## DISTRICT COURT OF APPEAL FIRST DISTRICT

CASE NO.: 1D13-5721

L.T. NO.: 16-20012-CF-011572-AX

MORRIS PUBLISHING GROUP, LLC d/b/a THE FLORIDA TIMES-UNION, MULTIMEDIA HOLDINGS CORPORATION and GANNETT RIVER STATES PUBLISHING CORPORATION d/b/a WTLV/WJXX First Coast News,

Petitioners,

v.

STATE OF FLORIDA and MICHAEL D. DUNN,

Respondents

## PETITIONERS' SUPPLEMENTAL APPENDIX

## **HOLLAND & KNIGHT, LLP**

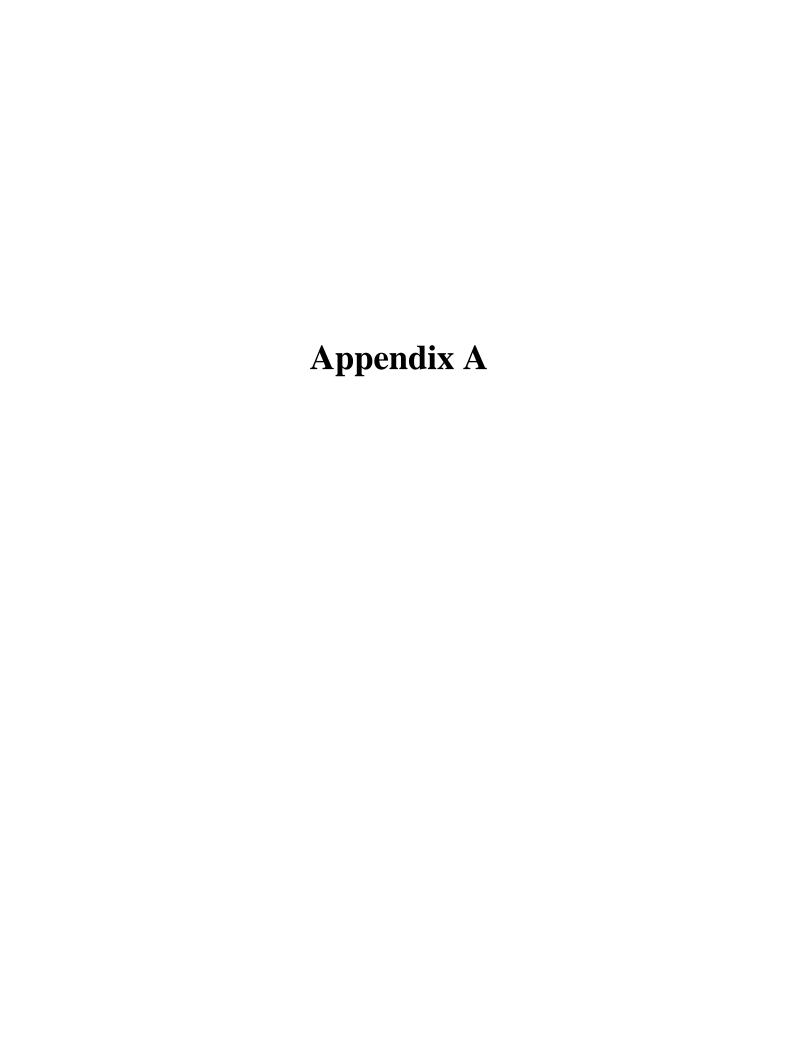
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A	Transcript of Proceedings before the Honorable Russell Healey in the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida, Case No. 2012-CF-11572-AXXX-MA.



1	IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, IN
2	AND FOR DUVAL COUNTY, FLORIDA.
3	Case No: 2012-CF-11572-AXXX-MA
4	Division CR-I
5	
6	STATE OF FLORIDA
7	vs-
8	MICHAEL DAVID DUNN,
9	Defendant,
10	
11	
12	PROCEEDINGS taken before the
13	Honorable Russell Healey, on November 7, 2013, and as
14	reported by Faye M. Gay, Certified Realtime Reporter,
15	Registered Merit Reporter, and Certified Legal Video
16	Specialist.
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24	OFFICIAL REPORTERS, INC. 201 E. Adams St.
25	Jacksonville Florida 32202 904-358-2090

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1 APPEARANCES:
2 ANGELA B. COREY, Esquire,
  State Attorney,
3 Appearing on behalf of the State of Florida.
5 JOHN GUY, ERIN WOLFSON and LISA DIFRANZA, Esquires,
6 Assistant State Attorneys,
  Appearing on behalf of the State of Florida.
8
9 COREY STROLLA, Esquire,
10 Appearing on behalf of the Defendant.
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- 1 THE COURT: All right. Where are we on our
  2 discovery depos?
  3 MR. GUY: Judge, we've got depositions this

-- well, today and tomorrow.

THE COURT: Good.

6 MR. GUY: So --

4

- MS. COREY: And then I'll update the spreadsheet and send it to you. I haven't updated it recently, but I'll get it soon.
- 10 MR. GUY: Plugging along in that vein.
- 11 THE COURT: Are we going to be able to set it
- 12 for trial today?
- MR. STROLLA: I think we talked about setting it previously.
- 15 MR. GUY: Blocked off some dates.
- MR. STROLLA: We've obviously had some
- witnesses fall off. I was hoping to have
- 18 everything down by the next time we're here. So
- as long as everything stays on track. We have
- seven of 11 for today and then two of five for
- 21 tomorrow. So there is some issues with getting
- 22 some witnesses in for whatever reason.
- THE COURT: Okay. Well, if that becomes a
- 24 problem, let me know. I'll get them in here.
- We're going to set it for February 3rd.

- 1 MR. GUY: Okay. The 3rd and the 10th?
- THE COURT: Well, the 3rd and as long as it's
- 3 going to take.
- 4 MR. GUY: Right. Right.
- 5 THE COURT: So we'll go to June if we have
- to. We'll do it in courtroom 406.
- 7 MR. GUY: Okay.
- 8 THE COURT: Which is one of two ceremonials.
- 9 It's the one I guess on the --
- MR. GUY: Westside.
- 11 THE COURT: -- westside of the building. For
- now I think we'll just keep trotting along in
- Courtroom 303. It doesn't seem to be a problem.
- The first the year we might be in 305 a little bit
- because I may just set this during my --
- 16 CLEANING PERSON: I'm sorry.
- 17 THE COURT: That's okay.
- 18 It's amazing court reporters don't have cards
- to get in those doors, but other people do.
- 20 Anyway, I may just start setting this during
- one of my felony weeks.
- 22 MR. GUY: Is that going to be your courtroom
- 23 now?
- THE COURT: Yeah, we're going to move to 305.
- Judge Norton's division. I guess she's in 505.

- 1 MR. GUY: Right.
- THE COURT: We are going to move to 305. One
- 3 week it's Cofer, one week it's me. There are some
- 4 weeks, though, where he can't do it for J-1,
- 5 traffic court reasons so I might be there three
- 6 weeks in a row. The same might happen with him.
- 7 But -- let me think. Let me see here. The first
- 8 week I'll be in there will be the week of January
- 9 13. Actually I'll be in there January 20th, I'll
- 10 be there January 27th. So it will be January will
- be in 305. But I'll be in there doing felony
- 12 stuff and some misdemeanor county court stuff.
- We've got the media this morning wanting to
- hear their motion to intervene. So I told them we
- 15 could do that.
- MR. GUY: Um-hum.
- 17 THE COURT: I don't know what position you
- 18 guys have on all that business. But we'll see
- 19 what they have to say.
- MS. COREY: All right, Judge. Just so you'll
- 21 know, I mean outside the courtroom I'm fighting
- this battle as publicly and as much as I can. I
- think it's very damaging to both the State and the
- 24 defendant's right to a fair trial to have the
- 25 media give so much exposure to a case. It's not

1	like it was when we started and the media came
2	into court for sometimes motion hearings, but
3	hardly ever, but then they would report this
4	witness said this, you know, they would report the
5	trial, and now it's all a race to see who can
6	THE COURT: Yeah.
7	MS. COREY: It's a race to see who can get
8	the most

Judge, have you met Lisa Difranza?

10 THE COURT: Yes.

MS. DIFRANZA: Yes.

MS. COREY: Lisa Difranza is our dedicated public records lawyer because it's become so voluminous. You know, we've dealt with it in other cases. So our position is to extent that we are allowed to control this, we are asking that you control it.

I think my mistake -- and I apologize for not being here last time, I was out of the office. Is when I send copies of the discovery response, anything we list on discovery, once we can find any --

It's called an exception or an exemption?

MS. DIFRANZA: Exemption.

MS. COREY: Anytime we can exempt it we

- exempt it, but all of it is being subject to being released to the media.
- THE COURT: Right. We'll talk about it when 3 we get down there. The problem I have is once you 4 5 do that, as I read some of these cases, it's technically public record and if they're faster --6 I mean theoretically if they're faster going down 7 there getting it than Mr. Strolla is, it's gone. 8 9 They'll be able to go through it faster than he 10 ever will, I suspect, because they've got more
- MS. COREY: Lisa will do a full review

  process before, so Mr. Strolla gets it way before

  they do. She has to review everything and redact.

done. No pun intended there.

people, more outlets. Once it's out there it's

- THE COURT: He's getting it way before you list it as discovery?
- MR. STROLLA: No.

11

12

19 MS. COREY: No, sir. Well, he's got it all
20 in paper form, I mean police reports and all that.
21 When I finalize it on those spreadsheets I'm
22 sending, you get the spreadsheets, we all get the
23 spreadsheets so he knows there's X number of phone
24 calls, and at the time we give him that we turn
25 the disk over to him.

- 1 THE COURT: Right. But what I'm saying, he 2 hasn't listened to them.
- MS. COREY: He hasn't had time to listen to them.
- 5 THE COURT: Right. They get the disk at the 6 same time. They've got a thousand outlets.
- 7 They're listening to all this stuff. He can't
- 8 listen to 180 hours worth of taped conversations.
- 9 What you might think is exempt or you might think 10 is objectionable is one thing.
- MS. COREY: Yes, sir.

22

23

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- 12 THE COURT: He might think something else is 13 objectionable, and quite frankly, in my opinion, what you might think is okay to go out and what he 14 might think is okay to go out I might think is not 15 okay, quite frankly. I mean there's a lot of 16 17 reasons why people might say let it go. And I get 18 that. But they would be reasons, and if I were in 19 your shoes, I might do the same thing, but I'm not 20 in your shoes, I'm in my own shoes, and I'm saying 21 from the Court's perspective it might not be okay.
  - MS. COREY: Judge, I wish we could not do any of it. So to the extent that we can support that position, I mean I won't speak for Mr. Strolla, but the State is fine with legally protecting

- anything the law allows us to legally protect.
- 2 And the reason we brought Lisa today is to furnish
- 3 any answers to questions about public records.
- THE COURT: In case something comes up?
- 5 MS. COREY: Yes, sir.
- 6 MR. STROLLA: And clearly the defense hasn't
- filed any objections to your prior order so I
- think you know where we stand as well.
- 9 THE COURT: Right. One thing I think they
- 10 may argue a little bit about is I stuck my nose in
- 11 before anybody else did. You didn't file an
- objection to anything, but I kind of did. But I'm
- not worried about that. I feel good about being
- on solid ground being able to do that.
- Buffy is here from the Clerk's Office because
- I think they were asking to see document 51, which
- was your motion to declare some things
- 18 confidential or whatever. I've forgotten how you
- 19 termed it.
- MR. STROLLA: Okay.
- 21 THE COURT: She may know. But it's -- I
- don't know the word you use. It's blocked. If
- you try and look at it through CORE as a lawyer,
- you're not going to see it. What do you call
- 25 that?

- 1 THE CLERK: Well, we secure the document.
- 2 And the only question that we have is now that the
- 3 Florida Times-Union and their attorney are
- 4 questioning it, we just wanted to make sure that
- 5 our response was in line with what would be proper
- for the case.
- 7 THE COURT: They just want to see the motion.
- 8 THE CLERK: Correct. And we have it secured
- 9 so we told them it's not available and they wanted
- to know the reason why.
- 11 THE COURT: They called my office yesterday
- and I told them we would deal with it in the
- 13 courtroom. Frankly I don't know why they can't
- see the motion and see the order. I'm not sure
- they haven't seen it.
- MR. STROLLA: I'm not sure which motion.
- 17 THE COURT: It's the one that blocks the
- 18 witnesses' names and addresses and things like
- 19 that.
- 20 MR. STROLLA: And I think that was a
- 21 carryover from -- that was a carryover from Judge
- 22 Bass.
- THE COURT: Yeah.
- MR. STROLLA: I wanted to make sure. Right,
- because there's also other witnesses I plan on

- filing as well and part of what I told those
- 2 witnesses are your name and address will be
- 3 protected until we go to court because there's an
- 4 order.
- 5 THE COURT: No, no, no.
- 6 MR. STROLLA: Okay. I wasn't sure if there
  7 was a separate motion. Okay.
- 8 THE COURT: No, you filed this motion eons
- 9 ago. There was an order that Judge Bass entered
- that had a time frame on it. I extended that
- order. So that's what we're talking about. All
- they've asked for is the motion.
- 13 THE CLERK: All they've asked for is the
- motion, but there's a couple of other things that,
- 15 you know, based on what you said earlier that
- 16 you've said that you don't want out there that we
- have protected that information. So whatever
- response we give, we just want to make sure it's
- 19 in line with, you know, doing what's best for the
- case.
- 21 THE COURT: Okay.
- THE CLERK: So our media outlet person, I
- told her that we'd be communicating with you
- before we gave them a formal response.
- MS. COREY: And, Judge, the most recent issue

- we had in the Tadros case, which is a very
- 2 high-profile case as well, is that lawyers have
- 3 different -- lawyers in general, I'm assuming,
- 4 have different access than a reporter could.
- 5 THE COURT: Right.
- 6 MS. COREY: And, you know, we argued the
- 7 issue that it's not fair for somebody to use their
- 8 status as a member of the court -- what do you
- 9 call it? Officer of the court to be able to
- 10 access these documents --
- 11 THE COURT: And disseminate.
- MS. COREY: And turn them over to their
- clients that pay them to represent them. So I
- don't know if that's going to become an issue in
- this case, but we've already argued that and Judge
- Soud has ruled on that in case you want to get a
- 17 copy of his ruling on that issue.
- 18 THE COURT: Yeah, I remember seeing something
- 19 like that. And the clerk has brought it to my
- 20 attention that that is a glitch. And a lot of
- this is so new I guess it's kind of a learn as you
- 22 go, unfortunately, and probably nobody anticipated
- that a member of the Bar would be able to see it,
- but then would turn it over to a media outlet,
- 25 which would not on their own be able to see it.

- 1 MS. COREY: Yes, sir.
- 2 THE COURT: So I trust that --
- 3 MR. STROLLA: It wouldn't be too far of a 4 stretch in this case, based on previous officers 5 of the court doing things, releasing it in the
- 6 media.
- 7 THE COURT: The good thing is after our 8 hearing the last time, I noticed that from what I 9 saw, everybody said no comment. That would be 10 you, you, Mr. Phillips, everybody said no comment. 11 So that was good. I'd just like everybody to go 12 do their work, be quiet and we'll all have a nice time when we get here on the 3rd to try the case 13 14 and then they could put whatever they want out 15 there.
- THE CLERK: And also to make you aware that

  he's in this case now the attorney that you're

  talking about, correct?
- MS. COREY: He represents Channel 4.
- THE COURT: Ed Burke. Yeah, I know him.
- 21 He's a good guy. I suspect there was no
- deliberate there of that. But I mean -- anyway, I
- don't need to comment on it.
- Okay. What else we need to talk about?
- 25 Anything? I don't know how long they're going to

- 1 take. I haven't spoken to -- they've called the
- office and I suspect said get with everybody, if
- it's okay with everybody, we'll hear it today. If
- 4 not we'll just set aside time. Everybody said it
- 5 was okay to do it
- 6 MS. COREY: What time is our first depo?
- 7 MR. STROLLA: 10.
- 8 MR. GUY: 10.
- 9 MR. STROLLA: But they're inmates. They're
- 10 not going anywhere.
- 11 THE COURT: Well, that's optimistic. I don't
- think they're going to be done -- I don't know.
- I've never seen this show, but I don't think
- they're going to be done by 10:00.
- MR. STROLLA: I don't think there's going to
- be much argument by the State or defense, Judge.
- MS. COREY: If we handle Cory's --
- Mr. Strolla's part first and it's just us staying
- 19 to monitor what's going on with the media. We can
- stay and they can go start the depo.
- 21 THE COURT: I think he might want to be
- there.
- 23 MR. STROLLA: Yes. Especially if Your Honor
- is going to make a ruling today.
- MS. COREY: Okay. Guess what? The good

thing about the inmate depos --1 2 THE COURT: He's not going anywhere? MS. COREY: Right. He'll be at our office 3 and he's not going anywhere. 4 Judge, are you bringing in extra jurors? You 5 mentioned that last pretrial? Have you ordered a 6 7 special amount of jurors? 8 THE COURT: Yeah, I'm talking to the clerk about it. We'll have a larger number. 9 10 And I think I asked you, Mr. Guy, do you remember, maybe you'd know, Ms. Corey, how many 11 jurors were kind of segregated out for, like 12 Trayvon Martin case? I mean did they start with a 13 hundred? 14 15 MR. GUY: We had 500. THE COURT: Dedicated to that case? 16 17 MR. GUY: Dedicated to that case. But I 18 don't think we ever got past 250. We got the 19 jurors really within that number. It was nearly 20 as troublesome as we thought it was going to be. 21 MS. COREY: They don't pick juries the way we 22 do, Judge. We much prefer our method up here. THE COURT: Okay. I mean I don't know how 23 many we normally have come down. It's in the 400

range. I'm sure they're going to beef that number

24

- 1 up. We never need the 400.
- 2 MR. GUY: Right.
- 3 THE COURT: So even if they went to five or six, and that's the other thing, we'll ultimately 4 5 need to talk about. I don't know how many I could 6 put in that courtroom at a time. I'm thinking a hundred max and it might not be a hundred that I 7 can get in there at a time. Of course, they'll be 8 some individual voir dire obviously, but once 9 10 again we get talking -- if we do talk to folks as 11 a group, I don't think I can get more than a hundred people in there at a time. I'm not sure I 12 13 want to do it that way anyway. That's a lot of
- MS. COREY: I think we --

people to talk to.

- THE COURT: We might have to go through some stages.
- MS. COREY: We probably will, Judge, but
  we'll have to in a sense expedite it with us
  already having decided not to seek the death
  penalty. We're going to ask you to make that
  announcement at the beginning, don't you think,
  John?
- 24 THE COURT: Right.
- MS. COREY: Just that the death penalty is

- not an issue here. That knocks out a lot of the
  questions and publicity -- individual voir dire on
  the publicity would be important. We do have a
  method of reviewing jurors' criminal records and
  since Mr. Strolla does not have access to the law
  enforcement database we will provide what we get,
  but it's on a disk. We do not print it out,
- 9 MR. STROLLA: What software do you use to open it? Don't say it just --
- 11 MS. COREY: It's a PDF.

Mr. Strolla.

- MR. STROLLA: That's fine. If it's a PDF
  we're okay. As long as it's not proprietary
  software.
- MS. COREY: It's not proprietary and we'll furnish that to him. When is the earliest we can furnish it?
- 18 THE COURT: The other thing I thought of and 19 it's just a thought. When I did a three-week 20 tobacco trial we -- I say we. It had already been 21 kind of something that was designed before I came 22 along to try the case. They actually had a 23 written questionnaire that they gave the jurors, 24 kind of tailored to these tobacco kind of issues, 25 you know, to kind of get a feel for how

opinionated people were one way or the other about tobacco. I'm throwing it out for you to think about, not that we're going to decide anything today. Maybe we could have a questionnaire that we would give the folks early on relative to publicity, quite frankly, because other than that there's not an issue once we tell them there's no death penalty, that I see. Although I suppose --we'll see how it goes. Maybe you might have to throw in a little stand your ground stuff since it's a hot topic, but we'll see.

Anyway, some kind of a written questionnaire, you give it to them, have them fill it out. It was amazing how they got that back and everybody kind of went through it and, quite frankly, the lawyers in that case then got together and just said out, out, we agree. These out, out, out. We're not going any further with these people. And then you got another pile, okay, these people are still in the game and then you start talking to them. Maybe it could work, maybe it won't work. I don't know. Just think about it.

MR. GUY: That's what we did in Zimmerman.

That's exactly what we did. And it helped us

filter out a lot of people that we would be

- wasting our time questioning.
- 2 MR. STROLLA: And also taint the jury.
- MR. GUY: Yeah, that.

4 THE COURT: We're not going to have that

5 because I suspect we're going to do all that

6 individually. I'm not going to have people out

7 there as Judge Washington said we're going to

8 taint the whole panel. We're not going to have

9 that. But it might pare things down, then you

10 might get -- maybe you get down to a group, you

11 know, maybe you give that questionnaire to 200

12 people and I can't imagine you'd knock out a

hundred of them, but let's just pretend you

knocked out a hundred of them, at least you've got

a hundred people that you think are pretty good

that are going to -- you might not ultimately

17 like, but publicity is not going to be, hopefully,

the issue. And out of that are maybe we're going

19 to get where we want to go.

20 MR. STROLLA: It will definitely expedite the

21 process for sure.

22 THE COURT: Start thinking about it and

23 maybe, you know, seeing how we could come up with

some questions that we could put on there that

would be relatively quick for them to look at,

- answer and get -- and get back and the way they

  did it, of course, tobacco, obviously the defense

  had lawyers coming out of their ears. Even the

  plaintiff had a staff. And so they were going

  through this stuff pretty quickly. It's going to

  be a little bit more difficult for you if you're

  by yourself. But, anyway. Think about that.
- 8 MR. GUY: Absolutely.
- 9 THE COURT: All right. So I'll see you all down there.
- 11 Yes.

19

20

- 12 THE CLERK: This is Charles Broward

  13 (phonetically) and that will be the individual

  14 that will be releasing the information on behalf

  15 of the Clerk's Office as far as what goes on with

  16 the ruling. And that's really some documents.

  17 He'll be making the official statement to the

  18 Florida Times-Union or whoever.
  - THE COURT: Okay. Let me back up. That reminds me. The only thing that I know that's kind of hanging out there are these phone calls.
- MS. COREY: Yes, sir.
- 23 THE COURT: And I see that there had already
  24 been some correspondence back and forth between
  25 you guys and the media, but it was money that was

- 1 holding them up, it looked like to me, because
- 2 it's expensive.
- 3 MS. COREY: Yes, sir.
- 4 MS. DIFRANZA: That's correct, Your Honor.
- 5 THE COURT: So have you all gone through all
- 6 180 hours of these calls?
- 7 MS. DIFRANZA: No, we haven't --
- MS. COREY: She hasn't. We have.
- 9 MS. DIFRANZA: Sorry.
- MS. COREY: You mean for public records?
- 11 THE COURT: Actually both. So you have for
- 12 discovery purposes --
- MS. COREY: Yes, sir.
- THE COURT: -- you've listened to them all?
- MS. COREY: Well --
- THE COURT: Your people.
- MS. COREY: My intern has listened to all of
- them and given me a briefing on them.
- 19 THE COURT: A synopsis of what's on these
- 20 calls?
- MS. COREY: Yes, sir.
- THE COURT: And you haven't heard any of
- 23 them?
- MR. STROLLA: I've started to listen to some
- of them, but that was when we talked about about

- 1 two months ago that it was going to take days and
- then Ms. Corey said they were going to narrow it
- down for trial purpose.
- 4 THE COURT: To try and point you in the right
- 5 direction?
- 6 MR. STROLLA: Right.
- 7 THE COURT: But you guys have not started
- 8 looking at it in terms of --
- 9 MS. COREY: Redaction, correct.
- 10 THE COURT: Okay. And that's where all that
- 11 money and time came in.
- MS. COREY: Yes, Your Honor, it's six and a
- half weeks, 40 hours a week straight work.
- MS. COREY: And they have to pay for that in
- 15 advance of us doing it so unless and until the
- 16 media pays for that I'm not going to dedicate a
- lawyer to listen to that because we don't just
- 18 turn them all over. They have to be redacted.
- The letters were --
- Lisa, have you already reviewed the letters?
- 21 MS. DIFRANZA: We reviewed and redacted
- 22 extensively.
- MS. COREY: Those were easy, fairly easy to
- do, but the calls would not be.
- 25 THE COURT: Did you get a version of the

1 redacted letter?

MR. STROLLA: No, we got the letters, we got the supplemental discovery with the letters and then I don't believe -- I haven't even seen what was released to the media because I didn't go on Mr. Phillips' Twitter page and Facebook page to see what he posted. He just knew they were But I knew what the letters contained. posted. When all of a sudden this thing came out, the letters were in the media, I knew what was in those letters.

THE COURT: Okay. Well, I'm just -- I just wonder if they're going to try and make an argument that these things are public record already because he's got them.

MS. COREY: No, they do make that argument, Judge, but what we do is we follow the public records law to a T and we are allowed to say we're not turning this over until we've spent the time to properly redact. That's the one thing that public records law protects us on, is not turning over anything that basically would involve any admissions of his client. There's a few other things.

25 THE COURT: Right.

1	MS. COREY: But admissions is the biggest
2	thing because it's phone calls and letters written
3	by the defendant.

THE COURT: In reading some of these cases, the other thing that pops to my attention is any comments that there may be about victims or witnesses. There's some cases that talk about that and not putting comments out there that would call their character into question or disparage them or something like that. I've forgotten the exact language of the case. I don't know if any of that is in there or not. So, you know, it's wider than I guess just him saying some things that could be considered to be him saying a confession, of sorts.

MR. STROLLA: And I think to be candid, I believe Mr. Phillips specifically went out of his way to try to use one of the letters to his fiancee that was released and published to try to then make accusations that Mr. Dunn was lying to witnesses, trying to coerce witnesses to change their story. So those leaps of faith, unfortunately, are being taken by certain people anyway.

THE COURT: Well, I mean what happened --

that's the problem. What people -- the spin they

put on it themselves after it's out there, there's

nothing really you can do to control that too

much, maybe, unless they're a member of the Bar

and even though I don't know yet. But I'm looking

into that.

Anyway, I'm just trying to figure out how I can be involved in this, assuming they say they want you to do this, how I get involved in it, because, you know, again, the way I see this is let's say you do it, I'm thinking he's going to want to look at it before they get it to object or not. I want to look at it before they get it to maybe say I have a problem with it, even though you all don't, and I don't know how that's going to work.

MS. COREY: Judge, it would take you forever. I mean that's why this law needs to be changed. It would stop our process of trying to get a clean case to trial with all due process rights given. It would stop us for the next two or three months to litigate the issue or to have you be able to review this. It's voluminous. I mean there are — how many calls are there total listed on the last discovery response?

- 1 MR. STROLLA: Six, seven.
- MS. COREY: What?
- MR. STROLLA: I believe it was over 600.
- 4 MS. COREY: I believe it was over 700. It
- 5 was 725 calls and that was only as the date I
- finished that discovery response.
- 7 THE COURT: Right.
- 8 MS. COREY: I haven't even started on the
- 9 next batch and that's why, I know we're on the
- 10 record, but we, quite frankly, sent maybe not so
- 11 many calls or just talk about the weather or
- 12 something. We don't want to deal with this, but
- 13 we have to.
- 14 THE COURT: Right. Yeah.
- 15 MS. COREY: So, Judge, the only thing I can
- think we can do is I can have Lisa give you a
- summary, give you a one-page procedural sheet that
- she'll furnish to Mr. Strolla, too, this is how we
- 19 do it and these are the laws that apply to the
- process and we're not backing down.
- And here's the other thing, because we've had
- 22 to deal with this before. They can't go get it from
- the Sheriff's Office because technically they're the
- custodian of that record, but the Sheriff will not
- 25 release those to the media because obviously they

- 1 would have already tried that and just paid for just
- 2 the disk
- 3 THE COURT: Right.
- 4 MS. COREY: Without the redaction time, but
- 5 they can't do it that way. Thank God.
- THE COURT: Yeah. That's good to know.
- 7 MR. STROLLA: And, Judge --
- 8 THE COURT: Maybe the way -- I know -- I'm
- 9 just trying to think if we go that route.
- 10 MS. COREY: Yes, sir.
- 11 THE COURT: Maybe somebody could give me a
- summary -- maybe I can see the summary -- he
- doesn't need to see it necessarily. But the
- summary from your office as to what your people
- think they found on there to begin with and then
- 16 whatever she finds in addition. I'm not worried
- about what you all think ought to be redacted.
- I'm worried about what you think might not need to
- be redacted that I think might need to be. That's
- why I need to see the summary.
- 21 MS. COREY: It's our work product. We worked
- hard, but I'm happy to furnish that to you in
- camera if you would like.
- 24 THE COURT: That's probably what I need to do
- to start looking at it to see, you're right, he

- 1 was talking about the weather 90 percent of the
- 2 time so who cares.
- MS. COREY: I'll go ahead and get that to you
- 4 then.
- 5 THE COURT: Yeah, just sealed. That'll come
- in paper form or on a disk?
- 7 MS. COREY: No, sir, it's on a thumb drive.
- 8 It's on a thumb drive.
- 9 THE COURT: Okay. We have techie people that
- 10 will help me with that.
- MS. DIFRANZA: The statute is 119.011,
- 12 subsection 3 where it talks -- subsection 5 where
- it talks about the defamation or the potential
- 14 statements to --
- 15 THE COURT: Witness, right. That's what I
- thought.
- MS. DIFRANZA: Right. It does say pursuant
- to court order. It doesn't say upon motion of any
- 19 party. It says upon court order, the Court may
- 20 order information confidential.
- THE COURT: Well, that's what I say. I don't
- 22 know. I haven't seen it. I haven't really read
- 23 those letters. There might be things in there
- somebody might consider to be defamatory about a
- 25 witness or a victim.

- 1 MS. COREY: Yes, sir.
- THE COURT: And, you know, so all right.
- MR. STROLLA: Judge -- sorry, Judge. The
- 4 only other thing and I talked to the State,
- 5 Mr. Guy about today, I contacted the Sheriff's
- Office to obviously try to review discovery.
- 7 There's DVDs and statements. I can't bring any
- 8 electronics into the jail and I called to see if
- 9 they have some type of room I could bring my
- 10 client to to watch it. They didn't respond. So
- 11 what I was going to ask the Court is for an order
- allowing me to bring in either a DVD player or a
- laptop, something where I could go over the
- 14 evidence with my client.
- MR. GUY: I know the PDs are able to do it.
- 16 I don't know how they do it. But they routinely
- take DVDs over and publish them to their clients.
- THE COURT: When you guys go out, ask them
- 19 how they think they're doing it?
- MS. COREY: Yes, sir.
- 21 THE COURT: How they're able to do it so
- 22 maybe you'll have an answer for me.
- MR. GUY: Yes, sir.
- 24 THE COURT: I hate telling the Sheriff what
- to do, but you're right, you need something over

- there that you can play these things for him. I
- 2 can't imagine they don't allow you to take a
- 3 laptop in there.
- 4 MR. STROLLA: I can't even bring my I-Pad or
- 5 my phone. I have to lock it up. Nothing.
- 6 THE COURT: That's at the jail?
- 7 MR. STROLLA: Yeah. Yeah.
- 8 THE COURT: If you run into somebody, ask
- 9 them. We'll try and solve that this morning, too.
- I'll see you down there.
- 11 (The following proceedings were had in
- 12 courtroom 303:)
- THE COURT: Good morning.
- MS. COREY: Good morning, Your Honor.
- THE COURT: Need to get this computer going
- here.
- I believe Mr. Strolla is talking to Mr. Dunn.
- 18 So as soon as they're finished we'll have them come
- out and we'll be ready to begin.
- MR. STROLLA: My apologies, Judge.
- THE COURT: That's all right. I know you
- 22 need time to talk to them.
- Do you want to bring Mr. Dunn on out then?
- BAILIFF: Yes, sir.
- 25 (Defendant present.)

- 1 THE COURT: All right. Good morning.
- We're here on the case of Michael Dunn, case
- 3 No. 2012-CF-11572.
- 4 There are a variety of things to handle this
- 5 morning.
- First, Mr. Strolla, how you are we coming on
- 7 the discovery deposition?
- 8 MR. STROLLA: Fairly well, Judge. Obviously
- 9 with every case we were trying to get about 11
- 10 today. We think we've got seven and then tomorrow
- out of the five we've got about two. I know the
- 12 State is still looking into contacting some of the
- local witnesses hopefully to try to get them in
- 14 tomorrow. I know I do have another round of
- depositions set up for not only today and
- 16 tomorrow, but the 21st and the 22nd of this month.
- So I'm extremely optimistic that we can get all of
- the witnesses that we don't get now that the State
- is working on getting here in the next couple of
- weeks.
- THE COURT: Okay. So are we ready to go
- 22 ahead and set and announce a trial date for this
- 23 case?
- 24 MR. GUY: Yes, sir. I think we are.
- THE COURT: Mr. Strolla?

- 1 MR. STROLLA: Yes, Your Honor.
- THE COURT: All right. And we talked about a
- 3 variety of dates in January or February. And for
- 4 several reasons that don't really matter to a lot
- of folks, what I'm going to do is I'm going to set
- 6 this case for trial to commence on February the
- 7 3rd and we will try the case, I believe, at least
- 8 at this point, in courtroom 306, which is one of
- 9 the larger courtrooms in the courthouse. So
- that's probably all we need to know about that.
- MR. GUY: Judge, I believe it's 406.
- 12 THE COURT: It is. Did I say 3?
- MR. GUY: You did.
- 14 THE COURT: Thank you. It's 406. So we're
- 15 good there.
- So I guess then the only other thing really,
- 17 unless you guys have something else to talk about,
- would be to move on to Morris Publishing and I think
- one of the other media outlets' motion to intervene
- 20 and to vacate a restrictive order that I entered and
- for continued access to public records.
- So Mr. Strolla, before we get to that, anything
- else from your point of view?
- MR. STROLLA: Judge, the only thing that I'd
- 25 mention is that I've contacted the jail.

- Obviously there's some DVDs with my client's
- 2 statements, the other witnesses statements. The
- jail won't let me bring any electronic devices in.
- I've reached out to the jail. I just haven't had
- 5 word back yet. What I'm going to try to do is I'm
- 6 going to try to resolve that issue this time when
- 7 I'm up here so in two weeks that I can have that
- 8 evidence ready. So I may be submitting an order
- 9 to Your Honor. If I don't need to involve Your
- 10 Honor, I will not.
- 11 THE COURT: Okay.
- MR. STROLLA: I think the State will help me
- resolve that issue with the jail so I can bring
- 14 that evidence and review it to my client.
- THE COURT: Are you able to talk to anybody?
- 16 MS. COREY: Ms. Wolfson went to find out
- about it so she could report it to you and
- 18 Mr. Strolla.
- 19 THE COURT: Here she is. Maybe she knows.
- 20 MS. WOLFSON: Good morning, Your Honor.
- THE COURT: Good morning.
- MS. WOLFSON: I actually texted with a Public
- Defender and she advised she's just able to take a
- laptop to the jail so I'm not sure if it's a
- 25 standing order or not, but that's what I found out

- 1 from her.
- THE COURT: Well, it would seem to me they
- 3 would allow a laptop in there so that you could
- 4 show certain things to your client. If that
- 5 becomes a problem, just let me know and I'll enter
- an order.
- 7 MR. STROLLA: I was going to ask is it
- 8 acceptable to the Court for an ex-parte order as
- 9 long as I talk to the State? I'm sure they're not
- going to object. Just submit that to Your Honor.
- 11 THE COURT: Would there be any objection to
- him just submitting one to me ex parte?
- MS. COREY: No, sir, none at all.
- 14 THE COURT: Hopefully that won't be a
- problem, but you might just mention your
- 16 understanding is that at least the Public
- Defender's Office is doing it so you should be
- 18 allowed to do it, too.
- MR. STROLLA: Correct. Thank you, Your
- Honor.
- 21 THE COURT: Okay. All right then. I guess
- 22 then we can move on to the motion to intervene.
- Looks like Mr. Gable is here.
- Good morning.
- 25 MR. GABLE: How are you? Good morning.

- 1 THE COURT: Good, thank you.
- 2 MR. GABLE: I'm George Gable. I represent
- 3 Morris Communications and First Coast News,
- 4 Times-Union and First Coast News.
- 5 THE COURT: Yes, sir.
- 6 MR. GABLE: I have some cases I was going to
- 7 give everybody.
- 8 THE COURT: While we're doing that, are we
- 9 minus Mr. Burke? Are you going to be handling it
- for everybody?
- 11 MR. GABLE: Crystal is here.
- MS. BREYHAN: Your Honor, I'm Crystal Breyhan
- 13 (phonetically) on behalf of Post Newsweek.
- 14 THE COURT: All right. Do you both want to
- be heard or are you going to kind of defer to
- Mr. Gable and see where we are or how is that
- 17 going to work?
- 18 MS. BREYHAN: At this time we're deferring to
- Mr. Gable. I think he's more than capable.
- THE COURT: I agree with you.
- 21 Go right ahead, Mr. Gable.
- 22 MR. GABLE: Thank you, Your Honor. We have
- 23 -- we're here about the order that Your Honor
- 24 entered on October 24th, restrictive order. I
- 25 guess the best way to say it is we have four

- 1 issues with your order.
- 2 THE COURT: Okay.

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MR. GABLE: The first one deals with the substance itself. In paragraph 4 of the order you -- the Court says in the instant case and based on the above law this Court finds that the future release of any materials such as jail letters, videos, audio recordings, photographs and witness statements would gravely risk defendant's right to a fair trial and could easily taint the jury pool.

I've given you a couple of cases and also furnished cases to counsel talking about the substance of this kind of restrictive order. The first one is Morris Communications Company versus State of Florida and Stephen Lee Edmonds. It's 844 So. 2d 671. This is a case Your Honor may remember.

THE COURT: As a matter of fact, I do.

MR. GABLE: The man was a deacon in the First Baptist Church and was accused of molesting some young men. And if you'll look at page 2 of the appellate decision from the First District, the trial court had granted Mr. Edmonds' motion for protective enclosure order and it listed some of the documents. One was a search warrant which is

1	not an issue here. Secondly was numerous
2	printouts of instant messages which could be
3	similar to the kind of thing that you're dealing
4	with here and the recorded telephone conversation
5	and basically the Court said the trial court
6	had ruled that these items are so graphic,
7	shocking, damning and distressing, as to page 3,
8	so as to cause grave concern that the defendant
9	will have any chance for receiving a fair trial.
10	And the Court said that is not enough to show it
11	would be a serious and imminent threat to
12	administration of justice and directed the trial
13	court to provide petitioners access to the
14	discovery documents.

I have another one similar to that. There are others as well, but this one is Florida Publishing versus Shorstein. Actually I don't know -- I don't have the Southern Second cite for it. But it's 20 Media Law Reporter 2102. This -- I've attached also as an appendix is attached the trial court's decision.

But if you'll look at the trial court's decision on the third page down, there are various items that the trial court listed, one of which was the saturation of the northeast Florida market with

stories about the case and distressing and
judicially disruptive practice of publishing
articles just before jury selection. And here we
even had confessions. Of course, that confession
as you saw from our motion, have now been excluded
under the public records law.

So I guess my first point is that substantively it's difficult to find almost anything, especially in a county the size of Duval County, that would warrant a protective order because of the fact that jurors are drawn, they don't read the newspaper anymore, and if they did they've forgotten what it was about.

THE COURT: Yeah, that was an interesting comment that you cited in your memorandum of law. And you cited a case where a court found that. That struck me as a little unusual. I'm wondering how that court determined that people don't read newspapers. And that was an older case. This is — a lot of these cases are way older than what we're dealing with as far as media today and how people communicate and get news and such. But I was puzzled as to how the Court could find that — or say that people don't read the paper, they don't watch TV and even if they do, they don't

retain anything they saw. I wonder about that. I

think a lot of people retain a lot of things they

see and read.

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That could be right, Your Honor. MR. GABLE: There is another case which I didn't bring with me that Judge Santora ruled, that was back when we had 600,000 and he said the same thing. It's, you know, perhaps -- well, that leads me actually into the second point, legal issue here is that there's been no evidentiary hearing. All of the cases, even the ones that Your Honor cited in your order, McCrary and others, there was an evidentiary hearing -- pardon me -- and in your case where you've asked the parties or directed the parties to furnish you the documents ahead of time, it seems like it would be difficult, it is certainly possible for the Court to hold its own evidentiary hearing, issue subpoenas, cross-examine witnesses, but ordinarily you rely on the parties to file motion for protective order and that's the way we've always been here before the Court in the past.

THE COURT: And, again -- I agree with you, that's the way we've always done it, but that doesn't mean the way it's always going to be done

as we move into the future and we deal with the way news is reported today, which is so different than it was reported in any of these cases. But I think -- and I don't mean to interrupt, but I think perhaps there's a misunderstanding as to what my order says and what it meant. I haven't closed anything. I don't intend to do that without a hearing. I understand what the case law is and, you're correct, I have to have a hearing to determine whether or not something should be closed, if you will.

MR. GABLE: Right.

THE COURT: My point in the order was I want to make sure that both the State, the defense and the Court have ample time to review things before they get out to the media outlet and go across the country, seemingly, in this case, and to use, for instance, the letters from the jail as an example, there were quite a number of them. And the way I'm reading the law is that once the State kind of discloses those, they're basically public record.

MR. GABLE: Exactly.

THE COURT: And if you get down there at the same time as Mr. Strolla, the State hands those things out simultaneously, you and all the other

1	media outlets that there are with the resources
2	that you have, can disseminate those things
3	instantaneously. Mr. Strolla has to sit down and
4	review the items and he's reviewing them all, but
5	he may say, you know what, I don't care. They're
6	all good. He may say, whoops, I want some things
7	to be reviewed by the Court and maybe not to be
8	disseminated. By that time, I think you used the
9	term, I loved it, the horse is out of the barn.
10	There's no getting it back. It's over.

And the case law then is very, very bad from the Court's point of view, you can't really get it back. And that's really what I am concerned about and want to try and prevent. I want to make sure that everybody has an opportunity, when I say everybody, I mean the State, the defense and the Court, has an opportunity to see these things to make sure there's ample time to file whatever motion is deemed necessary, if any. Maybe there won't be any. And at that point then we'd have a hearing like you suggest and like the law requires.

The only little difference I guess is I have interjected myself, which you're right, I agree with you is a bit unusual, but there weren't any

objections about the letters, the jail letters, and, you know, why the State didn't feel as though something might be objectionable, why the defense didn't feel that way, maybe they didn't get to see it fast enough before it all got out there and then they realized there was nothing they could do about it, I don't know, and the way I look at it is they have their jobs to do and I have mine. Mine's a little different. I've got to try and ensure we're going to get a fair and impartial jury seated here in Jacksonville. I've got to ensure that we have the proper administration of justice as it relates to this case.

So my role is a little bit different than theirs and there are strategy reasons why sometimes attorneys may or may not object to something. But as high-profile as some of these things have become now, it seems incumbent upon me that the Court may have to step in to prevent some of those things that could happen.

And, you're right, that case Judge McCaulie had, I remember the Edmonds case. If there was one that was going stop it, you would have thought that might have been it. Didn't seem to sway the appellate court. I'm not sure what they saw or knew

about what the substance of all that was, but -- so

we may be talking a lot about something that's never

going to happen, quite frankly. In essence, I'm

just trying to put a buffer in there.

MR. GABLE: I understand that, Judge, but,
Your Honor, that really leads to my third point
and that is the fact that this order creates
what's called a judicial exception to the public
records law and I have given you a copy of the
McCrary case which you cited in your order.

THE COURT: Yes, sir.

MR. GABLE: On page 3 in the middle of headnote one on the left side of the page, it refers to the Weight case. That was the -- that case involved an attorney-client -- the Court establishing an attorney-client privilege in a public records case and the Supreme Court says, well, there are no judicial exemptions under the public records law, and it says in Weight we held that the judiciary should not create public policy exemptions beyond those specified by the legislature. What the legislature has said here is that once the State furnishes the documents to the defendant, they become public records. And for Your Honor to insert yourself into the picture

1 at that point creates a judicial exception.

I would say that if Judge Healey were the one handling all these cases, you may look at it for a few minutes and send it on and say nothing is wrong in my opinion, but to make it a general rule among all circuit judges, the mischief in that could be that a judge would take the documents and never rule until the trial. So they've, in effect, then stopped the operation of the public records law.

So I suggest that perhaps there ought to be some other method than for the judge to insert himself or herself

THE COURT: Well, I think -- I think you've made that argument before. I think Judge Cooper, as I understand it, had a similar situation and entered an order that, in essence, did the same thing. I think it's in the Donald Smith case.

Imposing a time limit, and I think you suggested that in your papers, and I believe in her situation it was ten days that everybody had an opportunity to review these things before actually I guess the media would get them. So that anybody who had reason to file a motion, could.

And I believe there's some other cases.

- 1 There's some cases that back that up. One of them
- 2 is Media General Operations, Inc., versus State at
- 3 933 So. 2d 1199, which is a Second DCA case out of
- 4 2006. I don't know the -- I'm sure you are
- 5 probably familiar with it. But I think there the
- 6 Court did the same thing and just imposed a time
- 7 limit, if you will.
- 8 MR. GABLE: Right. And there's no time limit
- 9 in this.
- THE COURT: Right. I agree with you. You're
- 11 absolutely correct.
- MR. GABLE: I'd like to add one other point.
- 13 THE COURT: Sure.
- MR. GABLE: It looks like your order is not
- working, because as you may have seen from the
- 16 attachments we have, there has been a public
- 17 records request to the State for the jailhouse
- 18 telephone calls.
- 19 THE COURT: Yes, sir.
- MR. GABLE: And they have neither furnished
- 21 those calls to you, as far as I know, unless
- there's been some ex parte communication.
- THE COURT: They have not.
- 24 MR. GABLE: Nor to the media. So your order
- is not self-executing apparently so I mean

- something needs to be done. It seems to us.
- THE COURT: And to be honest with you, that
- 3 -- I knew those things were out there. I -- you
- 4 know, it's interesting. The Court doesn't always
- 5 get to know everything about the case until
- 6 usually you get right before the trial.
- 7 MR. GABLE: Right.
- 8 THE COURT: So, for instance, I didn't know
- 9 there were jail letters. Nobody has any need to
- 10 necessarily include me in that. Now I know. I
- also know there are also all these jail phone
- 12 calls that have been recorded and I saw, I think
- 13 attached to your documents, that there had been
- correspondence between either your client or maybe
- Mr. Burke's or whatever, about obtaining these
- disks, if you will, of phone calls.
- My understanding is there's some 180 hours
- worth of phone calls, which therein lies the
- dilemma. It would take at least 180 hours,
- obviously, for somebody to listen to all those
- 21 things, to then be able to be in a position to
- 22 either make an objection to some part of it or
- 23 not.
- I don't know that they've even been turned over
- to the defense, quite frankly. I don't know where

1 they are. You're right.

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- MR. GABLE: If they haven't been turned over
- 3 to the defense, they're not public records yet.
- 4 That's what makes them a public record.

5 THE COURT: And maybe Ms. Corey or one of her lawyers can speak to this. My understanding from 6 7 reading the documents there, though, is that they are charged with complying with public records law 8 9 and so while her office looks at these things in one way as far as evidentiary value for a trial, 10 they have to then look at it in a second way to 11 see where it falls within the public records law 12 13 and I understand they have people in their office 14 to do it, and it's rather time consuming, obviously, and costly, and so what I saw was they 15 16 indicated to either your client or one of the other media outlets that it was going to cost in 17 excess of \$6,000 for somebody to sit down, go 18 through all that with the mindset of I'm applying 19 the public records law to these calls and I'm 20 going to redact this, that or the other and then 21 22 give them to you.

So it sounds like it was a money issue that kind of held that up, which was fortuitous, quite frankly, because now I know about it and, you're

- right, that poses a dilemma as to how anybody,

  including myself, could listen to that and either

  say they're fine, let them go, or this should not

  be disseminated, we need to have a hearing about
- 5 1t.

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6 MR. GABLE: Your Honor, the part that I disagree with the State Attorney on in that regard 7 8 is it's not up to the State Attorney to decide 9 what should be redacted. If they feel like something needs to be redacted, they file a motion 10 with the Court and we have an argument about it, 11 12 we have a hearing about it. The State Attorney could redact all kinds of things. 13

THE COURT: True.

15 MR. GABLE: And it's not up to the State 16 Attorney to do it so that's another issue, maybe 17 issue No. 5 in the way this is working. They need 18 -- if they want to protect part of it -- and I'll say, you know, personal phone calls are not public 19 20 records so it may be that a lot of these are 21 personal phone calls. But that needs to be 22 brought to Your Honor and it's not a decision for 23 the State Attorney to make.

THE COURT: Well, two things. One, I hear you about what they think ought to be redacted.

- 1 MR. GABLE: Right.
- THE COURT: And that's, again, a little bit
- of why -- and I don't -- you know, I came up years
- 4 ago and judges didn't really interject themselves
- 5 much.
- 6 MR. GABLE: Right. More passive role.
- 7 THE COURT: Exactly. That was kind of the
- 8 way I was schooled. I'm sure you're familiar with
- 9 that.
- 10 MR. GABLE: Right.
- 11 THE COURT: But when you become a judge
- nowadays, and I became one in 1992, they, at the
- schools and the classes you go to prior to taking
- the bench, they suggest to you that you really
- need to rethink that, particularly in this day and
- age and you might need to take a little bit more
- 17 active role sometimes.
- MR. GABLE: Right.
- 19 THE COURT: And I always struggle with that
- because it kind of came up a few years ago. But
- 21 this is one of those instances where, again, I
- feel like I need to interject myself perhaps and I
- hear you. What the State thinks ought to be
- redacted, that's their opinion. What Mr. Strolla
- 25 thinks ought to be redacted is something else,

- what I think might be yet another third opinion.
- 2 But interestingly, the State already redacted
- 3 things out of those jail letters which apparently
- 4 nobody has objected to.
- 5 MR. GABLE: Right.
- 6 THE COURT: Even the media, from what I
- 7 gather.
- MR. GABLE: Well, they don't call us on every
- 9 issue.
- 10 THE COURT: I understand. I understand. But
- I guess when you got them you could have looked at
- it and said we might like to know what was on that
- page.
- MR. GABLE: I was thinking of one possible
- solution for an objective look at the letters, and
- I don't know if that resource is available to the
- 17 Court, but I know you have judicial clerks here
- that when they are furnished that perhaps some
- time could be spent by perhaps an objective third
- 20 party rather than the State or the defense.
- 21 THE COURT: Right.
- MR. GABLE: As to what is a personal call or
- 23 whether there's personal information that needs to
- be redacted. We understand there's some things
- 25 that need to be redacted, but we suggest it's not

- 1 up to the State or the defense to do it.
- THE COURT: Well, the other point that I was
- going to speak to is personal calls. I suspect,
- don't know, but I suspect a lot of them are
- 5 probably personal calls.
- 6 MR. GABLE: Probably.
- 7 THE COURT: And if there's a conscious
- 8 concession that any personal calls are not public
- 9 record, that may make things a lot easier.
- MR. GABLE: Well, there's a case that says
- 11 that.
- 12 THE COURT: I understand. But, however --
- and that goes back to the dilemma. You would
- indicate, yes, we agree they're not public record,
- but the State is not going to say we're not going
- to necessarily use it at trial. He might have
- been having a personal conversation with some
- other person and, lord knows what was said, that
- they want to use during the course of the trial.
- 20 Well, now all of a sudden I suspect the media is
- going to say you're right, it's not public record
- 22 because it was a personal call, but, wait a
- 23 minute, now the State thinks it's got all this
- evidentiary value, we do want it and we want to
- 25 disseminate that information.

- 1 MR. GABLE: Well, you're right. But I mean a
- 2 personal call to his wife to discuss family
- 3 matters.
- 4 THE COURT: Well --
- 5 MR. GABLE: Unless you're Zimmerman.
- 6 THE COURT: One problem is he's not married
- 7 but I get the example.
- MR. GABLE: My apologies, Your Honor.
- 9 THE COURT: Because then you're talking about
- maybe it would be privileged and even the State
- 11 couldn't use it, but I don't know that they're --
- we have that situation unless he's talking to a
- 13 clergyman.
- 14 MR. GABLE: We haven't seen the calls either
- so we don't know. We understand there are
- 16 probably transcripts which makes it move a little
- 17 faster, too.
- THE COURT: I don't believe there are any
- 19 transcripts.
- MR. GABLE: There are no transcript?
- 21 THE COURT: We've talked about and we've
- decided a lot of things for the State. Why don't
- we let Ms. Corey tell us what she thinks about
- some of those public records issues.
- MS. COREY: Well, Judge, Chapter 119 clearly

1	makes it our obligation to life documents with
2	exemptions to protect the defendant's due process
3	rights and to protect the State's case so we
4	completely disagree with Mr. Gable about that.
5	But the Court just touched on the crux of the
6	issue, what Florida's overall broad public records
7	law. We have a filter called the rules of
8	evidence that you as the presiding Judge must work
9	very hard to impose on every aspect of this case
10	to make sure only that which is allowed by our
11	rules of evidence goes to a jury.

We furnish hundreds of documents in discovery that are similar to what you just mentioned, personal calls. They may never be relevant, they may not have anything that are of an evidentiary value, but we're required by law to turn those over to the defense and then we all sort through it and then we present it with you presiding, making the decisions about what a jury should and should not hear.

For example, something that is turned over to the defense that we may think is perfectly admissible as evidence, you may decide that the prejudice outweighs the probative value. There are none of those decisions being made by the

media. They're putting every bit of it out there
that they think will grab their readers or their
listeners and they're getting it all out there and
it can't be erased, we can't erase the internet
and it's time for our public records law to
change. The criminal justice system does not
belong in that arena.

For example, if this case were in federal court, you wouldn't even be hearing this argument. If it were in 45 or more of the other 50 states, you would never hear this for two reasons. One, they don't have the broad public records law. They also don't require the State to turn all of this evidence over to the defense. So if it's constitutionally protected in those arenas, it should be in the State of Florida as well. If a defendant facing similar charges in federal court isn't subject to having every shred of evidence released prior to a full and fair due process jury trial, why should it happen in state court.

And I think the intent of the public records law to have government in the sunshine, this was never contemplated, Judge. It was never contemplated by our legislators that we should be trying cases in the media before we can get them in

front of a jury, which is the constitutional trier
of fact. Not the people, not the bloggers, not the
opinions of the media, but a jury of this
defendant's peers. And so this -- this issue goes
much deeper and much broader than what's been
mentioned here.

But in any case, we do believe we have the statutory obligation to redact documents before they're released. We are allowed to charge the requester and we do that appropriately, Judge. I have created a public records unit which has never existed in the State Attorney's Office because the demands have been voluminous and because things were being released before that should never have been released and now Ms. Difranza, our public records attorney and her staff work diligently to comply and the law is a very clear on how it has to be, how these requests must be handled and complied with and we've done it exactly as we're required to do in this case.

There's nothing that says I have to turn this law over to Mr. Gable and let him decide or argue to you what should or should not be redacted. And so we're going to stick with our method of dealing the public records law, we believe we're handling it

1	correctly and although I do understand that these
2	cases exist, we would love to see a change in the
3	law that would allow this court and other courts to
4	get a high-profile case to trial and the problem is
5	you never know what's going to become high-profile.
6	It just depends on what one aspect of a case the
7	media decides to jump on and we have a right to
8	represent the people of the State of Florida and get
9	a fair trial from us and this defendant certainly
10	has a right to a fair trial and we believe those
11	constitutional rights outweigh any interest of the
12	media or the public.

13 THE COURT: Mr. Strolla, you want to say anything?

MR. STROLLA: Yeah, Your Honor, briefly. If it may please the Court.

Judge, just in response I do agree with

Ms. Corey in the aspect of my client deserves that
fair trial and more specifically the first case, the
petitioners have cited was the Morris Communication
on page 3 sub 4, it talks about the Supreme Court
saying if there's absent a showing of widespread
adverse publicity and I think from day one of this
case, at least my client will hold the stance, and I
speak for him, there's been nothing but adverse

widespread publicity regarding specifically Mr. Dunn. Through all of the television interviews, both locally, nationally, the parades that have gone on, the marches that have gone on, we found out through depositions that members of the family have been camping out at the gas station where this happened for the victim. So there is widespread adverse publicity because the local medias are covering it as they're covering it in every hearing that we had. As a matter of fact, I never had a hearing before in my 16-year career for a motion for costs with 20 cameras there to review a motion for costs, but it has been in this case since day one.

The second part of that same paragraph, Judge, it talked about that there had not been substantial hostile pretrial publicity and specifically this issue came up after the letters were released and I don't think anybody could have foreseen, be it the State or myself, that these letters were going to be submitted on civil attorneys' Twitter pages,

Facebook pages, spread out to the local and then commentary given on those letters and such specific commentary to say, well, Mr. Dunn is trying to sway witnesses and trying to lie and get other witnesses to lie.

Nobody could have foreseen that adverse hostile publicity, but it happened and that led Your Honor to bring up the issue about the order where the State did not object, we did not object, and it was only specifically after very widespread publicity was evident at that last pretrial, and if I'm not mistaken, I believe it was right directly before that pretrial date.

So we came here trying to speak about a fair trial and both sides got bombarded about what were in these letters and then commentary that was widespread both nationally and locally by media outlets and attorneys in this jurisdiction who used those letters to their advantage to create an even broader widespread hostile environment.

So I think -- and I understand their claim, but the way this case has led down this road, not by the State and not by the defense, it's been everybody on the outside, the media and the other players involved on the civil side that have created a need for this order, and that's why I stand by the order, Judge.

THE COURT: Mr. Gable.

- MR. GABLE: Yes, Your Honor.
- I think the key thing that Ms. Corey said was

the public records law needs to be changed but the 1 2 fact is that what the public record law says, when 3 the State turns over the documents to the defense, they become public records. There needs to be a 4 balance, as Your Honor has pointed out, between 5 the defendant's right to a fair trial and the 6 7 public records law. And so I know that's what Your Honor is trying to figure out. What I'm 8 suggesting is that the judicial exception you have 9 proposed may not be the right one. 10

THE COURT: Creative, though, wasn't it?

MR. GABLE: It was creative, right.

13 Thank you, Your Honor.

14 THE COURT: Thank you.

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Well, I appreciate the argument, Mr. Gable, and the comments and arguments from the attorneys. And maybe you're right, Ms. Corey, maybe the public records law does need to be changed. The problem is we've got to deal with the one that we've got and, you're right, you don't know whether a case is going to be a high-profile, highly publicized case. Quite frankly the only way we think we know this one is, and I say we, I'm talking about the court, is the media has told us that.

1 MS. COREY: Yes, sir.

Interestingly enough. The word THE COURT: that we get is that, you know, this is the next big thing. I'm hoping that it's not. I'm hoping we just try this case like we'd try any other. And maybe that's what's going to happen. The problem is it's the unknown. We just don't know if this is going to rise to the level of the next big thing or not.

I'm trying to do, and I intend to do something. I will consider what Mr. Gable has said and try and balance everything, but this -- it is a difficult balancing equation to try and come up with something that works for everybody. And that's my intention. And I do agree with Mr. Gable, appreciate you saying if it was me, you know, I'm going to get on it and I'm going to look at it and get back out and if it's somebody else, that may not happen as quickly and I hear you about that. I don't -- I think the judiciary here in the Fourth Judicial Circuit, I don't think you'd ever have that problem.

I think that we've got fantastic judges here that are very, very conscientious, particularly

- when it gets to something like this and they would
  spend all the time they need to to get the
  decision back out as quickly as possible so
  everybody that has a stake in this can do what
  they need to do as far as their position, their
- So what I intend to do is I've read a lot of
  these cases, I'll continue to read a couple of the
  others that maybe I hadn't read and digest these
  arguments and then I'll get a written order out. It
  might be the first of the week, but it will be
  quick.
- MS. COREY: May I mention one other thing,

  Judge?
- THE COURT: I won't sit on it.

job or their whatever.

Yes, ma'am.

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17 MS. COREY: You know, there's a real and 18 tangible cost to having all of this information 19 out and that would be you having to declare a 20 change of venue and it is costly to the taxpayers, it is unfair to the litigants and to the Court and 21 22 to the court personnel and it's unfair to the 23 people of Duval County for us not to be able to 24 hold a fair and impartial trial right here in our county. And I've heard it said in court before by 25

a lawyer representing the media, well, the worst that could happen is a change of venue.

Well, that's not a good thing, Judge. In fact, we think it's the worst thing that could happen so we believe we have a right to try this case in Duval County, according to the rules of evidence, and the way this Court rules and we believe that the media should not be allowed to interfere with the constitutional rights of the defendant and the State.

THE COURT: I appreciate that. It's interesting that you say it because it's easy for somebody to say, well, you can just change venue and that will solve the problem. And what I have learned since I inherited this case is that the behind the scenes things that go on with a case of this magnitude or what seems to be one that's going to be of this magnitude, is absolutely mind boggling. And I know Ms. Corey, you've experienced it in other cases. I have not.

It's unbelievable to me the amount of behind the scenes things the Court has to do just to get ready and be prepared for this and have to pack that up and move it somewhere else is -- is something obviously I don't think anybody wants to

happen. That talks -- that gets back to the administration of justice and that is something that I'm going to try and make sure we don't have to do. Not to mention the cost of that and, you know, then you're going to have all the citizens of Jacksonville and anywhere else in the State of Florida saying, you know, what are they doing, why are they spending all this money on this case, why can't they just try it where it should have been tried in the first place. So there's a lot of dynamics going on.

It's just an interesting day in where we are as far as how things are reported and I agree that the difficult thing is sometimes things get out there that are never going to become relevant in the trial. They're never going to be presented to a jury. But -- and I'm not suggesting that your client would do it. It's more the -- the -- maybe it's TV or news talking programs where all of a sudden everybody starts to offer their opinions of their -- their take on what this meant or what was said and what the ramifications are of that and how that might play out and it just spins and spins and spins out of control to where it takes on a whole 'nother meaning and that gets

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2 It just -- it's just the ripple effect of it, I quess, is so different today than it ever was in 3 the past. In the past, you're right, all you had 4 was TV and the newspaper. Now I understand, now 5 that I've got people working on this, some of 6 these things we're having millions of hits, I'm 7 not sure what all that means, on some of these 8 websites across the country about this, which, 9 10 again, you know, just kind of confounds me. I 11 mean it's Jacksonville, just a regular town. You know, I don't understand it. But for whatever 12 reason, it's garnered interest. So it just makes 13 my job a little bit more difficult in trying to 14 15 fashion something that's going to be -- that's going to take into consideration everybody. 16

MR. GABLE: Right.

18 THE COURT: Which is what I'm trying to do.

MR. GABLE: Sure. Your Honor, we appreciate that. I'd like to say, first of all, I'm not one of the lawyers for the media who has ever said, well, we could just change the venue.

THE COURT: Right.

MR. GABLE: In fact, the law is that you're supposed to try to do everything you can short of

changing venue. It's not convenient for the media
to go to Sanford or wherever it might be
transferred to, but I'd like to say it seems like
there's been quite a bit of negative comment about
the high-profile nature of this case and others.

What I think you'll find and the Supreme

Court of the United States has said this often,

that it's important -- pretrial proceedings are

important to be reported because so many cases end

up with a plea agreement and there is no trial.

So it's very important for the public to know

what's going on in a case before it would go to

trial. And the benefit of that is the credibility

it gives to the judicial system so that the people

in the community can see how well it is being

handled.

I had -- I represented the media in the election of President George W. Bush wherein there were cameras in all the courtrooms, people from around the world were seeing what was going on in the State of Florida courts and I was in federal court in Miami before Judge Middlebrooks and there were no cameras allowed in the courtroom in federal court and I said to Judge Middlebrooks, you know, it's ironic for the election of the U.S.

President that the media can't -- there aren't enough seats for all the media, much less the public to be here, that the election of the U.S. President you can't be there or know what's happening in the U.S. court and he agreed, but that's the rule of the Supreme Court. We have it wonderfully done in Florida, the balancing that goes on and we know that Your Honor will handle it

the right way.

THE COURT: Well, last comment I guess is the interesting thing about that change of venue is people, you know, talked about some of these cases. The problem is you're not going to ever know whether you have to change venue until you've made the attempt to pick the jury here in the first place. So we're going to go through that exercise. I'm -- I believe we'll be able to get a jury here. But on the flip side of that you may spend days, a week, who knows how long, trying to and it's not until five, six, seven days into a jury selection process that you say you know what, we're not going to be able to ever get a jury here. Now we've got to pack everybody up and go someplace else.

So it's interesting in reading these cases

- because I get the feel that sometimes it's lost on 1 how procedurally you get to where you are, that 2 3 it's easy to say, well, you know, maybe you can have a change of venue, but, you know, people 4 5 forget what you have to go through before you ever realize that that's what you have to do and let's 6 not even talk about the funds to be expended here 7 8 and then expended again wherever else it is you're 9 going to go.
- 10 It's just -- again, it's just a new day and a

  11 new age. But we'll get something out to you that

  12 hopefully will -- well, maybe it won't make

  13 everybody happy. Maybe that will mean I did

  14 pretty much the right thing. I don't know. At

  15 least that's what my dad used to say. So we'll

  16 see.

We need to get another -- I'll get this out to you by mail prior to the next pretrial date. But for the attorneys and media, whoever, our next pretrial date will be November the 21st, which is two weeks from today. I think that was the day we had discussed. Correct?

MR. STROLLA: Yes, Your Honor.

24 THE COURT: Is that still good with

everybody?

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- 1 MR. GUY: It is.
- 2 MS. COREY: Yes, sir.
- 3 THE COURT: So November 21, 9:00 o'clock.
- We'll still be here, I believe, in Courtroom 303.
- 5 MS. COREY: Thank you, Your Honor.
- 6 THE COURT: All right. Thank you all very
- 7 much for your time. I appreciate it. It was nice
- 8 seeing you all.
- 9 THE COURT: Mr. Gable, I forgot. You had
- asked to be able to see document 51.
- MR. GABLE: Oh, yes, Your Honor. I
- 12 understand there was --
- 13 THE COURT: It was a motion. I'll release
- 14 that.
- MR. GABLE: Okay.
- 16 THE COURT: So you can see it. I didn't know
- it was even --
- 18 MR. GABLE: Yeah.
- 19 THE COURT: Let me make sure nobody has a
- 20 problem with that.
- 21 Mr. Strolla.
- MR. STROLLA: Yes, Your Honor.
- 23 THE COURT: Come here real quick. We can be
- on the record.
- Ms. Corey.

- 1 MS. COREY: Yes, sir.
- 2 THE COURT: I forgot Mr. Gable wanted to see
- 3 document 51, which is -- hold on.
- 4 MR. GABLE: It was filed --
- 5 THE COURT: Mr. Strolla's motion to determine
- 6 confidentiality of court records and motion for
- 7 protective order sealing certain court records and
- 8 limiting the disclosure of discovery materials.
- 9 This was filed a long time ago.
- MR. GABLE: Oh, we've seen that one. Is that
- 11 the one Judge Bass entered an order on?
- 12 THE COURT: Yes.
- MR. GABLE: That's it.
- 14 THE COURT: You've seen that then?
- 15 MR. GABLE: I don't know if we've seen the
- motion, but we saw the order. If we could see the
- motion.
- 18 THE COURT: Sure. I got word from the clerk
- that you wanted to see document 51 and that's what
- that is.
- 21 MR. GABLE: We just had heard there was a
- 22 motion filed under seal and we just wanted to know
- 23 what it was.
- 24 THE COURT: That's what -- I assume that's
- what it is.

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MR. GABLE: So if we could have a copy, that
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2
         would be great.
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              THE COURT: Sure. I'll have the clerk
4
         release that to you.
              MR. STROLLA: That's fine.
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              MR. GABLE: Thank you, Your Honor.
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              THE COURT: That didn't need to be sealed.
         Might have been inadvertent.
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              MR. STROLLA: I don't recall filing it under
        seal either.
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              THE COURT: It was probably inadvertent.
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         I'll get that to you.
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              MR. GABLE: Thank you, Judge.
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              (Thus the proceedings ended.)
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CERTIFICATE
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   STATE OF FLORIDA )
3
   COUNTY OF DUVAL )
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               I, Faye M. Gay, CRR, RMR, RPR, CLVS, certify
5
6 that I was authorized to and did stenographically report
7 the foregoing proceedings and that the transcript is a
8 true and complete record of my stenographic notes.
9 DATED this Atay of Dr., 2013.
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