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.
_____/

DEFENDANT'S SWORN MOTION FOR A CHANGE OF VENUE AND INCORPORATED MEMORANDUM OF LAW

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PREFACE

"It will be a jury trial.... John...if your [sic] smart you'll demand trial by judge. You don't want a trial by jury.... WE consist of the jury. I listen very carefully and stay very quiet during 'Voir Dire'... I know exactly what it takes to get on a jury... So do a lot of bored people just like me... Pray I don't get a summons John ... PRAY...."

On-line comment to *Palmbeachpost.com*, July 24, 2010, "Friends of Scott Wilson cleaning crash site: 'We just want Wellington to remember,'" by "Halliburton STILL owns the rig"at 9:04 a.m., 7/25/2010.

"The pretrial publicity should assure Goodman is convicted and goes down .... after all the PBP tried and convicted him...."

On-line comment to *Palmbeachpost.com*, May 19, 2010, "Polo Club founder Goodman could face up to 30 years in prison if convicted," by "OBIWAN" at 8:01 p.m., 5/20/2010.

"Either he goes down in the courts of our land, or maybe he will be taken down by the justice of the people who are over these kinds of pos's ... no fat body guard will stop the revenge of the people!"

On-line comment to *Page2live.com*, Feb. 27, 2011, "Once again, Sunday is DUI killing suspect John Goodman's day" by "what the f–" at 9:15 p.m., 6/24/2011.

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The Defendant, JOHN B. GOODMAN, through undersigned counsel, respectfully moves this Court, pursuant to sections 47.091 and 47.121 of the Florida Statutes (2011), Florida Rule of Criminal Procedure 3.240, Article I, Section 16 of the Florida Constitution and the Fifth and Sixth Amendments to the United States Constitution, for a change of venue in this case, preferably to Miami-Dade County. In support of this motion, Mr. Goodman states the following:

1. On February 12, 2010, Mr. Goodman's automobile was involved in an accident resulting in the death of the second car's driver, Scott Wilson. Mr. Goodman was subsequently arrested and charged with one count of DUI Manslaughter/Failure to Render Aid and one count of Vehicular Homicide/Failure to Render Aid.

2. Since the day of the accident, Mr. Goodman has been the target of an unrelenting media blitzkrieg led by the editorial staff of the *Palm Beach Post* and aided and abetted by the attorneys representing the family of Scott Wilson in civil litigation against Mr. Goodman and Palm

Beach County police and prosecutors. The media assault – magnified many times over by the hundreds of unfiltered, hate-filled reader "comments" posted indefinitely on the internet by the *Post* – has thoroughly poisoned the jury pool against him to such a degree that neither *voir dire* nor jury instructions will be sufficient to guarantee him a fair trial in Palm Beach County.

3. The Supreme Court in *Sheppard v. Maxwell,* 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600 (1966), discussed the need for courts to be able to rely upon an ethically responsible and objective press, as the best partner for a court trying to avoid pre-trial prejudice:

> A responsible press has always been regarded as the handmaiden of effective judicial administration, especially in the criminal field. Its function in this regard is documented by an impressive record of service over several centuries. The press does not simply publish information about trials but guards against he miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism.

Sheppard, 384 U.S. at 350. Responsible newspapers adhere to the Society of Professional Journalists Code of Ethics, *see* **Exhibit 1**, which requires journalists to:

- Test the accuracy of information from all.
- Always question sources' motives before promising anonymity.
- Make certain that headlines, news teases ... sound bites and quotations do not misrepresent[,]... oversimplify or highlight incidents out of context.
- Never distort the content of news photos or video.
- Avoid stereotyping by ... social status.
- Distinguish between advocacy and news reporting.
- Recognize that gathering and reporting information may cause harm or discomfort. Pursuit of the news is not a license for arrogance.

● Show good taste. Avoid pandering to lurid curiosity.

● Balance a criminal suspect's fair trial rights with the public's right to be informed.

Since 1922, the American Society of Newspaper Editors has promulgated similar "Statement of Principles, *see* **Exhibit 2**, including:

● Article IV - Truth and Accuracy: "...Every effort must be made to assure that the news content is accurate, free from bias and in context, and that all sides are presented fairly. Editorials, analytical articles and commentary should be held to the same standards accuracy with respect to facts as news reports."

● Article V "- Impartiality: ... Sound practice ... demands a clear distinction for the reader between news and opinion."

●Article VI - Fair Play: "Journalists should respect the rights of people involved in the news, observe the common standards of decency and stand accountable to the public for fairness and accuracy of their news reports...."

4. As underscored by the reader comments quoted in the *Preface*, *supra*, the editors, reporters and columnists for the *Palm Beach Post*, by far the largest newspaper in Palm Beach County,[1] long ago discarded these principles when it came to reporting and editorializing about Mr. Goodman. While it is, fortunately, rare for a newspaper to take a formal position, *as an institution* in editorials and otherwise, about an ongoing criminal case, the *Post* has been shamelessly doing just that since February 2010. Through its tabloid-style reporting, biased editorials, the use of reader "opinion polls" on various aspects of the case and the apparently permanent on-line posting of

[1] The *Palm Beach Post* reaches 668,500 adult readers. In addition, it hosts a popular web page, www.palmbeachpost.com, which as discussed in the text and elsewhere in this motion has posted dozens of "comments" from its readership.

over1,000 reader "comments" – including many thinly veiled death threats, incitements to vigilante justice and even mob violence if Mr. Goodman were to be acquitted – the *Post* has irrevocably poisoned the jury pool against Mr. Goodman. Such biased reporting is especially pernicious because social science research shows that information from sources perceived as being "neutral," such as newspapers, has a greater prejudicial effect than other sources.[2]

5. The following memorandum and exhibits analyzes the media deluge and the parties responsible for it in detail. However, one recent *Post* editorial provides a telling window into the likely impact of the media-inflamed community on Mr. Goodman's ability to obtain a fair trial in Palm Beach County. Although nearly 23 months have elapsed since the fatal accident on February 12, 2010, and initial flurry of inflammatory publicity that followed, on Dec. 6, 2011, the *Post* issued an editorial (one of many since the crash) criticizing a motion filed by Mr. Goodman's civil attorneys in the lawsuit brought against Mr. Goodman by the Wilson family. *See blogs.palmbeachpost.com*, Dec. 6, 2011, Opinion Zone Section, "Should polo mogul get break on DUI death lawsuit." On its face, the topic of the editorial would hardly seem even newsworthy, much less significant enough to justify an editorial – a technical legal skirmish in a civil lawsuit about how to calculate damages. The Wilson family had sued the bar where Mr. Goodman had allegedly been drinking and the bar had reached a financial settlement with the Wilson family. The issue in the motion was a purely legal question – whether that amount should be deducted from any damage award obtained from Mr. Goodman by the Wilson family. According to the editors of the *Post*, this somehow meant –

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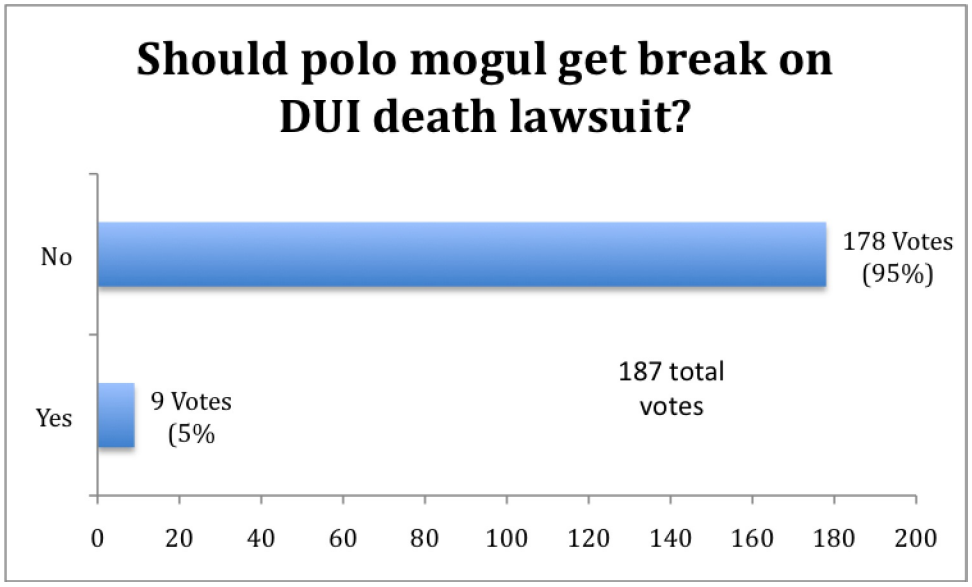
[2] *See* Christina A. Studebaker, Jennifer K. Robbenolt, Maithilee K. Pathak-Sharma & Steven D. Penrod, *Assessing Pretrial Publicity: Integrating Content-Analytic Effects,* 24 L. & HUM. BEHAV. 317, 326 (2000).

> Goodman no doubt wants to shift responsibility to the bar. He could try to claim the bar served him when he obviously was drunk, or that the bar should have known he was an alcoholic.... Goodman has to take 100 percent responsibility for his own actions ... Goodman should pay 100 percent of any penalty the jury in his civil trial decides to impose.

6. Since Mr. Goodman, in fact, has never made this imaginary argument, the *Post* was using a straw man as a pretext for publishing an inflammatory, anti-Goodman editorial. However, the *Post* did not stop there. Posing the question "what do you think?," the *Post* invited its readers to cast on line votes on a question framed in the same loaded rhetoric as its headline: – "Should polo mogul get break on DUI death lawsuit?" As of December 23, 2011, the poll had received 191 total votes with 181 of them (95%) voting "no." The *Post* also solicited reader "comments." As it does in every such solicitation, the *Post* adds a disclaimer of sorts, promising to act as a gatekeeper in order to prevent the posting of comments that it considers "**obscene, hateful, racist or otherwise inappropriate**." As of December 23, 2011, the *Post* had published a total of 42 comments, only 2



of which could be construed as neutral. Among the comments that the *Post* did *not* find "obscene, hateful, racist or otherwise inappropriate" were at least three thinly and no so thinly veiled death threats (including the very first one posted)[3] as well as one posted on December 6th but still on line – that bluntly reads: "**Kill Goodman now!**" Another commentator suggested that Mr. Goodman be tortured *and then* killed, hoping that someone "**should nail this dork upside down by his nut sack and let the fire ants do the rest**."

7. Sending death threats through the mail or via email is a crime under both state and federal law. Yet, the *Post* apparently does not believe that comments urging that Mr. Goodman be killed – and many others like them, *see* pp. 18-19 *infra* – are even "inappropriate" to leave on line in perpetuity for its nearly 700,000-person audience.[4] Indeed, when a similar death threat was posted

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[3] The first comment posted by someone identified only as "legal eagle" wrote:

> **Settlement amounts aren't usually disclosed. Goodman (oxymoron name if I ever heard one) doesn't want to take responsibility for his own irresponsible actions. Isn't this guy with the egg-shaped dick who had underage girls give him "massages"? Isn't it the way it always is: the richer they are - the cheaper they become. He was drunk, hit the kid and left him to die in a canal. Mr. "Goodman": *be thankful this was not my son, you would have never made it to court.***

(Emphasis added). Comment No. 17 by "stu bum" similarly wrote:

> **A Men! *Mr. Goodman, you are also very luck[y] that you did not kill my son. You wouldn't have to worry about the judgment you are about to receive!* As a matter of fact, if you are of any good material, you should give every frigin dollar you (or you think you own) to the family of the KID YOU KILLED! That is the least you could do! *And heaven help you if we meet alone!***

(Emphasis added).)

[4] Under Fla. Stat. § 836.10, it is a second degree felony to send someone a letter or electronic communication, even anonymously, containing "a threat to kill or to do bodily injury" to that person. Similarly, 18 U.S.C. § 875(c) makes it a felony to "transmit[] in interstate ... commerce any communication containing any threat ... to injury the person of another." *See, e.g., United States v. Mabie*, No. 10-3526 (8th Cir. Dec. 2, 2011), *2011 U.S. App. LEXIS 23954* (affirming convictions under § 875(c) and § 876(c) where defendant sent threatening letters and emails to prosecutors, stating, among other things "A cornerstone of this society (for which countless have died) is a fair Justice system, honesty is

(continued...)

back in February 2011 in response to a story on *Page2live.com*, Feb. 27, 2011, entitled "Once again, Sunday is DUI killing suspect John Goodman's day" – "**I'm gonna get some friends together. Your [sic] dead you slimey [sic] bastard**," posted by "Goodman Die" at 10:23 PM on February 27, 2011 – Mr. Goodman filed a criminal complaint and undersigned counsel sent the prosecutors emails requesting an investigation. *See* **Composite Exhibit 3**. The response from the prosecutors and law enforcement? Nothing. The response from the *Post*? The death threat remains on line to this day.

8. Another reader commenting to the December 6th editorial graphically fantasized about Mr. Goodman being raped in prison by "some big Haitian" who would "stick him in the corn hole." While that posting would seem to satisfy all four of the *Post*'s criteria for deletion – it is obscene, hateful, racist and inappropriate – both the editorial staff of the *Post* and its readership (who are invited to complain about offensive postings) apparently disagree. The posting remains.

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[4](...continued)
essential, correct your mistakes without delay or suffer the consequences" and "If I don't hear from you, I'll stop by some evening, so we can work toward justice"); *United States v. Fulmer*, 108 F.3d 1486 (1st Cir. 1997) (finding evidence sufficient to convict a disgruntled citizen who sent an FBI agent an email stating "[t]he silver bullets are coming" but reversing based on evidentiary errors); *United States v. Clemens*, No. 10-10124-DPW (D. Mass. April 22, 2011), *2011 U.S. Dist. LEXIS 43728* (affirming conviction under §875(c) where citizen, after losing two civil cases against a town, sent emails to the town's attorney stating, among others, "[o]ne way or another, I will have my day in court or the back alley [hint hint, veiled threat potential here]," that he was "looking forward to putting" the attorney in his place, that he wished "a 10-ton I-beam would fall on you ... Splat! Boy, would I love to see that!" and "You, at this point, I assure you, will get what you deserve. Pow! Bang! Splat! I really, truly and sincerely wish you were dead"). *See also United States v. White*, 610 F.3d 956 (7th Cir. 2010) (per curiam) (affirming conviction for soliciting a crime of violence under 18 U.S.C. §373, in part, based on defendant's website posting that "everyone associated with the Matt Hale trial has deserved assassination for a long time" and posting name and identifying information of a juror); *United States v. Hanna*, 293 F.3d 1080 (9th Cir. 2002) (although reversing for trial error, holding that defendant's distribution of leaflets about President Clinton that read "KILL THE BEAST" and "WANTED FOR MURDER, DEAD OR ALIVE" stated an offense under 18 U.S.C. § 871(a), despite the fact that he did not send it to the President); *United States v. Turner*, No. 09-00650 (E.D.N.Y. Oct. 5, 2009), *2009 U.S. Dist. LEXIS 131244*, at ** 6-8 (rejecting First Amendment challenge to an indictment charging defendant under 18 U.S.C. §115(a)(1)(B) for placing a post on a blog that called for the killing of three judges to prevent other judges from "act[ing] the same way," recognizing that "[p]ublic discourse must mean something more than threats and rants"). *But see United States v. Bagdasrian*, 625 F.3d 1113 (9th Cir. 2011) (reversing defendant's conviction under 18 U.S.C. § 879(a)(3) for posting message boards referring to presidential candidate Barack Obama "shoot the nig" and Obama "will have a 50 cal in the head soon").

9. Most of the other comments to the December 6th editorial either call Mr. Goodman names (*e.g.* "low life garbage," "scum of the earth," "punk" etc.) or rail about his wealth, his lawyers and/or the "corrupt" court system – "corrupt" because Mr. Goodman has not been locked up yet. One reader actually commented on the comments and had no trouble interpreting their collective message: "**Hmmm, by the sounds of the comments here, Goodman might be better off in jail, for his own protection.**"[5] The *Post*'s December 6th editorial, skewed "polling" and *ongoing* publication of citizen outrage – implicitly endorsed by the *Post*'s failure to find such the postings sufficiently offensive to remove – is not an isolated incident but rather the culmination of similar hatemongering that the *Post* has been fomenting on a continuing basis for the last 23 months (with much of it repeated in stories picked up by other media outlets such as the *Sun Sentinel*).

10. As demonstrated in the following Memorandum of law, the damage to the jury pool caused the *Post* with the assistance of both the Wilson family's attorneys and Palm Beach law enforcement is both demonstrable and irreparable by any measure this Court has the power to employ.

a. Part I sets forth the legal standard governing change of venue motions and the factors courts have used to assess the likelihood of both empaneling an impartial jury and keeping that jury free of taint throughout the proceedings.

b. Part II summarizes the media coverage, addressing the factors discussed in Part I, using the results of a *Media Coverage Analysis* conducted by Dubin Research & Consulting.

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[5] Whether a statement is considered a "true threat" for criminal prosecution under federal law, one factor courts have looked at is how others perceived them. *See Bagdasrian*, 625 F.3d at 1129 (Wardlaw, J., concurring in part, and dissenting in part).

See **Exhibit 4**. The articles and broadcasts have been separately reproduced in full in *Media Coverage Supplement*, attached hereto as **Exhibit 5a-e.**[6]

c. Part III demonstrates how this deluge of inflammatory material has infected the jury pool, summarizing the results of a *Public Opinion Survey* that Dubin Research and Consulting conducted with residents of Palm Beach County from October 5-26, 2011. *See* **Exhibit 6**. The survey was conducted under rigorous polling standards, with a margin of error of only plus or minus 5 percent. *See* Affidavit of Amy Shields, **Exhibit 7**. The survey's results closely correlates with the impression obtained from the publicity itself, various polls taken by the *Post* and "comments" to the *Post*'s publications. The expert Dubin researchers have concluded that at the very least, Palm Beach County citizens categorically believe that John Goodman was under the influence of alcohol (and possibly drugs) on the night of the accident, that he ran a stop sign, hit another car (pushing it into a canal), caused the death of a young man, and that he fled the scene, leaving the other driver to drown. *See* **Exhibit 6**.

d. Part IV demonstrates that based on the review of the media and polling to date and the likelihood that a trial held in Palm Beach County would generate an even greater media frenzy, Mr. Goodman is entitled to a presumption of prejudice, mandating a change of venue. Part IV also demonstrates that under these conditions – and the fact that in the internet age publications, televisions broadcasts and the vicious rants of bloggers are permanently stored and accessible to jurors with the click of a mouse – even the extensive use of individualized *voir dire* and jury instructions cannot be trusted to ensure Mr. Goodman a fair trial in Palm Beach County.

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[6] In addition, counsel will be submitting CDs containing these materials to the Court and the prosecutor which contain these same materials along with hyperlinks directly to the articles and broadcasts on the internet.

MEMORANDUM

I. CHANGE OF VENUE STANDARDS AND FACTORS

A. Any Doubts About the State's and the Court's Ability to Furnish Mr. Goodman a Trial By a Fair and Impartial Jury Must Be Resolved In Favor of Mr. Goodman

"The theory of our [trial] system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print." *Patterson v. Colorado ex rel. Attorney General of Colo.*, 205 U.S. 454, 462, 27 S.Ct. 556, 51 L.Ed. 879 (1907) (opinion for the Court by Holmes, J.). Criminal defendants especially have the right to be tried in a forum "free of prejudice, passion, excitement, and tyrannical power." *Sheppard v. Maxwell,* 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600 (1966). When prejudicial publicity and an inflamed community atmosphere coalesce, a defendant is entitled to a change of venue in order to ensure his Sixth Amendment right to an impartial jury and Fourteenth Amendment due process right to a fair trial. *See Estes v. Texas*, 381 U.S. 523, 85 S.Ct. 1628, 14 L.Ed. 2d 543 (1965); *Rideau v. Louisiana*, 373 U.S. 723, 83 S.Ct. 1417, 10 L.Ed. 2d 663 (1963); *Irvin v. Dowd*, 366 U.S. 717, 722, 81 S.Ct. 1639, 6 L.Ed.2d 751 (1961); *Coleman v. Zant*, 778 F.2d 1487 (11th Cir. 1985), *cert. denied*, 476 U.S. 1164, 106 S.Ct. 2289, 90 L.Ed.2d 730 (1986); *Coleman v. Zant*, 708 F.2d 541, 544 (11th Cir. 1983).

In "[o]rdinar[y]" cases, trial courts need not grant a change of venue motion "until an attempt is made to select a jury." *Serrano v. State*, 64 So.3d 93, 112 (Fla. 2011) (per curiam). However, in "extreme or unusual situation[s]," trial courts "may make that determination upon the basis of evidence presented prior to the commencement of the jury selection process...." 64 So.3d at 112, quoting *Manning v. State,* 378 So.2d 274, 276 (Fla. 1979). Indeed, so dangerous is the subconscious

and conscious effect of pervasive pretrial publicity on a potential juror's mind that when pretrial publicity approaches the saturation level, courts must disregard prospective jurors' assurances of impartiality and *presume* prejudice. *See Mu'Min v. Virginia,* 500 U.S. 415, 429-30, 111 S.Ct. 1899, 114 L.Ed. 2d 493 (1991) (recognizing that when pretrial publicity is pervasive within a community, a "juror's claims that they can be impartial should not be believed" and *voir dire* is an inadequate curative). *See also Sheppard,* 384 U.S. at 355; *Estes*, 381 U.S. at 551; *Rideau*, 373 U.S. at 727; *Irvin*, 366 U.S. at 722-723; *Coleman*, 778 F.2d at 1489-90, 1538; *Pamplin v. Mason*, 364 F.2d 1 (5th Cir. 1966). Therefore, while the defendant bears the burden of proof on a change of venue motion, the Court is "bound to grant" it "when the evidence presented reflects that the community is so pervasively exposed to the circumstances of the incident that prejudice, bias, and preconceived opinions are the natural result." *Manning,* 378 So.2d at 276. Moreover, any doubts about potential impact of negative pretrial publicity should be weighed "liberally" in Mr. Goodman's favor:

> We take care to make clear . . . that every trial court in considering a motion for change of venue must liberally resolve in favor of the defendant any doubt as to the ability of the state to furnish a defendant a trial by a fair and impartial jury. Every reasonable precaution should be taken to preserve to a defendant trial by such a jury and to this end if there is a reasonable basis shown for a change of venue, a motion therefore properly made should be granted.
> A change of venue may sometimes inconvenience the state, yet we can see no way in which it can cause any real damage to it. On the other hand, granting a change of venue in a questionable case is certain to eliminate a possible error and to eliminate a costly re-trial if it be determined that the venue should have been changed. More important is the fact that real impairment of the right of a defendant to trial by a fair and impartial jury can result from the failure to grant change of venue.

Singer v. State, 109 So.2d 7, 14 (Fla. 1959).

B. The Multi-Factor Test

The oft-repeated "test" for determining when a change of venue is warranted "is whether the general state of mind of the inhabitants of a community is so infected by knowledge of the incident and accompanying prejudice, bias, and preconceived opinions that jurors could not possibly put these matters out of their minds and try the case solely upon the evidence presented in the courtroom." *McCaskill v. State*, 344 So.2d 1276, 1278 (Fla. 1977) (citation omitted). *Accord Serrano*, 64 So.3d at 112; *Hooks v. State*, No. 4D08-4729 (Fla. 4th DCA June 29, 2011), *2011 Fla. App LEXIS 10159*, at *7. To guide trial courts in exercising their discretion, the United States Supreme Court, the United States Court of Appeals for the Eleventh Circuit and the Supreme Court of Florida have recognized a non-exhaustive list of factors to consider, including–

(1) The size/saturation level of the publicity;

(2) The source(s) of the publicity, especially when it is law enforcement;

(3) The inflammatory nature of the publicity and whether it is balanced or one-sided;

(4) The continuity of the publicity and whether it could be expected to dissipate by the time trial commences;

(5) The size of the community (and expected jury pool); and

(6) The likelihood that voir dire and jury instructions will be successful in ameliorating the prejudice.

Skilling v. United States, ___ U.S. ___, 130 S.Ct. 2896, 2916, 177 L.Ed. 2d 619, 644-45 (2010); *United States v. Campa*, 459 F.3d 1121, 1144 (11th Cir. 2006) (en banc); *Coleman*, 778 F.2d at 1438; *Rolling v. State*, 695 So. 2d 278, 284 (Fla. 1997) (citing *Manning*, 378 So. 2d at 276); *Hooks*, *2011 Fla. App LEXIS 10159*, at *7. If the Court decides to wait until *voir dire* to decide the motion,

the Court then must evaluate the difficulty in selecting an impartial jury. *Ibid.* And, even then, the Court should be wary of blindly accepting jurors' assessments of their own ability to be fair. As, the *Rolling* Court teaches, "such assurances are not dispositive." *Rolling*, 695 So. 2d at 285.

As demonstrated below, this case is "extreme and unusual" in both the pervasiveness and viciousness of the publicity. The examples listed below are but a very, very, small sampling of stories and bylines incessantly reported since the case's inception. Moreover, the advent of the internet and it's potential for interactive communication with the public has catapulted already negative and pervasive coverage to an entirely new level:

> One reason threats are more menacing on the Internet is their ability to reach a much larger and more widespread audience. Town criers are no longer constrained by the volume of their voice. Before the Internet, it was difficult for a speaker's message to spread throughout a small community, much less to the rest of the world. Now, the same message posted on a web page is available twenty-four hours a day, seven days a week in almost any country in the world.

Scott Hammack, *The Internet Loophole; Why Threatening Speech On-line Requires a Modification of the Courts' Approach to True Threats and Incitement*, 36 COLUM. J.L. & SOC. PROBS. 65, 81 (2002). As highlighted in the *Preface* above, a great deal of media coverage consists of prejudicial comments published on the *Post*'s internet blogs by members of the public. In *Rolling*, 695 So. 2d at 286, public commentary was part of the court's analysis. However, the manner in which the public comments were gathered and presented when *Rolling* was decided was completely different than today. Whereas in *Rolling*, 695 So. 2d at 286, the newspaper gathered comments which had been mailed in, and then published comments on both sides of the issue (in that case the death penalty), here, the *Post* has performed no such moderating or gatekeeper function, despite its promise to do so.

II. THE MEDIA BLITZKRIEG

A. Palm Beach County Has Been Saturated With Negative Publicity

By any measure, this case has generated, and continues to generate, an avalanche of negative publicity. As summarized in the accompanying *Media Coverage Analysis*, **Exhibit 4**, as of December 9, 2011, there had been 213 reports in 12 media outlets relating to the case. Additionally, the Dubin researchers found a 1998 profile of Mr. Goodman in the *Houston Press* – "*Money can't buy love. But it can buy polo*" – which was also included in the analysis since it is available on-line. The 12 outlets include four (4) local newspapers (*The Palm Beach Post*, the *Sun-Sentinel*, the *Broward-Palm Beach New Times* and *The Miami Herald*), one (1) local blog (Page2Live.com), four (4) local TV stations (NBC/WPTV, ABC/WPBF, FOX/WFLX and CBS 12), and three (3) non-local newspapers (the *Houston Press*, the *Houston Chronicle* and the *Orlando Sentinel*). *See* Table 1, *Media Coverage Analysis*, **Exhibit 4**.

The analysis further reflects that the *Palm Beach Post* is responsible for nearly all of the publicity – 76 publications (available through *Palmbeachpost.com*) and 17 other reports on the *Post*-sponsored gossip blog (*Page2live.com*). In addition, the vast majority of the stories published by the *Sun Sentinel*, *Miami Herald* and *Orlando Sentinel* were taken directly from the *Post.* *See* **Exhibit 8**. Television coverage has also been extensive with at least 57 total broadcasts. *See* **Exhibit 4**.

However, the number of original publications represents only the tip of the iceberg. As noted above, many of the editorials and stories published on *Palmbeachpost.com* and *Page2live.com* invite "comments" from readers, allowing them to spout off – usually anonymously or with pseudonyms – about the stories, the people in them and each other. The online media coverage of Mr. Goodman's case has yielded over 1,000 reader/viewer comments – the vast majority of them hostile

to Mr. Goodman. For instance, the 17 columns collected from *Page2Live* generated a whopping 934 user comments alone.

Although, as previously noted, each time the *Post* solicits comments it states that it will screen for and delete comments it considers "obscene, hateful, racist or otherwise inappropriate" and invites bloggers to report such comments, in fact, the *Post* has ignored this obligation. Counsel could find evidence of only *one* comment having been deleted, although the anti-semitic content of the original comment remains on-line through the still on-line complaint posted by another blogger:

> Why hasn't sk's moronic anti-semitic comment posted at 8:15 pm been removed yet? It has nothing whatsoever to do with this news article! "**roy black works for jews only, thats where the moneys attttttttttttttttt**."

See Palmbeachpost.com, May 21, 2010, "Lawyers on both sides of Goodman case are formidable" (posted by "sk" at 8:14 p.m., May 22, 2010) (emphasis added).[7]

Still on-line also is a story featured in a *Broward-Palm Beach New Times* piece called "The Dirty Dozen: 2010's Most Despicable People."[8] The piece presents as a foregone conclusion that Mr. Goodman, the "polo mogul," was a "coke addict and an alcoholic" who "ran a stop sign" colliding with Mr. Wilson's car and then "made no attempts to flag down any vehicles for help."

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[7] The *Post* has yet to remove other anti-semitic postings, such as:

> "...**I was told he was just late for Midnight Services at the Sin-a-gogue,..**"
> Posted by "checks and balances" at 12:57 p.m., March 9, 2010, as a comment to *Page2live.com*, March 9, 2010, "Source: Polo boss John Goodman passed out at the wheel."

> "**[Goodman is] another rich jew who will spend whatever it takes to stay out [sic] jail. Sad part he will get away with it**."
> – Posted by "rickmac37" at 3:23 p.m. on July 27, 2010, as a comment to *Palmbeachpost.com*, July 24, 2010, "Friends of Scott Wilson cleaning crash site: 'We just want Wellington to remember.'"

[8] *See Browardpalmbeach.com*, Dec. 30, 2010, "The Dirty Dozen: 2010's Most Despicable People."

The article is accompanied by a cartoon depiction of Mr. Goodman riding a polo horse dressed as a smiling, black-robed grim reaper holding a sickle in one hand and a polo stick in the other.

As a result of the *Post*'s reckless behavior, Mr. Goodman has been given the type of "limitless and eternal notoriety, without any controls" that violates any sense of decency and due process. *See Bursac v. Suozzi*, 22 Misc. 3d 328; 868 N.Y.S.2d 470, 481 (2008) (finding that Nassau County violated the due process rights of a resident by posting his name and photograph on an internet "Wall of Shame" after he was arrested for drunk driving).

The *Post*'s still on-line comments to its many stories are riddled with vicious personal attacks, calling Mr. Goodman *inter alia*: "monster," "coke fiend," "cockroach," "rich power hungry pig," "entitled sociopath," "spoiled, rich, self-centered MAN-child," a "dirt bag ... utterly without a shred of human decency," "slimy maggot," "mercenary, self-centered, unsympathetic, pretentious,

John Goodman

pompous, plastic, pointless human terd[],"and "complete degenerate."[9] Numerous others contain direct or implicit death threats, especially if he were to be acquitted,[10] or state that if they were the parents of Scott Wilson they would have killed Mr. Goodman by now themselves.[11] Others only

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[9] *See Page2live.com*, Feb. 12, 2010, "Sources: Wellington polo bid John Goodman was at party before deadly crash" (posting comment by "carl" at 1:02 a.m., 2/21/2010 ("**why shouldn't we vilify a monster?. cause that's what he is!**"); *Palmbeachpost.com*, Feb. 14, 2010, "Polo fans say game not tainted by fatal crash") (posting comment by "Ms. Taylor" at 2:23 p.m., 2/15/2010 ("**....mercenary, self-centered, unsympathetic, pretentious, pompous, plastic, pointless human terds**...") and comment by "Peter Golding" at 8:22 p.m., 2/15/2010 ("**...complete degenerate**"); *Page2live.com*, Feb. 19, 2010, "Report: Wellington polo boss John Goodman allegedly a coke fiend" (posting comment by "Js" at 9:49 p.m., 2/19/2010 ("**... all he really amounts to is equivalent [sic] of a Cockroach**" and comment by "VENA" at 9:53 p.m., 2/19/2010 ("**You are an evil person not even qualified to be called a human being**"); *Palmbeachpost.com*, Feb. 26, 2010, "Court filing: Wellington polo club founder Goodman failed to comply with cocaine tests" (posting comment by "Wow" on 02/26/2010 ("**...rich power hungry pig**"); *Page2live.com*, March 10, 2010, "Mother of victim in polo boss John Goodman's crash lawyers up" (posting comment by "carlos" at 9:42 p.m., 3/11/2010 (**"Goodman is super GUILTY!!"**); *Palmbeachpost.com*, May 20, 2010, "Cerabino: Woman has nightmare encounter with Wellington polo mogul Goodman" (posting comment by "Yusuf Alkindi" at 5:06 p.m., 5/21/2010 ("**...Goodman is a bit of an entitled sociopath**"); *Palmbeachpost.com*, Aug. 23, 2010, "Was polo club founder's phone working?" (posting comment by "Oh Jesus!," at 4:15 p.m., 8/24/2010 ("**...spoiled, rich, self-centered MAN-child**"); *Palmbeachpost.com*, Oct. 25, 2010, "Victim may share blame in fatal Feb. 12 crash near Wellington, polo mogul Goodman's attorneys assert in civil case" (posting comment by "Buddy," 10:58 p.m., 10/25/2010 ("**Goodman is a dirt bag; a man utterly without a shred of human decency**"); *Page2live.com*, Feb. 27, 2011, "Once again, Sunday is DUI killing suspect John Goodman's day" (posting comment by "Al Neuharth" at 11:04 p.m., 2/27/2011 ("**slimy maggot...**").

[10] *See, e.g., Page2live.com*, Feb. 12, 2010, "Sources: Wellington polo bid John Goodman was at party before deadly crash" (posting comment by "Yassar Arafat" at 8:48 p.m., 2/16/2010 ("**If Goodman gets off the hook on this one ... he better watch his back**"); *Page2live.com*, Feb. 19, 2010, "Report: Wellington polo boss John Goodman allegedly a coke fiend" (posting comment by Denise, 10:00 p.m., 2/19/2010, "**...Watch out PBC we are watching....closely... Those that turn away from justice will answer dearly for this atroscity [sic].... I would glady [sic] put this guy out of his misery....Can anyone say FIRING LINE!!!!!**"); *Page2live.com*, March 1, 2010, "Let's get drunk: Roy Black, polo boss John Goodman's lawyer, hosts yearly shindig" (posting comment by "nemo"at 6:39 p.m., 3/1/2010, "**Rot Black, Goodman, OJ ... kill them, kill them all**"); *Page2live.com*, March 9, 2010, "Source: Polo boss John Goodman passed out at the wheel" (posting comment by "The Equalizer" at 1:13 p.m., 3/9/2010, "**Remember the TV series? That's who is needed in Florida... especially South Florida. Someone to do what the cops and judge will not do. Equalize the situation for the people.**"); *Page2live.com*, March 19, 2010, "Sly Stallone's dad jumps in John Goodman fray, asks forgiveness for Goodman" (posting comment by "Ed" at 11:57 a.m., 3/21/2010, "**Someone should run him into a canal and let him experience what it's like to die alone in the dark water**"); *Palmbeachpost.com*, May 25, 2010, "Cerabino: Goodman's defense can't rely on gap in tragic night"(publishing comment by "Growly Bears" at 3:20 p.m., 1/27/2011, "**This piece of trash needs to have his eyes **** out of his head, skull raped, head unscrewed and spat down his neck!!!!!! I'll do it ..... for Lilly!!**").

[11] *See, e.g., Palmbeachpost.com*, Feb. 17, 2010, "Mother of Wellington college grad killed in crash: 'He died with a pure heart" (posting comment by "Yvonne," 6:54 a.m., 2/18/2010 ("**...My husband would have killed Goodman by now if that was our child... It would be better for my conscience to be clear that the man who killed my child paid the ultimate price for his actions with the same results then to walk this earth and know I could have done more....**"); *Page2live.com*, Feb. 27, 2011, "Once again, Sunday is DUI killing suspect John Goodman's day" (posting comment

(continued...)

wish that Mr. Goodman was dead, usually in various horrific ways, including drowning, hanging, electrocution, being drawn and quartered, publicly whipped and then drawn and quartered, shot in the head, hung beside the road with his body left to rot, stomped on by a 100 horses and "[p]ut ... in jail w/'Bubba'" and "[t]hen h[u]ng ...by his balls with high pitch piano wire."[12]

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[11](...continued)
by "Wishing Goodman Away To Jail" at 10:38 p.m., 2/27/2011 ("**...If it happened to my child, lets just say I would not be able to see this man happy in this photo and not go to his house and do him harm**"); *Palmbeachpost.com*, Oct. 25, 2010, "Victim may share blame in fatal Feb. 12 crash near Wellington, polo mogul Goodman's attorneys assert in civil case" (posting comment by Lennyais at 5:29 p.m., 10/25/2010, "**This man will pay for his actions one way or another as I believe in an eye for any eye. hes just lucky it wasnt one of my kids he did this to...**"); *Palmbeachpost.com*, Dec. 6, 2011, "Should polo mogul get break on DUI death suit?" (posting comment by "legal eagle" at 5:04 p.m., 12/6/2011 ("**Mr. 'Goodman': be thankful this was not my son, you would have never made it to court**").

[12] *See, e.g., Palmbeachpost.com*, Feb. 17, 2010, "Mother of Wellington college grad killed in crash: 'He died with a pure heart" (posting comment by "T" at 9:19 a.m., 2/21/2010, "**Goodman deserves to suffer "a fate worse that Mr. Wilson's**"); *Palmbeachpost.com*, Feb. 21, 2010, "Wellington Polo mogul Goodman faces scrutiny after fatal wreck" (posting comment by "Ric," 6:24 p.m., 2/22/2010, "**Put him in jail w/'Bubba'! Then hang him by his balls with high pitch piano wire**"); *Browardpalmbeach Newtimes*, Feb. 23, 2010, "Polo was his life," (Comment by HEHOWKNOWS: "**Yeh, He's 'innocent' all right. He does deserve the 'bedrock of the criminal justice system.' A ROPE FROM THE NEAREST TREE!**"); *Page2live.com*, March 9, 2010, "Source: Polo boss John Goodman passed out at the wheel" (posting comment "Author" at 10:32 p.m., 3/9/2010 ("**When he was found the cops should've just kneeled him down in a ditch and put a bullet in his head**...."); *Palmbeachpost.com*, May 20, 2010, "Goodman seeks to postpone parent's wrongful-death suit in fatal crash, saying it would jeopardize defense in criminal case" (posting comment by "john" on 5/20/2010 ("**Let him be tossed upside down into a canal and then fill it with water and let him watch everyone see him drown**") and "Zunny" on 5/20/2010 ("**...I say 'FRY THE BASTARD**'"); *Palmbeachpost.com*, May 21, 2010, "Lawyers on both sides of Goodman case are formidable" (comment by "Jupiter" on 5/21/2010 ("**Personally, I'd like to see him drawn and quartered outside of city hall, but that's me**"); *Palmbeachpost.com*, July 24, 2010, "Friends of Scott Wilson cleaning crash site: 'We just want Wellington to remember'" (posting comment by "s' on 7/24/ 2010, "**That drunk should be hung beside the road and his body left to rot!!!!!!!!**"); *Palmbeachpost.com*, Aug. 23, 2010, "Was polo club founder's phone working?" (posting comment by "Jim Campbell" at 12:30 p.m., 8/24/2010, "**How do people get to be such trash. He should be publicly whipped and then drawn and quartered. More of the elite trash!**"); *Sun-Sentinel.com*, Jan 26, 2011, "Polo club founder's drops claim victim may have shared blame for fatal crash" (via the Palm Beach Post) (posting comment by "DavidFromdelraybeach" at 12:09 p.m., 1/27/2011, "**This guy should get stomped on by 100 horses! White trash scumbag!**"); *Page2live.com*, Feb. 27, 2011, "Once again, Sunday is DUI killing suspect John Goodman's day" (posting comment by Abe Silverstein, 6:07 p.m. 2/28/2011, "**As far as 'JUSTICE': what they should do with this arrogant animal GOODMAN ...is lock him in an old car and chain all the doors shut and then push it into a canal and let him feel what it was like for his VICTIM who he never even had the decency to try and help. Let him sit there shackled inside as the water starts to fill up that car upside down and really feel just EXACTLY what his victim felt! ... And announce it – let the whole public and all his polo idiot drunks & druggies come out and watch it take place....**"). *See also See also Page2live.com*, Feb. 16, 2010, "Will justice prevail in Welly polo boss John Goodman's crash?" (comment #36 by "Carmine": "**This guy Goodman should have one of his relatives strapped in a car and have a truck broadside it while he is forced to watch**"; *Sen-Sentinel.com*, Feb. 20, 2010, "Before involvement in fatal crash, polo patron built legacy in Wellington," (comment by (continued...)

As the latter posting also illustrates, many of the postings are both obscene and racist, with readers gleefully envisioning Mr. Goodman being raped or gang raped in prison by "big black dudes" to become their "pussyboy."[13] Even those members of the public who might otherwise still try to be fair and impartial would likely fear for their own safety if they did not convict Mr. Goodman. The comments are replete with the threat of protests and even mob violence if the jury does not convict. The following are some representative examples:

> ● "**This case will be very interesting, and from the posts on here there will be a total outrage from the public if this guy gets off.**"[14]

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[12](...continued)
"Lambchop 123" at 9:54 a.m., 2/21/2010: "**Off to jail with you. Better yet, bring out the guillotine.**").

[13] *See, e.g., Palmbeachpost.com*, Feb. 21, 2010, "Wellington Polo mogul Goodman faces scrutiny after fatal wreck" (posting comment by "peekaboo" at 10:09 a.m., "**He doesn't quite look like a manly man. Maybe he'll be the right fit for 'bubba' knocking at his back door**") ; *Palmbeachpost.com*, Feb. 26, 2010, "Court filing: Wellington polo club founder Goodman failed to comply with cocaine tests" (posting comment by "sapo" at 6:35 p.m., 2/26/2010, "**You are going to prison for sure. Let me know how that first love encounter goes? I hear hair gel works great and it wont hurt that much**"); comment by "joe six pack" at 6:45 p.m., 2/26/2010, "**...I hope he bunks with one of the biggest brothers out there who has a fondness for middle aged guys....**"); and comment by "barber" at 12:59 a.m., 2/27/2010, "**...This guy really needs to meet his new jail cell mates (new wives), they will properly handle this coke head love machine**"); *Sun-Sentinel.com*, April 29, 2010, "Dad man's parents sue Goodman, polo club and bar in fatal Wellington crash" (via the Palm Beach Post) (publishing comment by "franko" at 5:08 a.m., 4/30/2010, "**Put this murderer behind bars and maybe his new cellmate of a 'husband' will show him the finer social graces of prison life!**"); *blogs.browardpalmbeach.com*, May 19, 2010, "Polo Club Founder Arrested, Charged With DUI" (publishing comment by "Joel Goodman" at 5:21 p.m., 5/20/2010,"**I would sentence him to 20 years in one of our worst state prisons where he can be some big black dudes pussy boy**"); *Palmbeachpost.com*, Oct. 25, 2010, "Victim may share blame in fatal Feb. 12 crash near Wellington, polo mogul Goodman's attorneys assert in civil case" (posting comment by "Billy Clinton" at 7:26 a.m., 6/28/2011, "**I hope he gets 30 plus years in a cell with Bubba**"); *Page2live.com*, Feb. 27, 2011, "Once again, Sunday is DUI killing suspect John Goodman's day" (posting comment by "Al Neuharth" at 11:04 p.m., Feb. 27, 2011,"**Goodman is going to prison and they will love to bend him over in the showers and make him their b----, oh yeh–you better lube up and practice taking that sausage before they put you away Big John! You got it COMIN'...!!!!!**"); comment by "Woody Johnson" at 3:02 p.m., 2/28/2011, "**Rot in Hell, or Raped in Prison. Not sure what would be worse. But a good daily gang rape of the chubby rich guy in prison, well, I can almost guarantee that**"); and comment by "What success???" at 5:48 p.m., 2/28/2011, "**I hope he rots in jail and gets gang-raped every single day and night**").

[14] Comment by "Sam" at 11:18 p.m., 2/16/2010, responding to *Page2live.com*, Feb. 12, 2010, "Sources: Wellington polo bid John Goodman was at party before deadly crash."

- **"If he is found innocent, the masses should take to the streets.... We should organize demonstrations."**[15]

- **"FACT: The public outrage is at a boiling point with the speculation that he will get off."**[16]

- **"Why are not thousands of Citizens Marching on City hall and this guys mansion. This is called RICH JUSTICE."**[17]

- **"The riots in LA? If this guy walks, people are going to come unglued."**[18]

- **"We should all show up at the courthouse and stage a united front."**[19]

- **"Either he goes down in the courts of our land, or maybe he will be taken down by the justice of the people who are over these kinds of pos's ... no fat body guard will stop the revenge of the people!"**[20]

Judge Kelly recently came under attack for having granted the motion discussed at pp. 5-6 *supra* and that was only in the civil case.[21] All 13 comments posted on-line to date criticize the

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[15] Comment by "T" at 9:19 a.m., 2/21/2010, responding to *Palmbeachpost.com*, Feb. 17, 2010, "Mother of Wellington college grad killed in crash: 'He died with a pure heart."

[16] Comment by "Lou" at 2:58 p.m., 3/5/2010, responding to *Page2live.com*, March 4, 2010, "Polo boss John Goodman shuns Welly, lands in luxury beachside retreat."

[17] Comment by "american patriot" at 8:27 a.m., 3/8/2010, responding to *Palmbeachpost.com*, March 7, 2010, "Scene of polo club owner's fatal crash not dangerous enough for traffic signals, officials say."

[18] Comment by "Chris" at 11:21 a.m., 9/7/2010, responding to *Palmbeachpost.com*, May 21, 2010, "Lawyers on both sides of Goodman case are formidable." This comment is also noteworthy in that it was posed in September about an article originally published some four months earlier.

[19] Comment by "Ann C" at 7:08 p.m., 10/25/2010, responding to *Palmbeachpost.com*, Oct. 25, 2010, "Victim may share blame in fatal Feb. 12 crash near Wellington, polo mogul Goodman's attorneys assert in civil case."

[20] Comment by "what the f----" at 9:15 p.m., 6/24/2011, responding to *Page2live.com*, Feb. 27, 2011, "Once again, Sunday is DUI killing suspect John Goodman's day."

[21] *See Palmbeachpost.com*, Dec. 21, 2011, "Judge rules Goodman can get credit for money Players Club paid to (continued...)

ruling and either call Judge Kelly names (“”an idiot,” “another moron”), suggest that he had been bribed by Mr. Goodman (“[t]he millionaire paid off the judge for this ‘ruling’”) and/or threaten to have him “removed from the bench” if Mr. Goodman was acquitted or received a “light sentence.” One arguably threatens to kill both Mr. Goodman *and* the judge: “**Daddy, Get yuurself a problem solver and send this a hole and the judge on a happy trails vacation**.”

A small minority of the bloggers have dared to voice concerns about the “‘lynch mob’ mentality” in Palm Beach County and have expressed concerns that “the public” might “take matters into their own hands.”[22] Some perceptively blamed the *Post* for the hostility: “Trial by newspaper should send a chill up your spine.”[23] And, several more openly called for a change of venue.[24] Such

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[21](...continued)
Wilson’s family”; *Sun-Sentinel.com*, “Judge: Millionaire DUI manslaughter suspect can get credit in lawsuit” (from the *Post*).

[22] *See Palmbeachpost.com*, Feb. 21, 2010, “Wellington Polo mogul Goodman faces scrutiny after fatal wreck” (posting comment by EBK, 6:13 p.m., 2/23/2010, “**Reading the ‘lynch mob’ mentality comments really makes me worry.... Don’t turn this into a class war...**”); and posting comment by “Joe” at 12:55 a.m., 3/9/2010, “**...I pray to God that Goodman is quickly apprehended before the public take matters into their own hands**”); *Palmbeachpost.com*, July 24, 2010, “Friends of Scott Wilson cleaning crash site: ‘We just want Wellington to remember’” (posting comment by nemo on 7/24/2010, “**Goodman deserves a fair trial, not a lynch mob run by a mad mother.....**”).

[23] *See Palmbeachpost.com*, Aug. 23, 2010, “Was polo club founder’s phone working?” (posting comment by “ThePollEtc.” at 7:45 a.m., 8/30/2010.

[24] *See, e.g., Palmbeachpost.com*, Feb. 26, 2010, “Court filing: Wellington polo club founder Goodman failed to comply with cocaine tests” (posting comment by “Rodney” on 02/26/2010,“**...How about a change of venue from PB County”**); *Page2live.com*, March 9, 2010, “Source: Polo boss John Goodman passed out at the wheel” (posting comment by “Nori” at 12:36 p.m., 3/9/2010,“**It’s now getting where the media is ‘implanting’ erroneous information.... maybe a change of venue to allow for clear heads**”); *Palmbeachpost.com*, April 27, 2010, “Grief of crash victim’s parents lead them to brink of suit against Wellington polo tycoon” (posting comment by “pete” at 12:01 a.m., 4/28/2010, “**a change of venue is needed**”); *Palmbeachpost.com*, July 21, 2010, “Friends of Wellington crash victim to clean up roadside near site of collision” (posting comment by “Lady Justice” at 10:30 a.m., 7/23/2010, “**Isn’t all this pandering press coverage destroying his right to a fair trial**”); *Palmbeachpost.com*, July 24, 2010, “Friends of Scott Wilson cleaning crash site: ‘We just want Wellington to remember’”(posting comment by “The Lord God” at 9:35 p.m., 7/24/2010, “**...Stop milking all this. Your [sic] turning you own son’s death into a media circus**”); *Palmbeachpost.com*, Aug. 23, 2010, “Was polo club founder’s phone working?” (posting comment by “Pam Lan” at 3:21 p.m., 8/26/2010, “**He clearly can not get a fair day in court with all the jealous [sic] haters out there**”);
(continued...)

dissidents, however, were shouted down as heretics by other bloggers, some of whom were thrilled that the *Post* was trying to guarantee Mr. Goodman's conviction. As one blogger wrote: "**The pretrial publicity should assure Goodman is convicted and goes down .... after all the PBP tried and convicted him for over three months**."[25]

B. The Trifecta: The Three Main Sources For the Negative Publicity

The hostility and bias so openly expressed in the blogosphere has not been an accident. Three sources of publicity have combined to make this case untriable in Palm Beach County: (1) the Palm Beach Post's editorial staff, (2) the conduct of law enforcement and (3) the attorneys representing members of the Wilson family in civil litigation against Mr. Goodman.

1. The bias and on-going hate-mongering of the Palm Beach Post

One of the most disturbing aspects of the media deluge in this case has been the conduct of the *Palm Beach Post*. As its most recent editorial on December 6, 2011 – discussed at the beginning of this motion – underscores, the *Post* long ago abandoned any pretense of being neutral, issuing periodic editorials and conducting patently loaded "polling" of public opinion on various aspects of the case that has helped fuel the venomous on-line postings. There is virtually no empirical research

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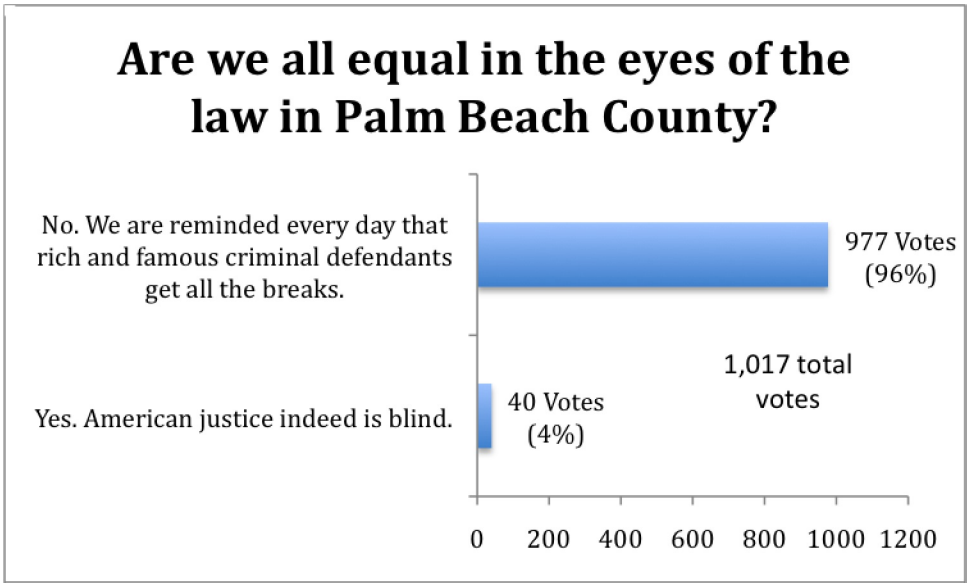
[24](...continued)
Palmbeachpost.com, Oct. 25, 2010, "Victim may share blame in fatal Feb. 12 crash near Wellington, polo mogul Goodman's attorneys assert in civil case" (posting comment by "Grounds for an Appeal" at 8:29 a.m., 10/27/2010, "**A prejudice [sic] populace without a change of venue will also give Goodman an appeal. The Post Times is contributing to this matter**"); *Palmbeachpost.com*, Feb. 12, 2011, "Family, friends gather on one-year anniversary of polo club founder's crash that killed 23-year-old in Wellington" (posting comment by "Rob" at 1:30 p.m., 2/13/2011, "**The jury pool is tainted in PBC. Trial should be held elsewhere, though don't think the verdict will be different in other venues**").

[25] *Palmbeachpost.com*, May 19, 2010, "Polo Club founder Goodman could face up to 30 years in prison if convicted" (comment by "OBIWAN" at 8:01 p.m., 5/20/2010). *See also Sun-Sentinel.com*, Feb. 20, 2010, "About 300 pay final respects to Wellington man killed in crash," posting comment by "andylewis" at 11:35 a.m., 2/21/2010, "**LET THE BAD PUBLICITY BEGIN!!! You deserve it JOHN GOODMAN!!!**"); *Page2live.com*, March 4, 2010, "Polo boss John Goodman shuns Welly, lands in luxury beachside retreat" (posting comment by "Justice 4 ALL" at 4:41 p.m., 3/4/2010, "**Palm Beach Post – keep at it! Don't let this important story fade away**.").

studying the effect of a newspaper's endorsement of a particular verdict in a criminal case on a jury pool – no doubt because the phenomenon is too rare to warrant such a study. However, research on the impact of endorsements on voting in political campaigns clearly shows that "endorsements are influential in the sense that voters are more likely to support the recommended candidate after publication of the endorsement." *See* Chun-Fang Chiang and Brian Knight, *Media Bias and Influence: Evidence From Newspaper Endorsements*, The Review of Economic Studies Limited, Oxford Univ. Press, Feb. 16, 2011, in *Review of Economic Studies* (2011), at p. 1, available at http://restud.oxfordjournals.org/content/78/3/795.full.pdf+html (last visited Dec. 13, 2011).

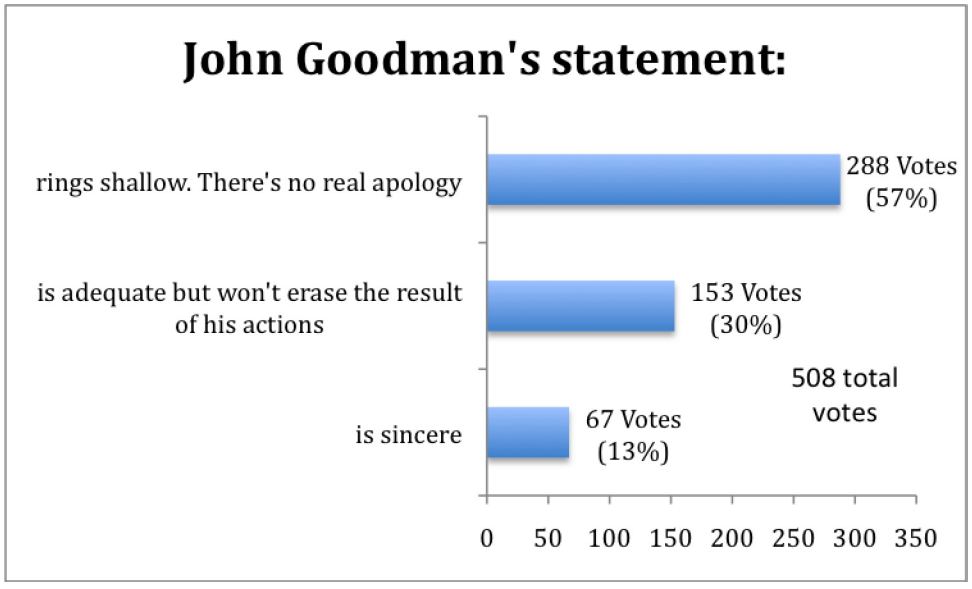
The editorial staff of the *Post* has been lobbying for Mr. Goodman's conviction since at least as early as February 2010, when the *Post* – through its gossip page on *Page2Live.com* – posed the question in its headline, "Will justice prevail in Welly polo boss John Goodman's crash?" and suggested that prosecutors were concealing information to protect Mr. Goodman.[26] The *Post* then conducted a poll on the question: "Are we all equal in the eyes of the law in Palm Beach County?"



[26] *See Page2live.com*, Feb 16, 2010, "Will justice prevail in Welly polo boss John Goodman's crash?"

The poll drew votes from 1,017 residents with 977 of those (96%) checking the box: "No. We are reminded every day that rich and famous criminal defendants get all the breaks." Only 40 votes (4%) believed "American justice indeed is blind." Accusations of an unlevel playing field were bolstered by a series of quotes from former prosecutor Paula Russell, whom the article paraphrased as stating that the justice system "already has treated Wellington polo boss John Goodman differently than the Average Joe." [27]

A few days later, February 20, 2010, the *Post* – again through a Jose Lambiet column on *Page2live.com* entitled "Polo boss John Goodman expresses 'sympathy and regret' as crash victim is buried" – asked readers whether they believed a statement of "sympathy and regret" that Mr. Goodman released before Scott Wilson's funeral. After reminding readers – as it does in nearly every piece it has published – that Mr. Goodman (the



[27] *See Page2live.com*, Feb 16, 2010, "Will justice prevail in Welly polo boss John Goodman's crash?"

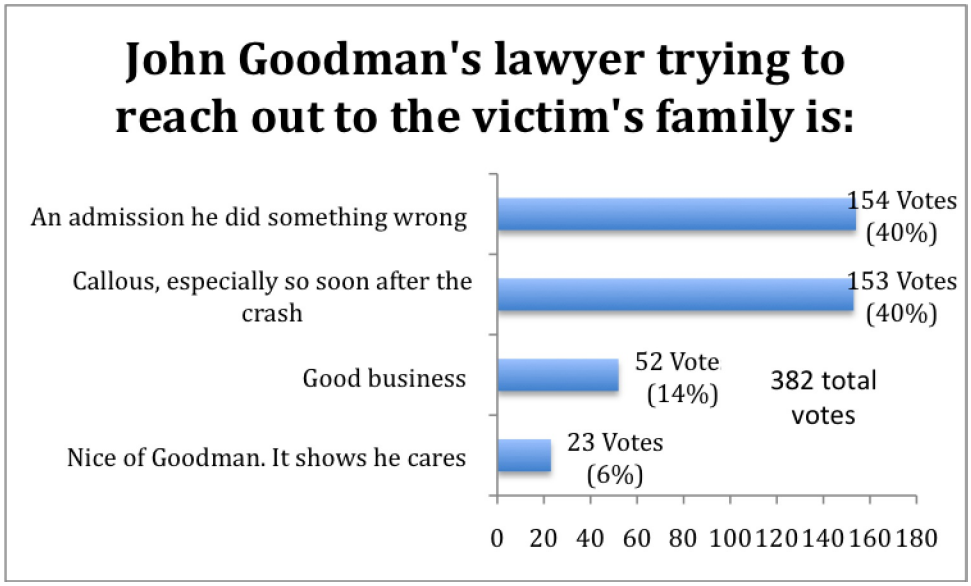
"Polo boss") was the founder of the Palm Beach International Polo Club, Lambiet invited readers to vote on whether they believed Mr. Goodman's statement – which Lambiet emphasized had been issued "through his lawyer's publicist."[28] Over 500 readers voted in this second poll, with the majority agreeing that Mr. Goodman's statement "rings shallow." Below the column, the *Post* printed (and still on line) 17 comments from readers. At least two picked up on the "lawyer's publicist" remark in the article to doubt Mr. Goodman's sincerity and accuse him of "hid[ing] behind your lawyers." Others called him ("coward" and "scumbag").

Three days later, February 23, 2010, Lambiet wrote another column, this time reporting that Mr. Goodman's civil attorneys were "discreetly" reaching out to the Wilson family to reach a financial settlement.[29] The piece prominently displays a photograph of Mr. Goodman with his arm around "Lizzie McGuire star Hillary Duff and a circus elephant at the polo club" and contains a hyperlink (Lili and William Wilson) directly to an earlier piece in the *Post* showing a photograph of Scott Wilson when he was

[28] *See Page2live.com*, Feb. 20, 2010, "Polo boss John Goodman expresses 'sympathy and regret' as crash victim is buried."

[29] *See Page2live.com*, Feb. 23, 2010, "Polo boss John Goodman's attorney working on settlement for crash victim's family."

2-3 years old.[30] Although no one mentioned in the column suggested that the seeking of a civil settlement either (1) constituted an admission of guilt, (2) was a "callous" act by Mr. Goodman or (3) was motivated by selfish business practices, Lambiet conducted another poll asking readers to vote on these questions. With nearly 400 votes cast, 307 (80%) agreed that seeking the settlement was either "[a]n admission he did something wrong" or "[c]allous, especially so soon after the crash." Another 52 (14%) said that Mr. Goodman was only making the inquiry because it was "[g]ood business" to do so. In light of the loaded questions and article featuring Mr. Goodman as a spoiled playboy, the sentiments in the 23 comments following the article (and still on line for viewing by jurors) were predicable. Readers accused Mr. Goodman trying to buy his way out of trouble and of being "callous," a "dirt bag," "disgusting," "a piece of schizz" and a "Party Boy." Still others spread vicious rumors about Mr. Goodman, including that he "loves cocaine," that "[h]is



[30] *See Palmbeachpost.com*, Feb. 17, 2010, "Mother of Wellington college grad killed in crash: 'He died with a pure heart." The same photo of Mr. Goodman with Hillary Duff and the circus elephant also appears in numerous *P2live.com* stories, including the ones on March 4. 9, 11, 2010.

own wife feared for her children's safety in his care" and criticizing a family court judge in his divorce for allegedly not requiring him to submit to "random drug testing" and keeping "appointments with the therapist."

In May 2010, the *Post* escalated the war by releasing two *editorials*. The first responded to criticisms about the Palm Beach County Sheriff's Office and State Attorney for allegedly taking too long to charge Mr. Goodman. After opining that law enforcement needed to be thorough and not give Mr. Goodman an advantage by triggering speedy trial rules, the *Post* stated what it viewed as "the evidence":

> With Mr. Goodman, founder of the international Polo Club Palm Beach, the evidence is that just after 1 am on Feb. 12 his blood-alcohol level was twice the legal limit when he ran a stop sign in Wellington and broadsided the car carrying 23-year-old Scott Wilson, sending it into a canal. Mr. Goodman, the investigator wrote, "left Scott Wilson to drown ... belted in the driver seat of his vehicle." Mr. Goodman called his girlfriend before he called 911. Investigators matched Mr. Goodman's boots to footprints at the scene, and sand in the boots to sand at the scene. Mr. Goodman faces 30 years in prison. A trial will sort out the evidence. That evidence was worth the wait.[31]

The second May editorial, authored by Randy Schultz, editor of the editorial staff, was designed to simultaneously stoke class bias against Mr. Goodman and undermine his Sixth Amendment right to counsel. Entitled "The Bentley and the Sonata," the theme for the piece was the "stark[] contrast between the accused and the victim."[32] Schultz drew this contrast in two ways. First, he contrasted Mr. Goodman's wealth and "$175,000" Bentley with Scott Wilson's $15,000" Hyundai and disclosed that when Mr. Goodman was not immediately arrested "[f]or weeks readers

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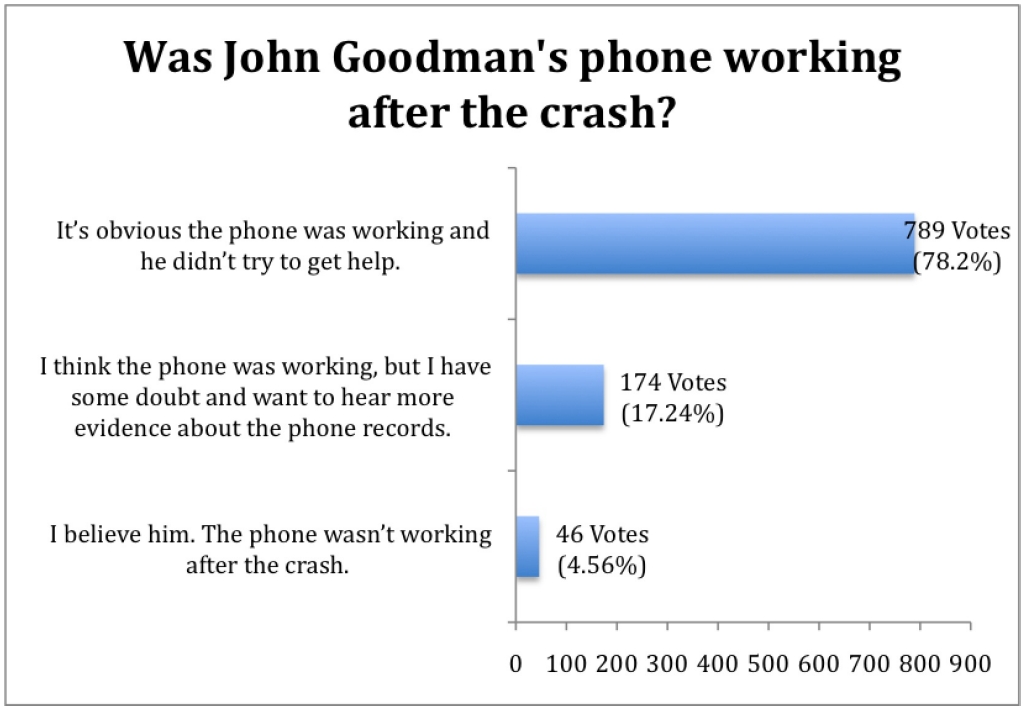
[31] *See Palmbeachpost.com*, May 19, 2010, "What took so long to charge Goodman? Evidence."

[32] *See Palmbeachpost.com*, May 21, 2010, "Schultz: The Bentley and the Sonata,"

called to complain" that his wealth must have been interfering with the investigation. Second, he attacked undersigned counsel for allegedly "relish[ing]" representing guilty, high-profile clients." He then argued that Mr. Goodman fit counsel's supposed "love of publicity and clients who can afford the best" because Mr. Goodman was "one of the most hated defendants this areas has seen." Schultz concluded the smear job by claiming that all he really cared about was that "the system ... get[s] it right" and that "[t]here will be no extra points if the smug Mr. Black gets his clock cleaned" because counsel will simply "go on to another client who can afford the best."

A few months later, on August 23, 2010, the *Post* published an editorial[33] whose sole purpose was to suggest that any claim by Mr. Goodman that his cell phone was not working the night of the



[33] *See Palmbeachpost.com*, Aug. 23, 2010, "Was polo club founder's phone working?"

accident was false. After ridiculing the alleged defense, the *Post* invited the readership to vote in a poll about whether they believed Mr. Goodman's alleged story. The results of the poll are still available on line. The poll attracted an enormous number of voters, 1,009 readers. Of those only 46 people (4.56%) believed the defense, as characterized in the slanted editorial. In contrast, 789 voters (78.2%) said it was "obvious the phone was working and he didn't try to get help" and another 174 (17.24%) "think the phone was working" but harbored at least some doubt.

In addition to the poll results, the editorial drew 77 mostly anonymous comments. While the majority were submitted on or shortly after the editorial was published, the editorial continued to draw comments in September and even November 2010. Only 12 of the comments were supportive or neutral. The rest assumed Mr. Goodman was guilty, hoped he would "rot in jail" and "suffer a long time" or railed about his wealth and his "high priced lawyer." Others called him names, such as "wealthy scumbag," "sorry ass character," "drunk millionaire," "arrogant, uncaring self-serving ego maniac," "a**h***," "spoiled, rich, self-centered MAN-Child" and "elite trash." As previously discussed, several suggested that he be executed in various graphic ways. When one reader tried to defend Mr. Goodman, the commenters started attacking *him*, calling him "stupid," a "loser" and an "a** clown."

The next *Post* editorial occurred on Nov. 5, 2010, when the editorial staff implied that Mr. Goodman was trying to bribe potential fire rescue witnesses by somehow arranging for "several high-ranking officials" to play golf for free at The Wanderers Club in Wellington.[34] And, as noted

[34] *See Palmbeachpost.com*, Nov. 5, 2010, "Fire-rescue blew call: Staffers should not have played free golf at Goodman's club."

at the outset, the most recent editorial was on December 6, 2011, and it too included a poll and lengthy comments from readers which were just as vitriolic as those in early 2010.

2. State Sponsorship of Negative Publicity

In *Sheppard v. Maxwell*, 384 U.S. 333 (1966), the Supreme Court criticized the trial court for failing to control the conduct of both attorneys and police officers involved in the case, noting in particular that "[t]he prosecution repeatedly made evidence available to the news media which was never offered in the trial." 384 U.S. at 360. Indeed, the Court found that the volume of publicity in that case was at least in part the direct result of public "disclosures" by state officials. *Id.* at 362. *See also Irvin*, 366 U.S. at 730 (Frankfurter, J., concurring); *Rideau*, 373 U.S. at 725; *Delaney v. United States*, 199 F.2d 107, 114 (1st Cir. 1952); *State v. Wilson*, 202 S.E.2d 828, 831 (W. Va. 1974); *State v. Bonner*, 587 P.2d 580, 582, 585 (Wash. App. 1978); *Commonwealth v. Frazier*, 369 A.2d 1224, 1226 (Penn. 1977). *See also Williams v. Griswald*, 743 F.2d 1533, 1539 (11th Cir. 1984) (noting that the "credibility of the source to which the information is attributable may influence the validity of the claim"). As in *Sheppard*, the prejudicial nature of the publicity in this case was compounded because it has been fomented, at least in part, from the very beginning by prosecutors and other law enforcement officials.

a. Statements by police about suspected intoxication and drug abuse

Immediately after the accident, news outlets were reporting that police suspected alcohol or drug use had contributed to the crash. For instance, the very first article in the *Post*, initially posted less than five hours after the crash, stated, "Deputies reported that alcohol or drugs may have played

a role."[35] Later that day, two television news reports – one from FOX/WFLX and the other from CBS 12 – reported that "Alcohol or drugs are suspected factors,"[36] and a WPTV newscast said, "Investigators suspect John B. Goodman was drinking when he ran a stop sign and plowed into Scott Wilson's car." The following day, an article published in the *Sun-Sentinel* and in the *Orlando Sentinel* confirmed, based on "Initial Sheriff's Office reports," that "investigators suspect[ed] alcohol

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[35] *See Palmbeachpost.com*, Feb. 12, 2010, "Car driven by International Polo founder kills 23-year-old in Wellington crash; alcohol suspected." Rumors of cocaine use continued to spread based, in part, on a blog post on the *Houston Press* website. *See Houstonpress.com*, Feb. 19, 2010, "The Billionaire, The Bentley And The Body, Part III: Divorce And Cocaine." That post reported that Mr. Goodman's ex-wife had made a motion to suspend his visitation rights until he submitted to drug tests, as agreed upon in their original divorce settlement. The motion, according to the *Houston Press* report, claimed that Mrs. Goodman was "fearful for the safety and well-being of her children while they are in the possession of Respondent because of his history of substance abuse and his refusal to submit himself for drug screening." This generated a flurry of reports in the *Post* about Mr. Goodman's alleged history of cocaine abuse, which included such salacious headlines as "Court Records: Billionaire Bentley Driver Goodman Has History of Cocaine Abuse" and "Report: Wellington polo boss John Goodman allegedly a coke fiend." *See blogs.browardpalmbeach.com*, Feb. 19, 2010, "Court Records: Billionaire Bentley Driver Goodman Has History of Cocaine Abuse"; *Page2live.com*, Feb. 19, 2010, "Report: Wellington polo boss John Goodman allegedly a coke fiend." At least 18 other reports later referenced the allegations included in the motion. *See www.chron.com*, Feb. 22, 2010, "Millionaire draws scrutiny, outrage after fatal crash."; *WFLX.com*, Feb. 22, 2010, "Family awaits info on son's fatal crash."; *CBS 12.com*, Feb. 22, 2010, "Victim's family learns more about millionaire in fatal crash."; *Palmbeachpost.com*, Feb. 23, 2010, "Wellington Polo mogul Goodman faces scrutiny after fatal wreck."; *Sun-Sentinel.com*, Feb. 23, 2010, "Polo's John Goodman doesn't live in the spotlight."; *Palmbeachpost.com*, Feb. 26, 2010, "Court filing: Wellington polo club founder Goodman failed to comply with cocaine tests."; *Sun-Sentinel.com*, Feb. 26, 2010, "Goodman failed to submit to drug tests, psychiatrist wrote."; *Sun-Sentinel.com*, March 4, 2010, "Polo club founder's legal team likely preparing defense for fatal Wellington crash."; *Page2live.com*, March 11, 2010, "John Goodman crash victim's family 'pleased' with probe, but Goodman was 'reckless'."; *WPBF.com*, March 11, 2010, "Parents Of Canal Crash Victim Launch Investigation." ; *Palmbeachpost.com*, April 29, 2010, "Parents' lawsuit: Polo club founder Goodman was drunk, taking drugs before causing fatal crash in Wellington."; *blogs.browardpalmbeach.com*, April 29, 2010, "Suit: Polo Owner Was Falling Down Drunk Night of Fatal Crash."; *WFLX.com*, April 30, 2010, "Lawsuit filed against John Goodman."; *blogs.browardpalmbeach.com*, June 3, 2010, "Was John Goodman Using Cocaine the Night Before Fatal Crash?"; *WPTV.com*, June 21, 2010, "New information released in Goodman discovery: Goodman reportedly asked for tequila, vodka."; *WPBF.com*, June 21, 2010, "Tequila, Vodka On Goodman's Tab Before Fatal Crash."; *Houstonpress.com*, June 22, 2010, "John Goodman: More Details Emerge From Bar Where Polo Patron Spent Last Hours Before Fatal Crash."; *Browardpalmbeach.com*, July 8, 2010, "Will a Multimillionaire Polo Mogul Be Punished for a Fatal Drunken Accident?"

[36] *See WFLX.com*, Feb. 15, 2010, "Coroner: College grad drowned after accident"; *Orlandosentinel.com*, Feb. 16, 2010, "Investigation into polo owner's crash that killed man, 23, may take months." (via Palm Beach Post)

or drugs played a role [in causing the crash]."[37] These early reports appear to have resulted from the release of information by Palm Beach County law enforcement.

b. Statements alleging significance of cell phone record

During the summer after the crash, the *Post* published and *The Sun-Sentinel* reprinted an extremely damaging article headlined, "Goodman called aide, not 911, around time of fatal Wellington collision, cellphone records show."[38] Included in this piece was the following biased statement attributed to Palm Beach County Sheriff Department's Sgt. John Churchill: "You do have evidence suggesting the phone was operational during or after the crash.... In one case it could be a contributor to the crash. In another case it could be much worse." Later in the article, the *Post* stated, "Law enforcement officials say Goodman's single phone call could strengthen their accusation that Goodman willfully ignored his legal obligation to help the crash victim, Scott Wilson, or call for help after sending him careening into the water." While the article stated that the paper obtained the phone records through a public information request, the officer(s) gave the piece greater weight by providing further comment.

c. Statements made by prosecutors suggesting unfair advantage

In May 2010, prosecutor Ellen Roberts gave an inflammatory quote to the *Post*, which suggested that Mr. Goodman would use his wealth to evade punishment. In the article, "Lawyers on both sides of Goodman case are formidable," which was republished in *The Sun-Sentinel*, Roberts

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[37] *See Sun-Sentinel.com,* Feb. 16, 2010, "Investigation into polo owner's crash that killed man, 23, may take months." (via The Palm Beach Post); *Orlandosentinel.com*, Feb. 16, 2010, "Investigation into polo owner's crash that killed man, 23, may take months" (via Palm Beach Post).

[38] *Palmbeachpost.com*, Aug. 19, 2010, "Goodman called aide, not 911, around time of fatal Wellington collision, cellphone records show" (also featured in Sun-Sentinel).

was quoted as follows: "'The more money they have, the more experts they can hire and the more depositions I'll have to go to,' she said dismissively. 'The only difference between them and me is they make a lot more money.'" Elsewhere in the article, *Post*'s staff writer conveyed this inflammatory sentiment even more explicitly: "There seems to be little question that Goodman, 46, the multimillionaire owner of Wellington's International Polo Club Palm Beach, will bring to court all the advantages money can buy. His deep pockets can assure that Black's firm can hire any number of private investigators and experts to probe for weaknesses in the state attorney's office's case...." This article, fueled by Ms. Robert's participation, demonstrated a clear bias against Mr. Goodman and is likely to have inflamed hostility towards him.

Another person tied to the State's Attorney's office, Paula Russell, who reportedly worked there for 23 years, precipitated an earlier series of highly inflammatory articles, which suggested that Mr. Goodman was already receiving preferential treatment from law enforcement:

> "They won't admit it, of course," said Russell, who unsuccessfully ran for state attorney in 2008, "but when deputies saw a Bentley, they told themselves they'd better dot every i and cross every t. That's human nature…
>
> "When it comes to rich and/or famous defendants, the facts speak for themselves," Russell said. "I believe that the state attorney's office over the years has given significant breaks to people with a lot of money. Is it political or psychological? Are prosecutors in a panic when Roy Black shows up? I don't know. But the facts are there."[39]

[39] *See* Page2live.com, Feb. 16, 2010, "Will justice prevail in Welly polo boss John Goodman's crash?"

These statements provided the basis for a slew of extremely negative reports which appeared in *The Sun-Sentinel*,[40] *The Orlando Sentinel,*[41] on the website Page2Live[42] and on *The Houston Press*'s Hairball's blog.[43]

d. The inflammatory Arrest Affidavit and release of the 911 call

Many of the most inflammatory articles that have been written about Mr. Goodman's case stemmed from the arrest affidavit that was submitted by police in May 2010 and subsequently made available to the press. This affidavit, described by the *Post* as "strongly worded,"[44] also appears to have included statements made by several witnesses to police investigators. The report was directly quoted in at least three articles on the day of Mr. Goodman's arrest[45] and provided the basis for at least ten other extremely inflammatory pieces.[46]

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[40] *See Sun-Sentinel.com*, Feb. 16, 2010 , "Investigation into polo owner's crash that killed man, 23, may take months" (via The Palm Beach Post).

[41] *See Orlandosentinel.com*, Feb. 16, 2010, "Investigation into polo owner's crash that killed man, 23, may take months" (via Palm Beach Post).

[42] *See Page2live.com*, Feb. 16, 2010, "Will justice prevail in Welly polo boss John Goodman's crash?"

[43] *See Houstonpress.com*, Feb. 16, 2010, "More On The Billionaire And The Bentley: The Coroner's Report Is In, The Lawyer Is A Star, And Why Hasn't Goodman Been Charged?"

[44] *See Palmbeachpost.com*, May 19, 2010, "Polo Club founder Goodman could face up to 30 years in prison if convicted."

[45] *See Palmbeachpost.com*, May 19, 2010, "Polo Club founder Goodman could face up to 30 years in prison if convicted"; *Sun-Sentinel.com*, May 19, 2010, "Polo club founder charged with DUI manslaughter in fatal Wellington crash"; *www.chron.com*, May 19, 2010, "Houston millionaire charged in deadly Florida crash."

[46] *See WPBF.com*, May 20, 2010, "Witness Recounts Goodman's Actions After Crash"; *blogs.browardpalmbeach.com*, May 20, 2010, "Witness Account of Polo Mogul's Crash: "He Did Not Want to Get Into Trouble"; *blogs.browardpalmbeach.com*, June 3, 2010, "Was John Goodman Using Cocaine the Night Before Fatal Crash?"; *nl.newsbank.com*, June 22, 2010, "CRIME: Woman told investigators polo mogul wanted cocaine night of fatal crash" (via Sun-Sentinel); *WPBF.com*, June 21, 2010, "Tequila, Vodka On Goodman's Tab Before Fatal Crash"; *blogs.browardpalmbeach.com*, June 22, 2010, "Possible John Goodman DUI Defense: A Barn Drink After Fatal Crash"; *blogs.browardpalmbeach.com*, June 23, 2010, "Weeks After Fatal Crash, John Goodman Attended Lakers Game in

(continued...)

Tapes of 911 calls reporting the accident, including the one made by Mr. Goodman, also appear to have been released to the media directly from law enforcement officials. The recordings were featured on the *Post*'s website[47] in a video that featured graphic images from the crash along with images of the two men involved. This combination made for an compelling presentation that is likely to have inflame emotions regarding the case for anyone who watches it. A transcript of the call was also posted to the CBS 12 website.[48]

e. Information leaked by "unnamed" sources

Finally, there were at least two extremely biased stories that appear to have been leaked by law enforcement officials. The first story was broken by *Page2Live* in an article headlined, "EXCLUSIVE! Prosecutors seize John Goodman's $200-Ladies' Night booze bill." This highly inflammatory article was reportedly based on information provided by "a source close to the criminal investigation into the accident." Published only eight days after the crash, it was later referenced in at least three other articles.[49]

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[46](...continued)
Miami"; *blogs.browardpalmbeach.com*, June 24, 2010, "John Goodman Offered to Pay Post-Accident Witness"; *blogs.browardpalmbeach.com*, June 29, 2010, "Polo Mogul John Goodman's Concern for Crash Victim: 'Somebody's Dead.'"; *blogs.houstonpress.com*, June 22, 2010, "John Goodman: More Details Emerge From Bar Where Polo Patron Spent Last Hours Before Fatal Crash."

[47] *See* link.brightcove.com.

[48] *See Www.cbs12.com*, June 25, 2010, "Exclusive: 911 call from Goodman Crash."

[49] *See nl.newsbank.com*, June 22, 2010, "CRIME: Woman told investigators polo mogul wanted cocaine night of fatal crash" (via Sun-Sentinel); *blogs.browardpalmbeach.com*, June 24, 2010, "John Goodman Offered to Pay Post-Accident Witness"; *www.browardpalmbeach.com*, July 8, 2010, "Will a Multimillionaire Polo Mogul Be Punished for a Fatal Drunken Accident?"

A second article based on the claims of an unnamed source – "Source: Polo boss John Goodman passed out at the wheel"[50] – was also published to *Page2Live* in the month following the accident. This time the *Post* claimed, based on information provided by "a source familiar with the hush-hush investigation into the crash," that investigators believed Mr. Goodman passed out at the wheel when the two cars collided. "There's no way that, at that speed, he could have taken the turn on Lake Worth Road," the source reportedly told Page2Live. "He must not have been conscious." This prejudicial speculation could only have been made by a law enforcement official.

The State, having chosen to feed the flames of public hysteria over this case, must bear the consequences of this tactic. "We think that the [State] is put to a choice in this matter: If the [State] ... chooses to ... [generate] damaging publicity prejudicial to a person awaiting trial on a pending indictment, then the [State] must accept the consequence that the judicial department, charged with the duty of assuring the defendant a fair trial before an impartial jury...." *Delaney v. United States*, 199 F.2d 107, 114 (1st Cir. 1952). *See also State v. Woodington*, 31 Wis. 2d 151, 142 N.W.2d 810 (1966) (right of Attorney General to issue public statements about matters of great public concern "should be exercised with circumspection so as not to prejudice or impair the rights of a defendant in either prospective or pending litigation").

3. Inflammatory publicity fomented by the Wilson family attorneys

A unique factor at play in the Court's analysis of this motion should be the role that the civil attorneys retained by the Wilson family have played in fomenting both hostile publicity about Mr. Goodman and sympathetic publicity about the family. Unlike representatives of the State who are constitutionally bound to ensure Mr. Goodman a fair trial and who are directly responsible to the

[50] *See Page2live.com*, March 9, 2010, "Source: Polo boss John Goodman passed out at the wheel."

Court for their conduct, the Wilson family attorneys have neither that responsibility nor anyone directly refereeing their behavior.[51] They have been a repeated source of photographs for the media and in "press conferences" and interviews they have constantly vilified Mr. Goodman in a campaign patently designed to increase the likelihood of both Mr. Goodman's conviction and a large financial payout by tainting the jury pool in both venues.

For example, just one month after the accident, Mr. Smith and Christopher Searcy, the attorney for Mr. Wilson's mother, held a "press conference" at his office, announcing that they were

[51] Private attorneys are limited only by Rule 4-3.6(a) of the Rules Regulating the Florida Bar, which provides:

> **(a) Prejudicial Extrajudicial Statements Prohibited.** A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding due to its creation of an imminent and substantial detrimental effect on that proceeding.

However, due in part to the "substantial likelihood" requirement, motions seeking gag orders are rarely successful in preventing attorneys from violating the rule. *See, e.g., D.L v. Slattery*, Case No. 10-61902-Civ-Moore (S.D. Fla. March 31, 2011), *2011 U.S. Dist. LEXIS 39799*); *E.I. Dupont de Nemours & Co. v. Aquamar, S.A*, 33 So.3d 839 (Fla. 4th DCA 2010); *Rodriguez ex rel. Posso-Rodriguez v. Feinstein*, 734 So.2d 1162 (Fla. 3d DCA 1999).

launching their own investigation into the accident. A clip of the press conference is still a featured video on Youtube.[52] The Wilson family and both attorneys are all seated around a conference table in what appears to be their law library, which is seen filled with poster-size photographs of the crash site. As the attorneys give essentially a closing argument to the cameras, in the background they staged an "exhibit" – a white-clothed table with eighteen shot glasses filled with a dark liquid – which was presumably meant to symbolize the number of drinks Mr. Goodman allegedly consumed before the accident. The video then does a close-up of the shot glasses so that the viewer gets the message. This extravaganza – staged by the Wilson family attorneys entirely for press consumption – was and will continue to be extremely damaging to Mr. Goodman's public image for at least three reasons: (1) it contributes to the insidious perception that he has been receiving preferential treatment from authorities (thus necessitating a private investigation), (2) it showcases the family's grief (thus inflaming negative sentiment against Mr. Goodman), and (3) it gives the attorneys an opportunity

[52] *See* "Wilson Family Wants Answers From John B. Goodman! Part 3."

to accuse Mr. Goodman of being reckless and impaired at the time of the accident and to suggest to the public that there were "confidential informants" who could testify to these claims.[53]

In late April, the Wilson family attorneys instigated another rash of negative media attention for Mr. Goodman, when they filed a sensationally worded lawsuit against him. On April 27 and 28, 2010, the attorneys were quoted at length in a story covered in both Palm Beach and Orlando in which they juxtaposed statements about the grief and sorrow of the Wilson family with unproven factual assertions concerning the speed at which Mr. Goodman allegedly struck Scott Wilson's car after allegedly running a stop sign.[54]

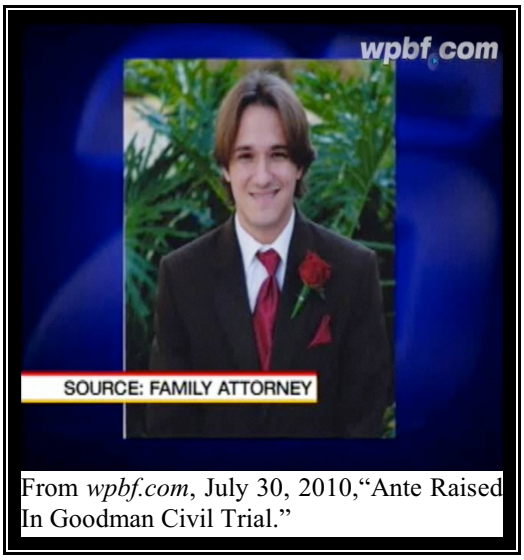
Youtube video: "Attorneys Argue Goodman's Worth." Uploaded by WPBF on Jan. 20, 2011.

[53] This press conference was covered by all media outlets. *See, e.g., Palmbeachpost.com*, March 10, 2010, "Parents to open own probe into son's fatal accident with polo mogul Goodman"; *Page2live.com*, March 10, 2010, "Mother of victim in polo boss John Goodman's crash lawyers up." *Palmbeachpost.com*, March 11, 2010, "Attorneys seek information, witnesses to crash; consider suing Polo club founder"); *Page2live.com*, March 11, 2010, "John Goodman crash victim's family 'pleased' with probe, but Goodman was 'reckless'"; *WPTV.com*, March 11, 2010. For example, in the March 11, 2010 Page2Live.com report, attorney Scott Smith is quoted as saying that: "'They (the Wilsons) are simply 100 percent convinced that the only reason that Scott's car ended up upside down and underwater in a cold, dark canal is the reckless and outrageous actions of John Goodman,'" and that Mr. Goodman "'drove at a high rate of speed and blew through a stop sign.... The damages to Scott's car were horrific ... probably the worst I've seen in a two-car collision.'" The March 11th Palmbeachpost.com story about the press conference added that a civil suit against the "polo mogul" was imminent and based in part on "information from 'confidential informants.'" It also quoted Mr. Searcy directly: "We want to know why John Goodman ran a highly visible stop sign at a high rate of speed..." In the broadcast on *WPTV.com*, Mr. Searcy also talked about their "investigation" and suggested that Mr. Goodman had been using cocaine and wanted his blood tested.

[54] *See Palmbeachpost.com*, April 27, 2010, "Grief of crash victim's parents lead them to brink of suit against Wellington polo tycoon"; *Sun-Sentinel.com*, April 28, 2010, "Parents of crash victim to file wrongful death lawsuits against Wellington polo tycoon (via The Palm Beach Post)"; *Orlandosentinel.com*, April 28, 2010, "Parents of crash victim to file wrongful death lawsuits against Wellington polo tycoon."

The next day, April 29, 2010, the attorneys filed the lawsuit along with a press release. Both were loaded with inflammatory accusations and rhetoric that they assumed, correctly, would be picked up by the media, including allegations that Mr. Goodman was "so obviously drunk that he fell down for no apparent reason," that he had been using "controlled substances," that he was "habitually" addicted to alcohol and had attended Alcoholic Anonymous meetings, that he "made no effort whatsoever to come to the aid of Scott Patrick Wilson," that he had "fled the scene" and "sought to hide at nearby structures" and that after the crash he called friends "and lawyers to protect himself from prosecution."[55]

To make matters worse, Mr. Searcy's law firm web site, www.searcylaw.com, contains a link directly to the press release. Federal prosecutors in *United States v. Carmichael*, 326 F. Supp. 2d 1267 (M.D. Ala. 2004), sought a protective order to compel the defendant to remove material from a web site he sponsored (www.carmichaelcase.com), arguing, among other things, that the web site "will taint the jury pool." 326 F. Supp. 2d at 1295. While the court recognized that "[t]he nature of Carmichael's site distinguishes this case from cases involving 'gag orders' directed against general pre-trial publicity," it denied the government's motion, holding that the site itself was "virtually impossible to find on the internet without knowing the exact internet address. A



From *wpbf.com*, July 30, 2010,"Ante Raised In Goodman Civil Trial."

[55] *See Palmbeachpost.com*, April 29, 2010, "Parents' lawsuit: Polo club founder Goodman was drunk, taking drugs before causing fatal crash in Wellington"; *Sun-Sentinel.com*, April 29, 2010, "Dead man's parents sue Goodman, polo club and bar in fatal Wellington crash (via The Palm Beach Post)."

'Google' search for 'Carmichael case,' 'Leon Carmichael,' and the names of the witnesses and agents pictured on the site does not produce the site." *Id.* at 1295, 1299. In the instant case, if a curious member of the jury pool were to conduct an internet search (whether it be on Google, Yahoo! or bing) using as search terms "John Goodman and Scott Wilson" or "John Goodman and DUI," a link directly to the press release routinely appears on the first three "pages" of the search results under the headline "International Polo Club Owner John Goodman Arrested on Charges of." *See* **Exhibit 9**. The press statement contains additional quotes from Mr. Searcy and Mr. Smith and ends with a request to the public for "information as to Mr. Goodman's prior or habitual use of alcohol and/or cocaine."

On June 3, 2010, Wilson family attorney Chris Searcy gave a quote to the *Broward-Palm Beach New Times* for a story headlined, "Was John Goodman Using Cocaine the Night Before Fatal Crash?," claiming that he has a witness who was with Mr. Goodman before the accident who has confirmed that Mr. Goodman was on his way to buy cocaine when the accident occurred: "We have information from some sources that, in their opinion, he had been using cocaine that evening."[56] The attorneys also attempted to obtain access to Mr. Goodman's medical records believing that this would provide evidence of his alleged history of cocaine abuse.[57] While the motion was denied, it did have the devastating effect of suggesting to the public that Mr. Goodman *did* have such a history. Although several of the allegations made by the Wilson family's attorneys have since been shown to be completely without merit (such as the claim that he was abusing cocaine and was falling-down

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[56] *See blogs.browardpalmbeach.com*, June 3, 2010, "Was John Goodman Using Cocaine the Night Before Fatal Crash?"

[57] *See Palmbeachpost.com*, Oct. 26, 2010, "Judge: Polo mogul allowed to argue crash victim partially at fault - for now."

drunk on the night of the accident), they were included in the attorneys' complaint and in numerous public statements to the press as part of their smear campaign to deprive Mr. Goodman of fair trials.

Youtube video: "New Details Released in Goodman Investigation." Uploaded by WPBF on June 11, 2010.

In addition to falsely accusing Mr. Goodman of abusing cocaine, the attorneys have treated the charge that Mr. Goodman was drunk at the time of the accident as a foregone conclusion and encouraged the public to do that same. Consider the following statement given by Mr. Smith to WPBF: "'Whether he has cocaine in his system or not, the fact that his blood alcohol level was 0.177 at the time of this crash makes it reckless and unlawful and unacceptable,' Wilson family attorney Scott Smith said.... 'Their 23-year-old son was struck down and left to drown by John Goodman in an instant,' Smith said."[58]

Then, on July 29, 2010, the *Palm Beach Post* reported that the Wilson family would be seeking over $100 million in punitive damages because Mr. Goodman had been "grossly impaired" and had driven in "a homicidally reckless manner when he drove at a very high rate of speed and ran through a

Youtube video: "Wilson Family Can Seek Punitive Damages Vs. Goodman." Uploaded by WPBF on July 30, 2010.

[58] *See WPBF.com*, June 21, 2010, "Tequila, Vodka On Goodman's Tab Before Fatal Crash."

visible stop sign without stopping."[59] The next day, ABC/WPBF television quoted Mr. Smith again, this time bemoaning the fact that, to the Wilson family, "[t]he pain is as strong as it ever was. The suffering is as great as it ever was. They lost their child."[60] While it is, of course, appropriate for the Wilson family to be grieving the loss of their son, their attorneys' conduct in continually emphasizing this fact in the press, along with attacks on Mr. Goodman, appears to be part of a concerted effort to rouse negative sentiment towards Mr. Goodman. Among other themes pursued by the attorneys, they have accused Mr. Goodman of (1) attempting to "blame the victim,"[61] (2) hiding his wealth[62] and (3) seeking unreasonable delays in the trial, furthering the pain felt by Scott Wilson's parents in the process.[63]

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[59] *See Palmbeachpost.com*, July 29, 2010, "Wellington polo magnate John Goodman's attorneys agree to let dead man's family seek punitive damages in fatal Bentley crash."

[60] *See WPBF.com*, July 30, 2010, "Ante Raised in Goodman Civil Trial."

[61] *See WPTV.com*, Oct. 26, 2010, "Polo mogul's attorney blaming victim in fatal DUI crash"; *Palmbeachpost.com*, Oct. 25, 2010, "Victim may share blame in fatal Feb. 12 crash near Wellington, polo mogul Goodman's attorneys assert in civil case"; *Palmbeachpost.com*, Oct. 25, 2010, "Victim may share blame in fatal Feb. 12 crash near Wellington, polo mogul Goodman's attorneys assert in civil case"; *Palmbeachpost.com*, Oct. 25, 2010, "Victim may share blame in fatal Feb. 12 crash near Wellington, polo mogul Goodman's attorneys assert in civil case; *WPTV.com*, Oct. 26, 2010, "Polo mogul's attorney blaming victim in fatal DUI crash"); *Palmbeachpost.com*, Oct. 26, 2010, "Judge: Polo mogul allowed to argue crash victim partially at fault - for now"); *Palmbeachpost.com*, Jan. 26, 2011, "Polo club founder Goodman drops claim victim may have shared blame for fatal crash" (also featured in *Sun-Sentinel*)).

[62] *See Palmbeachpost.com* (also in the *Sun-Sentinel* and *Orlando Sentinel*), Aug. 22, 2011, "Polo mogul is hiding wealth, attorney says"). *See also Orlandosentinel.com*, August 22, 2011, "Attorneys battle over Polo Club founder's level of wealth" (via The Palm Beach Post); *Palmbeachpost.com*, Jan. 10, 2011, "How much is Goodman really worth? Parents of Wellington man killed in crash seek answer in court"; *blogs.browardpalmbeach.com*, Jan. 10, 2011, "Is Polo Mogul John Goodman Hiding His Vast Wealth?" (claiming that Mr. Goodman had a "sophisticated ... system" for hiding his "wealth"); *Wpbf.com*., Jan. 10, 2011, "How much is Goodman really worth? Parents of Wellington man killed in crash seek answer in court" (quoting Searcy as saying that "all of this money is hidden in businesses and trust and corporations in this country and in Bermuda and Liechtenstein").

[63] *See, e.g., Palmbeachpost.com*, May 20, 2010, "Goodman seeks to postpone parents' wrongful-death suit in fatal crash, saying it would jeopardize defense in criminal case"; *WPBF.com*, Jan. 14, 2011, "Victim's Family Eager For Goodman Trial To Begin"; *Palmbeachpost.com*, Jan. 14, 2011, "Goodman's DUI manslaughter case could be ready for trial this year"; *Palmbeachpost.com*, June 27, 2011, "Oct. 24 trial date set for polo mogul in fatal Wellington crash." For (continued...)

These types of statements by the Wilson family's attorneys are extremely prejudicial because: (1) they portray Mr. Goodman as victimizing the Wilson family, (2) they contribute to the impression that Mr. Goodman must be guilty (otherwise, why would he want to avoid trying the case?) and (3) they further the notion that Mr. Goodman is using his wealth and status to manipulate the system, a theme Mr. Smith has gone out of his way to promote:

> "We are very close to the one-year anniversary of Scott's death," Wilson family attorney Scott Smith said. "Mr. and Mrs. Wilson are still grieving the loss of their only son while Mr. Goodman is making a decision whether or not he's going to play on and fund a professional polo team. I think that puts it into perspective how they're doing right now."[64]

Perhaps the most prejudicial conduct of the Wilson family's attorneys has been their repeated statements to the media – on August 17, 2010, October 25, 2010, June 27, 2011 – that Mr. Goodman refused to testify in civil depositions because he had invoked his Fifth Amendment right against self-incrimination.[65] Although it is rare for clients to attend civil depositions – and even rarer for them

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[63](...continued)
example, in its article on May 20, 2010, the *Palm Beach Post* article quoted Mr. Smith's response in opposition to Mr. Goodman's motions to stay the civil case pending the outcome of the instant case as "nothing more than a weak attempt ... to avoid legal responsibility and accountability," and arguing that "Goodman's motion infringes on his client's constitutional right to use the Florida court system...." Mr. Smith continued this theme in his remarks to the *Post*, quoted in the June 27th story, where he again bemoans the delay complaining that "[e]ach day is agony" for the Wilson family.

[64] *See WPBF.com*, Jan. 10, 2011, "Goodman Fatal Crash Case Back Before Judge." *See also Page2live.com*, Feb. 27, 2011, "Once again, Sunday is DUI killing suspect John Goodman's day" (attorney Smith quoted as saying that "[w]hile Mr. Goodman is free on bail attending polo matches and continuing to wine and dine the rich and famous ... Mr. and Mrs. Wilson continue to suffer from the loss of their only son."

[65] *See WPBF.com*, August 17, 2010, "Polo Founder Appears For Deposition" (quoting Searcy); *Palmbeachpost.com*, Oct. 25, 2010, "Victim may share blame in fatal Feb. 12 crash near Wellington, polo mogul Goodman's attorneys assert in civil case"; *Palmbeachpost.com*, June 27, 2011, "Oct. 24 trial date set for polo mogul in fatal Wellington crash" ("Goodman has invoked his right to remain silent during two civil depositions, Smith said, and refused to answer questions about the accident or his alcohol consumption that night"). Several other articles also reported that Mr. Goodman invoked his Fifth Amendment rights without mentioning the source. *See Palmbeachpost.com*, Oct. 26, 2010, "Polo mogul allowed to argue crash victim partially at fault - for now"; *Wptv.com*, Oct. 26, 2010, "Polo mogul's attorney
(continued...)

to receive live television coverage – the attorneys had the Wilsons personally attend the August 17, 2010 deposition, even though they knew that Mr. Goodman was not going to testify about the night of the accident. However, it was only by having them attend the deposition that sufficient "drama" would be created to attract the press. The television video clip of this staged event shows the Wilsons entering the law office. Mr. Searcy then speaks to the cameras outside, discussing how the Wilsons finally had their chance to "confront [their son's] killer" – which, of course, was false because Mr. Searcy knew Mr. Goodman was not going to testify about the night of the crash. The clip then shifts back to a television reporter who states that "we have learned" – obviously either from the Wilsons or their attorneys – that while the "polo mogul did answer questions about his wealth and properties," he had refused to say anything about the night of the crash "saying that it might incriminate himself in the criminal case against him." The clip closes with Mr. Searcy again addressing the reporter, stating that the deposition gave the Wilsons the feeling that "at last we're beginning to move in the direction of justice." The clip is still prominently featured on Youtube. *See* screen shot above.

Youtube video: "Wilson Family Attends Goodman Deposition." Uploaded by WPBF on Aug. 17, 2010.

The jury, of course, should never be allowed to know about, or to draw any negative inferences, from, Mr. Goodman's exercise of this constitutional rights. As the United States

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[65](...continued)
blaming victim in fatal DUI crash"; *Palmbeachpost.com*, Jan. 10, 2011, "How much is Goodman really worth? Parents of Wellington man killed in crash seek answer in court."

Supreme Court stated in *Johnson v. United States,* 318 U.S. 189, 196-97, 87 L. Ed. 704, 63 S. Ct. 549 (1943) (citation omitted), explained:

> If the privilege claimed by the witness be allowed, the matter is at an end. The claim of privilege and its allowance is properly no part of the evidence submitted to the jury, and no inferences whatever can be legitimately drawn by them from the legal assertion by the witness of his constitutional right. The allowance of the privilege would be a mockery of justice, if either party is to be affected injuriously by it.

See also United States v. LaCouture, 495 F.2d 1237, 1240 (5th Cir. 1974) ("[A] claim of Fifth Amendment privilege is likely to be regarded by the jury as high courtroom drama and a focus of ineradicable interest, when in fact its probative force is weak and it cannot be tested by cross-examination.").

A final aspect of the campaign by the Wilsons' attorneys is their possible role in contaminating the *Post*'s blog with self-serving "comments." For example, in response to the February 27, 2010, article (which included a posed portrait of Mrs. Wilson holding a including a framed photograph of her dead son) entitled "Mother of Wellington college grad killed in crash: 'He died with a pure heart," the following comment was posted by someone claiming to be a Florida attorney speaking on behalf of the "PBC Justice Project":

> As a member of the FL Bar, I will pay close attention to this case until Mr. Goodman is brought to justice and will work with other members of the FL Bar and media to uncover any corruption that allows him to escape. His generic expressions of 'sympathy and regret' and his

> 'thoughts and prayers' are worthless. If he is truly a 'good man' he will issue a statement admitting that he was under the influence and accepting full blame for his reckless actions instead of hiding behind his attorneys. PBC Justice Project, 1:33 PM, 2/21/2010

According to the Mr. Searcy firm's website, Mr. Searcy was "featured in the summer/fall edition of *Civil Justice Project News* in an article spotlighting his long-time advocacy of consumer rights and causes." *See* **Exhibit 10**. The website for that organization, the Public Citizen Civil Justice Project, also lists Mr. Searcy as one of its "Leadership Supporters." *See* **Exhibit 11**.

The prejudice caused by the Wilson family's attorneys continues to snowball on the internet, as their press conferences and media interviews continue to featured on Youtube. For example, a search for "John Goodman and Scott Wilson" produces a total of 20 videos on its first page, 8 of which were as "featured." Attached hereto as **Exhibit 12**, is the first page and individual screen shots of some of the videos themselves. Of the 8 "featured" videos, at least 4 featured live interviews and/or press conferences with either Scott Smith or Chris Searcy and usually both.[66]

C. The Biased and Inflammatory Nature of the Publicity

"[L]egal trials are not like elections to be won through the use of the meeting-hall, the radio, and the newspaper." *Sheppard*, 384 U.S. at 350. The *Post*, through its stories, columns, editorials, readership polls and unfiltered internet blogs, has been ceaselessly trying to do just that, first, by circulating false accusations of Mr. Goodman's alleged cocaine use, his invocation of the Fifth Amendment, his lack of remorse and the ridiculousness of his alleged defenses and, second, by allowing to remain on-line for months on end vitriolic, *ad hominem* personal attacks, outright and probably criminal death threats, graphic calls for Mr. Goodman (the alleged "rich Jew" and "cubby

[66] Those four were entitled "Wilson Family Can Seek Punitive Damages Vs. Goodman," "New Details Released in John Goodman Investigation," "John Goodman civil trial to continue" and "Attorneys Argue Goodman's Worth."

rich guy") to be tortured and then killed and, if not that, then "gang raped every single day and night" in prison by some "big black dudes" or "some big Haitian." At common law, libel was defined as speech "designed to expose a person to hatred, contempt, or ridicule." *Black's Law Dictionary*, 9th Ed. (West 2009), at p. 999. The *Post*'s conduct has not only done that but it has created a circus atmosphere and lynch mob mentality that the Supreme Court has repeatedly found deserving of a change of venue.[67] This atmosphere stems primarily from two insidious themes that permeate both the publicity and internet blogs: (1) efforts by the media in general and the *Post* in particular to stoke "class bias" against Mr. Goodman; and (2) vicious attacks – in many instances as vicious as many of the ones about Mr. Goodman – on undersigned counsel.[68]

1. The Stoking of "Class Bias" Against Mr. Goodman

Since Mr. Goodman is not "'charged ... with being wealthy," his "station in life" has, or should have, no legitimate bearing to his guilt or innocence. *Sizemore v. Fletcher*, 921 F.2d 667, 671 (6th Cir. 1990), *quoting v. Commonwealth*, 44 S.W.2d 306, 308 (Ky. Ct. App. 1931). Therefore, "[t]he general rule is that during trial no reference should be made to the wealth or poverty of any party, nor should the financial status of one party be contrasted with the other's." *Batlemento v. Dove Fountain, Inc.*, 593 So.2d 234, 241 (Fla. 5th DCA 1991) (citation omitted). If adopted as a trial

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[67] *See Sheppard*, 384 U.S. at 340 (a circus like atmosphere when court could not control press coverage); *Estes*, 381 U.S. at 550 (pretrial and trial media coverage resulted in a disruptive circus atmosphere that deprived the defendant of the solemnity and sobriety to which a defendant is entitled and emphasized the "notorious" character of the defendant); *Irvin*, 366 U.S. at 727 (reasoning that jury pool's exposure to unfettered prejudicial news coverage certainly biased against defendant); *Daniels v. Woodford*, 428 F.3d 1181, 1211-12 (9th Cir. 2005) (emphasizing prejudice presumed because of extensive and continuous publicity about crime and prejudicial information about defendant, and majority of potential and actual jurors exposed to publicity).

[68] As discussed in detail in the *Media Coverage Analysis*, the publicity has been prejudicial in several other respects, including (1) spreading rumors that Mr. Goodman fell down at the Players Club, (2) reporting on alleged alcohol consumption, (3) speculation by and about Lisa Pembleton, (4) prejudging Mr. Goodman's credibility and defenses, (5) allegations that Mr. Goodman is hiding his true wealth from the Wilson family.

strategy by the State, "[a]rgument directly contrasting the poverty of one of the parties with the wealth of the other is especially apt to prejudice the jury" and the admission of evidence in pursuit of such a strategy would constitute reversible error in Florida. 593 So.2d at 241 & n. 15 (citations omitted). *See also Ryan v. State*, 457 So.2d 1084, 1088-89 (Fla. 4th DCA 1984) (holding that it was "unfair and improper for the prosecutor" to characterize the defendant as "rich" who "fitted into that jet-set scene" and is a liar "because she's rich and will thumb her nose" at the community).

Trial courts are entrusted with a gatekeeping function to prevent juries from being exposed to any suggestion that a verdict can or should be influenced by the financial status of the parties. "[A]ppeals to class prejudice are highly improper and cannot be condoned *and trial courts should ever be alert to prevent them*." *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 239, 60 S.Ct. 811, 84 L.Ed. 1129 (1940) (emphasis added). "[S]uch appeals ... have no place in a courtroom...." *United States v. Stahl*, 616 F.2d 30, 33 (2d Cir. 1980) (finding prejudicial error in prosecutor's attempts at trial to incite class prejudice against wealthy defendant and remanding for a new trial). "Unfortunately, inherent in our system of trial by jury is always a danger the jury will be influenced by the wealth or power or one party or another or sympathy for a party's weakness, poverty or misery.... It is essential to avoid this risk." *Batlemento*, 593 So.2d at 242.[69]

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[69] *See also United States v. Bill Harbert Int'l Constr., Inc.*, No. 95-1231 (RCL), 2007 WL 842077, at *2 (D.D.C. Mar. 16, 2007) (Lamberth, J.) (denying motion to exclude evidence of civil defendants' financial condition or wealth as premature, but noting: "The Court is hard pressed to imagine how such evidence could be relevant, or how any relevance could help but be substantially outweighed by the undue prejudice and confusion likely to ensue from a discussion of defendants' wealth."); *United States v. Cassese*, 290 F. Supp. 2d 443, 457 (S.D.N.Y. 2003)(granting conditional motion for new trial under Rule 29(d) where government's theory "enabled the introduction of highly prejudicial and inflammatory evidence and arguments in front of the jury regarding Cassese's wealth, salary, and stock holdings. This evidence played into a bias against people of wealth."), *aff'd on other grounds*, 428 F.3d 92 (2d Cir. 2005); *Silbergleit v. First Interstate Bank of Fargo*, 37 F.3d 394, 398 (8th Cir. 1994) ("References to Silbergleit as a millionaire and to his receipt of unemployment compensation benefits were also highly prejudicial.");; *United States v. Cooper*, 286 F. Supp. 2d 1283, 1291 (D. Kan. 2003) (excluding evidence of extravagant expenditures for plastic surgery, gambling and strip

(continued...)

While the Court would be in a position to prevent the *prosecutors* from making an appeal to the jury's class bias if such a tactic were to be attempted inside the courtroom at trial, the Court has no power to curb the media's attempt to poison the jury pool by the incessant attacks on Mr. Goodman because of his alleged wealth. The "class-bias" attack has had several distinct features.

a. Pitting Mr. Goodman against Scott Wilson

***Page2live.com*, Feb. 27, 2011.**

Astonishingly, virtually every single article that collected – including the recent December 6th editorial and opinion poll fomented by the editorial board of the *Post* – alludes to the fact that Mr. Goodman's has a lot of money, and it is largely this fact that accounts for the case's perceived news value. There are 80 instances of the word "millionaire" in the 213 articles collected, 15 instances of the word "billionaire," and 102 instances of the word "mogul."[70] The term "patron"

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[69](...continued)
clubs because" the particularly limited probative value of this evidence is substantially outweighed by the unfair prejudice related to class and inflammatory moral issues"). *United States v. Payne*, 2 F.3d 706, 715 (6th Cir. 1993) (holding that the prosecutor's remarks during trial of the defendant for bribery and obstructing the mails "were part of a calculated effort used to evoke strong sympathetic emotions for Christmas-time activity, the poor, pregnant women, diaperless children and laid-off employees," prejudiced the defendant and required reversal); *Brown v. United States*, 766 A.2d 530, 546 n. 21 (D.C. App. 2001) (reversing obstruction of justice conviction, in part, due to prosecutor's "focus on the wealth and social status of the defendants" that "[came] across as an undisguised appeal to class prejudice against the powerful and privileged defendants"); *United States v. Terzado-Madruga*, 897 F.2d 1099, 1020 (11th Cir. 1990) (holding that trial court improperly admitted evidence that the defendant wore gold jewelry, boasted of his financial worth and drove a luxurious automobile without showing that these items were derived from legitimate sources); *Read v. United States*, 42 F.2d 636, 645 (8th Cir. 1930) (setting aside convictions of officers of a failed bank where the prosecutor repeatedly referenced the defendants' "very substantial fortune" and jewels, at a time of "intense" prejudice against the defendants in the context of the bank failures of the Great Depression).

[70] *See also Stahl*, 616 F.2d at 33 (reversing defendant's conviction for bribery where, during trial, the prosecutor referred to the defendant's as "a multi-millionaire businessman in real estate" and repeatedly referred to his "Park Avenue offices"). *Cf. Socony-Vacuum Oil Co.*, 310 U.S. at 237-239 (although not reversing, finding improper prosecutor's attacks on defendants as "millionaires and billionaires" and "malefactors of great wealth").

occurs 52 times, "magnate" 13 times and "heir" 23 times. And, the pieces almost never fail to connect Mr. Goodman to polo, usually with shots of the polo club that Mr. Goodman founded. These ubiquitous references seem to elicit hostility against Mr. Goodman by both the authors of the articles and by readers, as is evidenced by the editorial content of the articles and readers' comments. Any objective review of the published articles makes it clear that Mr. Goodman has become a target for the resentment that many people already feel towards the rich. One way that this hostility is invoked is by juxtaposing Mr. Goodman's wealth with the comparatively "modest" circumstances of Scott Wilson and his family.[71] This, in turn, leads to a David vs. Goliath, Rich vs. Poor, Good vs. Evil narrative. Consider, for instance, the opening sentences of the *Sun-Sentinel*'s first article about the crash: "They met at a crossroad, both literal and figurative. One was an engineering grad struggling to find his first job. The other, the multimillionaire founder and owner of the International Polo Club, who had just left a swank restaurant and bar… The Hyundai sank into the canal and Goodman's $200,000 Bentley came to a stop on a nearby sidewalk.[72] The authors' use of modifiers like "struggling" and "swank," as well as their decision to include "$200,000" before Bentley works to caricature the two

***Page2live.com*, Feb. 12, 2010, "Wellington Polo boss John Goodman involved in deadly crash; booze could have been a factor."**

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[71] *See Beck v. United States*, 33 F.2d 107, 114 (8th Cir. 1929) (reversing conviction where prosecutor portrayed the crime victims as the "widows and the orphans" and the defendant as someone who had "luxuriantly furnished offices" and who used the crime proceeds to purchase automobiles). *Cf. Brought v. Imperial Sterling Ltd.*, 297 F.3d 1172, 1179-80 (11th Cir. 2002) (in a civil case, finding improper, but not plain error since there was no objection, the plaintiff attorney's argument contrasting the defendant's "one hundred million dollar company" who and who "has at least three lawyers in place" to the plaintiff who was "simply an employee trying to make a living down in Florida").

[72] *Feb. 13, 2010, "International Polo Club founder hurt, UCF grad killed in Wellington car crash."*

individuals, painting Wilson as a hardworking, innocent young man and Goodman as a reckless playboy. The use of Mr. Goodman's Bentley and Mr. Wilson's Hyundai as proxies for their respective economic statuses is also common throughout the coverage. The tabloid narrative that is created through the inclusion of these details not only invites readers to resent Mr. Goodman for his wealth, it also invokes an in-group/out-group bias against him, by contrasting the (for most people) unfamiliar occasion of a "society fundraiser" with the relatable activity of a "flag-football game with friends."[73]

Beyond simply alluding to Mr. Goodman's privileged lifestyle, at least three blatantly inflammatory articles were devoted to criticizing him for participating in expensive or upscale activities after the crash. Two of these pieces – "Once again, Sunday is DUI killing suspect John Goodman's day,"[74] which castigated him for attending a polo match, and "EXCLUSIVE: Polo

***Page2live.com*, March 4, 2010, "EXCLUSIVE: Polo boss John Goodman shuns Welly, lands in luxury beachside retreat."**

[73] Other expensive or upscale activities performed by Mr. Goodman have also been given undue attention by the media because they helped feed the depiction of him as an uncaring millionaire. For instance, seven (7) of the articles noted that Mr. Goodman had been arrested at the Four Seasons Hotel – a well-known symbol of wealth. *See Sun-Sentinel.com*, May 19, 2010, "Polo club founder charged with DUI manslaughter in fatal Wellington crash." *Palm Beach Post*, May 19, 2010, "Polo Club founder Goodman could face up to 30 years in prison if convicted; *Broward-Palmbeach.com*, May 28, 2010, "Polo Mogul's Tactic in Crash Case: Delay, Delay, Delay"; *Broward-Palmbeach.com*, July 8, 2010, "Will a Multimillionaire Polo Mogul Be Punished for a Fatal Drunken Accident?" *Broward-Palmbeach.com*, Dec. 30, 2010, "The Dirty Dozen: 2010's Most Despicable People."; *Broward-Palmbeach.com*, Jan. 10, 2011, "Is Polo Mogul John Goodman Hiding His Vast Wealth?" Another article referred to it as a "a posh hotel in Miami." WPBF.com, May 19, 2010, "International Polo Club Founder Arrested."

[74] *Page2.live.com*, Feb. 27, 2011, "Once again, Sunday is DUI killing suspect John Goodman's day."

boss John Goodman shuns Welly, lands in luxury beachside retreat"[75] – were posted to *The Palm Beach Post*'s now-defunct gossip blog *Page2Live.com*. A third – "Weeks After Fatal Crash, John Goodman Attended Lakers Game in Miami"[76] – was featured on the *Broward-Palm Beach New Times* website. Each of these articles was premised on the notion that it was inappropriate for Mr. Goodman to carry on with his opulent lifestyle in the wake of the accident. This point was made in particularly inflammatory terms by Wilson family attorney Scott Smith in a quote to *Page2Live*: "'While Mr. Goodman is free on bail attending polo matches and continuing to wine and dine the rich and famous,' said attorney Scott Smith, 'Mr. and Mrs. Wilson continue to suffer from the loss of their only son.'"

b. Suggestions that Mr. Goodman is being given preferential treatment

Again referencing Mr. Goodman's wealth, several publications have suggested that he has already or will in the future receive preferential treatment from authorities. In a strongly biased blog post on the *Broward-Palm Beach New Times*, written just two days after the accident and excerpted on the *Houston Press* website,[77] author Bob Norman accused police of giving Mr. Goodman special treatment:

> And I believe the Palm Beach County Sheriff's Office is already handling Goodman – who has a net worth suspected to be in the hundreds of millions of dollars – with kid gloves. I've seen a whole lot of fatal car crashes like this, and usually you'll see the driver go to jail and a mug shot in the next day's newspaper. PBSO let

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[75] *Page2live.com*, March 4, 2010, "EXCLUSIVE: Polo boss John Goodman shuns Welly, lands in luxury beachside reteat."

[76] *Blogs.Broward-Palmbeach.com*, June 23, 2010, "Weeks After Fatal Crash, John Goodman Attended Lakers Game in Miami."

[77] *See blogs.houstonpress.com*, Feb. 16, 2010, "John Goodman, Bazillionaire Polo Patron, Awaits Possible Charges In Fatal Palm Beach Bentley Wreck ."

> Goodman, who suffered minor injuries and has hired big-name Miami attorney Roy Black, go free.[78]

In addition to these general allegations of preferential treatment, several outlets have suggested the possibility of corruption by questioning specific aspects of the investigation and prosecution. For instance CBS12 and FOX WFLX both aired reports questioning the fact that Mr. Goodman was not given a Breathalyzer test after the accident.[79] "It may surprise you that police did not give Goodman a Breathalyzer test that night," FOX stated. "Investigators say in many cases where DUI is suspected, a driver is given a Breathalyzer test at the scene. But that did not happen in Goodman's case." Other outlets questioned why prosecutors did not charge Mr. Goodman sooner, again suggesting that his wealth and stature played a role in the delay of his arrest. "It only took about three months," read a post on the *Houston Press* website, "but John Goodman, the Houston-bred multi-millionaire playboy air conditioning heir and Palm Beach polo patron, is finally behind bars."[80] NBC WPTV[81] and ABC WPBF[82] both aired reports prior to the arrest, questioning why Mr. Goodman hadn't yet been charged and noting public outrage about the delay. Another NBC WPTV report suggested wrongdoing by alleging that police had refused to speak with a post-accident witness who came across the damaged Bentley after the crash. That report, which featured an

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[78] *See blogs.browardpalmbeach.com*, Feb 13, 2010, "Polo Was His Life."

[79] *See CBS12.com,* Feb. 23, 2010, "Millionaire didn't take Breathalyzer test after fatal crash"; *WFLX.com*, Feb. 23, 2010, "Millionaire didn't take Breathalyzer test after fatal crash."

[80] *See blogs.houstonpress.com*, May 19, 2010, "John Goodman, Bazillionaire Polo Patron, Finally Arrested In Connection With Fatal February Crash."

[81] *See 2.WPTV.com*, Feb. 15, 2010, "Questions surrounding Wellington fatal car accident."

[82] *See WPBF.com*, April 15, 2010, "Prosecutor: No Delay In Goodman Case."

anonymous interview with the witness, used the incident to suggest that police were ignoring evidence to protect Mr. Goodman.[83]

c. Suggestions that Mr. Goodman will buy his way out of punishment

There is also a prevalent theme across the reporting on the case that Mr. Goodman will somehow use his wealth to evade justice.[84] For instance, several articles have suggested that Mr. Goodman has already used his "high-powered legal team, led by celebrity defense attorney Roy Black"[85] to delay his prosecution. This theme appeared as early as May 2010 in a *Palm Beach Post* article headlined "Goodman seeks to postpone parents' wrongful-death suit in fatal crash, saying it would jeopardize defense in criminal case."[86] The author quoted Wilson family attorney Scott Smith saying, "The motions to stay amount to nothing more than a weak attempt ... to avoid legal responsibility and accountability." The on-line version of this story includes a photograph of Mrs. Wilson trying to hold back her tears. Later that month, an article appeared on the *Broward-Palm*

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[83] *See WPTV.com*, Feb. 17, 2010, "Wellington car accident witness speaks out."

[84] This type of accusation, if made by a prosecutor in closing argument, would be blatantly improper. *See State v. Norris*, 874 S.W.2d 590, 598 (Tenn. Crim. App. 1993) (where defendant was charged with aggravated assault based on a car accident, finding prosecutor's argument "improper and intemperate" when he stated sarcastically: "Maybe we should just let you buy your way out of it if you can"); *Mitchell v. State*, 28 Ala. App. 119, 123; 180 So. 119, 122-23 (1938) (reversing grand larceny and stolen property conviction, in part, because prosecutor, pointing to the defendant, argued: "You thought you could take your money and beat the case"); *Kennamer v. State*, 28 Ala. App. 317; 183 So. 892 (1938) (reversing burglary conviction because the prosecutor prejudiced the defendant by arguing that the defendant's family was "'willing to plank down a lot of money to get him out of it'"); *State v. Netherton*, 128 Kan. 564, 279 P. 19 (1929) (reversing murder conviction of prominent doctor, in part, because prosecutor in closing asked the jury" "Can a Johnson County jury convict a man accused of murder when that man is worth one hundred thousand dollars?"); *State v. Powell*, 120 Kan. 772, 245 P. 128 (1926) (reversing bank officer defendants, in part, because the prosecutor made an impassioned argument to the jury as to whether there was on law for the rich and another for the poor).

[85] *See Palmbeachpost.com*, May 19, 2010, "Polo Club founder Goodman could face up to 30 years in prison if convicted."

[86] *See Palmbeachpost.com*, May 20, 2010, "Goodman seeks to postpone parents' wrongful-death suit in fatal crash, saying it would jeopardize defense in criminal case."

Beach New Times website with the headline: "Polo Mogul's Tactic in Crash Case: Delay, Delay, Delay."[87] After reporting that a judge had denied the defense's request to postpone the civil trial, the author wrote:

> But Palm Beach Circuit Judge Glenn Kelley's ruling is small consolation in a case that has been marked by repeated delays and eyebrow-raising treatment for the multimillionaire founder of the International Polo Club, who is accused of driving drunk, crashing into Wilson's car, then leaving the scene. I can't even understand how we have to wait all this time to get answers," said Lili Wilson, Scott's mother, who was choking back tears after the ruling yesterday. "Every day, I keep thinking I'm gonna wake up. This is a nightmare."

In addition to accusing Mr. Goodman of evading accountability, this excerpt suggests that the delays are further victimizing the Wilson family. This idea appeared again in a *Palm Beach Post* article after the original trial date was set for the criminal trial. In that piece, Mr. Smith and prosecutor Ellen Roberts were quoted making statements that furthered the theme that Mr. Goodman's case was unusually delayed and that the prolonged process was causing grief for the family:

> Outside the courtroom, veteran traffic homicide prosecutor Ellen Roberts said to the family, "See, I told you we'd get there. It just takes awhile." It's been nearly a year and a half since sheriff's investigators say that a drunken Goodman crashed into 23-year-old Wilson early on a February morning.[88]

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[87] *See blogs.browardpalmbeach.com*, May 28, 2010, "Polo Mogul's Tactic in Crash Case: Delay, Delay, Delay."

[88] *See Palmbeachpost.com*, June 27, 2011, "Oct. 24 trial date set for polo mogul in fatal Wellington crash."

Mr. Smith contributed to these themes by emphasizing the emotional toll that the delays were taking on the family:

> Smith said the Wilsons are pleased that a criminal trial date has been set and hope that their civil lawsuit will soon be scheduled for trial. The lawsuit and criminal trial must be done before the Wilsons' healing can begin, he said. "Each day is agony for them," Smith said.[89]

Yet another *Post* article – "Polo magnate Goodman waives right to speedy trial in DUI manslaughter case" – made reference to the theme of Mr. Goodman delaying his prosecution in July 2010. "The road to justice for John Goodman, the Wellington polo boss accused of DUI manslaughter, could be a lot longer now," the article, which was reprinted in *The Sun-Sentinel*,[90] began.[91] And in January 2011, an NBC WPBF segment, titled "Victim's Family Eager for Goodman Trial to Begin," featured an interview with Wilson family attorney Chris Searcy in which he spoke of his clients' desire to see the case brought to trial.[92]

Finally, the list of reports suggesting that Mr. Goodman will buy his way out of punishment also includes a *Broward-Palm Beach New Times* blog post, headlined "For Polo Mogul John Goodman, Other Celebrity DUI Cases Offer Hope of Minimal Punishment,"[93] which compared Mr. Goodman to rich and famous defendants who received lenient punishments for DUI offenses, and

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[89] *Id.*

[90] *See Sun-Sentinel.com*, July 21, 2010, "Polo magnate Goodman waives right to speedy trial in DUI manslaughter case."

[91] *See Palmbeachpost.com*, July 21, 2010, "Polo magnate Goodman waives right to speedy trial in DUI manslaughter case."

[92] *See WPBF.com*, Jan. 14, 2011, "Victim's Family Eager For Goodman Trial To Begin."

[93] *See blogs.browardpalmbeach.com*, July 9, 2010, "For Polo Mogul John Goodman, Other Celebrity DUI Cases Offer Hope of Minimal Punishment."

another, headlined "John Goodman Offered to Pay Post-Accident Witness,"[94] which accused him of attempting to bribe Lisa Pembleton during their encounter after the accident.

d. The blogosphere

The comments posted by readers to the *Post*'s articles and editorials both documents the impact of the class warfare on the jury pool and magnifies the prejudice of it by filling the internet with wave after wave of incendiary class-based rhetoric. The vast majority of the hundreds of posted comments evidence this theme.

The *Post*'s campaign to inflame the community through class-based appeals started as early as February 12, 2010, with the publication of a piece entitled "Wellington polo boss John Goodman involved in deadly crash; booze could have been factor." Among the comments were: "Another rich a** hole believing the rules don't apply to him. This young man died for no reason and this guy wont even go to jail Money talks in this town...." and "The rich & famous seem to think they are above the law! Let's hope this guys [sic] money & connections don't let him get away with it!" A full year later, community passions had not diminished. Commenting to the February 12, 2011, article in the *Palm Beach Post* marking the one-year anniversary of the accident, blogger "ELC" wrote:

> I recently had jury duty, but boy would i love to be on the jury when this piece of human garbage goes before a judge. You could say I already passed judgment-but that's ok. I hate when people think they are above the law and this jerk thinks he's one of the chosen. People like him have no conscience-its how this event affects him not how he destroyed lives. I would love to destroy his life like he destroyed

[94] *See blogs.browardpalmbeach.com*, June 24, 2010, "John Goodman Offered to Pay Post-Accident Witness."

> that of the Wilson's I believe in the death penalty but I would settle for life.[95]

Two days later, the *Post* published a piece entitled "Polo fans say game not tainted by fatal crash." *See Palmbeachpost.com*, Feb. 14, 2010, "Polo fans say game not tainted by fatal crash." Typical of the still on-line postings is the following by "Kkay":

> The whole Polo community knows what kind of person Mr. Goodman is. He's rich they are rich and they don't have to live by our rules. Drinking, drugs, using people and animals as disposable playthings are what they excel at. Their money makes them special... the lower class folks are to bend and bow to their wealth... Living in Palm Beach County gives us all the privilege of interacting with these selfish people. Please lock up Goodman for a long time.

Other similar comments included ones posted by Blogger "JEM" ("He is a rich fat cat who thinks rules do not apply to him") and "Amazed" ("John Goodman is a Billionaire drug addict whose resources afford him the luxury of untold amounts of Cocaine and legal representation to go along with it").

A frequent theme among the comments has been the belief that Mr. Goodman has been treated preferentially by authorities. A comment by "corruption1" posted to an article on *Page2Live* made this point in March 2010:

> Just another example of WPB corruption. What a cover up! Let's get real. If this were any other human being, they would be hanging by now. Where is the corruption task force when you need them ?? This crap makes me SICK ![96]

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[95] *See Palm Beach Post*, Feb. 12, 2011, "Family, friends gather on one-year anniversary of polo club founder's crash that killed 23-year-old in Wellington."

[96] *See Page2live.com*, March 9, 2010, "Source: Polo boss John Goodman passed out at the wheel."

Similarly, many commenters predicted that Mr. Goodman would buy his way out of trouble, as in the following comments, both posted to *Page2Live* just hours after the accident:

> Looks like he is in big trouble. He tried to flee the scene. Don't worry, he will pay off the family. He is rich. – Tommy
>
> Another rich a**hole believing the rules don't apply to him. This young man died for no reason and this guy wont even go to jail. Money talks in this town. – Devils Advocate[97]

The extreme and hostile nature of many of these remarks may be seen as evidence of bias within the larger community. Indeed, many of the comments explicitly contained reference to class, such as "[t]he attorney's [sic] and the rich OWN this country, and we peasants are the 'help'..."[98] and "Guilty until proven rich. The rule of law is for the peasants, not the ruling class. Now back to work Proles."[99] One reader, having perused the comments, saw the pattern and asked: "Why all this 'class' warfare[?]...."[100]

2. <u>Undermining Mr. Goodman's Sixth Amendment Right to Counsel</u>

"[T]he right to be represented by counsel is among the most fundamental of rights." *Pension v. Ohio*, 488 U.S. 75, 84, 109 S.Ct. 346, 102 L.Ed. 2d 300 (1988); *see also United States v. McDonald*, 620 F.2d 559, 564 (5th Cir. 1980) ("The right to counsel is so basic to all other rights that

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[97] *See Page2live.com*, Feb. 12, 2010, "Wellington polo boss John Goodman involved in deadly crash; booze could have been factor."

[98] *See Palmbeachpost.com*, March 7, 2010, "Scene of polo club owner's fatal crash not dangerous enough for traffic signals, officials say" (comment by "danno" at 2:45 p.m., 3/8/10).

[99] *See Page2live.com*, Feb. 27, 2011, "Once again, Sunday is DUI killing suspect John Goodman's day" (comment by "Charles Sheen" at 11:59 p.m., 2/27/2011.

[100] *See Page2live.com*, March 10, 2010, "Mother of victim in polo boss John Goodman's crash lawyers up" (comment by "holyballs" at 11:02 p.m. 3/11/2010.

it must be accorded very careful treatment. Obvious and insidious attacks on the exercise of this constitutional right are antithetical to the concept of a fair trial...."). The fact that a criminal defendant may have the financial means to retain highly qualified counsel is not fair game for prosecutorial attacks. "Lawyers in criminal cases are necessities not luxuries, and even the most innocent individuals do well to retain counsel." *Bruno v. Rushen*, 721 F.2d 1193, 1194-95 (9th Cir. 1983), *cert. denied*, 469 U.S. 920, 105 S.Ct. 302, 83 L.Ed. 2d 236 (1984). Moreover, the Sixth Amendment right to counsel encompasses more than the right to some representation and more even than effective representation; it also includes the right to counsel of one's choice. *Wheat v. United States*, 486 U.S. 153, 159 (1988). "[L]awyers are not fungible, as are eggs, apples and oranges." *United States v. Laura*, 607 F.2d 52, 56 (3rd Cir. 1979). Therefore, the denial of the right to counsel of choice is considered a "structural" error that is automatically reversible. *United States v. Gonzalez-Lopez*, 548 U.S. 140, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006).

In a trial, attacks on privately retained defense counsel would obviously be prohibited. It is "an impermissible strike at the very fundamental due process protections of the Fourteenth Amendment" to allow representatives of the State to prejudice juries by focusing closing arguments on a defendant's ability to retain private counsel. *Bruno*, 721 F.2d at 1194-95. And, such attacks frequently result in the reversal of convictions.[101]

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[101] *See, e.g., Ryan v. State*, 457 So.2d 1084, 1089 (Fla. 4th DCA 1984) (reversing conviction, in part, because prosecutor portrayed defendant's lawyer "as a fancy attorney and out-of-towner); *Sizemore*, 921 F.2d at 670-71 (improper for prosecutor to comment on "Sizemore's consultation with seven attorneys"); *United States v. Friedman*, 909 F.2d 705, 708-09 (2d Cir. 1990) (reversing conviction because of the prosecutor's improper statements, including that defense counsel "try to get [defendants] off, perhaps even for high fees" and that defense counsel "will make any argument he can to get that guy off"); *Goff*, 241 Ky. at 430-31 (reversing conviction where prosecutor in closing that defense counsel was fighting so hard so that he could earn "a big, fat fee" and criticizing defendant for being "able to pay fat fees," holding that "the reference to his ability of the defendant to ay a fee was improper"); *Howard v. Comm.*, 24 Ky. 91, 67 S.W. 1003 (1902) (reversing conviction where prosecutor in closing stated that defense counsel "was a high-priced (continued...)

In violation of these principles, many reports have propagated the notion that Mr. Goodman will buy his way out of punishment by focusing on his hiring of undersigned counsel. These articles paint counsel as a celebrity miracle worker, capable of successfully defending even the most guilty clients. The *Houston Press* contributed to this theme in a highly inflammatory blog post, headlined "More On The Billionaire And The Bentley: The Coroner's Report Is In, The Lawyer Is A Star, And Why Hasn't Goodman Been Charged?" shortly after the accident:

> While Miami's rich drug-trafficking milieu has provided him with more than a few clients, [Roy Black] has also defended the likes of accused rapist William Kennedy Smith, accused sodomite Marv Albert, and OxyContin-poppin' Rush Limbaugh. Black also defended Girls Gone Wild founder Joe Francis on charges of first-degree douchebaggery.[102]

In a *Page2Live* post that was already noted – "Will justice prevail in Welly polo boss John Goodman's crash?" – Paula Russell, a former employee of the State Attorney's office, predicted that the office would spare Mr. Goodman a vigorous prosecution because of his wealth and his representation by undersigned counsel.

> What's more, Goodman's hiring of high-profile Miami attorney Roy Black could expose yet again the state attorney's office as "accommodating" to rich defendants, Russell added. And she should know. She worked there for 23 years. "When it comes to rich and/or famous defendants, the facts speak for themselves," Russell said. "I believe that the state attorney's office over the years has given significant breaks to people with a lot of money. Is it political or

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[101](...continued)
lawyer, and was never employed unless in bad cases...."). *Cf. State v. Thomas*, 750 So.2d 1114 (La. App. 1999) (mistrial not warranted where trial court sustained counsel's objection to prosecutor's comments about "high-priced" defense attorney's "gimmicks and tactics"); *Raffaelli v. State*, 881 S.W.2d 714 (Tex. App. 1994) (improper but harmless for prosecutor to state that the defendant was represented by "some well-paid, well-compensated counsel").

[102] *See Houstonpress.com*, Feb. 16, 2010, "More On The Billionaire And The Bentley: The Coroner's Report Is In, The Lawyer Is A Star, And Why Hasn't Goodman Been Charged?"

> psychological? Are prosecutors in a panic when Roy Black shows up? I don't know. But the facts are there."[103]

The story even went so far as to suggest that the State Attorney would be influenced in his decisions regarding Mr. Goodman's case by the fact that undersigned counsel of one of counsel's partners had contributed to his campaign:

> PBSO is expected to present its investigative report to the office of State Attorney Mike McAuliffe for review and, if warranted, prosecution. But the case could be a challenge for a state attorney whose office traditionally has had difficulties making the rich and/or famous pay for crimes – especially when they're defended by Roy Black. Black, by the way, contributed a total $1,000 to McAuliffe's campaign, as did Black's law partner, Scott Kornspan, according to campaign records. [104]

Short of outright bribery, *The Palm Beach Post* has accused Mr. Goodman's legal team of securing an unfair advantage for their client by vastly outspending the prosecution on experts and investigators and exhausting their resources through unnecessary depositions:

> On one side of the criminal case against him is famed defense attorney Roy Black and his powerhouse Miami law firm - a stable of aggressive, impeccably mannered counsels to the troubled rich and famous. There seems to be little question that Goodman, 46, the multimillionaire owner of Wellington's International Polo Club Palm Beach, will bring to court all the advantages money can buy.
>
> Roberts, who started and now runs the state attorney's office's traffic homicide division, acknowledges that her team will be outgunned financially. "The more money they have, the more experts they can hire and the more depositions I'll have to go to," she said dismissively. His deep pockets can assure that Black's firm can hire any number of private investigators and experts to probe for weaknesses in the state attorney's office's case, which alleges Goodman was drunk in February when he crashed 23-year-old Scott

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[103] *See Page2live.com*, Feb. 16, 2010, "Will justice prevail in Welly polo boss John Goodman's crash?"

[104] *See Page2live.com*, Feb. 16, 2010, "Will justice prevail in Welly polo boss John Goodman's crash?"

> Wilson's car into a canal and then ran off, leaving the recent college graduate to drown.[105]

This highly biased and inflammatory article was also published in the *Sun-Sentinel*.[106] The effect of these attacks on counsel can be graphically seen in the blogosphere. Counsel has been variously described as "a scumbag," a "leach," the "devil" and "piece of garbage."[107]

Another series of articles have similarly focused on Mr. Goodman's civil attorneys. At least 5 news stories have alleged that the civil defense team's was trying to blame Scott Wilson for the accident.[108] Although Mr. Goodman's attorney in that matter, Dan Bachi, told the *Post* that the defense was simply being included in court filings as a legal precaution while the discovery process was ongoing and that they were likely to drop it once discovery had concluded, they and other media

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[105] *See Palmbeachpost.com*, May 21, 2010, "Lawyers on both sides of Goodman case are formidable."

[106] *See Sun-Sentinel.com*, Date not listed, "Lawyers on both sides of Goodman case are formidable."

[107] *See, e.g., Page2live.com*, Feb. 12, 2010, "Wellington polo boss John Goodman involved in deadly crash; booze could have been factor" (posting comment by "Liam" at 11:15 p.m., 2/13/2010, "**Roy Black is a scumbag who will stop at nothing to get his client off**"); *Palmbeachpost.com*, Feb. 14, 2010, "Polo fans say game not tainted by fatal crash" (posting comment by "Louanne" at 8:41 a.m., 2/15/2010, "**...that leach Roy Black!**"); *Palmbeachpost.com*, Feb. 17, 2010, "Mother of Wellington college grad killed in crash: 'He died with a pure heart" (posting comment by "Riv Goshen" at 8:56 a.m., 2/18/2010, "**...devil Roy Black...**"); *Sun-Sentinel.com*, March 4, 2010, " Polo club founder's legal team likely preparing for fatal Wellington crash" (posting comment by "langryfriend" at 9:56 a.m., 3/15/2010, "**This guy is a piece of garbage and Roy Black is even more of a piece of garbage for defending people like this. May they both rot in hell**"); *Palmbeachpost.com*, March 9, 2010, "Authorities: Polo club owner Goodman was found a quarter-mile from fatal crash, seeking help" (Posting comment by "A" on 3/8/2010, "**...high-priced scumbag lawyer**"); *Palmbeachpost.com*, May 20, 2010, "Goodman seeks to postpone parent's wrongful-death suit in fatal crash, saying it would jeopardize defense in criminal case" (posting comment by "Sink This Money Machine" on 5/5/2010, "**Your lawyers are nothing but a bunch of sneaky, lizard, slimy type that wallow in there [sic] own filth....**"); *Palmbeachpost.com*, May 21, 2010, "Lawyers on both sides of Goodman case are formidable" (posting comment by "Hugh Johnson on 5/21/2010, "**In my opinion Roy Black is scum and the worst kind of lawyer for taking this case**").

[108] *See Palmbeachpost.com*, Oct. 25, 2010, "Victim may share blame in fatal Feb. 12 crash near Wellington, polo mogul Goodman's attorneys assert in civil case"; *Palmbeachpost.com*, Oct. 26, 2010, "Judge: Polo mogul allowed to argue crash victim partially at fault - for now"; *WPTV.com,* Oct. 26, 2010, "Polo mogul's attorney blaming victim in fatal DUI crash"; *Palmbeachpost.com*, Jan. 26, 2011, "Polo club founder Goodman drops claim victim may have shared blame for fatal crash"; *Sun-Sentinel.com*, Jan. 26, 2011, "Polo club founder Goodman drops claim victim may have shared blame for fatal crash."

outlets continued to characterize the maneuver in biased and inflammatory terms. Consider the opening paragraphs of an October 2010 article in *The Palm Beach Post*, headlined "Victim may share blame in fatal Feb. 12 crash near Wellington, polo mogul Goodman's attorneys assert in civil case":

> Scott Wilson was wearing his seat belt, had no alcohol or illegal drugs in his system, was driving below the speed limit and had the right of way on Lake Worth Road on Feb. 12 when he was hit by polo club owner John Goodman and thrown into a canal, where Wilson drowned, authorities have said. But Goodman has argued in his defense in a wrongful-death lawsuit that Wilson, a 23-year-old civil engineer who was on his way to his mother's house, may be partially at fault for his own death.[109]

Another of the reports, a segment by NBC WPTV headlined "Polo mogul's attorney blaming victim in fatal DUI crash," claimed that the defense had leveled a "startling accusation" and featured an interview with Wilson family attorney Chris Searcy, who called the defense's actions "insensitive at best."[110]

D. The Continuity of the Publicity & Size of Palm Beach County

As the Court can see from the foregoing and accompanying exhibits, the publicity has not significantly lessened in the last 22 months. Indeed, as documented in **Exhibit 13**, virtually every court appearance, release of discovery, "press conference" and substantive court-filing in both the instant case and the parallel civil suit has produced a spike in the publicity. The fact that the media has been closing following status hearings about the *potential trial date* is particularly telling, as a

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[109] *See Palmbeachpost.com*, Oct. 25, 2010, "Victim may share blame in fatal Feb. 12 crash near Wellington, polo mogul Goodman's attorneys assert in civil case."

[110] *See WPTV.com*, Oct. 26, 2010, "Polo mogul's attorney blaming victim in fatal DUI crash."

forecast of the surge of publicity that would likely envelop jury selection and the trial if held in Palm Beach County.

The print media, however, is only the tip of the iceberg. With the internet, stories never fade away. People no longer need to wade through microfiche in a library to find month-old stories about a case. The *Post*'s on-line version contains archived material and each new story usually contains hyperlinks to that archived material, both in written and video form, which allows the viewer to access original broadcast footage and previously posted reader comments, including all the unfiltered comments and threats previously discussed. The *Post* helps fan the flames by allowing readers to post comments anonymously.[111] Thus, while the Internet is "freedom enhancing ... there is a harsher reality to virtual reality." Heather Berger, *Note and Recent Development: Hot Pursuit: The Media's Liability for Intentional Infliction of Emotional Distress Through Newsgathering*, 27 CARDOZO ARTS & ENT. L.J. 459, 474 (2009). "Our proliferating use of the Internet poses a potential threat of damaging reputations more permanently and vastly than ever before...." *Id.* As author Daniel J. Solove notes:

> The Internet allows information to flow more freely than ever before. We can communicate and share ideas in unprecedented ways. These developments are revolutionizing our self-expression and enhancing our freedom. But there's a problem. We're heading toward a world where an extensive trail of information fragments about us will be forever preserved on the Internet, displayed instantly in a Google search. We will be forced to live with a detailed record beginning with childhood that will stay with us for life wherever we go,

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[111] "While anonymity often facilitates greater exchange of ideas and more robust debate, it also allows people to make anonymous threats and to menace their targets behind a mask of namelessness. Not only does this mask protect them from liability, but it also makes a threat itself more frightening. When a threat comes from an unknown source, the victim is unable to assess the threat accurately." *See* Hammack, 36 COLUM. J.L. & SOC. PROBS. at 83-84. Moreover, "speakers using the Internet are willing to say more than they otherwise might if their identities were known." *See* Katelyn Y. A. McKenna & John A. Bargh, *Coming Out in the Age of the Internet: Identity "Demarginalization" Through Virtual Group Participation*, 75 J. PERSONALITY & SOC. PSYCHOL. 681, 692 (1998).

> searchable and accessible from anywhere in the world. This data can often be of dubious reliability; it can be false and defamatory; or it can be true but deeply humiliating or discrediting. We may find it increasingly difficult to have a fresh start, a second chance, or a clean slate. We might find it harder to engage in self-exploration if every false step and foolish act is chronicled forever in a permanent record. This record will affect our ability to define our identities, to obtain jobs, to participate in public life, and more. Ironically, the unconstrained flow of information on the Internet might impede our freedom.

The Future of Reputation: Gossip, Rumor, And Privacy on the Internet, Yale Univ. Press (2007).

Pre-trial publicity jurisprudence has yet to take into account the impact of the digital age on previous conceptions about the effectiveness of time/delay to "soften[] ... community sentiment." *Patton v. Yount*, 467 U.S. 1025, 1032, 104 S.Ct. 2885, 81 L.Ed.2d 847 (1984). Anyone in Palm Beach County with a computer terminal or I-phone can instantly access the publicity, whether it be written, visual or digital. Using the powerful search engines of internet services providers and YouTube, anyone can type in any number of keyword entries and be directed immediately to the *Post*'s publications and television broadcasts. "The Internet has no sunset and postings on it will last and be available until some person purges the Web site, perhaps in decades to come." *See Bursac*, 22 Misc. 3d at 339; 868 N.Y.S.2d at 479.

Youtube video, "New Details Emerge In Goodman Case." Uploaded by WPBF on May 20, 2010.

Exhibits 10 and **12** are printouts of the first few "page" of searches conducted on three popular internet service providers (Google, Yahoo! and Bing) and Youtube using the three searches

terms: "John Goodman and Scott Wilson," "John Goodman and DUI" or "John Goodman and Polo." The first "pages" of the stories on each internet service provider, as well as Youtube, display stories from as early as February 2010 and at various random times between then and now. Most also provide hyperlinks to other stories and broadcasts, as well as to the "press release" issued by Mr. Searcy's law firm.

Youtube video: "Wellington Crash Victim's Family To File Lawsuit." Uploaded by WPBF on Apr. 28, 2010

The Youtube searches are especially prejudicial. As previously noted, a search using the phrase "John Goodman and Scott Wilson" instantly produced a total of 20 videos, many featuring the choreographed "press conferences" performed by the Wilson family attorneys, as well as shots of the roadside memorial (with a cross and flowers) that was erected by Wilson family supporters.[112]

The remaining 12 videos include:

● One devoted entirely to a live interview of Mr. Wilson, including shots of Mr. Wilson displaying photographs of his son at various ages.

[112] These three were entitled "New Details Released in John Goodman Investigation," "John Goodman civil trial to continue" and "Wellington Crash Victim's Family To File Lawsuit."

Youtube video: "Scott Wilson's Father Speaks 6 Months After Son Dies." Uploaded by WPBF on Aug. 12, 2010.

●Two showing Mr. Goodman behind bars and being led in handcuffs into the courtroom under guard; one of which also includes Mr. Goodman's mugshot under the caption "BOOKED."

Youtube video: "Polo billionaire booked." Uploaded by WPTV on May 20, 2010.

Youtube video: "Goodman Bonds Out of Jail After Arrest." Uploaded by WPBF on May 19, 2010.

Youtube video: "Goodman Bonds Out of Jail After Arrest." Uploaded by WPBF on May 19, 2010.

●One devoted to reporting live at Scott Wilson's funeral, with shots of the roadside memorial, interviews with friends and Wilson's mother speaking at the podium.

Youtube video: "John B. Goodman Billionaire Involved in Fetal [sic] Wellington car crash. Part 2." Uploaded by jasontman36 on Feb. 16, 2010.

Youtube video: "John B. Goodman Billionaire Involved in Fetal [sic] car crash. The Scott Wilson memorial. Part 4." Uploaded by jasontman36 on Feb. 22, 2010.

- Numerous videos including live statements from Mrs. Wilson, usually including shots of her in tears and/or closeups of the roadside memorial.[113]

- One discussing the fact that Mr. Wilson invoked his Fifth Amendment right not to testify at the civil deposition, along with an interview with Mr. Searcy. *See* p. 46 *supra.*

The concept of "continuity" of publicity takes on a whole new meaning in the Youtube age. As one commentator has described it:

> A benefit of the traditional news media of television and print, is that they abide by essentially standard cycles of publication, allowing the court to review accurately when information was presented to the potential jury-pool. However, there is no similar news cycle for reports and coverage based on YouTube. Once a user posts content on the site it is essentially permanently stored, and due to Google's purchase of YouTube in 2005, the content is constantly accessible through any Google keyword search. Further, unlike traditional commercial broadcast or print media, YouTube can *narrow cast*, allowing any user at any time access content on a pending case, without the court being able to know or predict. While a court may assume that even large criminal trials only have a shelf-life of a few months in television and print, the court may not assume this when it comes to YouTube. Also, unlike the traditional news media, which may refrain or be barred by court order from reporting heavily on a case or on particular aspects of the case during critical time stages, the YouTube poster has neither incentive to limit his or her postings, nor is he under the jurisdiction of a court gag order as a private individual.

Matthew Mastromauro, *Pre-Trial Prejudice 2.0: How YouTube Generated News Coverage Is Set to Complicate the Concepts of Pre-trial Prejudice Doctrine and Endanger Sixth Amendment Fair Trial Rights*, 10 J. HIGH TECH L. 280, 339 (2010) (footnotes omitted).

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[113] *See* "Goodman Bounds Out of Jail After Arrest"; "John B. Goodman Billionaire involved in fetal [sic] Wellington car crash (part 2); "Billionaire John B. Goodman arrested!" and "Goodman in Court For Status Hearing."

The author's observation about the uncontrolability of contributors to Youtube is underscored in this case. Each Youtube video indicates who posted the video and when. Several of the videos about the instant case were posted, not by the media directly, but by someone identified only as "jasontman36," who seems to have posted dozens of videos on a wide range of topics. Similarly, the searches on Google routinely produce an "editorial" posted by a blogger identified only as "tenaweek.org." *See* **Exhibit 14**. The 2-page blog, originally posted on March 11, 2010, is entitled "John Goodman gets away with murder in Florida?" and bitterly forecasts that Mr. Goodman is going to buy his way out of trouble ("And what does the Bentley imply? MONEY"... No one should get away with this. But John Goodman has something the average American doesn't – MONEY!"). At the end of the rant, the blogger lists 5 hyperlinks to publications and broadcasts selected, of course, by the blogger. Bloggers like tenaweek.org are particularly dangerous since they are not obliged to adhere to any journalistic standards for either factual accuracy or objectivity and are not subject to the jurisdiction of the Court to restrain through a gag order.

Under these circumstances, neither the time between the accident and trial nor the size of Palm Beach County can be expected to significantly diminish the prejudice from the pervasive coverage. As one commentator has correctly perceived, "[t]he Internet is more conducive to sustaining interest in a case over longer periods of time than traditional media because of the unique self-selected nature of the information the public gathers on-line.... This allows constant access to the full range of past and present information about a case." Erika Patrick, *Protecting the Defendant's Right to a Fair Trial in the Information Age*, 15 Cap. Def. J. 71, 81 (Fall 2002). With outlets such as Youtube the problem is even greater because the presentation of videos creates a more indelible impact on a jury, lengthening the possible effect. *See* . *Estes,* 381 U.S. at 542; *Belo*

v. Clark, 654 F.2d 423, 430 (5th Cir. 1981); *United States v. Sanders*, 611 F. Supp. 45, 49 (S.D. Fla. 1985).

"The riots in LA? If this guy walks, people are going to come unglued."

Palmbeachpost.com, May 21, 2010, "Lawyers on both sides of Goodman case are formidable" (comment posted by "Chris" at 11:21 a.m., Sept. 7, 2010).

To be sure, jury pools in other cities would have the same ready access to this material as residents of Palm Beach County. However, people in other regions of the state are far *less* likely to be as inquisitive as those in Palm Beach County and far *more* likely to adhere to the Court's instructions. In contrast, the community in Palm Beach County has become so inflamed that even if jurors chosen from there honestly believe they can objectively hear the evidence before trial, they may come to fear "return[ing] to [their] neighbors" with anything other than a guilty verdict. *Estes,* 381 U.S. at 545; *see Turner v. Louisiana,* 379 U.S. 466, 472 (1963). It should not take courage for a juror to vote to acquit. Yet, a juror here who reads about this case may very well fear for their own safety. A *Palm Beach Post* article from May 2010 called the case "a lightning rod for community outrage" and reported that it had "ignited furious debate in and around Wellington about class and privilege."[114] In addition to these general observations, an NBC WPBF segment from April 2010 noted that the station had received inquiries on Facebook from people wondering why Mr. Goodman had not yet been charged in Scott Wilson's death.[115] And in July 2010, a blog post on the *Broward-Palm Beach New Times* speculated that a political ad baring

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[114] *See Palmpeachpost.com,* May 19, 2010, "Polo Club founder Goodman could face up to 30 years in prison if convicted."

[115] *See WPBF.com,* April 15, 2010, "Prosecutor: No Delay In Goodman Case."

the name "Goodman" had been knocked down in anger at "the constant reminder" of Mr. Goodman and because of the sign's proximity to the crash site.[116]

E. The Totality of the Circumstances

As Oliver Wendell Holmes noted over 80 years ago, "[t]he only difference between the expression of an opinion and an incitement in the narrower sense is the speaker's enthusiasm for the result. Eloquence may set fire to reason." *Gitlow v. New York*, 268 U.S. 652, 673 (1925) (Holmes, J., dissenting). While hardly "eloquent," the *Post*, the Wilson family attorneys and representatives of the State have joined forces to "set fire to reason" in this community and, as the internet insures, their unbridled "enthusiasm" to see Mr. Goodman convicted is unlikely to abate. The totality of the circumstances necessitates a change of venue in order to guarantee Mr. Goodman a fair trial.

III. THE PUBLIC OPINION SURVEY

A. Introduction

Numerous courts and commentators have recognized the value of a scientifically valid public opinion survey as a means of detecting bias in connection with a motion for a change of venue.[117] Since such surveys are "'conducted in an atmosphere free from the pressure and regimentation of the jury selection process,'" people are much more inclined to be honest "when questioned by unintimidating, unnamed and relatively unintrusive, neutral researchers, in the comfort of their home, and where there is no 'wrong' answer that will lead to dismissal." Rich Curtner and Melissa Kassier,

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[116] *See Browardpalmbeach.com*, July 24, 2010, "Tropical Storm -- or Hater -- Demolishes "Goodman" Sign Near Scott Wilson Crash Site."

[117] *See, e.g. United States v. Maad*, 75 Fed. Appx. 599 (9th Cir. 2003); *State v. Baumruk*, 85 SA.W.3d 644 (Mo. 2002); *State v. Erickstad*, 620 N.W.2d 136 (N.D. 2000). In *Erickstad*, the court went so far as to hold that "[m]ere quantity of media coverage is not the focus; rather, ... defendants [need to] submit qualified public opinion surveys, other opinion testimony, or any other evidence demonstrating community bias caused by the media coverage." 620 N.W.2d at 140.

"Not in Our Town Pretrial Publicity, Presumed Prejudice, and Change of Venue in Alaska: Public Opinion Surveys as a Tool to Measure the Impact of Prejudicial Pretrial Publicity, 22 ALASKA L. REV. 255, 289 (Dec. 2005), quoting Peter O'Connell, *Pretrial Publicity, Change of Venue, Public Opinion Polls: A Theory of Procedural Justice*, 65 U. DET. L. REV. 169, 183 (1988). The accompanying *Public Opinion Survey* confirms what the publicity itself strongly suggests – the jury pool in Palm Beach County has been tainted beyond repair.

B. <u>The Findings of the Public Opinion Survey</u>

The *Public Opinion Survey* was conducted with residents of Palm Beach Country from October 5, 2011 to October 26, 2011. Based upon the sampling method used(*random stratification*) and survey size (400), the survey has a margin of error of plus or minus 5% at a 95% level of confidence. The survey was designed to gauge the following:

1. The extent to which residents of Palm Beach County who are eligible for jury service ("Residents") have been exposed, through media accounts or other means, to information related to this case.
2. Whether the information Residents have been exposed to has resulted in any opinions, biases or perceptions about the cause of the accident that led to Scott Wilson's death, Mr. Goodman generally, Mr. Goodman's guilt or innocence and/or the punishment he should receive.
3. Whether any additional factors (in addition to, or independent of, media accounts) have caused Residents to form an opinion, bias, or

perception about the facts and circumstances of the case, or other issues closely related to the case.

The survey found that the overall impression of Mr. Goodman, by all Residents, was negative. Additionally, Residents who were aware of Mr. Goodman and had a positive impression of him prior to this case, no longer hold the same view of him based upon the publicity of the case. Some 65% of participants (261 of the 400 polled, less one resident who personally knew Mr. Goodman) were aware of the case.[118] Later in the survey, when asked about their overall impression of Mr. Goodman, based on the publicity of the case, 159 Residents indicated that they had formed an opinion about Mr. Goodman. Of those, 87% (or 138 of 159 Residents) had a predominately negative impression of him. *Cf. Skilling*, 130 S.Ct. at 2915 n. 15 (holding that the record did not support a finding of presumptive prejudice from the publicity where only 12.5% of those surveyed believed Enron executives were guilty and 2/3 of respondents "failed to say a single negative word" about him or had never heard Skilling's name).

Delving even deeper, it became clear that the publicity of this case has negatively impacted positive feelings that previously existed towards Mr. Goodman. All survey participants (400) were asked if they had heard of Mr. Goodman prior to this case. Those who responded affirmatively were then asked what their impression of him was prior to this case, followed by what their impression is now, based upon the publicity of the case. Of the 400 Residents polled, 13% (52 less one that personally knows him) had previous awareness of Mr. Goodman.

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[118] This conclusion was learned through a series of questions which asked Residents to name any recent criminal trials they have heard or read about, followed by a question which asked if they had read or heard anything about John Goodman, and finally with a question which asked if they had read or heard anything whatsoever about a car accident involving John Goodman, the owner of the Palm Beach International Polo Club.

These questions reveal a staggering negative shift in opinion among those who had heard of Mr. Goodman before the incident. While only 6 of the 51 Residents who knew of Mr. Goodman before the incident professed a "mostly negative" impression of him at that time, 21 of those same 51 professed a "mostly negative" impression of him *after* being exposed to publicity about the case. That is an increase of 71% (or 15 of 21 Residents). Additionally, of the people who had a "mostly positive" impression of Mr. Goodman prior to the current criminal case, 43% say they changed their view as a result of the publicity of this case.

Residents also overwhelmingly believed that Mr. Goodman was at fault and that the publicity of this case has favored the prosecution's side of the story. As mentioned above, 65% of Residents were aware of the case involving Mr. Goodman. Based upon what they have heard or read about this case so far, 71% (or 261 of 400 Residents aware of the incident) believed that Mr. Goodman was most likely guilty of a crime. This was more than double the 26% that had no opinion. A mere 3% believed that he was most likely not guilty of a crime. These findings clearly indicate a presumption of guilt.

Those who were aware of Mr. Goodman or the case were also asked to provide details about what they have read or heard, in their own words. The Court can readily see from the responses listed in the *Survey*, they were remarkably similar in nature to the on-line comments following the *Post*'s publications – *i.e.*, they reflect that the Residents categorically believe that Mr. Goodman was under the influence of alcohol (and possibly drugs) on the night of the accident, that he ran a stop sign, hit another car (pushing it into a canal), caused the death of a young male, and that he fled the scene, leaving the other driver to drown.

The effect of the *Post*'s campaign to stoke class bias was also glaringly evident throughout

the responses, with specific references to Mr. Goodman's wealth and the notion that he will somehow buy his way out of punishment, hints that he has been given preferential treatment, suggestions that Lisa Pembleton verified his drunken state after the accident, and implications that he has been hiding his assets from the Wilson family. When asked whether they agree or disagree that wealthy people seem to be treated more favorably than others by the criminal justice system, 68% (or 271 Residents) agreed that they are. This opinion was rooted in the beliefs that "they can afford better legal representation," "they get away with things normal people can't," "they have the money to get out of trouble," and "I see/read about it in the news," and "they have the power of influence – a higher position in society." In addition, 31% (or 124 Residents) believed that wealthy individuals seem to be more inclined to engage in irresponsible or harmful behavior than others. There were three primary beliefs that lead to the respondent's agreement of this statement (in order of relevance): "they have the money to do so - more opportunities to get into trouble"; "they believe they can get away with it"; and, "they do whatever they want – are not concerned with consequences." Further, 29% (or 117 Residents) had some negative opinions about wealthy individuals. The following statements were offered in connection with this admission: "they feel above everyone else," "they think they can get away with anything," "because I'm not rich (am jealous)," "they feel entitled," and "they are selfish."

The *Survey* also showed that Residents have continued to be exposed to negative media coverage about the case. Respondents who earlier stated they were aware of the case were asked, "When was the last time you read or heard anything about this case?" The most significant response, "more than one month ago but less than 3 months ago," is cited by 30% (or 79 of 261 Residents), while the next closest ("within the last month") is chosen by 25 (or 65 of 261 Residents).

Additionally, 11% (or 29 of 261 Residents) specified that it had been within the last week, compared to 17% (or 46 of 261 Residents) for whom 'it has been more than three months ago but less than 6 months, 11% (or 28 of 261 Residents) for whom "it has been more than 6 months ago but less than 12 months" and 5% (or 14 of 261 Residents) for whom "it has been more than 12 months." These results offer substantial proof that the jury pool in Palm Beach County is still being exposed to media coverage about the case. In further support of this point, very few Residents reported a belief that there has "not been a lot of media coverage" about the case when directly asked.

As to the sources of the exposure, the *Survey* revealed that Residents were obtaining information about the case from a variety of sources, including reading the newspaper, watching television news, listening to radio talk shows, surfing the Web, and using electronic communications. However, of no surprise, the internet was the information source that was most utilized by respondents, with 92% (or 368 Residents) making use of it. Some 69% (or 25 Residents) visited the Web on a regular basis. The most commonly mentioned sites were facebook.com, google.com and yahoo.com and others. A significant 84% (or 334 Residents) affirmed their use of email, social networking sites, etc. Of these, 66% (or 263 Residents) used email and 29% (or 117 Residents) used Facebook. Another large percentage of respondents, 69% (or 274 Residents), read at least one newspaper on a regular basis. The vast majority of Residents, 55% (or 220 Residents), were reading the *Post*, while another 15% (or 59 Residents) were reading *The Sun Sentinel*, which, as previously noted, largely reprinted verbatim stories originally published by the *Post*.

When pointedly asked if they agreed or disagreed that local current affairs and media coverage was important to them, the preponderance of people viewed both as very important. In stark contrast to the 9% who disagreed, an astounding 91% (or 364 Residents) agreed that local

current affairs was important to them. Likewise, when asked about the importance of media coverage of current affairs, 84% (or 335 Residents) agreed that it was important, with only 16% (or 65 Residents) disagreeing.

The poll thus demonstrates that the *Post* has been remarkably successful in developing a hostile and biased attitude toward Mr. Goodman based largely on the class-bias theme. It also demonstrates that attitudes in the community have not lessened in the 22 months since the accident and suggest that the internet has played prominent a role in keeping the case alive.

IV. PREJUDICE SHOULD NOW BE PRESUMED AND A CHANGE OF VENUE ORDERED

The community passion surrounding Mr. Goodman's prosecution has been as dramatic as any in Florida criminal trial history. If a presumption of juror prejudice applies in any case, it should apply here. And, if an exercise of the Court's power to transfer cases to escape such prejudice is warranted in any case, it is this one. Under the circumstances, there is no valid justification for refusing to transfer venue to a locale untainted by pervasive community hostility and media vitriol, from which no juror residing in Palm Beach County could possibly escape.

A. The Prejudice Cannot Be Rebutted Through Voir Dire

The Supreme Court has long and consistently held that a change of venue is required when "the community and media reaction" is "so hostile and so pervasive as to make it apparent that even the most careful *voir dire* process would be unable to assure an impartial jury." *Flamer v. Delaware,* 68 F.3d 736, 754 (3d Cir. 1995) (Alito, J.) (en banc) (quotation omitted). That is, when "adverse pretrial publicity" combines with the "added pressure" of a "huge wave of ... public passion" to create an "atmosphere corruptive of the trial process," the Supreme Court "will presume a fair trial could not be held, nor an impartial jury assembled." *Mu'Min,* 500 U.S. at 448-50 (Kennedy, J.,

dissenting). Since that is precisely what has occurred here, *voir dire* can no longer be expected to perform its usual function of securing a fair and impartial jury. *See Mu'Min,* 500 U.S. at 429-30; *Patton,* 467 U.S. at 1031-33, 1040; *United States v. Murphy,* 421 U.S. 794, 799, 95 S.Ct. 2031, 44 L.Ed.2d 589 (1975); *Sheppard,* 384 U.S. at 362-63; *Estes,* 381 U.S. at 550-51; *Rideau,* 373 U.S. at 726-27; *Irvin,* 366 U.S. at 725-28.

In *Irvin,* the defendant was charged with six murders in a small Indiana town, and police press releases announcing Irvin's confession – functionally equivalent to the Wilson family attorneys' fomenting of publicity about Mr. Goodman's refusal to testify in a civil deposition because it might incriminate him – were "intensively publicized." 366 U.S. at 719-20. Although each juror gave assurances of fairness to the trial court in *voir dire*, the Supreme Court examined the "popular news media" surrounding the trial and the four-week, 2,738-page *voir dire* record to test whether these assurances were legally adequate. *Id.* at 720, 724-28. The Supreme Court concluded they were not. The "build-up of prejudice" in the media was "clear and convincing"; the jury pool was overrun with scores of jurors with disqualifying biases; and 8 seated jurors came to *voir dire* believing Irvin was guilty. *Id.* at 725-27. Even though those jurors promised they could be fair, the Supreme Court held their statements could not be believed under the circumstances. *Id.* at 727.

While *Irvin* may be understood as a case addressing the actual prejudices of a particular jury, the Supreme Court generalized the presumed prejudice rule in a trilogy of cases starting with *Rideau.* In that case, the Supreme Court held that "only a change of venue was constitutionally sufficient" to ensure "an impartial jury," because the jurors' community "had been exposed repeatedly and in depth to the prejudicial pretrial publicity there involved." *Groppi v. Wisconsin,* 400 U.S. 505, 510-11, 91 S.Ct. 490, 27 L.Ed.2d 571 (1971) (describing *Rideau*). The defendant in *Rideau* gave a filmed

confession to murder, which was broadcast on local television stations. 373 U.S. at 723-25. The Supreme Court presumed potential jurors were prejudiced by the publicity, and therefore reversed the convictions "without pausing to examine a particularized transcript of the *voir dire*" to see whether it actually produced impartial jurors. *Id.* at 727. The Supreme Court did so even though *voir dire* showed that only 3 of the 12 jurors had seen the broadcast; none of the 3 "testified to holding opinions of [defendant's] guilt"; and all three testified they could "give the defendant the presumption of innocence" and "base their decision solely on the evidence." *Id.* at 731-32 (Clark, J., dissenting). As the Supreme Court explained: "*Any* subsequent court proceedings in a community so pervasively exposed to such a spectacle could be but a hollow formality." *Id.* at 726.

The Supreme Court again followed a categorical approach in *Estes,* which involved a defendant charged with financial frauds. His case attracted intense media scrutiny pretrial, including a disruptive televised pretrial hearing that was seen by much of the venire; and press coverage continued during trial. 381 U.S. at 534-38. The Supreme Court reversed the convictions. Although conceding that "there was nothing so dramatic as the home-viewed confession" in *Rideau,* the Supreme Court reasoned that the jury pool had been "bombard[ed]" with publicity about the case and Estes had been subjected to "minute electronic scrutiny." *Id.* at 538. The state argued the Estes could point to no "isolatable prejudice" among jurors or at trial and that any prejudice was, therefore, merely "hypothetical." *Id.* at 541-42. The Supreme Court disagreed. Recognizing that "[t]he television camera is a powerful weapon" that can "[i]ntentionally or inadvertently ... destroy an accused and his case in the eyes of the public, the Court held that the case was one "in which a showing of actual prejudice is not a prerequisite to reversal." *Id.* at 542, 549. The internet and

Youtube are far more "powerful weapons" in 2012 than was television back in 1962 when Estes' trial took place.

The Supreme Court applied the categorical approach again in *Sheppard.* There, the Cleveland media launched a *Post*-like "editorial artillery" against a doctor accused of murdering his wife. 384 U.S. at 335-42. The media wrote articles critical of his defense to which jurors were exposed and the jurors' identities were published. *Id.* at 342-49. The Supreme Court held that such circumstances required reversal, again without regard to proof of actual juror prejudice: "Since the state trial judge did not fulfill his duty to protect Sheppard from the *inherently* prejudicial publicity which *saturated the community* and to control disruptive influences in the courtroom," *id.* at 363 (emphasis added), the Supreme Court granted Sheppard's habeas petition without inquiring into any individual juror's bias, and despite juror assurances of impartiality. *Id.* at 351-52.

Subsequent Supreme Court decisions have consistently read the foregoing precedents as establishing a *per se* rule of transfer or reversal where the community passion or trial taint is severe enough to warrant a presumption of juror prejudice. Thus, the Supreme Court in *United States v. Gonzalez-Lopez*, 548 U.S. 140, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006), confirmed that exposure to prejudicial publicity "require[s] reversal of the conviction because the effect of the violation cannot be ascertained." 548 U.S. at 149 n.4; *see Mu'Min,* 500 U.S. at 429 (when a "presumption of prejudice in a community" arises from the "wave of public passion" surrounding events of trial, "the jurors' claims that they can be impartial should not be believed"); *Vasquez v. Hillery,* 474 U.S. 254, 263, 106 S.Ct. 617, 88 L.Ed.2d 598 (1986) ("when a petit jury has been ... exposed to prejudicial publicity, we have required reversal of the conviction because the effect of the violation cannot be ascertained"); *Patton,* 467 U.S. at 1031, 1038 & n.13 (while *voir dire* "usually identifies

bias," in certain situations it is "inadequate," because prejudice can be such that "jurors' claims that they can be impartial should not be believed").

Conversely, in *no* case has the Supreme Court indicated that, where community passion is severe enough to raise doubts about the impartiality of jurors drawn from that community, those doubts can be overcome merely by trusting the answers given in *voir dire*. The Supreme Court's decisions uniformly hold the opposite.

The Supreme Court's precedents recognize several reasons why even a careful *voir dire* cannot ensure an impartial jury when the community is so thoroughly soaked with hostility and prejudicial publicity. First, potential jurors in such circumstances can become infused with biases they cannot recognize or will not disclose. *See Estes,* 381 U.S. at 545; *Irvin,* 366 U.S. at 727-28. A "juror may have an interest in concealing his own bias," or "may be unaware of it." *Smith v. Phillips,* 455 U.S. 209, 221-22, 102 S.Ct. 940, 71 L.Ed.2d 78 (1982) (O'Connor, J., concurring). Several studies have shown that jurors are likely to exhibit either conscious or unconscious dishonesty during open court questioning.[119] This is unsurprising, as "practically speaking[] it is rare to find a juror willing to openly and honestly discuss his or her beliefs and biases."[120] Juror responses during *voir dire* are influenced by numerous social factors – for example, the need to

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[119] Newton Minow & Fred Cate, *Who is an Impartial Juror in an Age of Mass Media?,* 40 AM. U. L. REV. 631, 650 (1991); Richard Seltzer, Mark A. Venuti & Grace M. Lopes, *Juror Honesty During Voir Dire,* 19 J. CRIM. JUSTICE 451, 452, 460 (1991)(citing studies, and concluding from independent study of jurors in District of Columbia that "to a significant degree, [] jurors withhold information or lie during voir dire."); Dale Broeder, *Voir Dire Examinations: An Empirical Study,* 38 S. CAL. L. REV. 503, 506 (1965)("The data contain numerous instances of conscious concealment and lack of candor.").

[120] Minow & Cate, 40 AM. U. L. REV. at 650 n.123.

conform to a group dynamic[121] or the desire to present themselves as "good citizens" and, as a result, minimize personal bias. In particular, jurors are much less candid when they are questioned by judges rather than attorneys – often out of a response to authority and a desire to provide answers they believe the judge wants to hear.[122] The "psychological impact" of requiring each potential juror to declare his fairness "before [his] fellows" can engender bias, provoke false assurances, or result in sincere expressions of impartiality that are fleeting at best. *Irvin,* 366 U.S. at 728; *see United States v. Dellinger,* 472 F.2d 340, 375 (7th Cir. 1972) ("natural human pride" may compel juror to assert his fairness).

"It will be a jury trial.... John...if your [sic] smart you'll demand trial by judge. You don't want a trial by jury.... WE consist of the jury. I listen very carefully and stay very quiet during 'Voir Dire'... I know exactly what it takes to get on a jury... So do a lot of bored people just like me... Pray I don't get a summons John ... PRAY...."

On-line comment to *Palmbeachpost.com*, July 24, 2010, "Friends of Scott Wilson cleaning crash site: 'We just want Wellington to remember,'" by "Halliburton STILL owns the rig"at 9:04 a.m., 7/25/2010.

These risks are particularly acute in high-profile cases where jurors may believe they can achieve notoriety based on their jury service, or they wish to punish a particular defendant; such "stealth" jurors purposefully dissemble to get seated on a jury.[123] *See also Miller-El v. Dretke,* 545

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[121] Minow & Cate, 40 AM. U. L. REV. at 650 n.123 (citing David Suggs & Bruce D. Sales, *Juror Self-Disclosure in Voir Dire: A Social Science Analysis,* 56 IND. L. J. 245, 259 (1981)).

[122] Susan E. Jones, *Judge versus Attorney-Conducted Voir Dire: An Empirical Investigation of Juror Candor,* 11 L. & HUM. BEHAV. 131, 143-45 (1987); Minow & Cate, *supra* note 122 at 651 (citing Neal Bush, *The Case for Expansive Voir Dire,* 2 L. & PSYCHOL. REV. 9, 17 (1976)).

[123] Jerry Markon, *Jurors with Hidden Agendas,* Wall St. J., July 31, 2001.

U.S. 231, 267-68, 125 S.Ct. 2317, 162 L.Ed.2d 196 (2005) (Breyer, J., concurring); *Pennekamp v. Florida,* 328 U.S. 331, 359, 66 S.Ct. 1029, 90 L.Ed. 1295 (1946) (Frankfurter, J., concurring).

There is also substantial evidence that *voir dire* generally cannot distinguish between jurors who are prejudiced by pretrial publicity and those who are not. Studies confirm that voir dire is "grossly ineffective not only in weeding out 'unfavorable' jurors but even in eliciting the data which would have shown particular jurors as very likely to prove 'unfavorable.'"[124] One prominent experiment found that "[c]hallenged jurors exposed to the publicity were just as likely to convict as those not challenged, but both were more likely to convict than those never exposed to pretrial publicity," and that, as a result, "the net effect of judges', defense attorneys', and prosecutor's combined challenges was effectively *nil.*"[125] Notably, this proposition has been shown to be true even where voir dire is extensive.[126] Indeed, querying jurors about their exposure to pretrial publicity actually increases the prejudicial effects of that publicity.[127] In other words, the empirical evidence suggests that the very mechanism of *voir dire* may actually undermine its fundamental purpose.

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[124] Broeder, 38 S. CAL. L. REV. at 505. *See also* Sue et al., *Authoritarianism, Pretrial Publicity, and Awareness of Bias in Simulated Jurors,* 37 Psychol. Reps. 1299, 1301 (1975) (jurors who claimed they could disregard publicity were far more likely to convict than jurors not exposed); Kerr et al., *On the Effectiveness of Voir Dire in Criminal Cases with Prejudicial Pretrial Publicity,* 40 AM. U.L. REV. 665, 695 (1991) (jurors who claimed they could be impartial after being exposed to publicity were as likely to convict as jurors who doubted impartiality); Dexter et al., *A Test of Voir Dire as a Remedy for the Prejudicial Effects of Pretrial Publicity,* 22 J. APPLIED SOC. PSYCHOL. 819, 839 (1992) ("publicity increased perceptions of defendant culpability and a proposed remedy, extended voir dire, failed to qualify the effect of pretrial publicity"); Studebaker et al., *Pretrial Publicity,* 3 PSYCHOL. PUB. POL'Y & L. 428, 449 (1997).

[125] Kerr et al., 40 AM. U.L. REV. at 687-88 (emphasis added).

[126] Hedy R. Dexter, Brian L. Cutler & Gary Moran, *A Test of Voir Dire as a Remedy for the Prejudicial Effects of Pretrial Publicity,* 22 J. APP. SOC. PSYCH. 819, 830 (1992).

[127] Joel D. Lieberman & Jamie Arndt, *Understanding the Limits of Limiting Instructions: Social Psychological Explanations for the Failures of Instructions to Disregard Pretrial Publicity and Other Inadmissible Evidence,* 6 PSYCH., PUB. POL. & L. 677, 682 (2000) (citing study).

In short, scholars of pretrial publicity broadly agree that *voir dire* is a woefully inadequate remedy for pretrial prejudice and fails in its core function of filtering biased jurors from unbiased ones. A meta-analysis conducted of several pretrial publicity studies concluded that expanded *voir dire* – along with other remedies to pretrial publicity such as continuances, judicial instructions, trial evidence and jury deliberation – "do[es] not provide an effective balance against the weight of [pretrial publicity]." It noted further that "even the smallest effect contradicts our legal presumption of innocence."[128] This problem is exacerbated under circumstances of extremely widespread and entrenched adverse publicity – circumstances plainly present in this case. As the author of one study demonstrating the ineffectiveness of *voir dire* has commented, "it is not disturbing that voir dire accomplishes so little. What is disturbing is that we expect voir dire to accomplish so much."[129]

Given the problem of unrecognized or undisclosed juror prejudice, the *per se* transfer/reversal rule articulated in the Supreme Court's precedents cannot be seriously questioned. And cases in which the Supreme Court held that the rule did not apply – because the presumption did not arise – only confirm the importance of applying the rule here, because those cases involved far less inflammatory publicity.[130] Conversely, there is no empirical evidence showing that a change of

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[128] Nancy Mehrkens Steblay, Jasmina Besirevic, Solomon M. Fulero, & Belia Jimenez-Lorente, *The Effects of Pretrial Publicity on Juror Verdicts: A Meta-Analytic Review,* 23 L. & HUM. BEHAV. 219, 229 (1992).

[129] Kerr et al., 40 AM. U.L. REV. at 699.

[130] *See Skilling*, 130 S.Ct. at 2916 (no presumption of prejudice, in part, because the new stories did not contain "blatantly prejudicial information of the type readers or viewers could not reasonably be expected to shut from sight"); *Mu'Min,* 500 U.S. at 418-21 (defendant submitted 47 articles in support of venue motion; no actual juror had formed opinion of defendant's guilt based on publicity); *Patton,* 467 U.S. at 1032-33 (news coverage of case had dissipated by time of trial and "community sentiment had softened"); *Dobbert v. Florida,* 432 U.S. 282, 302-03, 97 S.Ct. 2290, 53 L.Ed.2d 344 (1977) (defendant did not exercise all peremptory challenges; pointed to "no specific portions of record" to show why prejudice should be presumed); *Murphy,* 421 U.S. at 802, 801 (most articles about defendant appeared 7 months before trial and were factual; jurors had only vague recollection of publicity, believed it to be irrelevant, and

(continued...)

venue prejudices the prosecution. Changing venue does not affect the trial's truth-seeking function, like the exclusion of evidence--to the contrary, by eliminating inevitable prejudice, changing venue encourages more accurate results.

B. The Inadequacy of Jury Instructions

Judicial admonitions to ignore pretrial publicity are frequently regarded as sufficient to counter the damaging effects of that publicity. In reality, instructions from a judge to ignore pretrial publicity in high-profile cases do not affect verdicts or the propensity of jurors to contest references to pretrial publicity during jury deliberation.[131] In a study of whether voir dire could work effectively when nearly everyone in the community had been exposed to pretrial publicity, the authors concluded that "reliance on standard cautionary instructions as a remedy for prejudicial pretrial publicity appears to be unwarranted."[132]

Indeed, judicial admonitions to ignore pretrial publicity may actually accomplish the reverse – *heightening* the effect of pretrial publicity by reinforcing the very bias they counsel against.[133] Researchers have suggested that admonitions designed to remove bias in fact spur reactance or draw

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[130](...continued)
expressed no colorable indicia of bias).

[131] *See* Geoffrey P. Kramer, Norbert L. Kerr, & John S. Carroll, *Pretrial Publicity, Judicial Remedies, and Jury Bias,* 14 L. & HUM. BEHAV. 409, 430 (1990).

[132] Kramer, *et al.,* 14 L. & HUM. BEHAV. at 430. *See also* Minow and Cate, 40 AM. U. L. REV. at 648 ("there has not been a single study which indicates that judicial instructions limit the effects of jury bias."); Kerr et al., 40 AM. U.L. REV. at 675 ("Judicial admonitions had no effect on individual jurors or jury verdicts.").

[133] Kramer, *et al.,* 14 L. & HUM. BEHAV. at 430; *see also* Joel D. Lieberman & Jamie Arndt, *Understanding the Limits of Limiting Instructions: Social Psychological Explanations for the Failures of Instructions to Disregard Pretrial Publicity and Other Inadmissible Evidence,* 6 PSYCH., PUB. POL. & L. 677, 691 (2000)(discussing studies).

jurors' attention to the material they should be disregarding.[134] The study described above found that, "with respect to jurors' evaluation of the defendant, such instructions were counter-productive, actually strengthening the impact of factual publicity."[135] This effect is particularly pronounced with respect to emotionally arousing publicity, where the impact is "primarily affective and cannot be deliberately disregarded."[136]

Justice Jackson recognized half a century ago that "[t]he naive assumption that prejudicial effects can be overcome by instructions to the jury ... all practicing lawyers know to be unmitigated fiction." *Krulewitch v. United States,* 336 U.S. 440, 453 (1949) (Jackson, J., concurring) (internal citations omitted). Nowhere is this more true than under circumstances of presumed prejudice, where a barrage of constant and hostile media coverage is likely to make judicial instructions ineffective at best, and counter-productive at worst.

C. When There is Strong Community Reaction in Favor of a Particular Outcome, Jurors Feel Compelled to Reach That Result

Finally, even if a juror honestly believes he can objectively hear the evidence before trial, he may come to fear "return[ing] to his neighbors" with anything other than a guilty verdict. *Estes,* 381 U.S. at 545; *see Turner,* 379 U.S. at 472. Empirical evidence on the subject of jury bias confirms the effect of community pressure on jury verdicts. Defined as "conformity prejudice," these studies show that "when the juror perceives that there is such strong community reaction in favor of a particular outcome of a trial [] he or she is likely to be influenced in reaching a verdict consistent

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[134] Kramer, *et al.,* 14 L. & HUM. BEHAV. at 412 (citing studies).

[135] Id. at 430.

[136] *Id*. at 412 (citing studies).

with the perceived community feelings rather than an impartial evaluation of the trial evidence."[137] As the reader "comments" in this case underscore, in high-profile cases, the media often not only reports details of the incident, but also responses from the community, "creat[ing] perceptions that there is a community consensus about what the verdict should be."[138] If jurors believe that there is consensus as to the "correct" verdict, and that there are expectations that the "correct" verdict will be reached – and threats of mob action if it is not – jurors will feel pressure to reach that verdict before reentering the community once the trial ends. As previously noted, it should not take courage for a juror to vote to acquit.

This principle was illustrated by the trial of the individuals accused of the Oklahoma City bombing. The district court in that case recognized that community pressure can adversely affect the ability of individual jurors to act impartially when "there is such identification with a community point of view that jurors feel a sense of obligation to reach a result which will find general acceptance in the relevant audience." *United States v. McVeigh,* 918 F.Supp. 1467, 1473 (W.D. Okla. 1996). It then granted the defendant's motion for change of venue, reasoning that "the entire state had become a unified community, sharing the emotional trauma of those who had been directly victimized." *United States v. McVeigh,* 955 F.Supp. 1281, 1282 (D. Colo. 1997). When there is a strong community reaction in favor of a particular outcome – as there was in the Oklahoma case, and as there also is in this case – jurors feel compelled to reach that result, notwithstanding their promises to the contrary.

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[137] *See* Neil Vidmar, *Case Studies of Pre- and Midtrial Prejudice in Criminal and Civil Litigation,* 26 L. & HUM. BEHAV. 73, 81-82 (2002). *Id.* 81-82.

[138] *Id.* at 86.

CONCLUSION

For the foregoing reasons, the Defendant respectfully requests that this Court will enter an Order changing venue in this case. Given the unique situation presented by Mr. Goodman's case, if it remains in Palm Beach County, his Sixth Amendment right to a trial by a fair and impartial jury will undoubtedly be violated. Therefore, the Court should transfer venue to Miami-Dade County.

Respectfully submitted,

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RULE 3.240(b)(2) CERTIFICATE

Pursuant to Rule 3.240(b)(2) of the Florida Rules of Criminal Procedure, the undersigned certifies that this motion is made in good faith.

By: _____
MARK A.J. SHAPIRO, ESQ.

AFFIDAVIT OF JOHN B. GOODMAN

I, John B. Goodman, being of sound mind, after being properly sworn, state that I have read the foregoing and, under penalty of perjury, I swear that the factual assertions contained therein are true and correct.

JOHN B. GOODMAN

SWORN TO AND SUBSCRIBED before me this 4th day of January, 2012, at Miami, Dade County, Florida.

THELMA WILCOX
MY COMMISSION #DD906036
EXPIRES: AUG 21, 2013
Bonded through 1st State Insurance

NOTARY PUBLIC, STATE OF FLORIDA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January __, 2012, my office mailed a true copy of the foregoing to:

Ellen Roberts
Assistant State Attorney
West Palm Beach State Attorney's Office
Traffic Homicide Unit
401 North Dixie Hwy.
West Palm Beach, FL 33401

By: _____
Mark A.J. Shapiro, Esq.