

1 GIBSON, DUNN & CRUTCHER LLP  
Theodore J. Boutros, Jr., SBN 132099  
2 Michael H. Dore, SBN 227442  
3 333 South Grand Avenue,  
Los Angeles, CA 90071-3197  
Telephone: (213) 229-7000  
4 Facsimile: (213) 229-7520

5 Attorneys for NBC Universal, Inc.; CBS  
Broadcasting Inc.; Fox News Network L.L.C.;  
6 ABC, Inc.; Cable News Network LP, LLLP;  
Courtroom Television Network LLC;  
7 The Associated Press, *Los Angeles Times*;  
The New York Times Company; and  
8 *USA Today*

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

AUG 13 2004

GARY M. BLAIR, Executive Officer

BY *Carrie L. Wagner*  
CARRIE L. WAGNER, Deputy Clerk

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

13 THE PEOPLE OF THE STATE OF  
14 CALIFORNIA,

15 Plaintiff,

16 vs.

17 MICHAEL JOE JACKSON,

18 Defendant.

Case No.: 1133603

19 ACCESS PROPONENTS' MEMORANDUM  
OF POINTS AND AUTHORITIES IN  
20 SUPPORT OF RULE 980 MEDIA  
REQUESTS TO PHOTOGRAPH, RECORD,  
OR BROADCAST AUGUST 16, 2004  
HEARING

Place: Department SM9,  
Judge Rodney S. Melville

[VIA FACSIMILE]

1 MEMORANDUM OF POINTS AND AUTHORITIES

2  
3 I.  
4 INTRODUCTION

5 Several news organizations have filed applications under Rule 980 seeking permission to  
6 photograph, record, and broadcast the hearing scheduled for Monday, August 16, 2004, at 10:00 a.m.,  
7 a portion of which likely will involve testimony from the District Attorney for Santa Barbara County  
8 in connection with Defendant Michael Jackson's Motion to Suppress Pursuant to Penal Code Section  
9 1538.5 and Non-Statutory Grounds (Part I). The Access Proponents, a group of national news  
10 organizations,<sup>1</sup> file this memorandum to request that the Court grant permission for such coverage –  
11 at least as to Mr. Sneddon's testimony. Specifically, the Court should permit the Access Proponents  
12 to place one pool television camera (or a cable connection to the television camera that the Court has  
13 provided in the past to allow for closed-circuit broadcast of the proceedings to another courtroom)  
14 and one pool still photographer in the courtroom to cover that portion of the August 16 hearing.  
15 See Rule 980(c)(7).

16 If ever there was a hearing that warranted camera coverage under Rule 980, this is it.  
17 Irrespective of whatever other rulings the Court might make regarding the proceedings beginning on  
18 August 16 or other proceedings in this case, Mr. Sneddon's testimony is a quintessential example of  
19 the kind of proceeding that warrants camera coverage. The allegations underlying the defense  
20 motions to be addressed at the upcoming hearing make it vital that the public see first-hand, via  
21 television and photographic coverage, the inquiry into an elected public official's alleged "blatant  
22 disregard" for a citizen's rights and general participation in "outrageous government conduct."  
23 Defendant's Mot. to Suppress at 10. Indeed, the Supreme Court has repeatedly reminded that "the  
24 press . . . guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial  
25 processes to extensive public scrutiny and criticism." *Gentile v. State Bar of Nev.*, 501 U.S. 1030,  
26 1035 (1991) (plurality) (citation omitted). And "[p]ublic awareness and criticism have even greater

27 <sup>1</sup> NBC Universal, Inc.; CBS Broadcasting Inc.; Fox News Network L.L.C.; ABC, Inc.; Cable News  
28 Network LP, LLLP; Courtroom Television Network LLC; The Associated Press; *Los Angeles Times*; The New York Times Company; and *USA Today*.

1 importance where . . . the criticism questions the judgment of an elected public prosecutor." *Id.* at  
2 1035-36; see also *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4th 1178, 1211 n.28  
3 (1999) ("If public court business is conducted in private, it becomes impossible to expose corruption,  
4 incompetence, inefficiency, prejudice, and favoritism.").

5 In his Motion to Set Aside the Indictment pursuant to Penal Code § 995, Mr. Jackson has  
6 further accused the District Attorney of an "outrageous" abuse of power and gross prosecutorial  
7 misconduct: "The grand jury proceeding leading up to the indictment of Michael Jackson was  
8 remarkable. The transcripts reveal a complete disregard on the part of the prosecutor for his duties to  
9 present evidence fairly and accurately and to behave in a fashion that would have been approved by a  
10 judge." Defendant's Mot. to Set Aside Indictment at 4. According to Mr. Jackson, there "is no case  
11 in the history of State California that has condoned anything like the abuse of power demonstrated in  
12 this grand jury proceeding." *Id.* at 5.

13 The nineteen factors set forth in Rule 980 clearly are satisfied here, and allowing video and  
14 still photographing in the courtroom would not even arguably disrupt or complicate the proceedings  
15 in the least. There will be no jury present and Mr. Sneddon is an experienced public official who is  
16 used to public scrutiny and who has told the Court he has "nothing to hide." Moreover, allowing the  
17 Access Proponents to set up a pool camera (or to connect a cable to any television camera the Court  
18 intends to use during the proceedings) and permitting a pool photographer to take a few still  
19 photographs under the Court's supervision would ease the pressure and intensity of people seeking to  
20 enter the courtroom on Monday morning.<sup>2</sup> Television coverage would relieve the potential pressure  
21 arising from people who would otherwise stand outside the Court trying to catch a glimpse of the  
22 hearing's participants, and thus aid the Court in "[m]aintaining orderly conduct of the proceeding."  
23 See Rule 980(e)(3)(xviii).

24  
25  
26  
27 <sup>2</sup> The Access Proponents intend to work with the Court Administrator to ensure that permitting  
28 television camera access would not be disruptive of the proceedings. A single "pool" television  
camera would not produce any noise or require any additional lighting. The still photographer  
would also be quiet and unobtrusive.



1 An official elected by the people of Santa Barbara County stands accused of a gross abuse of  
2 the power entrusted to him by his constituency. Mr. Jackson's allegations have been made public, the  
3 Court has already taken public testimony on these very issues. Especially under such circumstances,  
4 "To work effectively, it is important that society's criminal process 'satisfy' the appearance of  
5 justice,' and the appearance of justice can best be provided by allowing people to observe it."  
6 *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 571-72 (1980) (plurality) (citation omitted).  
7 Nor will Mr. Sneddon's testimony implicate privacy interests of the accused minor victim or  
8 Mr. Jackson's fair trial rights.

9 Moreover, no matter how accurate the non-electronic reporting is, there simply is no  
10 substitute for a contemporaneous live broadcast. Only the latter can show the public exactly what  
11 transpires in the courtroom. "[T]he availability of a trial transcript is no substitute for a public  
12 presence at the trial itself. As any experienced appellate judge can attest, the 'cold' record is a very  
13 imperfect reproduction of events that transpire in the courtroom." *Richmond Newspapers*, 448 U.S.  
14 at 597 n.22 (Brennan, J., concurring). No surer method exists than live courtroom broadcasts to  
15 enable "people not actually attending trials [to] have confidence that standards of fairness are being  
16 observed . . . and established procedures are being followed." *Press-Enterprise Co. v. Superior*  
17 *Court*, 478 U.S. 1, 13 (1986). Indeed, "one cannot transcribe an anguished look or a nervous tic.  
18 The ability to see and to hear a proceeding as i[t] unfolds is a vital component of the  
19 First Amendment right of access." *ABC, Inc. v. Stewart*, 360 F.3d 90, 99 (2d Cir. 2004).

20 As the California Supreme Court has explained, "a trial court is a public governmental  
21 institution" *NBC Subsidiary*, 20 Cal. 4th at 1211. The District Attorney is a public official who is  
22 accused of abusing his public office. The public therefore deserves every available insight into  
23 Mr. Jackson's accusations against Mr. Sneddon and his sworn responses to them. *See Press-*  
24 *Enterprise Co. v. Superior Court*, 478 U.S. 1, 13 (1986) (quoting *Richmond Newspapers*, 448 U.S. at  
25 572) (plurality) ("People in an open society do not demand infallibility from their institutions, but it  
26 is difficult for them to accept what they are prohibited from observing."). The Access Proponents  
27 thus respectfully submit that this Court should grant the Rule 980 Requests for television and  
28 photographic media coverage of Mr. Sneddon's testimony during the hearing beginning August 16.

1 DATED: August 13, 2004

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 L.L.C.; ABC, Inc.; Cable News Network LP, LLLP; Courtroom Television Network LLC; The Associated Press, *Los Angeles Times*; The New York Times Company; and *USA Today*

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1 **CERTIFICATE OF SERVICE**

2 **MAIL, COMMERCIAL OVERNIGHT MESSENGER, FAX, HAND DELIVERY**

3 I, Michael H. Dore, hereby certify as follows:

4 I am employed in the County of Los Angeles, State of California; I am over the age of  
5 eighteen years and am not a party to this action; my business address is 333 South Grand Avenue,  
6 Los Angeles, California 90071, in said County and State; I am a member of the bar of this Court, and  
7 on August 13, 2004, I served the following:

8  
9 **ACCESS PROPONENTS' MEMORANDUM OF POINTS AND AUTHORITIES IN**  
10 **SUPPORT OF RULE 980 MEDIA REQUESTS TO PHOTOGRAPH, RECORD, OR**  
11 **BROADCAST AUGUST 16, 2004 HEARING**

12 on the interested parties in this action:

13 Thomas W. Sneddon Tel.: (805) 568-2300  
14 District Attorney Fax: (805) 568-2398  
15 Santa Barbara County 2455  
16 1105 Santa Barbara Street  
Santa Barbara, CA 93101-2007

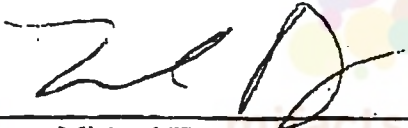
17 Thomas A. Mesereau, Jr. Tel.: (310) 284-3120  
18 Collins, Mesereau, Reddock & Yu LLP Fax:  
19 1875 Century Park East, 7th Floor  
Los Angeles, CA 90067

20 Robert Sanger Tel.: (805) 962-4887  
21 Sanger & Swysen, Lawyers Fax: (805) 963-7311  
22 233 E. Carrillo Street, Suite C  
Santa Barbara, CA 93001

23  
24  
25  **BY MAIL:** I placed a true copy in an envelope addressed as indicated above, on the above-  
26 mentioned date. I am "readily familiar" with the firm's practice of collection and processing  
27 correspondence for mailing. It is deposited with the U.S. Postal Service on that same day with  
28 postage thereon fully prepaid at Los Angeles, California 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.

- 1  **BY PERSONAL SERVICE:** I placed a true copy in a sealed envelope addressed to each  
2 person[s] named at the address[es] shown and giving same to a messenger for personal delivery  
3 before 5:00 p.m. on the above-mentioned date.
- 4  **BY FACSIMILE:** From facsimile machine telephone number (213) 229-7520, on the above-  
5 mentioned date, I served a full and complete copy of the above-referenced document[s] by facsimile  
6 transmission to the person[s] at the number[s] indicated.
- 7  **BY NEXT DAY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above,  
8 on the above-mentioned date. I am familiar with the firm's practice of collection and processing  
9 correspondence for delivery by Next Day Mail. Pursuant to that practice, envelopes placed for  
10 collection at designated locations during designated hours with a fully completed airbill, under  
11 which all delivery charges are paid by Gibson, Dunn & Crutcher, that same day in the ordinary  
12 course of business.

13 I certify under penalty of perjury that the foregoing is true and correct, that the foregoing  
14 document(s) were printed on recycled paper, and that this Certificate of Service was executed by me  
15 on August 13, 2004, at Los Angeles, California.



16 \_\_\_\_\_  
17 Michael H. Dore

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