
13 portions of the transcripts were sealed. Finally, Access Proponents renew their request for the Court
14 to, as *NBC Subsidiary* requires, provide meaningful notice and detailed findings *before* any future
15 proceedings are closed to the public.


16
17 **III.**
CONCLUSION

18 For the foregoing reasons, this Court should grant Access Proponents' request for the
19 immediate release of a transcript of today's in camera hearing, or release as soon as possible a
20 redacted version of the transcript with detailed findings explaining the basis for sealing and closure.

21 DATED: April 19, 2005

Respectfully submitted,

22 GIBSON, DUNN & CRUTCHER LLP
23 Theodore J. Boutrous, Jr.
Michael H. Dore

24 By: 
Theodore J. Boutrous, Jr.

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

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

I, Jess Fernandez, 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 Michael H. Dore, a member of the bar of this Court, and on April 19, 2005, I served the following:

ACCESS PROPONENTS' REQUEST FOR IMMEDIATE RELEASE OF IN CAMERA HEARING TRANSCRIPT

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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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
5 of the transmission, a copy of which is attached to the original of this declaration.

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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
25 recycled paper, and that this Certificate of Service was executed by me on April 19, 2005, at
26 Los Angeles, California.

27 
28 _____
Jess Fernandez

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