IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PALM BEACH COUNTY

CASE NO.: 2010CF005829AMB

STATE OF FLORIDA,

Plaintiff,

v.

JOHN B. GOODMAN,

Defendant.

_____/

JUDGE JEFFREY COLBATH

DEFENDANT'S MOTION TO COMPEL DISCLOSURE OF ALL COMMUNICATIONS BETWEEN JURORS AND THE COURT

The Defendant, JOHN B. GOODMAN, through undersigned counsel, respectfully moves this Court, pursuant to Rule 3.575 of the Florida Rules of Criminal Procedure and the due process and impartial jury clauses of Article I, Section 16 of the Florida Constitution and the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, for full and complete disclosures of all communications the Court and its chambers have had with or received from any juror or alternate juror in this case, including but not limited to:

(1) Telephone calls from (alternate) Juror No. 8;

(2) Telephone calls and written correspondence with Juror No. 6, Dennis DeMartin, including but not limited to copies of all correspondence and book chapters that Mr. DeMartin reports that he sent to the Court; and

(3) Any communications with or from any other jurors since the verdict was rendered in this case.

In support of these requests, the Defendant states the following:

1. During the trial, on March 20, 2012, Juror No. 6, Dennis DeMartin, wrote a letter to the Court in which he stated that he had been writing a book for over a year, but not about the trial. Rather, the only book he revealed in his letter was already at least partially written and entitled "The Trials and Tribulations of a Senior Citizen getting a Date without a Car."[1] In the letter, Mr. DeMartin claimed he was informing the Court about his book plan because he had been in contact with some publishing companies "for my dating book" and had also told the other jurors "that I am writing my book on dating without a car..." *Id.*

> "I told them [friends] that I would continue on my dating book and I would use the dating book as a leader to follow the process of getting it published. ***If*** I was successful, with that book, ***I would consider*** using the process to ***writing about the experience of being a juror***."
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> Dennis DeMartin, Letter to the Court, March 20, 2012 p. 2 (emphasis added).

2. Mr. DeMartin did *not* reveal – and, therefore, by implication denied – that he was writing a book *about the trial.* Indeed, he said only that "if" he was successful in publishing his "dating book" he "would consider using the process to writing about the experience of being a juror." *Id.* In truth and in fact, Mr. DeMartin had already decided to write a book about the trial, had been taking daily notes during the trial for that purpose, had been inputting them into his home computer each night and had informed the other jurors about his plans.

3. On March 23, 2012, the jury returned its verdict against Mr. Goodman. As discussed in Mr. Goodman's Motion For New Trial And/Or to Vacate His Conviction, that same day, Mr.

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[1] A copy of the March 20, 2012, letter was attached as Exhibit 3 of Mr. Goodman's April 16, 2012, Motion For New Trial.

DeMartin gave live interviews to numerous television stations and news outlets. However, only portions of these interviews were broadcast, none of which included anything about Mr. DeMartin writing a book about this case.

4. On April 16, 2012, Mr. Goodman filed his Motion For New Trial And/Or to Vacate His Conviction Based On Jury Misconduct. In that motion, counsel recited allegations from one of the alternate jurors, Juror No. 8, concerning numerous forms of jury misconduct, including that Mr. DeMartin had been writing a book about the case during the trial and had informed the other jurors about that fact.

5. As has every other event in this case, Mr. Goodman's motion spawned considerable publicity. In response, Mr. DeMartin gave at least one lengthy televised interview on April 16, 2012. Screen shots of that interview are attached hereto as **Composite Exhibit 1**, and a video version is being submitted along with this motion. Although Mr. DeMartin claimed that he had not "start[ed]" the book during the trial, he admitted that he had been taking daily notes on the trial ***for that purpose*** "and ***I told them [the other jurors] about the notes that I was making every night***." (Emphasis added.) He also admitted that he was "writing ***now*** about his trial experience." *Id.* (emphasis added). Sitting at his computer screen, Mr. DeMartin then showed the cameras some of his notes which reflected some undecipherable comments about "Defendant's Attorneys" on Day 4 of the trial.

6. On April 17, 2012, CBS12.com broadcast a story about the controversy, entitled *Could Juror Misconduct Hand John Goodman a New Trial? See* **Exhibit 2**. In the article accompanying the broadcast, the station indicated that Mr. DeMartin "is writing the book" about the case. The article elaborated as follows, apparently referring back to the interviews Mr. DeMartin gave to the media immediately after the verdict on March 23, 2012: "We spoke with him after the

> "The juror who is writing the book is Dennis DeMartin. We spoke with him ***after the trial.*** He told us ***then he's writing a book about his experience on the jury and showed us his daily notes.***"
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> Cbs12.com, *Could Juror Misconduct Hand John Goodman a New Trial?*, April 17, 2012.

trial. ***He told us <u>then</u> he's writing a book about his experience on the jury and showed us the daily notes.***" *Id.* (emphasis added). In other words, contrary to Mr. DeMartin's interviews on April 16, 2012, by the end of the trial he had already "started" writing the book on the trial. It is patently obvious from this sequence of events and shifting statements from Mr. DeMartin that he was concerned about Mr. Goodman's accusations that he had acted improperly in writing the book during the trial and was falsely attempting to portray his decision as post-dating the verdict.

7. That same day, April 17, 2012, the Court convened a telephonic hearing in which the Court indicated that it might summon the jurors for interviews. During that hearing, the Court seemed to already have concluded that there was nothing wrong about Mr. DeMartin writing a book about the case. "I mean, lots of jurors write books about their trial experience, so what? That's not grounds to excuse him...."[2] *But see* **Exhibit 3**, The Miami Herald, August 12, 2005, *Our Opinion: Courts, Lawyers Should Weed Out Profit-Minded Jurors* ("The odds of someone with a personal

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[2] A transcript has not yet been ordered of the hearing. However, the Court's comments were captured by the live television feed and broadcast on the evening news. The Court did not cite any sources for its statement that "lots of jurors write books about their trial experience." However, most of the juror-written books counsel have found were written about cases where the defendants were not convicted, such as O.J. Simpson, Michael Jackson and the Menendez brothers. *See, e.g.*, Hazel Thornton, *Hung Jury: The Diary of a Menendez Juror*, Temple University Press (1995); Michael Knox and Mike Walker, *The Private Diary of an O.J. Juror: Behind the Scenes of the Trial of the Century*, Dove Entertainment Inc. (July 1995); Armando Cooley, et al., *Madam Foreman: A Rush To Judgment?*, Newstar Pr. (January 1, 1996). Two books written by jurors in Michael Jackson's case – *see* Eleanor Cook, *Guilty As Sin, Free as a Bird*, and Ray Hultman, *The Deliberator* – apparently were never published. Jurors did write a book about Scott Lee Peterson's murder of his wife, *see* Greg Beratlis, et al., *We, The Jury*, Phoenix Books, Jan. 1, 2007, but it does not appear that Peterson ever challenged their conduct in doing so.

agenda getting on a jury may be slim, but the risk of tainting a jury is real. It's up to defense lawyers, prosecutors and judges to weed out the opportunists through voir dire hearings. The integrity of our justice system depends on impartial juries willing to give both sides a fair hearing and equal consideration.").

8. The hearing drew considerable media attention, which prompted Mr. DeMartin to write the Court the following day. *See* Letter, April 18, 2012, **Exhibit 4**. Counsel learned about the existence of this letter *from the media*, not from the Court. *See* **Exhibit 5,** WPTV.com, April 18, 2012, *Only on 5: Goodman juror accused of misconduct fires back at polo mogul's attorney, alternate juror - Accused Juror files letter with judge, clears air.* Counsel only received a copy from the Court after calling the Court's chambers.

9. Mr. DeMartin's letter began by stating: "***I had sent you the first and last chapters of a book I have been writing*** on how I was chosen for the jury and what had happened since it was over." *Id.* (emphasis added). He also indicated that along with the book chapters he asked the Court for advice about whether he "should wait to try to publish a book on the trial until after sentencing and/or appeal." *Id.* Although he did not provide a precise date for this communication with the Court, he stated that he was going to give an interview with Court TV on April 4, 2012, but "**canceled that April 4, interview when you did not respond.**" *See* **Exhibit 4** (emphasis in original). Accordingly, it appears that Mr. DeMartin corresponded with the Court about the book sometime *before* April 4. Yet, the Court informed no one at the time or even after Mr. Goodman's motion challenging Mr. DeMartin's book writing conduct. Instead, as noted above, the Court defended Mr. DeMartin's conduct on April 17 without even disclosing that Mr. DeMartin had sought the Court's advice about how to proceed.

10. In his April 18th letter, Mr. DeMartin also emphatically denied discussing his daily notes with other jurors: "The contents of these work sheets **WERE NOT DISCUSSED** with any juror." (Emphasis in original.) This assertion is difficult to square with what he told the cameras on April 16 ("I told them about the notes that I was making every night"). We, frankly, are not sure what is worse – (1) telling the jurors that he was taking notes about the trial every night but *not* telling them about the "contents" and thereby leaving them to speculate what he was saying *about them* in the book or (2) sharing the "contents" of his notes with the jurors.

11. On April 20, 2012, the Court denied the motion for new trial and ordered that the jurors be questioned only about their comments about Mr. Goodman's wealth, holding that questions about Mr. DeMartin's book (as well as his mendacity about it) would be off limits.[3] The Court's order acknowledged Juror No. 8's allegation about calling the Court twice in March but did not affirm, deny or elaborate upon that allegation.

12. On April 21, 2012, The Palm Beach Post published a story about the Court's order and its aftermath. *See* **Exhibit 6**, The Palm Beach Post, *'Rogue juror' in John Goodman DUI manslaughter case defends his vote, book writing*. Mr. DeMartin, apparently interviewed yet again for the story, reiterated: "'***I am writing a book now that I won't publish until all the dust is settled***,' DeMartin said." *Id.* (emphasis added). He then added that "***during the trial he worked at night on a book about the trial, a manuscript he has named Believing in the Truth***."

> "I am writing a book now that I won't publish until all the dust is settled...."
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> Dennis DeMartin, quoted in The Palm Beach Post, *'Rogue juror' in John Goodman DUI manslaughter case defends his vote, book writing*, April 21, 2012.

[3] During its discussion of the book-writing allegations, the Court stated that "Defendant seems to concede that Mr. DeMartin's literary exploits, in and of themselves, are not improper." Order, April 20, 2012, at p. 11. The Defendant has not made and does not make any such concession.

Id. (emphasis added). Mr. DeMartin, however, continued to deny that he discussed this book with the other jurors.

13. Before Mr. Goodman can assess whether to seek additional relief based upon the Court's unreported contacts with the jury, all the facts need to be disclosed. Communications of any kind between jurors and the trial judge during the course of a case, especially a criminal case, are serious matters. Under Rule 3.410 of the Florida Rules of Criminal Procedure, if a juror contacts the Court while the jury is still deliberating, the Court may not respond until it notifies and obtains the views of the prosecutors and defense counsel.[4] In *Ivory v. State*, 351 So.2d 26 (Fla. 1977), the Supreme Court of Florida held that a court's failure to strictly comply with Rule 3.410 constitutes *per se* reversible error, explaining:

> We now hold that it is prejudicial error for a trial judge to respond to a request from the jury without the prosecuting attorney, the defendant, and defendant's counsel being present and having the opportunity to participate in the discussion of the action to be taken on the jury's request. This right to participate includes the right to place objections on the record as well as the right to make full argument as to the reasons the jury's request should or should not be honored.

351 So.2d at 28. *See United States v. Scisum*, 32 F.3d 1479, 1481-83 (10th Cir. 1994) (juror's question to marshal about whether she had to be present in the courtroom when the verdict was announced constituted a contact with the court requiring input by defendants and counsel).

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[4] Rule 3.410 provides:

> After the jurors have retired to consider their verdict, if they request additional instructions or to have any testimony read to them they shall be conducted into the courtroom by the officer who has them in charge and the court may give them the additional instructions or may order the testimony read to them. The instructions shall be given and the testimony read only after notice to the prosecuting attorney and to counsel for the defendant.

14. The Supreme Court in *Ivory* then went on to hold that "[a]ny communication with the jury outside the presence of the prosecutor, the defendant, and the defendant's counsel is so fraught with potential prejudice that it cannot be considered harmless." *Id.* The Supreme Court has repeatedly reiterated that violations of Rule 3.140 are *per se* reversible. *Johnson v. State*, 53 So.3d 1003, 1008 (Fla. 2011); *State v. Merricks*, 831 So.2d 156, 161 (Fla. 2002) (per curiam); *Mills v. State*, 620 So.2d 1006 (Fla. 1993); *Bradley v. State*, 513 So.l2d 112 (Fla. 1987). *See also O'Keefe v. State*, 47 So.3d 937 (Fla. 4th DCA 2010); *Natan v. State*, 58 So.3d 948 (Fla. 2d DCA 2011).

15. To be sure, the communications in the instant case do not appear to have occurred *during* the jury's deliberations. Therefore, they would not be covered by Rule 3.140. However, the Supreme Court of Florida has already repeatedly held that the same rules of notice and participation occur to *all* judge-jury communications and that "communications outside the express notice requirements of rule 3.410 should be analyzed using harmless-error principles." *Mendoza v. State*, 700 So.2d 670, 674 (Fla. 1997), *cert. denied*, 525 U.S. 839 (1998). *See also Merricks*, 831 So.2d at 159 n. 2; *Williams v. State*, 488 So.2d 62, 64 (Fla. 1986). Moreover, since Mr. Goodman has not yet been sentenced, he has a continuing right to be present at all critical stages of his case.[5]

16. The harmless error rule also applies in civil cases. *See Sears Roebuck & Co. V. Polchinski*, 636 So.2d 1369 (Fla. 4th DCA 1994) (Pariente, J.). Due to the inherent difficulty in proving harm, however, "prejudice is presumed and the burden is on the party seeking to uphold the jury's verdict to demonstrate the ex parte communication was harmless." 636 So.2d at 1370

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[5] Pursuant to the Sixth and Fourteenth Amendments of the Constitution, a criminal defendant has the right to be personally present at all critical stages of his trial. "[A] defendant is guaranteed the right to be present at any stage of the criminal proceeding that is critical to its outcome if his presence would contribute to the fairness of the procedure." *Kentucky v. Stincer*, 482 U.S. 730, 745, 107 S. Ct. 2658, 96 L. Ed. 2d 631 (1987); *Illinois v. Allen*, 397 U.S. 337, 338, 90 S. Ct. 1057, 25 L. Ed. 2d 353 (1970). *See Scisum* 32 F.3d at 1482-83.

(citations omitted). If the reviewing court is "unable" to assess the harm, then reversal "is required." *Id.* at 1371 (citation omitted). *See also Scisum*, 32 F.3d at 1484 (placing the "heavy burden" of proving harmless error on the government).

17. Absent full disclosure of the jury's communications with the Court, it is impossible to fully assess the harm. *Cf. United States v. Smith*, 31 F.3d 469, 473 (7th Cir. 1994) (district court's decision to respond to juror's inquiry not harmless, in part, because judge's communications with jurors not "available for review" and, therefore, "we cannot say that the record completely negates any possibility of prejudice" to the defendant) (citation omitted).

CONCLUSION

Jurors, unlike lawyers and judges, directly control a trial's outcome. The system depends upon their impartiality. Therefore, it was bad enough that Mr. DeMartin served on Mr. Goodman's jury with a hidden agenda – a motive to use his civic duty as a platform for profit and celebrity. Even worse, Mr. DeMartin's conflict led him to mislead the Court and the parties during voir dire and in his March 20 letter to the Court. Had Mr. DeMartin been candid then about his book writing, counsel would have moved to replace him then. Mr. DeMartin's deliberately concealed conflict has violated Mr. Goodman's Sixth Amendment right to an impartial jury and undermined the appearance of justice. *See generally Steinhorst v. State*, 636 So.2d 498, 500-01 (Fla. 1994) (recognizing that "one of the most important dictates of due process" is that "proceedings

> "The odds of someone with a personal agenda getting on a jury may be slim, but the risk of tainting a jury is real. It's up to defense lawyers, prosecutors and judges to weed out the opportunists through voir dire proceedings. The integrity of our justice system depends on impartial juries willing to give both sides a fair hearing and equal consideration."
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> The Miami Herald, *Our Opinion: Courts, Lawyers Should Weed Out Profit-Minded Jurors*, Aug. 12, 2005.

involving criminal charges ... must both be and appear to be fundamentally fair") (citation omitted); *Cravens v. Smith*, 610 F.3d 1019, 1031 (8th Cir. 2010) ("'A district court is required to strike for cause any juror who is shown to lack impartiality or the appearance of impartiality....'") (citation omitted). While the Court may disagree with that legal conclusion, it should not compound Mr. DeMartin's acts of concealment by keeping its own communications with him secret. For the foregoing reasons, the Court should fully disclose all communications it has had with any of the jurors since the verdict, especially Mr. DeMartin.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 24, 2012, my office hand-delivered a true copy of the foregoing to:

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