No. 4D12-1488

IN THE DISTRICT COURT OF APPEAL
FOR THE FOURTH DISTRICT
STATE OF FLORIDA

JOHN B. GOODMAN,

Petitioner/Defendant,

v.

STATE OF FLORIDA,

Respondent/Plaintiff.

Circuit Court No. 2010CF005829AXXMB
Circuit Court of the Fifteenth Judicial Circuit
In and For Palm Beach County, Florida

PETITION FOR A WRIT OF PROHIBITION AND A WRIT OF MANDAMUS

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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.

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PETITION FOR WRIT OF PROHIBITION AND A WRIT OF MANDAMUS

On March 23, 2012, the Petitioner, JOHN B. GOODMAN, was convicted of one count of DUI Manslaughter/Failure to Render Aid and one count of Vehicular Homicide/Failure to Render Aid. He has not yet been sentenced. Within days of the verdict, the presiding judge, the Hon. Jeffrey J. Colbath (hereinafter "the court") began receiving allegations about and direct proof of jury misconduct. Yet, he failed to report these allegations to the parties and now has explicitly *refused* to do so.

First, on March 27 and 28, Alternate Juror No. 8, Ruby Mei Delano, called the court's chambers to report various forms of jury misconduct, including that Juror No. 6, Dennis DeMartin, had been writing a book about the trial *during* the trial itself, that jurors were engaged in premature deliberations and had been consulting the media in disregard of the court's repeated instructions and had been making derogatory statements about Mr. Goodman's wealth. The court neither returned her calls nor notified the parties about them. Mr. Goodman only learned about the misconduct allegations when Ms. Delano called counsel the reported them. Thereafter, on April 16, 2012, Mr. Goodman filed a motion for new trial based on jury misconduct and sought permission to interview the jurors concerning the allegations. *See* **Appendix, Tab 3.**

Second, at some still undisclosed time before April 4, 2012 – and while Mr. Goodman's motion was pending – Mr. DeMartin sent the court a letter, along with two chapters of the very book at issue in Mr. Goodman's motion. Despite the pendency of the motion, the court did not notify the parties about the communication. And, when counsel later learned about the communication from the media and requested that the court produce the material, the court refused to do so.

Third, on April 18 or 19, 2012 – still while Mr. Goodman's jury misconduct motion was pending – the court received a letter from a Palm Beach County resident, Toni May, who reported that she had overheard statements by Juror No. 4, Teresa Lewis, which corroborated Ms. Delano's allegations and made additional ones (including that Ms. Lewis had complained to a bailiff about jury misconduct *during* the deliberations but that nothing happened and that Mr. DeMartin had been offered $50,000 for his book while still sitting as a juror). Instead of disclosing Ms. May's letter to the parties, the court, on April 20, 2012, denied most of Mr. Goodman's jury misconduct motion, refusing to conduct jury interviews on and most of the allegations. When Ms. May informed counsel about her letter, Mr. Goodman moved to disqualify the court for concealing these reports of jury misconduct.

On Friday, April 27, 2012, the court summarily denied that motion as "legally insufficient." The court then, improperly, tried to explain its conduct by disclaiming

any "personal" knowledge of the communications. Although the court also did not deny that the communications had, in fact, occurred, it refused to disclose them, stating that Mr. Goodman would have to file a "Petition For a Writ of Mandamus with a higher court" to get them. Based on the court's conduct, Mr. Goodman respectfully petitions this Court, pursuant to Fla. R. App. P. 9.030(b)(3) and 9.100(a), for: (1) A writ of prohibition restraining Circuit Judge, the Honorable Jeffrey J. Colbath, from presiding as a circuit judge in this case; and (2) A writ of mandamus directing Sharon R. Bock, Clerk and Comptroller, Palm Beach County, and/or Judge Colbath to disclose *all* communications made to the Court *by* or *about* any former juror or alternate juror in the instant case, including but not limited to:

(a) Telephone calls from former alternate Juror No. 8, Ruby Mei Delano;

(b) Telephone calls and written correspondence with former Juror No. 6, Dennis DeMartin, including but not limited to copies of two chapters of a book that Mr. DeMartin was writing about the case while activity sitting as a juror.

(c) Telephone calls and written correspondence with Toni May concerning the statements made by Juror No. 4, Teresa Lewis discussing various forms of jury misconduct.

I. BASIS FOR INVOKING JURISDICTION

This Court has original jurisdiction to issue writs of prohibition and mandamus under Article V, section 4(b)(3) of the Florida Constitution, and under Rule 9.030(b)(3) of the Florida Rules of Appellate Procedure. Prohibition is the proper remedy to test the validity of the denial of a motion for the disqualification of a judge. *See Pearson v. Pearson,* 870 So. 2d 248, 248-50 (Fla. 2d DCA 2004).

II. STATEMENT OF THE FACTS

A. Pretrial Proceedings

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.

Before trial, Mr. Goodman filed a motion for a change of venue, arguing that the community had been so saturated with prejudicial pretrial publicity that neither *voir dire* nor instructions from the court would be adequate to safeguard his constitutional rights. As documented in depth in Mr. Goodman's Motion for a Change of Venue, *see* **Appendix, Tab 1**, since the day of the accident, Mr. Goodman has been the target of an unrelenting media blitzkrieg, most of which emphasized Mr. Goodman's alleged wealth. For example, the motion documented that there were 80

instances of the word "millionaire" in the 213 articles collected, 15 instances of the word "billionaire," and 102 instances of the word "mogul." *See* Tab 1, pp. 501-51. The term "patron" occurred 52 times, "magnate" 13 times and "heir" 23 times. *Id.* Many of the on-line comments to articles explicitly contained references to class, such as "[t]he attorney's [sic] and the rich OWN this country, and we peasants are the 'help'..." and "Guilty until proven rich. The rule of law is for the peasants, not the ruling class. Now back to work Proles." *Id.* at p. 60. The *Palm Beach Post*'s on-line comments to its many stories were also riddled with vicious personal attacks, calling Mr. Goodman, *inter alia*, a "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, pompous, plastic, pointless human terd[]," and "complete degenerate." *See id.* at pp. 17-18. And, the pieces almost never fail to connect Mr. Goodman to polo, usually with shots of the polo club that Mr. Goodman founded.

For example, a *Broward-Palm Beach New Times* featured a piece called "The Dirty Dozen: 2010's Most Despicable People" and presented, 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."*Id.* at p. 16. The article was 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. *Id.*

Mr. Goodman also warned about the potential for one or more "stealth" jurors who, in addition to simply wishing to punish a notorious defendant, may believe they could achieve notoriety based on their jury service and purposefully contrive to get seated. *Id.* at p. 85.

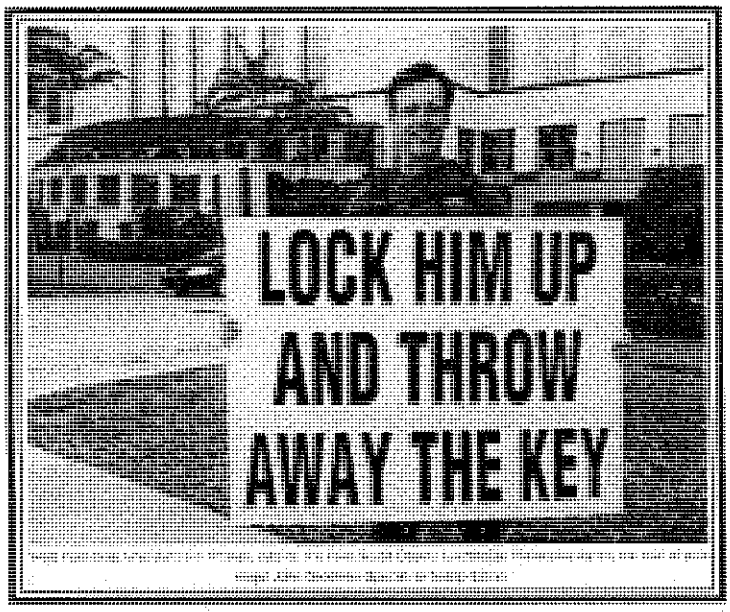
John Goodman

B. The Trial

The court denied the motion for a change of venue, believing that *voir dire* and other procedures could ensure Mr. Goodman a fair trial. After three days of jury selection on March 6, 7 and 8, 2012, six jurors and two alternates were ultimately chosen. While none of the eight knew *which* two were the alternates, the media disclosed that the alternates were two women, one of whom "directs field trips for a preschool for low-income families and another woman who spends her time volunteering, *see* **Appendix, Tab 3**, at p. 7 and Exhibit 2. However, the jurors were repeatedly instructed not to read the newspaper, to watch the television or to use the internet or electronic devices to learn about the case. *See* Draft Transcripts, Vol. 16, March 8, 2012, at p. 21; Vol. 17, March 13, 2012, p. 13.

All eight jurors also swore that they could be fair and impartial and harbored no hidden bias against Mr. Goodman because of his wealth. They also agreed to follow the court's repeated instruction that "until everybody rests, it's inappropriate to talk about what you think about the evidence or the witnesses.... you're not permitted to do that..." Draft Transcript, Vol. 16, March 8, 2012, p. 22. *See also* Draft Transcripts, Vol. 17, March 13, 2012, at pp. 12-13; Vol. 19, March 13, 2012, p. 78; Vol 37, March 16, 2012, p. 45; Vol. 63, March 22, p. 43.

Despite the intensity and venom of the pretrial publicity, the court overruled defense objections to allowing the trial to be televised through a live feed. The court then did little to prevent Mr. Goodman and his counsel from being assailed on a daily basis by the loud, expletive-ridden taunts of the "sign man" – all within the sight and earshot of the jurors. Mr. Goodman was even threatened in the lobby of the courthouse itself.[1] After the media leaked the identities of two jurors to the public, the court still allowed the filming to continue. *see* Draft Transcripts, March 14, 2012, Vol. 25, at pp. 67-70; Vol. 26, at pp. 1-30.



From Jose Lambiet's *GossipExtra*, "Goodman Trial: Circus? What Circus," March 8, 2012

During the last week of the trial, on March 20, 2012, Juror No. 6, Dennis DeMartin, wrote a letter to the Court in which he stated that he had been writing a

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[1] *See* Draft Transcript, Vol. 26, March 14, 2012, at pp. 21-22. The court indicated at one point that it was "taking the jurors out the back way" in an attempt to avoid the sign man but he frequently moved his position around the courthouse, limiting the effectiveness of this tactic. And, of course, his screaming could be heard from a long distance.

member of the defense team saw Mr. DeMartin wave his hand dismissively and then turn and speak to Juror No. 5, suggesting Mr. DeMartin was making a derogatory comment to Juror No. 5 about counsel's cross-examination in violation of the court's daily instructions not to discuss the case. *See* **Appendix, Tab 3**, p. 8; Draft Transcript, Vol. 60, March 22, 2012, at pp. 30-33. After a break and at counsels' request, the court summoned Mr. DeMartin for questioning about the incident. Mr. DeMartin claimed that the hand gesture had nothing to do with the trial testimony but was about a button that had popped off his shirt and was still on the floor from the day before. *Ibid.* When the court asked him directly whether the gesture had anything to do with the testimony, Mr. DeMartin stated: "No way. That's the big joke back there because they said I ate too many of those donuts and that's why the button popped." *Id.* at p. 9.

After Mr. DeMartin returned to the jury room, the court questioned Juror No. 5.[2] She repeated Mr. DeMartin's account: "I found his button he lost the other day ... Because I didn't know he lost one. So I just said, did anybody lose a button? He said, that's my button from yesterday." *Id.* at p. 9. With that testimony, the issue seemed resolved.

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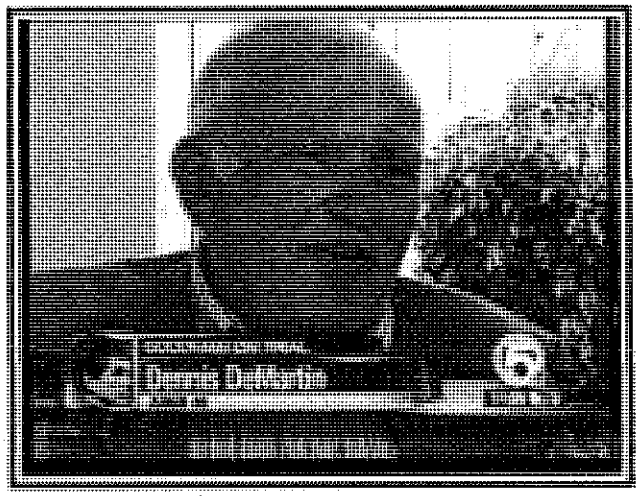
[2] Before Juror No. 5 was summoned, Mr. DeMartin would have had plenty of time to inform her about the explanation he gave for the incident.

Later that day, following closing arguments, the court dismissed the two alternates and informed them that they were free to talk to the press about the case if they wished to do so. The court then added: "The lawyers aren't allowed to approach you and initiate conversation, *but* ***you can approach anybody*** *you want to* ***to initiate*** *conversation....*" *See* Draft Transcript, Vol. 63, March 22, 2012, at p. 36 (emphasis added). The next day, March 23, 2012, the jury returned its guilty verdicts after only a few hours of deliberation. That evening, Mr. DeMartin gave live interviews to the press. *See* **Appendix, Tab 3**, at p. 9 and Exhibit 4.



C. The Circuit Court's Concealment of Ms. Delano's Report of Jury Misconduct

At 8:19 a.m. on March 27, 2012, one of the two alternate jurors, Ms. Delano, telephoned the court's chambers, wishing to report various forms of jury misconduct. *Id.* at p. 10. She left a message but did not receive a return telephone call. *Id.* The next day, March 28, 2012, she called again. This time, she left a message with a secretary or clerk but, again, did not receive a return call from the court. *Id.*

If the court had returned the calls – or, at the very least, reported Ms. Delano's complaints to the parties – Mr. Goodman would have had time to include a jury misconduct claim in his first post-conviction motion for new trial under Fla. R. Crim. P. 3.600(b)(4) before the 10 day period in Rule 3.590(a) expired. However, the court did not do so. Mr. Goodman filed his motion for new trial on the 10th day permitted by the rule, April 2, 2012. *See* **Appendix, Tab 2**. With no knowledge of the information described below or of Ms. Delano's attempt to contact the court, the motion did not include any jury misconduct claim.

At some still unknown time but before April 4, 2012, Mr. DeMartin wrote the court a letter, attaching the first and last chapters of a book he was writing about the trial. *See* **Appendix, Tab 5**, pp 5-6 and Exhibit 4. The court did not report the communication to the parties or provide them with copies of the letter and book chapters.

At approximately 9:30 a.m. on the morning of Wednesday, April 4, 2012, Ms. Delano telephoned undersigned counsel's office and left a message that she wanted to discuss what went on with the jury during the trial. *See* **Appendix, Tab 3**, p. 10. After confirming with the Florida Bar Ethics Line that it was permissible to return the

call since Ms. Delano had "initiated" the contact,[3] counsel interviewed Ms. Delano and she subsequently memorialized her statements in an affidavit. *Id.* at p. 12 and Exhibit 1.

After explaining her prior attempts to contact the court,[4] Ms. Delano indicated that, contrary to the court's repeated instructions, the jurors often discussed witness testimony and other evidence throughout the trial. *Id.* at p. 3. As examples, she indicated that there were discussions about how anyone could have an accident and then go and drink, about why Mr. Goodman did not call 911 immediately, about why he did not stop at the stop sign, about who took the videotape of the drive from the Players' Club and how Mr. Goodman could have passed his own driveway on 120th Avenue. "We all had things to say about the trial as it progressed each day." *Id.* at pp. 3-4 and Exhibit 1. When Ms. Delano reminded the other jurors that the court had instructed them not to discuss the case, she was "teased" by another juror that she must have a crush on Mr. Goodman. *Ibid.*

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[3] Rule 4-3.5(d)(4) of the Rules Regulating the Florida Bar provides that after dismissal of the jury lawyers may not "*initiate* communication with ... any juror regarding the trial except to determine whether the verdict may be subject to legal challenge...." (Emphasis added.) Counsel were advised that since Ms. Delano "initiated" the contact, counsel could return the call. *See* **Appendix, Tab 3**, p. 11.

[4] With her permission, counsel took a photograph of her cell phone record, showing the two calls to the court: (1) a 53 second call at 8:19 a.m. on March 27 and (2) a 1:33 minute call at 9:39 a.m. on March 28. *See* **Appendix, Tab 3, Exhibit 5.**

Ms. Delano also disclosed that "[o]n many occasions" the jurors talked about Mr. Goodman's wealth. *Id.* at p. 4. "Most of the conversations about money [were] in the context of Mr. Goodman probably being guilty but getting away with it because he has a lot of money. Although no one specifically used the word 'guilty.'" *Id.* According to Ms. Delano, it was clear that before the end of the trial many of the jurors had already decided how they were going to vote. "Based on the negative talk about Mr. Goodman's wealth and the issues discussed about the case, it was clear to me that these jurors had already made up their minds before Thursday, March 22nd." *Id.* at p. 4.

Ms. Delano further reported how Mr. DeMartin had lied about his conduct on March 22. According to Ms. Delano, Mr. DeMartin's explanation about the allegedly dropped button on "was not true" since, in fact, Mr. DeMartin had lost and found the button earlier. *Id.* at pp. 4-5. "I believe that Mr. DeMartin's gesture was an expression of his disdain for Mr. Goodman and the defense team." *Id.* Ms. Delano also reported that Mr. DeMartin was *already* writing a book about the trial and "would frequently tell us that he wrote down what happened in court each day, and all the jurors knew about it." *Id.* at p. 5.[5]

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[5] Mr. DeMartin's alleged dishonesty about both the button incident and his publishing plans would constitute an independent basis to find jury misconduct. See (continued...)

Ms. Delano believed that the "pre-deliberation discussions" about the case "were wrong" and wanted to inform the court but did not come forward immediately because "everyone on the jury was telling me that I was an alternate. As an alternate, I did not believe I had as much a right as the other jurors to bring this to the Court's attention." *Id.* at p. 5. As previously indicated, the only way the jurors could have known that Ms. Delano was an alternate was if they had been disregarding the court's instructions to not read about the case in the media.

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[5](...continued)
DeFrancisco v. State, 830 So.2d 131, 133 (Fla. 2d DCA 2002) ("If a juror answers a question falsely or conceals a material fact, that misconduct is prejudicial to one of the parties because it impairs his or her right to challenge the juror") (citations omitted). *See also Gray v. Moss*, 636 So.2d 881 (Fla. 5th DCA 1994). Bias may be implied "where repeated lies in *voir dire* imply that the juror concealed material facts in order to secure a spot on the particular jury." *Fields v. Brown*, 503 F.3d 755, 770 (9th Cir. 2007); *see also Green v. White*, 232 F.3d 671, 677-78 (9th Cir. 2000) (holding that a juror was impliedly biased where he "lied twice to get a seat on the jury," provided misleading, contradictory, and false responses when questioned about those lies, and engaged in behavior that brought his impartiality into question); *United States v. Boney*, 977 F.2d 624, 634 (D.C. Cir. 1992) ("[L]ying or failing to disclose relevant information during voir dire itself raises substantial questions about the juror's possible bias."); *United States v. Colombo*, 869 F.2d 149, 152 (2d Cir. 1989) ("[H]er willingness to lie about it exhibited an interest strongly-suggesting partiality.").

D. The Motion To Conduct Jury Interviews and Discovery That the Circuit Court Had Received Other Communications From Jurors

Based on Ms. Delano's allegations, on April 16, 2012, Mr. Goodman filed *Defendant's Motion For New Trial And/Or to Vacate His Conviction Based On Jury Misconduct*. *See* **Appendix, Tab 3**. In response to the publicity spawned by the motion, Mr. DeMartin gave a lengthy televised interview that same evening. *See* **Appendix, Tab 5**, at p. 3 and Exhibit 1. Although Mr. DeMartin claimed that he had not "start[ed]" the book during the trial, he admitted that he had been taking daily notes on the trial *for that purpose* "and *I told them [the other jurors] about the notes that I was making every night*." (Emphasis added.) He also admitted that he was "writing *now* about his trial experience." *Id.* (emphasis added). Sitting at his computer screen, Mr. DeMartin then showed the cameras some of his notes which reflected some undecipherable comments about "Defendant's Attorneys" on Day 4 of the trial. *Id.* at p.3 and Exhibit 1.

On April 17, 2012, CBS12.com broadcast a story about the controversy. *See* **Appendix, Tab 5**, at p. 3 & Exhibit 2. The article accompanying the broadcast indicated that Mr. DeMartin "is writing the book" about the case. Apparently referring back to the interviews Mr. DeMartin gave to the media immediately after the verdict on March 23, 2012, the article elaborated: "We spoke with him after the

trial. *He told us **then** he's writing a book about his experience on the jury and showed us the daily notes*." *Id.* at pp. 3-4 (emphasis added).

That same day, April 17, 2012, the court convened a telephonic hearing in which the court indicated that it might summon the jurors for interviews. During that hearing, the court seemed to already have concluded that there was nothing wrong about Mr. DeMartin writing a book about the case. "I mean, lots of jurors write books about their trial experience, so what? That's not grounds to excuse him...." *See* **Appendix, Tab 9**, p. 16. Despite the fact that the propriety of Mr. DeMartin's book writing was a significant contested issue, the court still did not disclose that it had received a letter and two chapters of the book from Mr. DeMartin sometime before April 4.

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

The hearing drew considerable media attention, which prompted Mr. DeMartin to write the court (now his third letter) the following day, April 18. *Id.* at p. 5 and Exhibit 4. Counsel learned about the existence of this new letter *from the media*, not from the court. *Id.*, Exhibit 5. Counsel only received a copy from the court after calling the court's chambers and requesting a copy. *Id.* While the court turned over

the April 18th letter, it still concealed the existence of the earlier letter and book chapters. However, Mr. DeMartin's April 18th letter began by referring directly to the earlier letter: "*I had sent you the first and last chapters of a book I have been writing* on how I was chosen for the jury and what had happened since it was over." *Id.* (emphasis added). He also indicated that along with the book chapters he had asked the court *for advice* about whether he "should wait to try to publish a book on the trial until after sentencing and/or appeal." *Id.* Although he did not provide a precise date for this communication with the court, he stated that he had been planning on giving an interview with Court TV on April 4, 2012, but "**canceled that April 4, interview when you did not respond.**" *Id.* (emphasis in original).

In his April 18th letter, Mr. DeMartin also contradicted what he had told the cameras on April 16 ("I told them about the notes that I was making every night"). He now emphatically denied discussing his daily notes with other jurors: "The contents of these work sheets **WERE NOT DISCUSSED** with any juror." *Id.* at p. 6 and Exhibit 4 (emphasis in original.)

On April 18 or 19, 2012, Toni May, Director of Community Relations-Communications at the Quantum Foundation in West Palm Beach, hand-delivered to the court a letter in which she described overhearing statements from Juror No. 4, Teresa Lewis, which both corroborated Ms. Delano and reported additional forms of

jury misconduct. *See* **Appendix, Tab 6**, at p. 1 and Exhibit 1.[6] Ms. May reported that she was at a restaurant on Saturday, March 24, 2012, and had overheard a juror (later identified as Ms. Lewis) sitting next to her at the restaurant's bar discussing the case. Ms. May also had apparently had a short conversation with Ms. Lewis. Ms. May indicated that sometime after hearing about Mr. Goodman's April 16th motion, she had called the court's chambers in an effort to report the misconduct but was told by the court's staff that she could not speak to the court or send an email about the misconduct but would have to send a letter. Following that conversation, Ms. May drafted a letter and personally hand-delivered it directly to the court's mailbox on April 18 or 19, 2012. *Id.* at p. 7. In the letter, Ms. May indicated that she heard Ms. Lewis state, *inter alia*, that:

- "[O]ther jurors talked about *Goodman's money* and ... *they believed he was guilty before the trial ended....*"
- A juror named "Mike" was "'bullying' two other jurors" who disagreed with him and that "she went to someone, I thought she said *the bailiff* and complained about the situation ... that *they were not following*

[6] Ms. May is a former Emmy Award-winning host and executive director of South Florida Today, which airs on WXEL, a public television station. *Id.* at p. 7.

the judge's protocol" but this person who she thought was the bailiff apparently did nothing.[7]

- A juror, obviously Mr. DeMartin, "was offered *$50,000 for a book deal* and was continually taking notes and filled up 4-5 notepads during the trial... She knew details about the book deal and said it was clear he wanted to get it done...."[8]

E. The Court Finds Ms. Delano's Allegations Insufficient and Too Speculative, While Concealing Its Communications With Mr. DeMartin and Ms. May

By the close of business on April 19, 2012, the court thus had in its possession: (1) a letter sent by Mr. DeMartin sometime before April 4, 2012; (2) the first and last chapters of Mr. DeMartin's book; and (3) Ms. May's letter concerning Ms. Lewis'

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[7] The bailiff's failure to report Ms. Lewis' complaint about the "bullying" and disregarding of the court's protocols would constitute *per se* reversible error under Rule 3.410 of the Florida Rules of Criminal Procedure, as construed by the Supreme Court of Florida in *State v. Merricks*, 831 So.2d 156 (Fla. 2002) (per curiam). *Accord Natan v. State*, 58 So.3d 948 (Fla. 2d DCA 2011); *Dixon v. State*, 768 So.2d 14 (Fla. 3d DCA 2000); *Thiefault v. State*, 655 So.2d 1277 (Fla. 4th DCA 1995). *See also* Fla. Stat. § 918.07 (prohibiting officers in charge of jurors from communicating with jurors "on any subject connected with the trial").

[8] The book advance itself may be criminal. *See* Fla. Stat. § 918.12 ("Any person who influences the judgment ... of any ... petit juror on any matter ... which may be pending ... before him ... as such jury, with intent to obstruct the administration of justice, shall be guilty of a felony of a third degree"). *See generally* Note, *Post-Trial Jury Payoffs: A Jury Tampering Loophole*, 15 ST. JOHNS J. L. COMM. 353 (Spring 2001).

statements. Without disclosing any of this evidence, on April 20, 2012, the court denied the motion for new trial and ordered that the jurors be questioned *only* about their comments about Mr. Goodman's wealth. *See* **Appendix, Tab 4**. The court dismissed Mr. Goodman's other allegations, including those about premature deliberations and Mr. DeMartin's book writing, as too "speculative" or insufficiently supported by Ms. Delano's affidavit. The court based its refusal to conduct questions about the book writing on a finding that Mr. Goodman did not "offer any support for his belief about Mr. DeMartin's purported frame of mind other than mere speculation of bias." Order, at p. 13. The court made this finding while remaining silent about having received (1) Mr. DeMartin's letter and book chapters sometime before April 4, 2012, and (2) Ms. May's letter on April 18 or 19, which indicated that Mr. DeMartin had been "offered $50,000" for the book during the trial. The court acknowledged Ms. Delano's allegation about calling the court twice in March but did not affirm, deny or elaborate upon that allegation. The court later scheduled a limited jury interviews for Monday, April 30, 2012.

On April 21, 2012, The Palm Beach Post published a story about the court's order and its aftermath. *See* **Appendix, Tab 5**, at p. 6 and Exhibit 6.

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

Mr. DeMartin, interviewed again before the cameras, reiterated: "'*I am writing a book now that I won't publish until all the dust is settled,*' DeMartin said." *Id.* (emphasis added). He then conceded that "*during the trial he worked at night on a book about the trial, a manuscript he has named Believing in the Truth.*" *Id.* (emphasis added). Mr. DeMartin, however, continued to deny that he discussed this book with the other jurors.

F. The Motion to Compel Disclosure of the Concealed Evidence and Motion To Disqualify the Court

On April 24, 2012, counsel filed *Defendant's Motion To Compel All Communications Between Jurors and the Court*, seeking the disclosure of the letter and book chapters Mr. DeMartin had apparently sent to the court weeks earlier, as well as any other communications the court may have had with the jury. *See* **Appendix, Tab 5**. The motion pertained mostly to Mr. DeMartin's communications since counsel did not yet know about Ms. May's letter to the court. Later that day, she telefaxed a copy of the letter to counsel. *See* **Appendix, Tab 5**, Exhibit 1.

After comparing the allegations made by Ms. Lewis to the reasoning employed by the court in denying Mr. Goodman's motion for new trial and severely restricting the jury interviews scheduled for April 30, 2012, on Thursday, April 26, 2012, Mr. Goodman filed a motion to disqualify the court, pursuant to Section 38.10, Florida

Statutes, Rule 2.330 of the Florida Rule of Judicial Administration 2.330, and Canon 3(B)(7) of the Florida Code of Judicial Conduct. *See* **Appendix, Tab 6**. The motion argued that the pattern of the court's concealment of evidence of jury misconduct required its disqualification and a reassignment of the case so that the allegations of jury misconduct could be fully and fairly exposed. The motion charged that the court's concealment of evidence supporting Mr. Goodman's allegations of jury misconduct "create[s] in a reasonably prudent person a well-founded fear of not receiving a fair and impartial trial." *Kates v. Siedenman*, 881 So.2d 56, 75 (Fla. 4th DCA 2004), *citing MacKenzie v. Super Kids Bargain Store, Inc.*, 565 So.2d 1332, 1334 (Fla. 1990). *Accord Livingston v. State*, 441 So.2d 1083, 1087 (Fla. 1983); *State v. Thompson*, 79 So.3d 933, 933-34 (Fla. 1st DCA 2012) (per curiam); *Salters v. State*, 857 So.2d 977 (Fla. 4th DCA 2003); *Siegel v. State*, 861 So.2d 90, 92 (Fla. 4th DCA 2003); *Peterson v. Asklipious*, 833 So.2d 262 (Fla. 4th DCA 2002).

The next day, April 27, 2012, the court issued two orders. First, the court summarily denied the motion for disqualification, holding that the grounds relied upon in the motion were "legally insufficient." *See* **Appendix, Tab 7**. Second, the court denied the motion to compel. *See* **Appendix, Tab 8**. The substance of the latter order, however, appeared to constitute the court's justification for not disqualifying itself. Thus, the court claimed that it was "not personally aware as to what

correspondence exists." *Id.* The court claimed that it "does not review communications from jurors" but has an "office practice" whereby the court's staff "is to forward copies of juror communications to counsel for both the state and defense....." The court then refused to affirm or deny that the court's staff received the letter and book chapters from Mr. DeMartin and/or the letter from Ms. May and refused to explain why counsel *was* able to obtain a copy of Mr. DeMartin's letter of April 18th directly from the court's staff but not anything else. Nor did the court explain, if it was the court's practice to forward copies of juror communications to the parties (without looking at them), why that had not occurred in this case. In refusing to provide any of these explanations, the court contended that "[a] Petition for Writ of Mandamus filed with a higher court, rather than a Motion to Compel, is the proper pleading to seek action by a Court." *Id.* The court concluded by suggesting that a request for "public records" could be made "in accordance with Administrative Order No. 2.304-4/10." *Id.*

III. STANDARDS OF REVIEW

I. Whether a motion to disqualify a judge "is legally sufficient is a matter of law that is reviewed by the appellate court *de novo*." *Aberdeen Property Owners Assoc., Inc. v. Bristol Lakes Homeowners Assoc., Inc.*, 8 So.3d 469, 472 (Fla. 4th DCA 2009), citing *Barnhill v. State*, 834 So.2d 836, 843 (Fla. 2002), *cert. denied*, 539 U.S. 917,

123 S.Ct. 2281, 156 L.Ed. 2d 134 (2003); *Chillingworth v. State*, 846 So.2d 674, 676 (Fla. 4th DCA 2003).

II. The court's holding that a circuit court judge may deliberately keep itself ignorant of communications to his chambers directly from jurors complaining about or evincing jury misconduct *while allegations of jury misconduct are pending before him*, and the related holding that a circuit court judge need not respond to a motion to compel disclosure of such communications, are subject to *de novo* review.

ARGUMENT

I. A WRIT OF PROHIBITION SHOULD BE GRANTED TO REQUIRE THE CIRCUIT COURT'S DISQUALIFICATION

A. The Motion To Disqualify Was Legally Sufficient

Of all the rights guaranteed by the due process clause, none is more fundamental than the right to an impartial judge. An impartial tribunal free from bias or prejudice is a fundamental requirement of the due process clause. *See In re Murchison,* 349 U.S. 133, 136-37, 75 S.Ct. 623, 99 L.Ed 942 (1955). Rules of law, no matter how perfect, mean nothing unless they are administered and applied by a fair tribunal. Indeed, the "legitimacy of the Judicial Branch ultimately depends on its reputation for impartiality and nonpartisanship." *Mistretta v. United States*, 488 U.S. 361, 407, 109 S.Ct. 647, 102 L.Ed.2d 714 (1989). The court apparently lost sight of

these principles when it repeatedly concealed evidence of jury misconduct that the court received either directly from the jurors themselves or by third parties at the same time that the court was considering and then denying Mr. Goodman's motion for extensive jury interviews. The court's concealment of material information about a matter pending before it has generated a well-founded fear that Mr. Goodman "will not receive a fair" hearing or sentence in this matter "on account of the prejudice of the judge...." Fla. Stat. § 38.10.

Florida Rule of Judicial Administration 2.330(f) provides that a judge faced with a disqualification motion "shall determine *only* the legal sufficiency of the motion and shall not pass on the truth of the facts alleged" and "[i]f the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action." (Emphasis added.)[9] Moreover, the rule

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[9] Rule 2330(f) provides:

> The judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. If any motion is legally insufficient, an order denying the motion shall immediately be entered. No other reason for denial shall be stated, and an order of denial shall not take issue with the motion.

(continued...)

expressly states that if the judge finds that the grounds are insufficient "[n]o other reason for denial shall be stated, and an order of denial shall not take issue with the motion."

Contrary to the circuit court, the motion was legally sufficient. Disqualification is required when the allegations made in disqualification, taken as true as required by Rule 2.330(f), "would create in a reasonably prudent person a well-founded fear of not receiving a fair and impartial trial." *Kates*, 881 So.2d at 75, *citing MacKenzie*, 565 So.2d at 1334. *Accord Livingston*, 441 So.2d at 1087; *Thompson*, 79 So.3d at 933-34; *Siegel*, 861 So.2d at 92. A party does not need to prove "actual prejudice." *Aberdeen Property Owners*, 8 So.3d at 472. The standard is objective, not subjective: "It is not a question of what the judge feels, but the feeling in the mind of the party seeking to disqualify and the basis for that feeling." *Id.* at 471. *See also Goines v. State*, 708 So.2d 656, 659 (Fla. 4th DCA 1998) ("[T]he facts underlying the well-grounded fear must be judged from the perspective of the moving party."), *disagreed with on other grounds by Thompson v. State*, 949 So.2d 1169 (Fla. 1st DCA 2007), *quashed*, 990 So.2d 482 (Fla. 2008).

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[9](...continued)
Florida Rule of Judicial Administration 2.330(d)(1) states: "A motion to disqualify shall show: (1) that the party fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge...."

The Florida rule parallels the rule governing federal judges in 28 U.S.C. § 455(a), in that it imposes a "reasonable man" or objective standard in determining whether a judge must disqualify himself. Therefore, a judge faced with a potential ground for disqualification ought to consider how his participation in a given case looks "to the average man on the street." *Potashnick v. Port City Const. Co.*, 609 F.2d 1101, 1111 (5th Cir. 1980). *Accord Moran v. Clarke* 296 F.3d 638, 648 (8th Cir. 2002); *Home Placement Serv., Inc. v. Providence Journal Co.*, 739 F.2d 671, 676 (1st Cir. 1984). *See also United States v. Alabama*, 828 F.2d 1532, 1540 (11th Cir. 1987), *cert. denied sub nom. Alabama State Univ. v. Auburn Univ.*, 487 U.S. 1210, 108 S.Ct. 2857, 101 L.Ed.2d 894 (1988).

The rule is thus concerned as much with appearances as with reality. Where it is reasonable for the public to believe that a judge is not impartial, a judge is deemed to possess a disabling conflict *whether or not* the public is correct. *See Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009) ("The Court asks not whether the judge is actually, subjectively biased, but whether the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias.") (internal quotation marks omitted); *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 860, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988) (whether § 455(a) is violated "does not depend upon whether or not the

judge actually knew of facts creating an appearance of impropriety, so long as the public might reasonably believe that he or she knew"); *Kielbania v. Jasberg*, 744 So. 2d 1027, 1028 (Fla. 4th DCA 1997) (holding that "even though there is no evidence of actual bias, we find that recusal is necessary to satisfy the appearance of justice"). Doubts must be resolved in favor of disqualification, since "[t]he very purpose of § 455(a) is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible." *United States v. Kelly*, 888 F.2d 732, 744-45 (11th Cir. 1989) (citations omitted).

Judges may properly form impressions and opinions about a case during the course of hearing the issues and the evidence *in the record.* However, "[w]hen the judge enters into the proceedings and becomes a participant, a shadow is cast upon judicial neutrality so that disqualification is required." *Asbury v. State*, 765 So.2d 965, 966 (Fla. 4th DCA 2000) (per curiam), quoting *Chastine v. Broome*, 629 So.2d 293, 295 (Fla. 4th DCA 1993). When "the court transforms itself into one of the litigants, it creates a well-founded fear that a party will not be dealt with in a fair and impartial manner." *Chillingworth*, 846 So.2d at 676.

A similar rule also applies in the federal system. Under 28 U.S.C. § 455(b)(1), a judge must disqualify himself where, among other things, he or she "has ... personal knowledge of disputed evidentiary facts concerning the proceeding."

Disqualification under this standard is required where a judge conducts an extrajudicial investigation of the facts. Such "[o]ff-the-record" investigations, of course, "leave no trace in the record." *In the Matter of: James R. Edgar*, 93 F.3d 256, 259 (7th Cir. 1996) (per curiam).

In *Edgar* the Seventh Circuit ordered a judge disqualified under § 455(b) for a number of extrajudicial meetings with appointed experts, including a letter he received from one of the experts. *Id.* at 261. Florida courts also routinely require disqualification when trial courts engage in *ex parte* communications. *See, e.g., Howell v. State*, 80 So.3d 441 (Fla. 4th DCA 2012) (reversing conviction and remanding for a new trial, holding that "the trial court erred by engaging in an ex-parte communication in which the trial judge indicated how he would rule on the State's motion in limine to preclude the defendant from claiming a mental health defense") (citation omitted); *Frengel v. Frengel*, 880 So.2d 763 (Fla. 2d DCA 2004) (per curiam) (requiring disqualification when judge assigned to child custody dispute gave her telephone number to the children, invited them to communicate with her and then failed to disclose emails with the children to the mother).

While there is no evidence that the court invited the communications it received from jurors and third parties concerning the jury, the court received multiple contacts – first from Ms. Delano, then from Mr. DeMartin and finally from Ms. May

– none of which the court disclosed on its own. Moreover, all three sets of communications either alleged or exhibited various forms of jury misconduct during the trial and all three sets of communications were made to the court during the time period in which Mr. Goodman was seeking to interview the jurors. By not disclosing these communications, the court allowed itself to be "transform[ed] ... into one of the litigants," thereby "creating a well-founded fear that a party will not be dealt with in a fair and impartial manner."

The court then compounded its error by denying Mr. Goodman's motion to conduct broad-based jury interviews, in part, by finding the motion was not sufficiently supported when, all along, the court had in its possession that very support – the letter from Ms. May. The appearance of impartiality was destroyed by the court's suppression of material evidence that supported Mr. Goodman's motion.

An analogous situation occurred in *United States v. Van Griffen*, 874 F.2d 634 (9th Cir. 1989). In that case, a magistrate (presiding at trial) came into possession *ex parte* of a police report concerning the case before him. He kept the report at the bench during trial, although he denied ever having looked at it prior to the trial. The Ninth Circuit found that this conduct was improper:

> If it was not good practice to receive the communication, it was equally not good practice to retain it. We have no assurance from the magistrate that he did not subsequently

> look at the communication. Certainly he might have been tempted to do so. The rule requiring disqualification when there is an appearance of partiality is a rule designed to remove the possibility of temptation. Tumey v. Ohio, 273 U.S. 510, 532 . . .(1927). It is not an imputation against the honesty of the magistrate to say that a reasonable person could doubt his impartiality when he kept with him at trial this *ex parte* communication. If a jury had received such an *ex parte* communication that had a reasonable possibility of affecting the verdict, its verdict would be tainted.... Here, the magistrate was the trier of fact and he did not dispose himself of a communication which he himself implicitly acknowledges he should not have had. A reasonable person could doubt his impartiality.

874 F.3d at 637.

The instant case is far more egregious than *Van Griffen*. There was no suggestion in *Van Griffen* that anything exculpatory or of evidentiary benefit to the defendant was contained in the concealed police report. Here, in sharp contrast, the court did not voluntarily disclose, *while Mr. Goodman's motion was pending*, that it had received material information that directly supported Mr. Goodman's allegations of jury misconduct. Worse, the court then denied the jury misconduct motion in substantial part based on criticisms about Mr. Goodman's insufficient factual showing – an alleged deficiency that the concealed evidence would have remedied. A reasonable person would certainly doubt the court's impartiality under these circumstances.

B. The Circuit Court Improperly "Took Issue With the Motion

As previously noted, under Rule 2330(f), a court is prohibited from determining anything other than the "legal sufficiency" of a disqualification motion and "shall not take issue with the motion." In the instant case, the court improperly used its Order Denying Defendant's Motion To Compel to do just that, essentially arguing in that order that no inference of bias should be drawn from the court's conduct because the court was not "personally aware as to what correspondence exists" because the court "does not review communications from jurors." *See* **Appendix, Tab 8**. Putting aside the startling notion that a court would not bother to review communications from jurors about misconduct in a recently completed trial prior to sentencing,[10] the court's attempt to excuse its conduct constitutes an independent basis to compel its disqualification.

As this Court held in *Frost v. Ward*, 622 So.2d 597, 598 (Fla. 4th DCA 1993), "[i]f a judge attempts to refute the factual assertions in a motion for disqualification, he or she is deemed to have taken an adversarial role in the matter, *which itself warrants disqualification*." (Emphasis added.) *See also Cave v. State*, 660 So. 2d 705, 708 (Fla. 1995) ("When a judge has looked beyond the mere legal sufficiency

[10] If Ms. Delano or Ms. May had written to the court that jurors had been bribed or physically threatened, under the court's reasoning, it would have done nothing as well.

of a suggestion of prejudice and attempted to refute the charges of partiality, he has then exceeded the proper scope of his inquiry and on that basis alone established grounds for his disqualification.") (citations omitted); *J&J Indus., Inc. v. Carpet Showcase of Tampa Bay, Inc.*, 723 So. 2d 281, 283 (Fla. 2d DCA 1998) ("Attempts to refute the charges of partiality exceed the scope of inquiry and alone establish grounds for disqualification.") (citations omitted). By attempting to refute the substantive basis for the disqualification motion by asserting a lack of "personal" knowledge, the court "did more than determine the legal sufficiency of the motion for disqualification, and thereby created the 'adversarial position' establishing grounds for him to grant the motion as a matter of law." *D.H. v. Department of Children and Families*, 12 So.3d 266, 271 (Fla. 1st DCA 2009). *See also Deakter v. Menendez*, 830 So.2d 124, 130 (Fla. 3d DCA 2002); *Martin v. State*, 804 So.2d 360, 364 (Fla. 4th DCA 2001).

In addition to the fact that the court's attempt to justify its conduct was, standing alone, improper, the substance of the court's attempted defense only compounded the appearance of bias. Even assuming that the court, in fact, *initially* lacked "personal" knowledge about the correspondence to the court, once Mr. Goodman pointed out that Mr. DeMartin's April 18th letter specifically referred to an earlier letter having been sent along with two chapters of his book, the court

apparently *refused to find out* what communications "existed" – holding that Mr. Goodman would have to file a Petition For a Writ of Mandamus and/or a time-consuming public records request in order to pry the documents loose from the court. Nor did the court explain why its alleged long-standing practice to notify the parties if jurors attempted to communicate with the court was not followed.

In any event, a court's lack of "personal" knowledge concerning the disqualifying facts is no excuse since disqualification standards are concerned, and rightly so, as much with appearances as with reality. Where it is reasonable for the public to believe that a judge is not impartial, a judge is deemed to possess a disabling conflict *whether or not* the public is correct. The United States Supreme Court so held in *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988).

In that case, Judge Robert Collins was the district court judge in a civil law suit between John Liljeberg and St. Jude Hospital of Kenner, Louisiana. Judge Collins ruled in favor of Liljeberg in the litigation. Later, it was discovered that Judge Collins had been a member of the Board of Trustees of Loyola University, while Liljeberg was negotiating to purchase a parcel of land on which to construct a hospital. "The success and benefit to Loyola of these negotiations turned, in large part, on Liljeberg prevailing in the litigation before Judge Collins." 486 U.S. at 850.

Hence, the Fifth Circuit and later the Supreme Court found that Judge Collins plainly had a duty under 28 U.S.C. § 455 to disclose Liljeberg's negotiations with Loyola to St. Jude in the litigation before him.

The issue in *Liljeberg*, however, was whether Judge Collins would be deemed to have this duty, and thus whether § 455 would be violated, even if Judge Collins did not know – or did not remember – that his position on Loyola's Board of Trustees had a connection to Liljeberg. The Fifth Circuit and later the Supreme Court concluded that Judge Collins' *actual* knowledge of the conflict at the time he issued the ruling in favor of Liljeberg was not determinative and that a new trial was required even if he did not have actual knowledge of his conflict until after the litigation was over. Indeed, the Fifth Circuit made a finding a fact that at the time the Liljeberg/St. Jude litigation was pending before him, Judge Collins did not remember – and "thus lacked actual knowledge during trial and prior to the filing of his opinion" in favor of Liljeberg – that he attended meetings of Loyola's Board of Trustees where Loyola's interest in St. Jude was discussed. *Id.* at 851-852. The Fifth Circuit nonetheless found that disqualification was violated, holding "that regardless of Judge Collins' actual knowledge, 'a reasonable observer would expect that Judge Collins would remember that Loyola had some dealings with Liljeberg and St. Jude and seek to ascertain the nature of these dealings.'" *Id.*

The Supreme Court affirmed the Fifth Circuit's rulings. Observing that "[s]cienter is not an element of a violation of § 455(a)," the Court concluded that "[t]he judge's lack of knowledge of a disqualifying circumstance may bear on the question of remedy, but it does not eliminate the risk that 'his impartiality might reasonably be questioned' by other persons." *Id.* at 860. Thus, whether disqualification is required "does not depend upon whether or not the judge actually knew of facts creating an appearance of impropriety, so long as the public might reasonably believe that he or she knew." *Id. Accord United States v. Kelly*, 888 F.2d 732, 744 (11th Cir. 1989) ("[n]either actual partiality, nor knowledge of the disqualifying circumstances on the part of the judge during the affected proceeding, are prerequisites to disqualification under this section") (citing *Liljeberg*). Since an objective review of the circumstances would have suggested to a reasonable person that Judge Collins knew of the conflict and failed to disclose it, Section 455(a) was deemed to have been violated, requiring a new trial.

Under *Liljeberg*, the court's ostrich defense is, in reality, no defense at all. The proverbial "man on the street" would reasonably question the court's impartiality. The court, or its chambers, (1) *had* a copy of Mr. DeMartin's letter of April 18th and (2) *freely provided* it to Mr. Goodman and his counsel based only on a telephone call. It is, therefore, reasonable to assume that the court also had Ms. May's letter (hand-

delivered to the court either that *same day* or the next), as well as Mr. DeMartin's earlier letter and book chapters. For the court to suddenly hold that it would take a Petition for a Writ of Mandamus to pry them loose from the court demonstrates that the court has lost all objectivity and is desperately trying to salvage Mr. Goodman's conviction at all cost.

II. A WRIT OF MANDAMUS SHOULD ISSUE TO REQUIRE THE CIRCUIT COURT TO DISCLOSE ALL COMMUNICATIONS WITH OR ABOUT THE JURORS

The circuit court has refused to turn over the communications unless directed to do so by a "higher court" through a Petition For a Writ of Mandamus. The Court should issue that writ.

Mandamus relief "'is used to compel an official to perform lawful duties'" and is "the appropriate means to seek copies of legal documentation" from court or other public officials. *See Rosado v. State*, 1 So.3d 1147, 1148, n. 1 (Fla. 4th DCA 2009) (per curiam) (citations omitted). *See also Florida Caucus of Black State Legislators, Inc. v. Crosby*, 977 So.2d 861 (Fla. 1st DCA 2004). A petitioner must establish "a clear legal right to performance of the act requested, an indisputable legal duty, and no adequate remedy at law." *Smith v. Sierra*, 696 So.2d 814, 815-16 (Fla. 2d DCA 1997) (citations omitted).

These standards are amply met here. Under the circuit court's reasoning, a court's "lawful duties" do not include any requirement to notify the parties when it receives communications from jurors or third parties reporting jury misconduct that occurred during a still ongoing criminal case. Nor, according to the court, is a motion to compel even the proper vehicle to address the court's conduct. As such, Mr. Goodman has no other remedy at law. The Court should issue the writ and direct it to both Judge Colbath and the Clerk of the Court.

CONCLUSION

For all of the forgoing reasons, the Court should grant the Petition and issue both a Writ of Prohibition, disqualify the Circuit Court, and a Writ of Mandamus, requiring the Circuit Court to disclose all communications with the jurors or from others, such as Ms. May, reporting possible jury misconduct.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 30, 2012, my office hand-delivered a true copy of the foregoing to:

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The Honorable Jeffrey Colbath
Circuit Court Judge
Fifteenth Judicial Circuit
205 North Dixie Highway
West Palm Beach, FL 33401

Charon R. Bock
Clerk and Comptroller
Palm Beach County
305 North Dixie Highway
West Palm Beach, FL 33401

By: _____
G. RICHARD STRAFER

AMENDED CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 30, 2012, my office hand-delivered a true copy of the foregoing to:

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By: 
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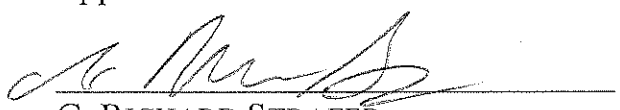
CERTIFICATE OF COMPLIANCE

Pursuant to Fla. R. App. P. 9.21(a)(2), I certify that this computer-generated brief is prepared in Times New Roman 14-point font and complies with the font requirement of Rule 9.210, Florida Rules of Appellate Procedure.



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