

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

FEB 07 2005

GARY M. BELL, Executive Officer
BY: *[Signature]*
GARRIE L. WAGNER, Deputy Clerk

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY
County of Santa Barbara
2 By: RONALD J. ZONEN (State Bar No. 85094)
Senior Deputy District Attorney
3 GORDON AUCHINCLOSS (State Bar No. 150251)
Senior Deputy District Attorney
4 GERALD McC. FRANKLIN (State Bar No. 40171)
Senior Deputy District Attorney
5 1112 Santa Barbara Street
Santa Barbara, CA 93101
6 Telephone: (805) 568-2300
FAX: (805) 568-2398
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA BARBARA
10 SANTA MARIA DIVISION
11

12 THE PEOPLE OF THE STATE OF CALIFORNIA,)

13 Plaintiff,

14 v.

15 MICHAEL JOE JACKSON,

16 Defendant.
17

No. 1133603

18 PLAINTIFF'S CONCURRENCE
WITH ACCESS PROPONENTS'
REQUEST THAT COMPLETED
JURY QUESTIONNAIRES
BE MADE AVAILABLE TO
THEM

19 DATE: February 7, 2005
20 TIME: 8:30 a.m.
DEPT: SM 2 (Melville)

~~FILED UNDER SEAL~~

21 Introduction:

22 On February 1, 2005, Access Proponents requested public access to blank and
23 completed jury questionnaire forms. Defendant opposed that motion. On Friday, February
24 4th, Access Proponents filed their Reply to Defendant's Opposition.

25 Concurrence:

26 Plaintiff's counsel has reviewed the decisions cited by Access Proponents: *Press-*
27 *Enterprise v. Superior Court* (1984) 464 U.S. 501 [104 S.Ct. 819], *Leshar Communications,*
28 *Inc. v. Superior Court* (1990) 224 Cal.App.3d 774, *Copley Press, Inc. v. Superior Court* (1991)

1 and *Bellas v. Superior Court* (2000) 85 Cal.App.4th 636, citing and discussing all of the
2 foregoing decisions. The jury questionnaire form in this case cautions prospective jurors that
3 the filled-in questionnaires will become "part of the public record" and that "IF ANY
4 QUESTION CALLS FOR A RESPONSE THAT YOU WISH TO REMAIN
5 CONFIDENTIAL, MARK SUCH A QUESTION CONFIDENTIAL."

6 Plaintiff notes that *Leshar Communications, supra*, 224 Cal.App.3d 774 held, among
7 other things, that

8 *Press-Enterprise* does not require that disclosure be made of
9 questionnaires submitted by venirepersons never called to the jury box
10 for voir dire; we assume that those questionnaires play no role
11 whatsoever until a prospective juror is actually called to the jury box.
12 [V]enirepersons who are never called to the jury box do not play
13 any part in the voir dire or the trial. They fill out questionnaires only as
14 a prelude to their participation in voir dire. The questionnaire serves no
15 function in the selection of the jury unless the person filling it out is
16 actually called to be orally questioned. We see no legitimate public
17 interest in disclosure of these questionnaires.

18 (224 Cal.App.3d 774, at p. 779.)

19 In *Bellas v. Superior Court, supra*, 85 Cal.App.4th 636, the court noted its
20 disagreement with that aspect of the *Leshar* decision:

21 As we have noted, the distribution and completion of questionnaires
22 constitute part of jury selection, or voir dire. (*Copley II, supra*, 228
23 Cal.App.3d at p. 89; see also *Zamudio v. Superior Court* (1998) 64
24 Cal.App.4th 24, 30 (*Zamudio*). Yet, the *Leshar* court distinguished the
25 questionnaires completed by members of the venire who were never
26 questioned orally during jury selection. . . . In addition to failing to
27 offer any persuasive analysis in support of this distinction, *Leshar*
28 provides no guidance as to how a trial court and its staff might
practically go about reconstructing who was asked questions, and thus
whose questionnaires should be relinquished in response to a public
request, which might be received some substantial time after trial is
concluded.

83 Cal.App.4th at 645, n. 6.)

1 The questionnaires in this case were executed under penalty of perjury, and their
2 recipients were cautioned that the completed questionnaires "will be used by the judge,
3 attorneys, and their assistants in selecting a qualified jury." It would appear that all of the
4 completed questionnaires constitute a part - an important part - of the "voir dire" process,
5 regardless of whether a given prospective juror is orally questioned as part of the selection
6 process.

7 In light of the authority gathered and discussed by Access Proponents, the People
8 are constrained to agree with them that the completed questionnaires must be made available to
9 the public.

10 DATED: February 6, 2005

11 Respectfully submitted,

12 THOMAS W. SNEDDON, JR.
13 District Attorney

14 By: 

15 Gerald McC. Franklin, Senior Deputy
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

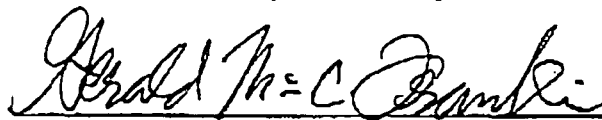
STATE OF CALIFORNIA }
COUNTY OF SANTA BARBARA } SS

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and I am not a party to the within-entitled action. My business address is: District Attorney's Office; Courthouse; 1112 Santa Barbara Street, Santa Barbara, California 93101.

On February 6, 2005, I served the within PLAINTIFF'S CONCURRENCE WITH ACCESS PROPONENTS' REQUEST THAT COMPLETED JURY QUESTIONNAIRES BE MADE AVAILABLE TO THEM on Access Proponents, and on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER, and BRIAN OXMAN by transmitting a true copy thereof by Facsimile to Mr. Mesereau at the confidential fax number in Santa Maria and Theodore Boutrous at the fax number shown on the attached Service List. I anticipate that "hard copies" will be provided counsel in open court on February 7th.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Santa Barbara, California on this 6th day of February, 2005.


Gerald McC. Franklin

SERVICE LIST

1
2 GIBSON, DUNN & CRUTCHER, LLP
3 Theodore J. Boutrous, Jr., Esq.
4 William E. Thomson, Esq.
5 Julian Poon, Esq.
6 333 S. Grand Avenue
7 Los Angeles, CA 90071-3197
8 FAX: (213) 229-6758

9 Attorneys for Access Proponents

10
11 THOMAS A. MESEREAU, JR.
12 Collins, Mesereau, Reddock & Yu, LLP
13 1875 Century Park East, No. 700
14 Los Angeles, CA 90067
15 FAX: [Confidential]

16 Attorney for Defendant Michael Jackson

17
18 ROBERT SANGER, ESQ.
19 Sanger & Swysen, Lawyers
20 233 E. Carrillo Street, Suite C
21 Santa Barbara, CA 93001
22 FAX: (805) 963-7311

23 Co-counsel for Defendant

24
25 BRIAN OXMAN, ESQ.
26 Oxman & Jaroscak, Lawyers
27 14126 E. Rosecrans Blvd.,
28 Santa Fe Springs, CA 90670

Co-counsel for Defendant