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6

FILED
San Francisco County Superior Court

MAR 13 1998

ALAN CARLSON, Clerk
BY: *[Signature]* Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE CITY AND COUNTY OF SAN FRANCISCO

11 LANDMARK EDUCATION CORPORATION,
12 Plaintiff,
13 v.
14 STEVEN PRESSMAN,
15 Defendant.
16
17

CASE NO. 989890
~~PROPOSED~~ ORDER COMPELLING
ANSWERS TO DEPOSITION QUESTIONS,
AND DENYING SANCTIONS
Date: December 19, 1997
Time: 10:30 a.m.
Discovery Dept: Room 610
Trial Date: Not Applicable

18
19 The motion of plaintiff Landmark Education Corporation for order compelling answers to
20 deposition questions and for sanctions, came on regularly for hearing before Discovery
21 Commissioner Richard E. Best, on December 19, 1997, with Carol P. LaPlant appearing for plaintiff
22 and moving party, Landmark Education Corporation, and Judy Alexander appearing for defendant
23 Steven Pressman, and upon consideration of the briefs submitted by the parties and the arguments of
24 counsel, and good cause appearing, the Court ^{and orders,} finds as follows:

25 The initial issue under the shield law is whether the qualified privilege applies to the
26 protection of sources and contemporary information gathered by a newsperson when the subject

1 evolves into a book. That issue does not arise in connection with the ^{First} Amendment objection
 2 which is not arguably restricted to periodicals.

3 The statute and case law is unclear or silent on the "book" issue. Article 1 Sec.2(b) ^{of the California Constitution} provides
 4 protection for information and sources of a person who is or has been "connected with" a press
 5 association, etc. It protects information and sources but there are two clauses: one regarding
 6 sources and one regarding unpublished information. The first is modified by the limitations
 7 "procured while so connected" and "for publication in a ...periodical," i.e., it expressly applies only
 8 to periodicals. The second is modified only by the phrases "obtained...in gathering ...information
 9 for communication to the public," i.e., it is not expressly limited to periodicals. There is no apparent
 10 reason to distinguish between sources and information with regard to the protection afforded. It is
 11 not clear that all limitations were to be applied as prerequisites for the protections of the
 12 Constitution. In *People v. Von Villas* (1992), 10 Cal.App.4th 201, 232 ⁽¹⁹⁹²⁾ the court held the protection
 13 was afforded to activity before the reporter was under contract, i.e., before he was "so connected."
 14 Thus at least one appellate court suggests that all express limitations need not be satisfied for the
 15 protections to apply and counsel have not cited authority to the contrary. ⁽⁹⁾ The purpose of the Shield
 16 Act and Constitutional provisions was set forth in the ballot argument quoted in *Delaney v. Superior*
 17 *Court* (1990), 50 Cal.3d 785, 803 fn. 13 ⁽¹⁹⁹⁰⁾:

18 "The free flow of information to the public is one of the most
 19 fundamental cornerstones assuring freedom in America. Guarantees
 must be provided so that information to the people is not inhibited."

20 Although the privileges belong to the reporter, that "free flow of information" might
 21 evaporate if a source could not rely on the assurance of protection in providing information. The
 22 purpose of the privileges may be frustrated if a source and reporter have to speculate and distinguish
 23 between the ultimate or contemporary intent regarding the use of the information being gathered by
 24 the reporter. Material may be gathered to write a magazine article that never is written; but, it may
 25 be the source for a book. The opposite may be true. There may be a joint objective in gathering the
 26 information or there may be no clear objective other than the ultimate dissemination of information

1 to the public. See page 2 line 11 of the Pressman declaration.

2 Although the written provisions are inconsistent and unclear, the purpose of the law and
3 Constitution as expressed in case authority and legislative history support the conclusion that the
4 protections of the Evidence Code and the Constitution apply to books of the nature involved in this
5 case and under the circumstances of this case. As pointed out in Mitchell v. Superior Court, 37 Cal. 3d 268, 274
(1984).

6 "Since contempt is generally the only effective remedy against a
7 nonparty witness, the California enactments grant such witnesses
virtually absolute protection against compelled disclosure."

8 The qualified reporter's privilege is recognized in California (Mitchell v. Superior Court
9 (1984), 37 Cal.3d 268; KSDO v. Superior Court (1982), 136 Cal.App.3d 373) and it protects all
10 newsgathering for public dissemination. (See Schoen v. Schoen, 9th Cir. 1993, 5 F.3d 1289) and Silkwood v.
11 Kerr-McGee (10th Cir. 1977) 563 F.2d 433 (motion picture documentary).) It requires a balancing
12 of several factors though the parties have not focused on those factors extensively. Non-parties like
13 Mr. Pressman are provided greater protection. New York Times Co. v. Superior Court (1990), 51
14 Cal.3d 453, 461. Mitchell, supra. From the facts presented it does not appear that the information
15 sought is directly relevant or goes to the heart of the Illinois action or that alternative sources have
16 been exhausted or are inadequate. A stronger showing is not necessary, however, until that issue is
17 reached after the witness has shown that the First Amendment is applicable to the questions that are
18 the subject of the motion.

19 The burden of proof to establish the applicability of the shield law or the qualified privilege is
20 on Mr. Pressman. New York Times Co. v. Superior Court (1990), 51 Cal. 3d at 461, supra. However slight that
21 burden may be, some showing must be made to the court that the questions infringe on protected
22 information. It is not sufficient for the party asserting the protections to make that determination.
23 (Cf. Fifth Amendment cases requiring some minimal showing.) Once that showing is made the burden
24 shifts to the opponent to establish any waiver or exception or to provide facts for the court to
25 consider in balancing interests and determining the First Amendment privilege issues.

26 The witness has made no showing by declaration or otherwise that the questions that are the

1 subject of this motion seek to discover sources or unpublished information or in any manner violate
2 the prohibitions and protections of the Shield Act, the California Constitution or the ^{First} Amendment.

3 Accordingly, **IT IS HEREBY ORDERED** that Steven Pressman answer the following
4 questions:

- 5 1. Did you ever attend a trial of a woman named Ms. Afromo?
- 6 2. a. Have you ever participated in a project called the Forum?
7 b. In your book, you wrote about the Forum. Did you ever attend a meeting of the Forum?
8 c. Do you recall ever signing in to attend a meeting of the Forum?
- 9 3. Have you ever used a fictitious name, other than your name, Steven Pressman?
- 10 4. Do you recall when you first met Mr. Wilson?
- 11 5. Have you ever seen Laurel Sheaf give any kind of a presentation?
- 12 6. Did you graduate from the Forum?
- 13 7. Did you ever sign a confidentiality agreement in conjunction with the Forum?
- 14 8. Have you ever been to Landmark's offices?
- 15 9. Did you ever give Mr. Wilson any information regarding the Forum?
- 16 10. Did you ever talk to anyone who identified themselves as Seth Derrish?
- 17 11. a. Did you ever talk to Paul Gutfreund?
18 b. Have you ever been on the houseboat that Mr. Gutfreund used to own in Marin County?
- 19 12. Did you engage in any transaction with Mr. Kornbluth?
- 20 13. Have you ever spoken with Cynthia Kisser?
- 21 14. When did you first become familiar with the name Cynthia Kisser?
- 22 15. a. Have you ever seen Cult Awareness Network's advertisement with respect to the materials
23 they may have on groups they characterize as a cult?
24 b. Are you familiar with -- have you ever seen the Cult Awareness Network's advertisement on
25 the Internet?
- 26 16. a. Have you ever spoken to Margaret Singer?

- 1 b. Have you ever read her works?
- 2 17. a. Have you ever spoken to Wendy Drucker?
- 3 b. Have you ever spoken to Landon Carter?
- 4 c. Have you ever spoken to Raz Ingrassci?
- 5 d. Have you ever spoken to Irving Bernstein?
- 6 18. Do you recall telling (Sharon Spaulding) that you met members of the Erhard family?
- 7 19. Have you written any letters to Stewart Esposito?
- 8 20. Do you recall, in 1991, late 1991, early 1992, writing a series -- letters to people who could
- 9 best be characterized as being friends or family members of Werner Erhard?
- 10 21. Are you familiar with a matter that might be called the Ney case?
- 11 22. a. Had you ever attended an est session at any time?
- 12 b. Have you ever attended sessions of est and the Forum in such a way that you could compare
- 13 how they operate?
- 14 23. Was the article that you wrote on Scientology subsequent to an investigative period that you
- 15 had done or research?
- 16 24. In paragraph 3 [of Mr. Pressman's declaration in *Landmark Education Corporation v.*
- 17 *Margaret Singer and Janja Lulich*, San Francisco Superior Court Case No. 976037] you
- 18 say, No one at Landmark would agree to an interview or otherwise to provide me with
- 19 information related to the book. Do you mean that no one at Landmark ever talked to you
- 20 in any way about the manner in which Landmark conducted its business?
- 21 25. a. Did anyone at Landmark ever give you information about the subject matter of the Forum
- 22 classes?
- 23 b. At any time, have you ever asked a question of a Landmark employee regarding the
- 24 information in the book?
- 25 c. When you indicated in your declaration that no one would agree to an interview or otherwise
- 26 provide me with information related to the book, and then, as today, you explained that tha

1 meant an opportunity to ask a question, so I'm understanding where we are, did you, at any
2 time – did you mean to infer to the court in this [declaration] that no one from Landmark
3 ever answered a substantive question you had that was directed toward them?

4 d. Did anyone at Landmark ever answer any substantive question regarding – a question you
5 may have asked regarding the Forum?

6 26. Did you ever meet Moden Kadavi?

7 27. a. Did you recall ever talking to Mike Salzman?

8 b. Are you aware that Michael Salzman represented Werner Erhard, as his lawyer, in a tax
9 case?

10 28. Did you meet Mr. Ragland before or after the book you wrote?

11 29. Do you know whether of not you've ever spoken to Clair?

12 30. Have you ever written to Werner Erhard?

13 31. Have you ever visited the office of Cult Awareness Network?

14

15 IT IS FURTHER ORDERED that, pursuant to stipulation of Mr. Pressman's counsel, Mr.
16 Pressman shall answer the following questions:

17 32. At any time after the book was written and published, did you ever talk to Charlene Afromo

18 33. Have you ever written under a pseudonym?

19 34. Have you ever published a document under a pseudonym?

20 35. a. What is your definition of cultlike as you use it in the book?

21 b. Do you distinguish cult from cultlike?

22 36. In your declaration, you refer to a number of occasions you tried to interview employees of
23 Landmark, including Harry and Joan Rosenberg. Who was it you tried to interview?

24 37. The brochures you talk about were hand-out-type brochures?

25 38. Who is David Kaye?

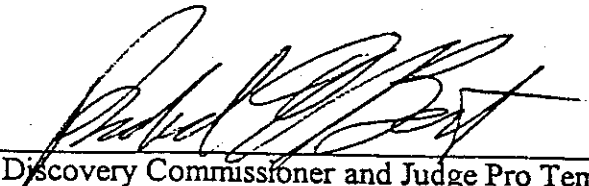
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IT IS FURTHER ORDERED that the parties' requests for sanctions are DENIED.

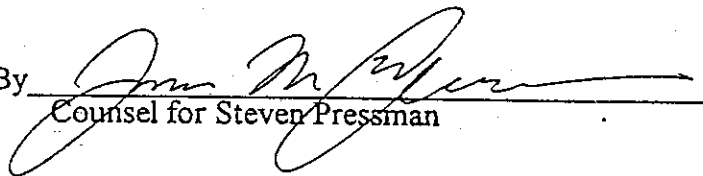
IT IS SO ORDERED.

DATED: 3/11, 1998

By 
Discovery Commissioner and Judge Pro Tem
of the Superior Court

APPROVED AS TO FORM *with interlineations as marked.*

DATED: March 3, 1998

By 
Counsel for Steven Pressman

1 CASE NAME: Landmark Education Corporation v. Pressman
2 San Francisco County Superior Court Action No.: 989890

3 **PROOF OF SERVICE**

4 I am over the age of 18 years, and not a party to the within cause. I am employed in the
5 county of San Francisco wherein this service occurs. My business address is 670 Howard Street, San
6 Francisco, California 94105. I am readily familiar with my employer's normal business practice for
collection and processing of correspondence for mailing with the U.S. Postal Service, and that
practice is that correspondence is deposited with the U.S. Postal Service the same day as the day of
collection in the ordinary course of business.

7 On the date set forth below, following ordinary business practice, I served a true copy of the
8 foregoing document(s) described as:

9 **NOTICE OF ENTRY OF ORDER COMPELLING ANSWERS TO DEPOSITION
10 QUESTIONS, AND DENYING SANCTIONS**

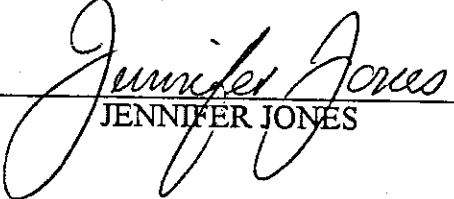
- 11 (BY FAX) by transmitting via facsimile the document(s) listed above to the fax
number(s) set forth below, or as stated on the attached service list, on this date
before 5:00 p.m.
- 12 (BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to be
placed in the United States mail at San Francisco, California.
- 13 (BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand
14 this date to the offices of the addressee(s).
- 15 (BY OVERNIGHT DELIVERY) I caused such envelope(s) to be delivered by an
overnight delivery carrier with delivery fees provided for, addressed to the person
16 on whom it is to be served.

17 Judy Alexander
18 Attorney at Law
Law Offices of Judy Alexander
824 Bay Avenue, Suite 10
19 Capitola, California 95010

James Chadwick
Genesis Law Group
160 West Santa Clara Street, Suite 1300
San Jose, California 95113

- 20 (State) I declare under penalty of perjury under the laws of the State of California
21 that the above is true and correct.

22 Executed on March 24, 1998 at San Francisco, California.

23
24 
25 JENNIFER JONES
26