

DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO 7325 S. Potomac St. Centennial, Colorado 80112	▲ COURT USE ONLY ▲
PEOPLE OF THE STATE OF COLORADO v. JAMES EAGAN HOLMES, Defendant	Case No. 12CR1522 Division: 202
ORDER REGARDING REQUESTS FOR EXPANDED MEDIA COVERAGE (C-137)	

INTRODUCTION

Television station KUSA-TV, on behalf of itself and the Denver Media Group (collectively, “electronic media”), asks the Court to permit expanded media coverage (“EMC”) of the trial in this case through one television camera with a distribution point located outside the courtroom. Motion C-134 at p. 1. The Denver Post, on behalf of itself, the Associated Press, Getty Images, and Colorado state newspapers (collectively, “print media”), asks the Court for permission to conduct EMC of the trial in this case via still photography. Motion C-135 at p. 1.¹

¹ In this Order, the Court refers to the electronic media and the print media collectively as “the media petitioners.”

The prosecution and the defendant oppose both requests. The Court held a hearing on September 22, 2014, during which no testimonial evidence was presented.²

For the reasons articulated in this Order, Motion C-134 is granted in part and denied in part. The Court approves the electronic media's request for EMC of the trial, but sets specific procedures and restrictions which must be strictly observed by all members of the media.³ A single violation of this Order may result in the immediate termination of EMC. Further, the Court retains the discretion to terminate EMC at any point during the trial if it finds that the substantial rights of individual participants will be prejudiced by continuing EMC. Because the Court's ruling on Motion C-134 renders Motion C-135 substantially moot, Motion C-135 is denied.

ANALYSIS

I. Legal Standard

Chapter 38, Rule 2, of the Colorado Supreme Court Rules, titled "Media Coverage of Court Proceedings," provides, in pertinent part:

² The prosecution introduced 47 exhibits of printouts displaying the results of Google searches it conducted. *See* Ex. P-PT-99 through P-PT-145. No other evidence was presented.

³ At the hearing, defense counsel asserted that EMC has never been allowed in a capital punishment case in Colorado. That is incorrect. James King, if convicted, could have faced the death penalty in the United Bank "Father's Day Massacre" trial in 1992. Peggy Lowe, *Retired Police Sergeant is Acquitted in Slayings of Four Bank Guards*, Associate Press (Jun. 17, 1992), <http://www.apnewsarchive.com/1992/Retired-Police-Sergeant-Acquitted-in-Slayings-of-Four-Bank-Guards/id-6bc5118f466d0555cf4bba442bb14e6a>. King's trial was broadcast on Court TV. *James King, Key Figure in Denver Father's Day Massacre, Dies*, Huffington Post (Jun. 11, 2013), www.huffingtonpost.com/2013/06/11/denver-fathers-day-massacre-james-king_n_3423381.html.

(2) *Standards for Authorizing Coverage.* In determining whether expanded media coverage should be permitted, a judge shall consider the following factors:

(A) Whether there is a reasonable likelihood that expanded media coverage would interfere with the rights of the parties to a fair trial;

(B) Whether there is a reasonable likelihood that expanded media coverage would unduly detract from the solemnity, decorum and dignity of the court; and

(C) Whether expanded media coverage would create adverse effects which would be greater than those caused by traditional media coverage.

Underpinning this rule is Colorado's general policy strongly favoring openness and public access to judicial proceedings. Indeed, Colorado was "the first state to officially sanction courtroom photography and televised trials" in 1956, more than half a century ago. Andrew J. Field, *Mainliner Denver: The Bombing of Flight 629*, 137 (2005). In a report unanimously adopted by the justices of the Colorado Supreme Court, Justice Moore set forth his findings:

Generally only idle people pursuing "idle curiosity" have time to visit courtrooms in person. ***What harm could result from portraying by photo, film, radio and screen to the business, professional and rural leadership of a community, as well as to the average citizen regularly employed, the true picture of the administration of justice?***

Has anyone been heard to complain that the employment of photographs, radio, and television upon the solemn occasion of the last presidential inauguration or the coronation of Elizabeth II was to satisfy an "idle curiosity"? Do we hear complaints that the employment of these modern devices of thought transmission in the pulpits of our great churches destroys the dignity of the service; that they degrade the pulpit or create misconceptions in the mind of the

public? The answers are obvious. *That which is carried out with dignity will not become undignified because more people may be permitted to see and hear.*

Id. at 139-40 (emphasis added).

Justice Moore's comments proved prescient. Today, the vast majority of states allow some form of expanded media coverage of trial court proceedings under certain circumstances. *See* South Dakota Supreme Court, *Supreme Court's Committee for the Study of Cameras in the Trial Courts, Appendix to Final Report and Recommendations, Ex. 1* (Jan. 2010). Colorado is among the states "that allow the most coverage." *Id.*

In 2002, Chief Justice Mullarkey of the Colorado Supreme Court declared in an Order that "[i]t is in the interest of justice that the public understand as fully as possible the operation of the justice system, including the courts." Motion C-134 Ex. B.⁴ That same year, Chief Justice Mullarkey said she was "convinced that the benefits of opening up the courts outweighed the disadvantages." Howard Pankratz, *ABC to Eavesdrop on Colorado Trials*, *The Denver Post*, Dec. 12, 2002, at A1. Similarly, Justice Kourlis observed that the Colorado Supreme Court had placed a "high priority . . . on public education and jury reform." *Id.* She added that the judicial branch has "a responsibility to educate the public about what really goes on in the courts and criminal trials specifically." *Id.*

⁴ The Court could not locate a signed copy of this Order. However, there appears to be no dispute that the Order was issued by Chief Justice Mullarkey in 2002.

The comments by Justices Moore, Mullarkey, and Kourlis are consistent with the United States Supreme Court's views on the importance of allowing public access to the criminal justice system. Chief Justice Burger, writing for the plurality in *Richmond Newspapers, Inc. v. Virginia*, stressed that open trials, in addition to serving the defendant's interests, serve the interests of the public:

It is not enough to say that results alone will satiate the natural community desire for "satisfaction." A result considered untoward may undermine public confidence, and where the trial has been concealed from public view an unexpected outcome can cause a reaction that the system at best has failed and at worst has been corrupted. *To work effectively, it is important that society's criminal process satisfy the appearance of justice, and the appearance of justice can best be provided by allowing people to observe it.*

448 U.S. 555, 571-72, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980) (emphasis added) (internal quotation omitted).

Two years later, the Supreme Court again emphasized the critical function of public access to criminal trials:

[T]he right of access to criminal trials plays a particularly significant role in the functioning of the judicial process and the government as a whole. Public scrutiny of a criminal trial enhances the quality and safeguards the integrity of the factfinding process, with benefits to both the defendant and to society as a whole. Moreover, *public access to the criminal trial fosters an appearance of fairness, thereby heightening public respect for the judicial process. And in the broadest terms, public access to criminal trials permits the public to participate in and serve as a check upon the judicial process—an essential component in our structure of self-government.*

Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 606, 102 S.Ct. 2613, 73 L.Ed.2d 248 (1982) (emphasis added).

The Court recognizes that these declarations by the United States Supreme Court were made in the context of allowing the public to have access to criminal proceedings, not in the more specific context of a request for EMC; however, in the Court's view, the comments nevertheless provide guidance. This is one of the most high-profile cases in the history of Colorado. The public and the media have demonstrated extraordinary interest in this case. No matter what arrangements the Court makes, it cannot accommodate all of the members of the public and the media who wish to attend the trial. "A trial is a public event," and "[w]hat transpires in the court room is public property." *Craig v. Harney*, 331 U.S. 367, 374, 67 S.Ct. 1249, 91 L.Ed. 1546 (1947). While the media can generally serve as the public's surrogate, members of the public should have the opportunity to see firsthand their justice system at work. To the extent that the public must rely on journalists for the sights and sounds of a criminal trial, they should be allowed to use cameras and sound equipment when that is appropriate under the governing legal standards.

In his concurring opinion in *Houchins v. KQED, Inc.*, Justice Stewart eloquently articulated a similar point by employing an analogy:

That the First Amendment speaks separately of freedom of speech and freedom of the press is no constitutional accident, but an

acknowledgement of the critical role played by the press in American society. The Constitution requires sensitivity to that role, and to the special needs of the press in performing it effectively. *A person touring [a] jail can grasp its reality with his own eyes and ears. But if a television reporter is to convey the jail's sights and sounds to those who cannot personally visit the place, he must use cameras and sound equipment.* In short, terms of access that are reasonably imposed on individual members of the public may, if they impede effective reporting without sufficient justification, be unreasonable as applied to journalists who are there to convey to the general public what the visitors see.

438 U.S. 1, 17, 98 S.Ct. 2588, 57 L.Ed.2d 553 (1978) (Stewart, J. concurring) (emphasis added).

It is against this backdrop that the Court must analyze the media petitioners' requests for EMC. Although the Court has discretion in the matter, it is bound by the parameters set forth in Rule 2. Mindful of the circumstances surrounding this case, and given the EMC procedures and restrictions established in this Order, the Court determines that the electronic media's request should be granted in part and the print media's request should be denied as substantially moot.

II. Application

A. Electronic Media's Request

The Court concludes that, under the procedures and restrictions set forth in this Order, there is not a reasonable likelihood that granting the electronic media EMC will interfere with the rights of the parties to a fair trial or will unduly detract from the solemnity, decorum, and dignity of the Court. The Court recognizes that

the trial will receive intense and widespread publicity. But there is no basis to believe that EMC, as authorized by this Order, will lead to greater adverse effects than those caused by traditional media coverage of the trial. Accordingly, the Court grants the electronic media's request for EMC in part.⁵

Before addressing the factors in Rule 2 and the parties' arguments, the Court sets forth the EMC procedures it is allowing and the restrictions it is imposing on such EMC. The Court then discusses the considerations in Rule 2 and the merits of the parties' contentions in the context of these EMC procedures and restrictions.

1. EMC Procedures and Restrictions

Rather than allow a manually-operated television camera in the courtroom, the Court will authorize the electronic media to access, record, and broadcast the transmission from the remote-controlled closed circuit television camera already operating in the courtroom.⁶ The camera will be positioned so as to avoid showing any of the jurors or any part of the jury box. It will show the witness stand, the

⁵ The Court's authorization of EMC notwithstanding, pursuant to Rule 2(a)(3), the following are prohibited: (1) EMC of any part of *voir dire*; (2) audio recording of bench conferences; (3) audio recording of communications between counsel and client or between co-counsel; and (4) EMC of any *in camera* hearings.

⁶ The small, inconspicuous camera is attached to the ceiling of courtroom 201 and has been in operation throughout most of the proceedings in this case. It serves two purposes. First, it allows the Sheriff to monitor the courtroom in order to effectively carry out his responsibilities. Second, it transmits the proceedings to witnesses, victims, members of the media, and others in overflow rooms who cannot be in the courtroom as a result of space limitations.

screen above the witness stand for the presentation of evidence, the defense table, part of the prosecution table, the podium, the courtroom well, and the undersigned. The camera will remain at this fixed position throughout the trial unless the Court authorizes otherwise. Further, the “zoom in” and “zoom out” functions of the camera will not be used without the Court’s authorization. All other video recording and still photography will be strictly prohibited in the courtroom.

The media will not have access the Court’s audio system, but the closed circuit transmission will include audio. The Court will use the “white noise” feature in its audio system during all bench conferences and any other time the Court deems appropriate.

The electronic media will be solely responsible for designating one representative to arrange an open and impartial distribution scheme with a distribution point located outside the courtroom. If no agreement can be reached, there shall be no EMC. Moreover, any expenses incurred to allow the electronic media to access, record, and broadcast the closed circuit transmission will be borne entirely by the electronic media.

The Court recognizes that this arrangement is different than what the electronic media requests and may make the broadcast of the proceedings uninteresting for some in the media. However, any desire to make the broadcast more interesting or entertaining, while understandable, is not relevant to the

Court's determination. The purpose of this Order is strictly to make the trial accessible to a larger portion of the public, including some victims, in accordance with Rule 2. Whatever is transmitted for viewing by those in the overflow rooms will be transmitted for viewing by those who are not able to come to the Courthouse during the trial.⁷

In order to address some of the concerns raised by the parties, the Court establishes additional restrictions on media activity outside the courtroom. Video recording and still photography will be strictly prohibited in the following areas in the Courthouse buildings: the first two floors of Courthouse I, unless authorized inside a courtroom by a judicial officer; the "Link" between Courthouse I and Courthouse II, including the entire security screening area; and the first floor of Courthouse II, unless authorized inside a courtroom by a judicial officer.

Additionally, video recording and still photography outside the Courthouse will be restricted. Consistent with current practice, photographs and video may be taken while members of the media are in the area in front of the Courthouse reserved for media pictures and video. *See* Attachment A, Area Marked # 1.

⁷ Any precautions counsel must take in the courtroom as a result of this Order are precautions they would have been required to take even if the Court denied EMC. Regardless of EMC, the closed circuit camera will transmit the proceedings to victims, witnesses, and members of the public and media in overflow rooms. As indicated, the closed circuit transmission shows part of the prosecution's table, the defense table, and the podium. During the November 3, 2014 pretrial status hearing, the closed circuit camera will be set at the position at which it will be fixed throughout the trial. Counsel may wish to visit one of the overflow rooms before or after the hearing.

There will be an additional area designated in the front of the Courthouse to allow the media to conduct interviews. *See* Attachment A, Area Marked # 2. This will be the only area where interviews may be conducted; photographs and video may be taken in this area as well, but only for purposes of interviews. Finally, the media may record news reports in the media staging area in the front parking lot. *See* Attachment A, Area Marked # 3. In the event of inclement weather, the Court will designate an area inside Courthouse II where the media may conduct interviews and record news reports.

2. Rule 2 Factors and Merits of Parties' Assertions

At the outset, the Court notes that the People's lengthy response fails to directly address the factors listed in Rule 2. *See generally* Prosecution's Response. The response cites Rule 2 and identifies the factors listed in subsection (a)(2), but it does not discuss how any of those factors may be affected by the circumstances present in this case. *Id.* at p. 4. Nor does the response indicate which Rule 2 factor, if any, is affected by each of the numerous arguments advanced. For example, the People devote significant space to the victims' and witnesses' "substantial rights to privacy and safety," but fail to explain, or even state, which of the three Rule 2 considerations those concerns allegedly relate to. *See id.* at pp. 7-13. When questioned about this at the hearing, the People informed the Court that their concern for the privacy and safety of the victims and witnesses is

pertinent to the third factor listed in Rule 2. Accordingly, the Court addresses it in the discussion of that factor.

a) Rights of the Parties to a Fair Trial

As a preliminary matter, “[t]he mere presence of a camera in the courtroom does not in itself deny a defendant due process.” *People v. Wieghard*, 727 P.2d 383, 386 (Colo. App. 1986) (citing *Chandler v. Florida*, 449 U.S. 560, 574-80, 101 S.Ct. 802, 66 L.Ed.2d 740 (1981)). Under the procedures and restrictions adopted in this Order, the Court is convinced that EMC will not affect any of the parties’ rights. This includes each party’s right to a fair trial.

The defendant maintains, however, that “[t]here have been numerous instances . . . where members of the media and public have harassed individuals connected with this case.” Defendant’s Response at p. 9. Be that as it may, the defendant does not show that this is a concern specific to EMC. Like many of the parties’ other contentions, this is a red herring. There is no dispute that this trial will receive pervasive publicity and that, as a result, some of the individuals connected with this case will feel harassed by the media and the public. But the defense and the prosecution ignore that this will happen regardless of whether EMC is allowed. And there is no credible evidence in the record that EMC will exacerbate the problem. “[N]ewsworthy trials are newsworthy trials, and . . . they will be extensively covered by the media both within and without the courtroom

whether [cameras are permitted] or not.” *In re Petition of Post-Newsweek Stations, Florida, Inc.*, 370 So. 2d 764, 776 (Fla. 1979).

Next, the defendant alleges that EMC “runs the risk of victims and witnesses withdrawing their cooperation in this case.” Defendant’s Response at p. 10. As the defendant concedes, this is a high-profile case and “victims and witnesses may well be intimidated by the prospect of testifying at trial even if expanded media coverage is not permitted.” *Id.* With or without EMC, the trial proceedings, including the names of victims and witnesses and their testimony, will be widely reported by the national (and potentially international) electronic and print media. The Court declines the defendant’s invitation to speculate that EMC will “infinitely magnif[y]” any apprehension that victims and witnesses may feel about testifying at trial. *Id.* Absent a reliable evidentiary basis, the Court cannot conclude that there is a reasonable likelihood that EMC will interfere with the rights of the parties to a fair trial.

The Court notes that the EMC procedures and restrictions discussed in this Order ensure that the victims and witnesses will not face a manually operated camera on a tripod or a representative of the media with a handheld still camera. Additionally, the EMC procedures and restrictions will provide protection that is not otherwise available to the victims and witnesses—it will shield them from video cameras and still cameras inside the Courthouse, including in the security

screening area. Even in the area outside the Courthouse, the EMC procedures and restrictions place some limitations on where photographs and video may be taken and where interviews may be conducted. These measures should reduce the intimidation some victims and witnesses may feel and should decrease the risk that victims and witnesses will feel harassed by the media as they come and go from the Courthouse or as they enter and exit the courtroom.

At any rate, as the media petitioners aptly point out, “[w]itnesses are compelled to testify via subpoena and are thereafter sworn to tell the truth.” Reply at p. 6. Awareness that testimony will be broadcast to the public should provide a greater incentive for witnesses to respond to their subpoenas and be truthful. *Id.* at p. 7. It should not negatively impact their cooperation. As the Court noted in an earlier Order that addressed jury selection, “[r]ather than hinder [] effectiveness . . . openness and the watchful eye of the media will increase scrutiny and enhance the reliability and fairness of the process.” Order D-154 at p. 3.

The defendant avers that “[t]elevising the trial would also pose additional threats to the integrity of the jury.” Defendant’s Response at p. 11. To be sure, it will be a daunting challenge for jurors to avoid information about the case from media reports. However, as the defendant acknowledges, “this case will receive extensive media coverage even if the proceedings are not televised.” *Id.* The Court refuses to accept the defendant’s conjecture that EMC “will exacerbate the

difficulty the Court will have in ensuring that the jurors are able to comply with the Court's orders regarding media consumption." *Id.* There is no basis to support this naked claim.

Equally unpersuasive is the defendant's contention that EMC will make it "more likely that friends and family members of jurors will view portions of the trial and may be unable to resist the temptation of discussing the case with jurors." *Id.* Without EMC, the friends and family members of jurors would presumably experience the same degree of temptation to discuss the case with jurors after watching, hearing, or reading news reports about the case.

The defendant is likewise mistaken in asserting that EMC will "exponentially increase the possibility that jurors [will] learn . . . about arguments during the trial that take place outside of their presence." *Id.* If a subject matter of interest is mentioned by the lawyers or the Court outside the presence of the jury, it will no doubt receive coverage by the electronic and print media even if EMC is not allowed. Therefore, jurors would be equally at risk of finding out such information without EMC.

The defendant insists that EMC will interfere with the Court's Order sequestering witnesses. *Id.* at p. 12. This contention is untenable. To the extent that enforcement of the sequestration Order presents challenges—and the Court acknowledges that it does—it is not as a result of EMC, but as a result of the

widespread publicity the trial is expected to receive. The risk that witnesses will read about testimony provided during the trial in a newspaper article or will learn about it in an electronic news report may well be greater than the risk that they will obtain such information by watching the trial as it is televised. A news article or an electronic news report is likely to have a compelling or sensational headline or lead-in that witnesses may learn about inadvertently. On the other hand, the recording of the actual trial will have neither headlines nor lead-ins, and witnesses who watch any portion of it will have to make a knowing decision to violate the Court's sequestration Order. To the extent that a clip of the trial proceedings is part of an electronic news report, the risk the defendant warns about is unlikely to be greater than if EMC is disallowed.

The defendant posits that EMC will impact the trial participants. *Id.* Although the defendant relies on empirical studies, there are other empirical studies that reach the opposite conclusion. *See* Reply at p. 6. Moreover, none of the studies on which the defendant relies involved the EMC procedures and restrictions this Order implements. Based on the Court's experience in this case, EMC, at least under the procedures and restrictions set forth in this Order, is unlikely to impact the trial participants. The Court has held numerous evidentiary hearings while its closed circuit camera has been in operation and transmitting the proceedings to victims, members of the media, and other members of the public.

Yet the Court has not observed any adverse effects on the witnesses or counsel. While EMC has not been allowed for any evidentiary proceedings, EMC will simply afford a much larger portion of the population access to the same closed circuit transmission. Of course, if the Court notices during the trial that EMC is adversely affecting the participants, it has the discretion to terminate it immediately. The Court will not hesitate to do so if appropriate.

Lastly, the defendant avers that EMC “will irreparably taint the jury pool if [the case] is ever re-tried as a result of a mistrial, hung jury, or reversal.” Defendant’s Response at p. 12. The Court disagrees. In any case, the Court will face a similar challenge if it allows only traditional coverage of the trial and a re-trial is necessary.

b) Solemnity, Decorum, and Dignity of the Court

The defendant posits that EMC “presents a reasonable likelihood, if not a serious possibility, that the solemnity, decorum, and dignity of these proceedings will be undermined.” *Id.* at p. 13. According to the defendant, “televising these proceedings exponentially increases the risk of an ensuing media circus.” *Id.* The Court disagrees.

It is easy, and perhaps popular, to utter terms such as “media circus” when addressing a motion for EMC. Indeed, that is the kneejerk reaction that many people have to requests for EMC by the media. It is difficult, however, to support

a contention that EMC will turn the trial into a circus, regardless of the procedures and restrictions available to the Court.

The defendant fails to explain what aspects of the trial would become a “media circus” as a result of EMC. The Court will demand strict compliance with this Order and all previous Orders, including its Standing Decorum Order (C-3). Further, the Court will continue to maintain complete control of the courtroom. As Justice Moore noted, nothing about broadcasting trial proceedings inherently diminishes the solemnity of the court. To the extent that the defendant’s “media circus” assertion refers to what takes place outside the courtroom, the EMC procedures and restrictions adopted provide the Court more control than it would otherwise have. Without this Order, the Court would be uncomfortable prohibiting photography, video recording, and interviews in all the areas inside and outside the Courthouse where they will be prohibited pursuant to this Order.⁸ Thus, there would be a higher, not lower, risk of a “media circus.”

Michael Jackson’s 2005 child molestation trial underscores the Court’s point. The court there did not allow EMC of the trial. However, the trial was nevertheless “overwhelmed by hype and hysteria.” Clive Anderson, *The Case for Televised Trials*, Financial Times (Feb. 28, 2014), www.ft.com/intl/cms/s/2/4445419e-9ee5-11e3-a48e-00144feab7de.html. There

⁸ At the hearing, the electronic media agreed to accept restrictions on media coverage outside the courtroom if EMC of the trial is allowed.

were numerous journalists recording Jackson's every step as he entered and exited the courthouse. Getty Images, *Michael Jackson Arrives for Trial*, www.gettyimages.co.uk/detail/news-photo/michael-jackson-flanked-by-security-attorney-thomas-news-photo/52372198. He was photographed even as he went through the security screening area. My San Antonio, *Michael Jackson's Death*, www.mysanantonio.com/slideshows/news/slideshow/Michael-Jackson-s-death-15638/photo-225062.php. One of the most memorable stories of the trial involved video and photographs of Jackson arriving at the courthouse very late one day wearing his pajama pants. Ron Reagen & Monica Crowley, *Court Couture*, MSNBC (Mar. 10, 2005), www.nbcnews.com/id/7117843/ns/msnbc/. Because no EMC was allowed, one television station "was reduced to restaging the case as it went along, using actors to recreate [each] day's proceedings." Clive Anderson, *The Case for Televised Trials*, Financial Times (Feb. 28, 2014), www.ft.com/intl/cms/s/2/4445419e-9ee5-11e3-a48e-00144feab7de.html. Thus, the fact that the Court did not allow EMC in the Jackson trial did not prevent the "media circus." To the contrary, it may have exacerbated the situation and created more of a media circus outside the courthouse because it increased the media's desire to obtain photographs and video outside the courtroom.⁹

⁹ Attachment B to this Order is a Los Angeles Times diagram of the locations of the TV broadcast crews and TV satellite trucks for the "24-hour endeavor whenever [the Jackson] trial [was] in session" to provide "[a]round-the-clock coverage." Doug Stevens, *Jackson Media*

The Jackson trial renders the parties' reliance on the O.J. Simpson and Casey Anthony trials unpersuasive. Defendant's Response at pp. 5, 13-15; Prosecution's Response at p. 14. The parties are naïve if they believe that denial of EMC in this case will prevent or noticeably reduce the intense and widespread publicity of the trial. Regardless of whether the Court permits EMC, this case will receive intense and widespread publicity.

The defendant cautions the Court to "pause before transforming [its] workplace into a 'set' for the entertainment of the public." Defendant's Response at p. 14. The defendant's concern is misguided. EMC will not metamorphose the courtroom into a Hollywood set. In fact, EMC should have no impact on the proceedings in the courtroom.

The defendant conflates solemnity, dignity, and decorum *in the courtroom* with the frequency of *news reports* about the trial and the way proceedings may be *portrayed* in some of those reports. There is a significant difference between the trial proceedings in the courtroom and the amount and type of publicity those proceedings receive. The Court can control the former—and has every intention of doing so—but it has no control over the latter. Whatever reporting may be conducted about the trial, for entertainment purposes or for other purposes, will

Circus Descends on Courthouse, Los Angeles Times, <http://media.trb.com/media/acrobat/2005-02/16308545.pdf>. Although no cameras were allowed in the courtroom during the trial, the diagram nevertheless referred to the "media circus." *Id.*

take place regardless of whether EMC is authorized. Allowing EMC actually affords members of the public an opportunity to view the proceedings for themselves, instead of being forced to rely on characterizations by journalists, consultants, experts, and others.

Finally, the defendant urges the Court to deny EMC to protect “the privacy and the safety of the participants of the trial.” *Id.* According to the defendant, “[o]nce [an] image has been broadcast, even if done inadvertently, it is out there for all to see.” *Id.* This is another argument that is easy to advance, but difficult to support. First, the EMC procedures and restrictions articulated in this Order should prevent an image from being inadvertently broadcast because only what is transmitted by the Court’s single-angle, closed circuit camera will be broadcast.¹⁰ Second, even if the Court declines to allow EMC, images of victims and witnesses will be broadcast. In the absence of this Order, such images may show victims and witnesses walking into the Courthouse, going through security, walking into the courtroom, exiting the courtroom, and walking out of the courthouse. The defendant does not explain why these images are safer and more private for victims and witnesses than are images of victims and witnesses on the witness stand obtained from the courtroom’s closed circuit camera.

¹⁰ The Court will also have a “kill switch” available to block the transmission from the closed circuit camera at any time.

The Court disagrees that “[t]he more television exposure this case has, the greater the risk to the safety of the participants.” *Id.* As both parties concede, there have already been unfortunate instances of harassment and threats to the safety of the participants in this case, even though there has been almost no EMC throughout these proceedings. *Id.* at pp. 9-10; Prosecution’s Response at pp. 5, 7, 11-12. The lack of EMC certainly has not reduced, much less eliminated, the public’s interest in the case or the media’s interest in covering it. Yet the parties would have the Court believe that without EMC the trial will engender much less interest from the public and will receive much less publicity from the media. The Court is unpersuaded.

c) Adverse Effects of EMC

The defendant claims that “there is a significant cost—both to the public as well as to the participants of this case—associated with televising this high-profile trial that is different and greater than traditional media coverage.” Defendant’s Response at p. 15. As this Order demonstrates, the defendant’s assertion is unsupported. Whatever adverse consequences media coverage of the trial will have are very likely to occur regardless of whether the Court allows EMC or only traditional media coverage.

The prosecution devotes almost all of its response to the assertion that EMC will jeopardize the safety and privacy of the victims and witnesses. Prosecution’s

Response at pp. 7-17.¹¹ The Court is unconvinced. To the extent that participation in this high-profile trial risks jeopardizing the safety and privacy of the victims and witnesses, EMC is likely to increase that risk only marginally.

The Court takes at face value the prosecution's representation that most of the victims and witnesses would prefer to avoid having their videotaped testimony on the internet, perhaps indefinitely, without an ability to delete it. *See id.* at p. 10. However, as sympathetic as the Court is to the victims' and witnesses' desires, there is no evidentiary basis to conclude that EMC would have greater adverse effects on the trial than those caused by traditional media coverage.

The prosecution's reliance on the Victims' Rights Act ("VRA") does not alter the Court's conclusion. *Id.* at pp. 10-11. In the Court's view, this Order is consistent with the rights of victims and witnesses under the VRA, including the right to "be treated with fairness, respect and dignity." § 24-4.1-302.5(1)(a), C.R.S. (2014). Without the EMC procedures and restrictions outlined in this Order, the victims and witnesses are likely to feel more "intimidation, harassment, or abuse," *id.*, as they walk into the Courthouse, go through security, enter the courtroom, exit the courtroom, and exit the Courthouse. Indeed, at the hearing, the

¹¹ The prosecution also maintains that it has concerns about the safety and privacy of the jurors. Prosecution's Response at p. 11. However, the EMC procedures and restrictions established by this Order prohibit photographs and video recording of any juror. Further, the Court's Standing Decorum Order prohibits "[t]he media and members of the public" from "captur[ing] images of persons . . . known or identified to be summoned or selected jurors." Order C-3 at p. 2. Anyone displaying a jury summons or a juror badge may not have his or her image captured. *Id.* Hence the prosecution's concern is moot.

prosecution informed the Court that it is considering advising some victims and witnesses to cover their faces with a blanket or a veil as the media attempts to photograph or video record them.¹²

Further, the EMC authorized by the Court will avoid the prospect of having victims and witnesses testify “with a camera staring them down.” Prosecution’s Response at p. 9. The only camera in the courtroom will be the closed circuit camera that will operate with or without EMC.

It is true that, pursuant to this Order, each victim’s and witness’s testimony will be recorded and may be turned into an “internet ‘meme[.]’” and that a victim’s or witness’s “slip of the tongue, or carelessly uttered phrase, or steely glare . . . might become the next YouTube sensation.” *Id.* at p. 10. It is also true that “videos or photos of the trial [] might pollute the nation’s Facebook timelines” and that there may be “numerous photographs and videos of victims and other witnesses showing up on the Twitter feeds of hundreds of millions of people with the hashtag #theatershooting or something similar.” *Id.* However, there is no way to predict whether denying EMC will prevent much of this from happening, albeit

¹² Rule 2(a)(4) authorizes the Court to “restrict or limit” EMC “as may be necessary . . . to protect the parties, witnesses, or jurors.” Even after granting a motion for EMC, the Court “may terminate or suspend [it] . . . upon making findings of fact that . . . substantial rights of individual participants . . . will be prejudiced by such coverage if it is allowed to continue.” Through this Order, the Court does its utmost to protect the witnesses, including victims, as they respond to their subpoenas to testify at trial. This is not a case like *People v. Clark*, on which the prosecution relies, where the witness list included “high profile witnesses, as well as [a] witness who [was] [] under the protection of the United States Marshal through the Federal Witness Security Program.” Prosecution’s Response Ex. 1 at p. 2.

with different photographs or recordings. Even assuming EMC will increase the risk of the potential consequences discussed by the prosecution, such risk would be insufficient to warrant denial of the electronic media's request. The provisions of the VRA require that victims and witnesses "be treated with fairness, respect, and dignity," and that they "be free from intimidation, harassment, or abuse, *throughout the criminal justice process.*" § 24-4.1-302.5(1)(a) (emphasis added). The VRA does not apply to collateral consequences outside the criminal justice process after the trial is completed. The Court has no control over such consequences.

Significantly, the prosecution recognizes that some victims want the trial televised so that they can be in attendance, even though they cannot come to court every day. If the Court fails to extend access to the closed circuit transmission to them, they will be unable to attend the proceedings. Under the VRA, these victims have a constitutional right to attend the trial. Colo. Const. article II, § 16a; § 24-4.1-302.5(1)(b), (b.5). Given the unique circumstances of this case—namely, the large number of victims and the anticipated length of this trial—it is not realistic or reasonable to expect all of the victims to come to the Courthouse for eight hours a day during four or five consecutive months in order to exercise their constitutional right to be present at trial.

B. Print Media's Request

Because the print media may obtain still images from the electronic media's broadcast, the Court denies the print media's request for EMC as substantially moot.¹³ The Court understands that still images taken from the closed circuit video feed lack the quality of photographs and deprive the print media of independent editorial decision-making. However, considering the Court's commitment to the solemnity, decorum, and dignity of the proceedings, these concerns are not sufficient to justify the print media's request. Allowing a representative of the print media to stand up at any time during the trial to take photographs would unduly detract from the solemnity, decorum, and dignity of the courtroom. Further, it would risk distracting the jury, the witnesses, counsel, and the Court. Alternatively, limiting photographs to recesses may improperly add an element of entertainment to the trial.

CONCLUSION

For all the foregoing reasons, the electronic media's request for EMC is granted in part and denied in part, and the print media's request for EMC is denied as substantially moot. The Court cannot overemphasize the importance of strict compliance with every single EMC procedure and restriction set forth in this Order. A single violation of this Order may result in termination of EMC.

¹³ Nothing in this Order prevents the print media from enlarging a still image obtained from closed circuit transmission.

The Court acknowledges that this is the first time it has allowed EMC of a trial. However, the Court has never presided over a trial that has received anywhere near the interest this case has attracted. Nor has the Court participated in a trial with the intense and widespread publicity that surrounds this case.

The public's strong interest in this trial makes the request for EMC particularly compelling. The intense and widespread publicity expected to surround the trial makes EMC, as set forth in this Order, less likely to have adverse effects on the proceedings beyond those caused by traditional media coverage. The Court is confident that, with or without EMC, it will be able to enforce all of the parties' rights, including each party's right to a fair trial, and that it will be able to maintain the solemnity, decorum, and dignity of the proceedings.

Dated this 30th day of September of 2014.

BY THE COURT:



Carlos A. Samour, Jr.
District Court Judge

CERTIFICATE OF SERVICE

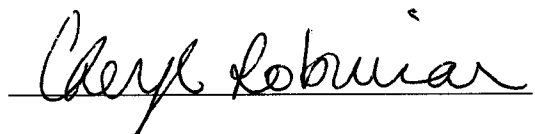
I hereby certify that on September 30, 2014, a true and correct copy of the Court's **Order Regarding Requests for Expanded Media Coverage (C-137)** was served upon the following parties of record:

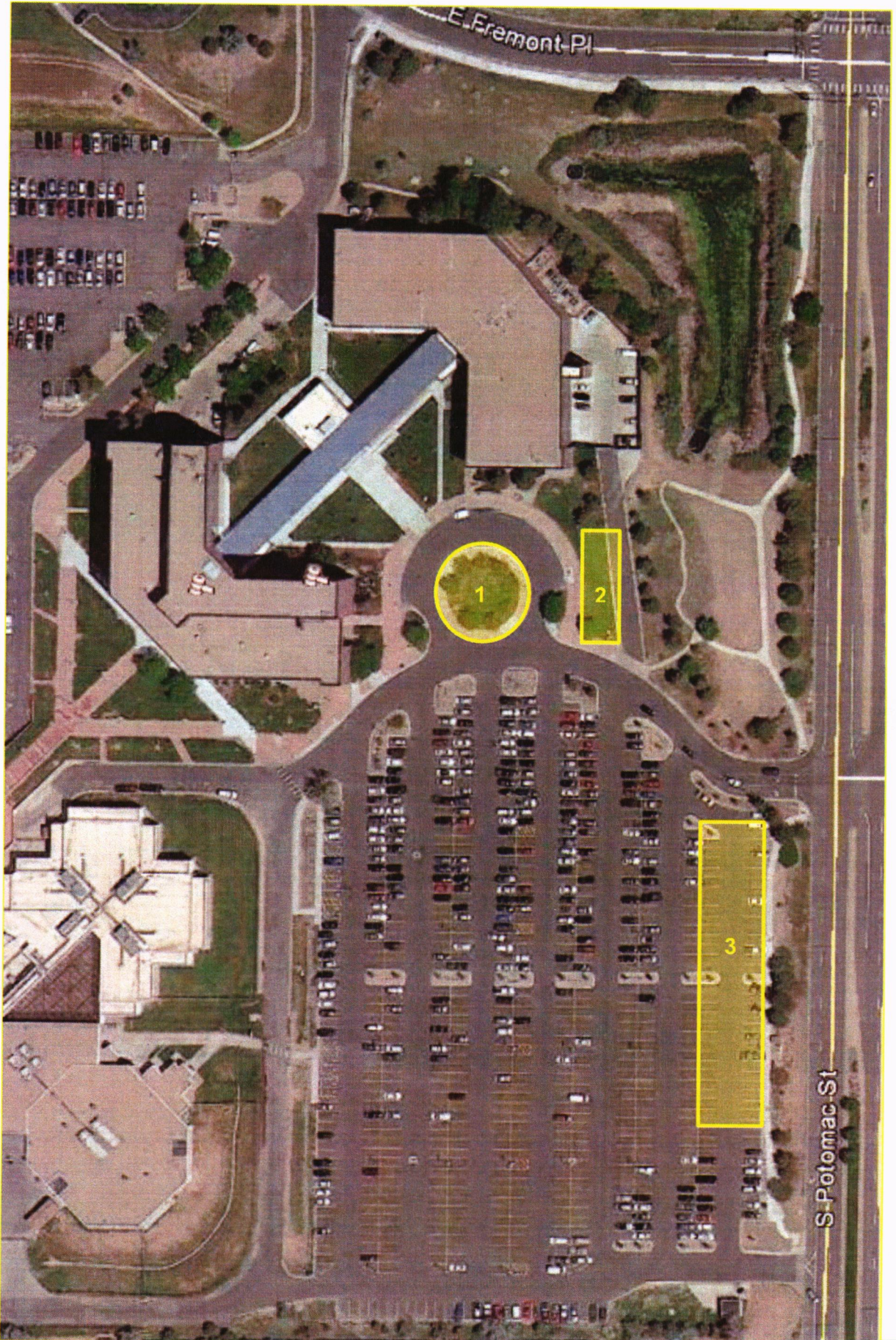
Karen Pearson
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Cheryl Lobuian



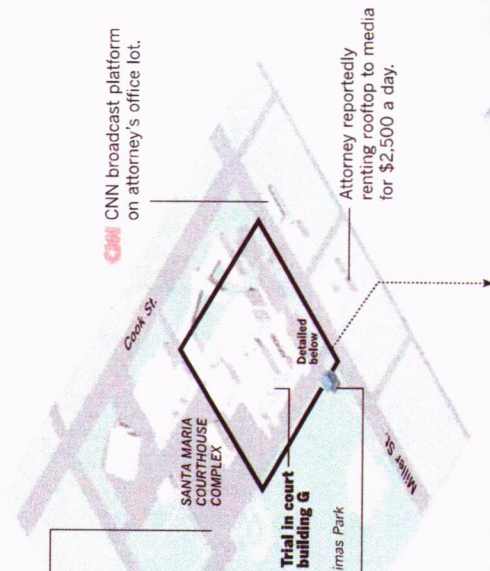
Order C-137
Attachment A

Jackson media circus descends on courthouse

More than 1,000 journalists from around the world have signed on to provide around-the-clock saturation coverage of pop singer Michael Jackson's trial. A closer look at the media village that has sprung up outside the Santa Maria, Calif., courthouse:

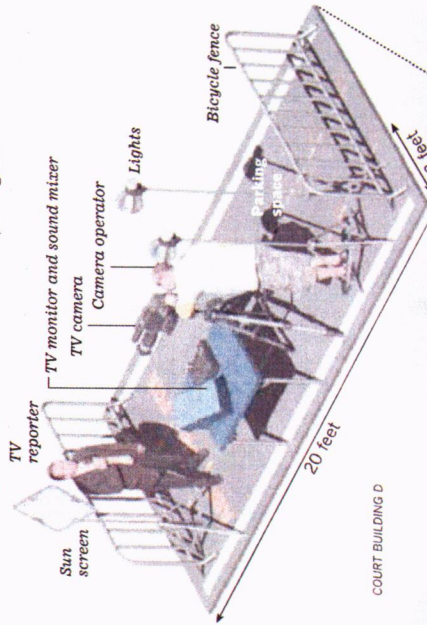
Jackson media village

- Future Fox, CBS and Court TV broadcast platform on city parking lot.
- ABC office space in attorney's office parking lot.
- Temporary Fox, CBS and Court TV office space at public swimming pool complex.
- NBC "Peacock Tower" broadcast platform on city parkland.

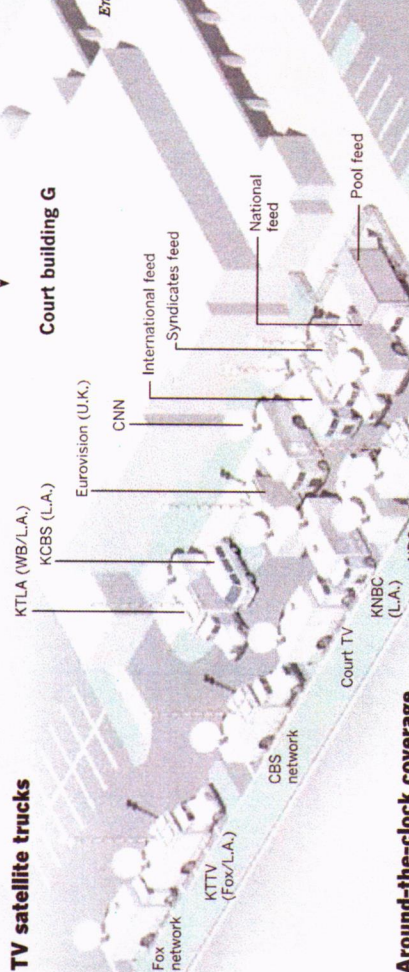


Tight confines for TV crews

With more than 50 television crews jostling for video footage of Jackson's comings and goings, each media outlet has been allocated a designated space in the courthouse parking lot.



TV satellite trucks



Around-the-clock coverage

Trial coverage is a 24-hour endeavor, whenever Jackson's trial is in session. A typical day outside the courtroom:

- 11 p.m.-1 a.m.** - U.K. morning news tape daily feeds
- 4-6 a.m.** - U.S. morning news
- 7-9 a.m.** - Local morning news courthouse at end of day
- 8-9 a.m.** - Jackson arrives at courthouse
- 9-11 a.m.** - U.K. evening news
- Noon** - Jackson leaves court for lunch
- 1 p.m.** - Jackson returns to court after lunch
- 1-3 p.m.** - Syndicates tape daily feeds
- 2-5 p.m.** - Jackson leaves courthouse at end of day
- 3 p.m.** - U.S. evening news
- 4-6 p.m.** - Local evening news
- 5-8 p.m.** - Cable prime time magazine shows
- 10-11:30 p.m.** - Local late night news

TV broadcast crew locations

- A** CNN Espanol Court TV
- B** WSVN (Fox/Miami) HD News (Cablevision)
- C** AB Groupe (France) BBC (UK)
- D** KETV (ABC/Santa Barbara) SKY (UK)
- E** Pool feed MSNBC KSBY (NBC/San Luis Obispo)
- F** NBC affiliates KNBC (L.A.)
- G** NBC network KCOY (CBS/Santa Maria)
- H** KCBS (L.A.) CBS network
- I** KABC (L.A.) Univision (Spanish language)
- J** CNN Reuters Extra/Celebrity Justice Eurovision (U.K.)
- K** KTTV (Fox/L.A.) Inside Edition Associated Press
- L** Access Hollywood Entertainment Tonight KTLA (WB/L.A.)
- M** ABC network Eurovision (U.K.) Fox network
- N** KTTV (Fox/L.A.) Associated Press Entertainment Tonight
- O** NBC network Access Hollywood
- P** Fox network CNN Extra
- Q** Celebrity Justice Eurovision (U.K.)
- R** Pool feed ABC network KABC (L.A.)
- S** CBS affiliates CBS network KPX (CBS/San Francisco) Channel 5 (UK)
- T** CNN
- U** CNN
- V** NBC affiliates NHK (Japan) RTL (Germany)

Note: TV crew positions can change daily. Sources: Peter Stapfen, Jackson trial media coordinator; Santa Barbara County Superior Courts. Graphics reporting by BRADY MACDONALD