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TO:

Judge Debra Steinberg Nelson

407-665-4261

NAME

COMPANY/FIRM

FAX NUMBER

CITY

STATE

TELEPHONE NUMBER

TO:

Angela B. Corey and Bernardo

De La Rionda

904-630-2938

NAME

COMPANY/FIRM

FAX NUMBER

CITY

STATE

(TELEPHONE NUMBER)

TO:

Mark O'Mara

407-898-2468

NAME

COMPANY/FIRM

FAX NUMBER

CITY

STATE

(TELEPHONE NUMBER)

FROM:

Scott D. Ponce

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NAME

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MESSAGE:**RE: State vs. Zimmerman**

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May 30, 2013

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Via Fedex and Facsimile

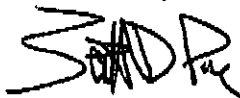
The Honorable Debra S. Nelson
Seminole Civil Courthouse
301 North Park Avenue
Sanford, Florida 32771

Re: State v. Zimmerman

Dear Judge Nelson:

Enclosed is our clients' brief. A hearing has been set for May 31, 2013 at 1:30 p.m. regarding the issue of photographing and recording jurors' faces in the courtroom. We do not think that the hearing is necessary because, as stated in the brief, our clients do not object to the entry of an order that applies the correct standard and is limited in time and scope, as required by the decisions cited in the brief. Please let me know if you determine that a hearing is necessary, and I will provide your assistant with a toll free telephone number that can be used for my telephonic appearance. Our brief also addresses the "anonymous jury" issue that you took under advisement. As always, please do not hesitate to contact me if you require any additional information or materials.

Sincerely,



Enclosure

cc: Bernardo de la Rionda (via facsimile and e-mail)
Mark O'Mara (via facsimile and e-mail)
Rachel Fugate (via e-mail)

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IN THE CIRCUIT COURT OF THE 18TH
JUDICIAL CIRCUIT IN AND FOR
SEMINOLE COUNTY, FLORIDA

CASE NO. 592012CF001083A

STATE OF FLORIDA

vs.

GEORGE ZIMMERMAN,

Defendant.

**MEDIA COMPANIES' BRIEF REGARDING
ELECTRONIC COVERAGE OF JURORS
AND IMPANELING AN ANONYMOUS JURY**

The McClatchy Company, publisher of *The Miami Herald* and *The Bradenton Herald*; Cable News Network, Inc.; Gannett Co., Inc., publisher of *USA TODAY*, *The News-Press*, *Pensacola News Journal*, *FLORIDA TODAY*, *The Tallahassee Democrat*, and owner of First Coast News and WTSP-TV; The New York Times Company, publisher of *The New York Times*; The E.W. Scripps Company, publisher of *Naples Daily News*, *Stuart News*, *Ft. Pierce Tribune*, and *Vero Beach Press Journal*, and owner of WPTV-TV and WFTS-TV; CBS News, a division of CBS Broadcasting Inc., and WFOR-TV, owned and operated by CBS Television Stations Inc.; The Associated Press; NBCUniversal Media LLC; Dow Jones & Company, Inc., publisher of *The Wall Street Journal*; Times Publishing Company, publisher of *The Tampa Bay Times*; and Florida Press Association (collectively, the "Media Companies") submit this brief regarding electronic coverage of jurors and impaneling an anonymous jury.

1. Electronic Coverage Of Jurors.

The Media Companies would not object to the entry of an Order restricting the photographing or recording of jurors' faces if such an Order is entered after application of the

correct standard, is properly limited to the court environs, and expires at the conclusion of the trial in this matter. *See Sarasota Herald-Tribune v. State*, 916 So.2d 904, 910-12 (Fla. 2d DCA 2005) (quashing as overbroad an order restricting photography of jurors).

With respect to the correct standard, Rule 2.450(a) of the Florida Rules of Judicial Administration permits "electronic media and still photography coverage of public judicial proceedings in the appellate and trial courts of this state" A court may prohibit the press and public from photographing or recording jurors' faces in court only upon a showing that such electronic coverage would "have a substantial effect upon the particular individual which would be qualitatively different from the effect on members of the public in general and such effect will be qualitatively different from coverage by other types of media." *See State v. Green*, 395 So.2d 532, 536 (Fla. 1981) (quoting *In re: Post-Newsweek Stations, Florida, Inc.*, 370 So.2d 764, 779 (Fla. 1979)); *see also Chavez v. State*, 832 So.2d 730, 758-59 (Fla. 2002); *Florida Times-Union v. State*, 747 So.2d 1030, 1031-32 (Fla. 1st DCA 1999); *WFTV, Inc. v. State*, 704 So.2d 188, 190-91 (Fla. 4th DCA 1998); *Sunbeam Television Corp. v. State*, 723 So.2d 275, 277-78, 280 (Fla. 3d DCA 1998) (adopting, on rehearing *en banc*, Judge Cope's dissent, and holding that the qualitatively different test may be applied to the jurors "as a group, without a juror-by-juror inquiry").

If the Court finds that this standard is satisfied, then the Media Companies will not object to the entry of a properly limited Order regarding the photographing or recording of jurors' faces in court.

2. Anonymous Juries.

Defendant has filed a Motion For Anonymous Jury (the "Motion"). It is not clear what, exactly, Defendant seeks through the Motion. Florida decisions suggest that withholding

potential and seated jurors' names is only appropriate "under certain unusual circumstances" and, at the very latest, only until jurors are discharged. *See, e.g., Times Publishing Co. v. State*, 632 So.2d 1072, 1074 (Fla. 4th DCA 1994). However, to the extent Defendant is asking that identifying information about jurors be permanently withheld, Florida law contains no support for that drastic relief and it should not be granted. Moreover, the federal law on which Defendant relies does not support that relief in the circumstances of this case.

There is a "presumptive First Amendment right of access to obtain the names of both trial jurors and prospective jurors prior to empanelment of the jury." *See United States v. Wecht*, 537 F.3d 222, 235 (3d Cir. 2008) (collecting decisions) (detailing the historical openness of juror identities). "[T]he empanelment of an anonymous jury is a drastic measure, one which should be undertaken only in limited and carefully delineated circumstances." *See United States v. Ross*, 33 F.3d 1507, 1519 (11th Cir. 1994). The factors most commonly considered in determining whether to infringe upon the First Amendment right of access to that information are:

(1) the defendant's involvement in organized crime, (2) the defendant's participation in a group with the capacity to harm jurors, (3) the defendant's past attempt to interfere with the judicial process, (4) the potential that, if convicted, the defendant will suffer a lengthy incarceration and substantial monetary penalties, and (5) extensive publicity that could enhance the possibility that jurors' names would become public and expose them to intimidation or harassment.

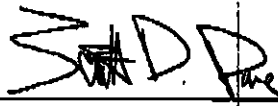
See id. at 1520.

Here, all that can be said is that Defendant faces incarceration if convicted and this is a "high profile" case. If that were all that were necessary to impanel an anonymous jury, then anonymous juries routinely would be impaneled in all high profile criminal trials, but, as is clear from the decisions Defendant cites, anonymous juries are rare and seldom seen. Additionally, Defendant has not come forward with any evidence establishing – or even suggesting – that

jurors will face intimidation or harassment if their names are released upon being impaneled or discharged, or who might attempt to intimidate or harass them. In fact, and has been previously noted by the Court, the passion that this case has stirred in the community has been expressed in peaceful, non-violent ways. There simply is no basis for an order permanently withholding juror names and information from the press and public.

Respectfully submitted,

HOLLAND & KNIGHT LLP
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By: 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via facsimile and e-mail on this 30th day of May 2013 on **Bernardo de la Rionda**, Office of the State Attorney, 4th Judicial Circuit, 220 East Bay Street, Jacksonville, Florida 32202; **Mark O'Mara**, 1416 East Concord Street, Orlando, Florida 32803; **Rachel E. Fugate**, Thomas & LoCicero PL, 400 N. Ashley Dr., Suite 1100, Tampa, Florida 33062.

By: 