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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN FRANCISCO DIVISION**

18 UNITED STATES OF AMERICA,) Case No. CR 07 0732 SI
19)
20 Plaintiff,) **DEFENDANT’S SUPPLEMENTAL**
21 vs.) **STATEMENT RE: CONFIDENTIALITY**
22 BARRY LAMAR BONDS,) **OF JUROR QUESTIONNAIRES**
23 Defendant.)

24 Having considered the recent submission of the government, defendant Bonds hereby
25 supplements his previous statement (Dkt. 250, filed February 25, 2011) concerning the press
26 organizations’ request for disclosure of completed juror questionnaires in this matter.

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1 In *Press-Enterprise Co. v. Superior Court of California, Riverside County*, 464 U.S. 501
2 (1984), the Supreme Court held that under the First Amendment, a “presumption of openness”
3 attaches to jury voir dire. As the government’s Recommendation Regarding Public Access to
4 Voir Dire and Trial (Dkt. 251) correctly observes (at 3), the Supreme Court has not decided, and
5 there is no federal consensus, on whether that presumption extends to juror names or juror
6 questionnaires. State court precedent addressing these issues, of course, is not binding on this
7 Court.

8 Defendant nevertheless recognizes that juror names and/or questionnaire responses are at
9 least arguably a component of voir dire and therefore subject to this presumption. Accordingly,
10 defendant concurs with the government’s request that the Court make explicit and specific
11 findings in support of any limitations it may impose on public access to such information in
12 accordance with the criteria set forth in *Waller v. Georgia*, as 467 U.S. 39, 48 (1984), as
13 discussed in *United States v. King*, 140 F.3d 76, 80-81 (2d Cir. 1998).

14 Defendant maintains his request that the Court defer disclosure of the names of jurors and
15 alternates until after the jury has been discharged. Defendant also requests that, at a minimum, all
16 identifying information for jurors and alternates (e.g., names, addresses, place of birth, name of
17 employer, names of relatives, etc.) be redacted from any juror questionnaires should any portion
18 thereof be made public prior to the jury’s discharge, with such redaction to remain in effect until
19 the time of the discharge.

20 The primary basis for defendant’s request, of course, is his right to a fair trial. See *Press*
21 *Enterprise*, 464 U.S. at 508 (“[n]o right ranks higher than the right of the accused to a fair
22 trial.”); *Gannett Co. v. DePasquale*, 443 U.S. 368, 380 (1979) (“Our cases have uniformly
23 recognized the public-trial guarantee as one created for the benefit of the defendant.”) As borne
24 out by the materials filed in support of the government’s recommendation, the release of
25 identifying juror information before the case has concluded, whether jurors consent to it or not,
26 presents a substantial and, indeed, extraordinary risk of juror contamination that would
27 significantly threaten this fundamental right. Such release would likewise undermine defendant’s
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1 interest in securing full and candid responses to the questionnaires and during the oral voir dire,
2 and would threaten jurors' interest in their own privacy. The analyses employed in *King, supra*,
3 and *United States v. Blagojevich* (N.D. Ill. No. 08 CR 888-1,6, attached as Exhibit B to
4 government's recommendation) are particularly useful for purposes of identifying these risks in
5 this matter and in responding to them with appropriate limitations on disclosure prior to the
6 jury's discharge.

7 Finally, defendant also concurs with the government's recommendation concerning the
8 treatment of jurors who wish to disclose private or sensitive information sought in the
9 questionnaire or during oral voir dire, as set forth in the government's brief (at 11-12). Such
10 treatment will again advance not only defendant's interest in eliciting truthful information from
11 prospective jurors and with it, his underlying right to a fair trial, but also the affected jurors'
12 interest in their own privacy.

13 Dated: March 4, 2011

Respectfully submitted,

14 ALLEN RUBY (SKADDEN, ARPS, ET AL.)

15 ARGUEDAS, CASSMAN & HEADLEY, LLP

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17
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19 By /s/ Donald M. Horgan
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