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SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF SANTA BARBARA

FEB 04 2005  
 GARY M. BLANK, Executive Officer  
 CARRIE L. WILSON, County Clerk

SUPERIOR COURT, STATE OF CALIFORNIA  
 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

**REPLY TO MICHAEL JACKSON'S  
 OPPOSITION TO ACCESS PROPONENTS'  
 MOTION REQUESTING IMMEDIATE  
 PUBLIC ACCESS TO BLANK JURY  
 QUESTIONNAIRE FORMS AND TO THE  
 COMPLETED FORMS SUBMITTED BY  
 PROSPECTIVE JURORS**

Date: February 7, 2005  
 Time: 8:30 a.m.  
 Place: Department SM-8,  
 Judge Rodney S. Melville

[VIA FACSIMILE]

I.  
 INTRODUCTION

Mr. Jackson's baseless opposition again demonstrates his persistent refusal to recognize that the First Amendment to the United States Constitution and California law create a presumption of openness, not secrecy. He says that "If the documents must be turned over, they can be released where [sic] the case is over." Opp'n at 3 (emphasis added). But as the lone case cited by Mr. Jackson indicates, "upon completion, [jury questionnaires] will become public records accessible to

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1 anyone." *Bellas v. Superior Court*, 85 Cal. App. 4th 636, 639 (2000) (rejecting sealing of jury ques-  
 2 tionnaires); *see also Leshar Communications, Inc. v. Superior Court*, 224 Cal. App. 3d 774, 776-77  
 3 (1990) (vacating trial court order denying newspaper publisher's access to jury questionnaires in tri-  
 4 ple murder trial that court of appeal had stayed pending resolution of access issue); *Copley Press, Inc.*  
 5 *v. Superior Court*, 228 Cal. App. 3d 77, 89 (1991) (holding that blanket denial of access to jury ques-  
 6 tionnaires was unconstitutional). Mr. Jackson cites no authority to the contrary.

7 Mr. Jackson's main argument is that making questionnaires public would make jurors  
 8 "think twice before answering the questions candidly." Opp'n at 3. But jury selection has been open  
 9 to the public for centuries. *See Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 506 (1984)  
 10 ("As the jury system evolved in the years after the Norman Conquest . . . the public character of the  
 11 proceedings, including jury selection, remained unchanged."). Moreover, as the court of appeal held  
 12 in *Bellas*, "a written questionnaire serves as an alternative to oral disclosure of the same information  
 13 in open court," and therefore "it is synonymous with, and a part of, voir dire." 85 Cal. App. 4th at  
 14 639 n.2. This Court has stated that it would hold voir dire in open court. Mr. Jackson's desire to  
 15 have every written questionnaire sealed thus is as arbitrary as it is unjustified. *See Leshar*, 224 Cal.  
 16 App. 3d at 778 ("[T]he public access mandate of *Press-Enterprise* applies to voir dire questionnaires  
 17 as well as to oral questioning."); *Copley Press*, 228 Cal. App. 3d at 86, 89 (holding that "the blanket  
 18 denial of access to the questionnaires . . . was unconstitutional," and that "*Press-Enterprise* teaches  
 19 that an individualized approach rather than a blanket one is appropriate in considering the privacy  
 20 rights of prospective jurors.") (citation omitted).

21 Most important, here the Juror Questionnaire itself states unequivocally that "[t]he answers  
 22 you give here will become part of the public record." Questionnaire at 1 (emphasis added). And  
 23 prospective jurors are properly instructed, in capital letters, that "IF ANY QUESTION CALLS FOR  
 24 A RESPONSE THAT YOU WISH TO REMAIN CONFIDENTIAL, MARK SUCH A QUESTION  
 25 'CONFIDENTIAL.'" *Id.* The prospective jurors who completed the form thus did so with full  
 26 knowledge that the forms would be publicly disclosed. In short, this Court followed the exact proce-  
 27 dure outlined in *Bellas*, *Copley Press*, and *Leshar*, which held that trial courts should make clear to  
 28

1 prospective jurors that the questionnaires will not remain confidential, but instead will be disclosed.  
 2 *See, e.g., Bellas*, 85 Cal. App. 4th at 639 (noting that “the constitutionally permitted procedure man-  
 3 dates that the judge advise members of the voir dire at the time the questionnaires are distributed that,  
 4 upon completion, they will become public records accessible to anyone, and as an alternative to writ-  
 5 ing in sensitive personal data, jurors can answer those questions on the record in chambers with coun-  
 6 sel present.”).<sup>1</sup>

7 There is no basis for suggesting that public disclosure now would deter candid responses. In  
 8 fact, the opposite is true. Since the court told the jurors the forms would be made public, and they are  
 9 already completed, disclosure will not effect candor.<sup>2</sup> Moreover, potential jurors are more likely to  
 10 be candid if they know that any false statements will be open to public view. *Cf. NBC Subsidiary*  
 11 *(KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4th 1178, 1219 (1999) (noting that one of the key pur-  
 12 poses served by such public access is “enhancing truthfinding by promoting the accuracy of witness  
 13 testimony”). Since the Court instructed the prospective jurors in clear, unambiguous language that  
 14 they could mark questions “confidential” and ask for in camera hearings, any legitimate privacy in-  
 15 terests are amply protected.

16 Finally, Mr. Jackson’s conclusory claim that no purpose would be served by releasing the jury  
 17 questionnaires is specious. As the Supreme Court has held, “[t]he process of juror selection is itself a  
 18 matter of importance, not simply to the adversaries, but to the criminal justice system.” *Press Enter-*  
 19 *prise*, 464 U.S. at 505. Openness “enhances both the basic fairness of the criminal trial and the ap-  
 20

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21 <sup>1</sup> As for Mr. Jackson’s contention that the questionnaires contain identifying information regarding  
 22 some prospective jurors, Opp’n at 3 n.1, the forms only ask for juror numbers, so some prospec-  
 23 tive jurors’ accidental inclusion of their names does not warrant sealing every questionnaire. In  
 24 fact, the names of the prospective jurors are presumptively matters of public record. *See People*  
 25 *v. Phillips*, 56 Cal. App. 4th 1307, 1309-10 (1997) (noting that the trial court “made no determi-  
 26 nation that there was a compelling interest which required identifying information of qualified ju-  
 27 rors be kept confidential,” and “[i]n the absence of that determination, it was improper for the  
 28 court to keep this information from the public, or the parties”).

<sup>2</sup> If, in the unlikely event posited by Mr. Jackson, Opp’n at 3, more prospective jurors are called in  
 to fill out questionnaires, disclosure also will have no effect because the form tells prospective ju-  
 rors that their responses will be public.



1 appearance of fairness so essential to public confidence in the system." *Id.* at 508. Indeed, "the pri-  
 2 macy of the accused's right [to a fair trial] is difficult to separate from the right of everyone in the  
 3 community to attend the *voir dire* which promotes fairness." *Id.* Mr. Jackson says he has the right to  
 4 an "unintimidated" jury, but he never explains how release of the questionnaires would intimidate the  
 5 venire, which has already completed the forms and will be questioned in open court. If anything, this  
 6 openness benefits Mr. Jackson by providing a check on those who might sit in judgment of him at  
 7 trial. The completed jury questionnaires, therefore, should be released to the public as part of the *voir*  
 8 *dire* process that will be conducted in open court beginning Monday.

9  
10 DATED: February 4, 2005

Respectfully submitted,

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

14 By: *Theodore J. Boutros, Jr.*  
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19 *Los Angeles Times*; The New York Times  
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21 France-Press

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**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 February 4, 2005, I served the following:

**REPLY TO MICHAEL JACKSON'S OPPOSITION TO ACCESS PROPONENTS' MOTION REQUESTING IMMEDIATE PUBLIC ACCESS TO BLANK JURY QUESTIONNAIRE FORMS AND TO THE COMPLETED FORMS SUBMITTED BY PROSPECTIVE JURORS**

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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Gibson, Dunn & Crutcher LLP

**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, pursuant to Rule 2008. The facsimile machine I used complied with Rule 2003(3) and no error was reported 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.

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I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that the foregoing document(s), and all copies made from same, were printed on recycled paper, and that this Certificate of Service was executed by me on February 4, 2005, at Los Angeles, California.

  
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 Jess Fernandez

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