

#134

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CRIMINAL #2013-983

COMMONWEALTH OF MASSACHUSETTS

v.

AARON HERNANDEZ

BRISTOL, SS SUPERIOR COURT
FILED

SEP 30 2014

MARC J. SANTOS, ESQ
CLERK/MAGISTRATE

**DEFENDANT AARON HERNANDEZ'S
MOTION FOR A CHANGE OF VENUE**

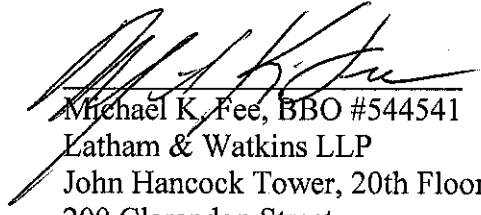
Defendant Aaron Hernandez ("Hernandez"), pursuant to Rule 37(b)(1) of the Massachusetts Rules of Criminal Procedure, hereby moves this Court for a change of venue. A change of venue is necessary to ensure that Hernandez is receives a fair trial before an impartial jury. A fair trial is guaranteed by the Sixth Amendment of the U.S. Constitution and Article 12 of the Massachusetts Declaration of Rights.

Under Mass. R. Crim. P. Rule 37(b)(1), when a criminal defendant's right to a fair trial is imperiled because the location where he is scheduled to be tried has been poisoned by extensive prejudicial pretrial publicity, a change of venue is necessary and may be ordered by the Court. In support of his motion, Hernandez submits the accompanying Memorandum of Law in Support of Defendant's Motion for a Change of Venue, in which he provides details of the continued stream of extreme and sensational media that has flowed into Bristol County. Specific examples of this prejudicial pretrial publicity are attached to the Affidavit of Michael K. Fee also submitted herewith.

The relentless avalanche of prejudicial publicity – the likes of which have not been seen in this Commonwealth – has had a devastating effect on the jury pool in Bristol County. As detailed in the Affidavit of John Della Volpe, results of a professionally-conducted poll of a representative sample of potential jurors in Bristol County revealed that two-thirds of the adult population are following the case against Hernandez “closely.” To follow the case, 90% of the potential jurors claim they look to television, 60% receive information on Hernandez’s case from radio news, 55% are reading about the case in local newspapers, 45% are following the case in national newspapers and 41% are turning to talk radio for information. Extreme and prejudicial media coverage has demonstrably poisoned the jury pool in Bristol County against Hernandez. The poll revealed that more than seven in ten adult residents of Bristol County believe Aaron Hernandez is either “definitely guilty” or “probably guilty.”

The facts before this Court compel a change of venue to a county outside the boundaries of the Boston media market, such as Hampden or Worcester County as a matter of constitutional law. Alternatively, should the Court conclude a change of venue is not compelled under the fundamental requirements of due process, this Court should exercise its sound discretion to order a change of venue to a county outside the boundaries of the Boston media market to save the money and time that would be wasted trying to impanel an impartial jury from a hopelessly biased jury pool in Bristol County and enhance Hernandez’s chances at securing a fair trial before an impartial jury.

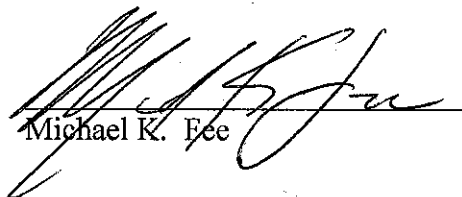
Respectfully Submitted,
Aaron Hernandez, by his counsel


Michael K. Fee, BBO #544541
Latham & Watkins LLP
John Hancock Tower, 20th Floor
200 Clarendon Street
Boston, MA 02116
(617) 880-4600

James L. Sultan, BBO #488400
Charles W. Rankin, BBO #411780
Rankin & Sultan
151 Merrimac Street, Second Floor
Boston, MA 02114
(617) 720-0011

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing document upon the Commonwealth by hand in Court on September 30th, 2014.


Michael K. Fee

#134

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CRIMINAL #2013-983

COMMONWEALTH OF MASSACHUSETTS

v.

AARON HERNANDEZ

BRISTOL, SS SUPERIOR COURT
FILED

SEP 30 2014

MARC J. SANTOS, ESQ.
CLERK/MAGISTRATE

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT'S MOTION FOR A CHANGE OF VENUE**

I. PRELIMINARY STATEMENT

The U.S. Constitution, the Massachusetts Declaration of Rights and Mass. R. Crim. P. Rule 37 all guarantee an individual accused of a crime in Massachusetts a fair and impartial trial. From the moment he was charged with Odin Lloyd's murder in the midst of a media frenzy, the likes of which have never been seen in recent memory, Aaron Hernandez has relied upon the prospect of receiving a fair trial before an impartial jury, the same kind of trial that is guaranteed to all citizens of this Commonwealth. Hernandez's quest for a fair trial, however, unlike that of any other citizen, is uniquely obstructed. Indeed, Hernandez's path to a fair trial before a Bristol County jury is not just impeded, it is irredeemably and demonstrably foreclosed by the impact of the deluge of relentless, prejudicial pre-trial publicity that erupted from the moment he was first publicly identified as a suspect in the death of Odin Lloyd, continuing through the present day.

As demonstrated herein, Hernandez has been the subject of a pervasive and unrelenting onslaught for more than 15 months from every media outlet imaginable. In a curious spectacle,

supposedly respectable journalists, TV anchors, talk radio hosts, reporters, and “expert” commentators have persistently portrayed Hernandez as a fundamentally bad person who is clearly guilty of the murder of Odin Lloyd, with the outcome of the impending trial a foregone conclusion.

The pretrial publicity directed at Hernandez has been so poisonous, pervasive, and effective in tainting the pool of potential jurors that it requires a change of venue. In this unique case, pretrial publicity has focused not only on the crime for which he is scheduled to be tried in Bristol County, but on a host of other alleged crimes and misdeeds as well. This vast and sensational coverage places this pre-trial publicity – and its devastating effect – in a rare and distinct category.

Specifically, in addition to the countless stories about the Lloyd case, the Bristol County jury pool has been subjected to a massive amount of prejudicial, multi-media publicity focused intensely on Hernandez himself. For example, he has been named as the killer of two persons in Boston in 2012– as well as the wounding of two others – alleged acts for which Hernandez was indicted by a Suffolk County Grand Jury in May. He has also been portrayed in the media as an emotionally wounded teen, the son of a mother with a criminal background, a member of a violent street gang (The Bloods), and a user of PCP (Angel Dust), marijuana and other illicit drugs. While much of this drivel is false, it has undoubtedly seeped deeply into the public consciousness, poisoning the minds of potential jurors against him.

If this were not enough to distinguish Hernandez’s case from the typical, media reports have also explored his alleged assault and battery of a restaurant employee in Gainesville, Florida while he was a student at the University of Florida, published a photo of him as a college student allegedly holding a semi-automatic pistol while wearing gang “colors,” and discussed

his suspected involvement in an unsolved shooting in Gainesville and his alleged refusal to cooperate with police investigating that shooting. There has been extensive media coverage of a civil action in which an individual claims Hernandez was responsible for shooting him in the face in Florida in early 2013, as well as descriptions and speculation about Hernandez's connection to a drug dealer in Bristol, Connecticut who died in a car accident.

Not to be overlooked is the torrent of damning information about Hernandez that flowed to the media from the Sheriff of Bristol County during the one-year Hernandez spent in his custody while awaiting trial. The Sheriff made sure that any national or local media outlet that would listen knew that Hernandez had to be confined to a 7-by-10 foot cell 21-hours a day, was only permitted to exercise alone in a 8-foot-by-12 foot "padlocked cage" that the Sheriff described as "a pen, chain-linked all around with a chain-linked top," that he was forbidden from watching TV—especially televised football games – and that he had allegedly assaulted a handcuffed inmate and threatened the life of a guard.

No defendant in memory has been the subject of a comparable blizzard of multi-faceted, intensely adverse pre-trial publicity. Though this Court attempted to stem the flow of information from law enforcement sources to the media by entering a gag order in February of this year (over the Commonwealth's vigorous protests), the aggregation of negative information both prior to and since the entry of the Court's order has – sadly -- had a profound effect on the residents of Bristol County. As demonstrated by the professionally-conducted poll of Bristol County residents over the age of 18 – the pool of potential jurors – more than 7 in 10 potential jurors in this county believe Aaron Hernandez is guilty of the murder of Odin Lloyd. The poll also reveals the residents of Bristol County are following the case closely and rely on television, radio, newspapers, and talk radio as their primary sources of information about the case. These

are the very same media outlets whose coverage continues to tarnish Hernandez's image beyond repair.

For over a year, Aaron Hernandez, an individual once lionized by the media for his contributions as a professional football player, has been portrayed in the media in the worst possible light. There have been, and are, no limits. "News," opinion, commentary, and pure entertainment have all blurred together. The Boston Herald has referred to Mr. Hernandez as an "accused mass murderer" and a story posted on Boston.com called him a "psychotic murderer." Just last week, the Boston Globe quoted the District Attorney of Suffolk County referring to Mr. Hernandez as "a cold blooded" murderer.

The demonstrable, unfairly prejudicial impact of pre-trial publicity on the jury pool in Bristol County vanquishes any hope of finding an impartial jury in this county and jeopardizes Hernandez's constitutional right to a fair and impartial trial. For these reasons, Hernandez respectfully requests a change of venue for his trial. Hernandez recognizes that some of the media coverage of the case has been state-wide, nationwide and even world-wide. The relentless bombardment of Bristol County residents from the Boston media and other sources, however, places Bristol County at the epicenter of prejudicial pre-trial publicity, and the professional, objective poll commissioned by the defendant confirms this. Accordingly, a transfer of the trial to (or, in the alternative the selection of the jury from) a county largely outside the reach of the Boston media market, such as Hampden or Worcester County, is the only avenue available to seek a more impartial and unbiased jury pool and provide Hernandez a fair trial.

II. SUMMARY OF RELEVANT FACTS

A. The Presence of Extreme, Unprecedented Prejudicial Pre-Trial Publicity is Undeniable

1. The Boston Media

How does one chronicle the sum total of millions of unfairly prejudicial words and images about Aaron Hernandez that have been generated over the last year by television, newspapers, radio, web sites and blogs? In the interests of time and judicial economy, a full recitation of all of the prejudicial pre-trial publicity that has poisoned the Bristol County jury pool is not submitted with this motion; the entire quantum of media is simply too vast.

Fortunately, this Court is already familiar with the type of anti-Hernandez publicity that has been generated and distributed in this case. Examples of prejudicial publicity attributable to “law enforcement sources” were included with Hernandez’s Motion for an Order Prohibiting Prejudicial, Extrajudicial Statements of Counsel and Their Agents (Docket No. 10) and with Hernandez’s Renewed Motion for an Order Prohibiting Prejudicial Extrajudicial Statements of Counsel and Their Agents (Docket No. 21), which was granted by this Court on February 15, 2014. (Docket No. 39). The presence of prejudicial pre-trial publicity in this case is a known fact: it is undeniable. Indeed, in a recent filing with this Court on another topic, the Commonwealth accurately summarized the rationale behind the Court’s entry of an order prohibiting extrajudicial pre-trial statements:

The pre-trial order was made in recognition of the unprecedented media scrutiny the present case has received and the potential for such scrutiny to impair the defendant’s or any codefendant’s ability to obtain a fair trial. Of particular concern was the impact that any pre-trial publicity might have on the potential jury pool.

Commonwealth’s Motion for Ex Parte Order of Impoundment and for a Hearing on Motion to Impound Pending Trial at 2. (Docket No. 125)

From the day the death of Odin Lloyd was first reported until the present day, the flow of prejudicial pre-trial publicity from Boston-based media has been relentless. It began on June 19, 2013 with headlines screaming what were represented to be the latest developments. Accurate or not, these stories were invariably detrimental to Hernandez's public image: Police Search Home of Patriots' Hernandez: Follows discovery of body in town (Boston Globe, June 19, 2013); Probe swirls around Hernandez: Acquaintance is deemed a victim of homicide (Boston Globe, June 20, 2013). This article reported on the allegation that earlier in the year, Hernandez had shot a man in Florida); A Clue that Hernandez was with man found slain: Officials cite video taken in Boston on day body was discovered (Boston Globe, June 21, 2013). See Exhibits 1, 2 and 3 to the Affidavit of Michael K. Fee ("Fee Affidavit"). A search of the Boston Globe website revealed over 400 articles in response to a search for "Aaron Hernandez Lloyd" from June 14, 2013 through September 24, 2014. There are probably many more. Fee Affidavit at Exhibit 4.

These articles have not appeared in isolated bursts. They are part of a constant flow of negative coverage that continues up to the present day. Indeed, in the September 24, 2013 Boston Globe, Daniel Conley, the District Attorney of Suffolk County, showing no regard for the presumption of innocence or the impact his statements might have on a jury pool, contributed to the flood of opprobrium directed at Hernandez in his comments on the sentencing of Hernandez's cousin, Tanya Singleton, in Suffolk County for criminal contempt. The District Attorney stated:

This defendant[Singleton] made a deliberate attempt to stymie a double homicide investigation. That choice wasn't made out of fear or intimidation, but to help her cousin [Aaron Hernandez] get away with two cold-blooded murders.

Fee Affidavit at Exhibit 5.

Television coverage by the Boston stations has also been relentless, with live coverage of every court appearance, complete with frequent close-ups of Mr. Hernandez's handcuffs (before they are removed) or leg shackles. Fox 25's website purports to house 130 stories and videos about Aaron Hernandez, along with side bars with timelines and the results of the station's "investigative reporting." Fee Affidavit at Exhibit 6. WCVB's (Channel 5) lists 482 stories and 190 video vignettes on Aaron Hernandez, including at least one story billed as "chilling." Fee Affidavit at Exhibit 7. The station's website also links readers to the coverage of Hernandez by ABC News, much of it generated locally and some of it false. (See, e.g., Aaron Hernandez Destroyed Home Security system and Phone, Sources Tell ABC News: Murder probe of Hernandez Associate has not cleared Patriots Star, Sources Say. ABC News, Michelle McPhee, June 20, 2013.) See Fee Affidavit at Exhibit 8. Similarly, 7 News New England has broadcast and compiled dozens of reports and videos on Hernandez, including an interview with Northeastern University Professor and "criminologist" Jack Levin. After observing Aaron Hernandez's "body language" during a recent court appearance, Professor Levin authoritatively told 7 News that Hernandez's "body language" may be attributable to his "childhood as a football prodigy, 'they feel superior, they begin to look invincible and sometimes when you look at Hernandez in court, it looks like he just doesn't care.'" Fee Affidavit at Exhibit 9. As is very common, the 7 News website allows visitors to post comments that remain visible for an extended period of time. Many of these comments augment the media stories and reflect attitudes held by the viewing public. The "Body Language" story attracted two caustic comments, including one that said: " We'll see how much he's smiling when he gets life in prison. I hope he rots there and gets rped (sic) by his cell BF's." Fee Affidavit at Exhibit 9.

A review of WBZ's (Channel 4) website, reveals a total of 5090 headlines relating to Aaron Hernandez, reflecting both television and news radio stories. Fee Affidavit at Exhibit 10. The New England Cable News (NECN) website states that there are over 825 stories about Aaron Hernandez stored on the website, including videos. The NECN archive contains numerous prejudicial stories, including a scintillating report from June, 2014, that focuses on Hernandez's rental of recreational scooters and jet skis in Newport, Rhode Island. According to NECN, "the visit [to Newport] came four days after he allegedly shot and killed two men outside a South End nightclub." In the broadcast version of the story, available at www.NECN.com, the owner of the scooter rental establishments states: "What I know now, looking back at it, it's even more shocking that somebody would do that and then, four days later, go out and have a blast...It's just a modern day Scarface, they could make a movie out of it, some of the things I've heard." Fee Affidavit at Exhibit 11.

2. A Sampling of Other Media Accessible in Bristol County.

The sensational content in the Boston-based media, but more importantly the type of coverage, should be sufficient to show the existence of extreme, pervasive prejudicial pre-trial publicity. As referenced above, content in various media forms has been generated about Aaron Hernandez, and the theme of this coverage has been uniformly negative. It has been open season on Hernandez and nothing is off limits. For example, there are not many criminal defendants in Massachusetts who have been the subject of a prominent story in Rolling Stone Magazine, complete with a blood-spattered portrait festooned with bullets on the opening page. Fee Affidavit at Exhibit 12. That article, with the flamboyant title, The Gangster in the Huddle, was published in late August 2013 and referred to Hernandez as the "All-American Thug." Though the competition is keen, the Rolling Stone article is perhaps the most negative and prejudicial mainstream media portrayal of Hernandez to date. Its toxic characterization of Hernandez was

proliferated by numerous print and electronic media outlets that cited or quoted its content allegations as if they were fact. Based on conversations with unidentified “friends” and “family members,” the article alleged with authority that Hernandez was (among other things): a disaffected youth following the death of his father, affiliated with the Bloods street gang, paranoid, armed with a gun at all times; and a user of Angel Dust (PCP) and other illegal drugs.

In an ironic, but useful, case of internecine sniping, a reporter for the Boston Globe reviewed the Rolling Stone story and found it to be deceptive. In a story entitled What Rolling Stone got Right, Wrong About Aaron Hernandez, reporter Ben Violin pontificated that “the piece does a thorough job of recounting Hernandez’s sordid past,” but the reporter then opines:

... the story also is filled with sensationalism, hearsay, convenient fact-bending, and even one blatant falsity. The authors go to great lengths to portray Hernandez’s friends and family as thugs and losers, then expect the reader to fully believe these same unnamed sources who provide many of the lurid details.

Fee Affidavit at Exhibit 13.

National media have had a field day with the Hernandez story. CNN’s website contains 157 reports. Fee Affidavit at Exhibit 14. In addition, on June 24, 2014, the news network aired a highly-publicized one-hour documentary entitled Special Report: Downward Spiral: Inside The Case Against Aaron Hernandez. Fee Affidavit at Exhibit 15. The program was aired on multiple occasions and, to put it mildly, did not make a case for innocence. Just weeks after Hernandez had been charged in 2013, the Headline News (HLN) network aired The Trial of Aaron Hernandez in which a team of legal “experts” presented “evidence” to a mock jury and sought a verdict on the Bristol County murder charge. The “jury” found Hernandez guilty.

The breadth of the sensational coverage of Hernandez’s case is truly amazing. A Google search using the terms “Aaron Hernandez Murder” yields approximately 800,000 hits. Fee Affidavit at Exhibit 16. The overwhelming weight of this publicity is negative. Indeed,

Hernandez's guilt has been so well-established in the media, he has become a punch line for would-be humorists. For example, in its September 2014 issue, GQ Magazine published its compilation of The 25 Biggest Sleazebags in Sports. Fee Affidavit at Exhibit 17. Number 2 on the list (behind former Los Angeles Clippers owner Donald Sterling) is Aaron Hernandez. The justification of this high placement as the penultimate "sleazebag" in sports is stated as follows:

2. Aaron Hernandez

Allegedly murdered three people, two of them over a spilled drink. Allegedly got a tattoo commemorating that double murder. (He can rub it and always reminisce about avenging that lost G&T.) Allegedly invited a friend for a car ride specifically to kill him. Allegedly beat a handcuffed inmate while he was in jail. But look, you can take all of that away and the ex-Patriots tight end would still be a scumbag. Let's go back in time to 2007, when he was still in college. We're in a Gainesville, Florida, restaurant and Hernandez is refusing to pay his tab, because of course. A bouncer confronts Hernandez and is rewarded with a punch from behind to the head, which ruptures his eardrum. Tim Tebow—Hernandez's Gators teammate—is in the restaurant, but even He cannot use His magic Jesus powers to stop Hernandez from being an unhinged psychopath.

Id.

In the same vein, it was widely reported in May that a poll conducted by E-Poll Market Research and ESPN sought to compile a list of The Most Hated Men in America. Fee Affidavit at Exhibit 18. The poll established a Top 10, and Aaron Hernandez was placed as the 7th most hated man in America. Id.

The exposure of Bristol County residents to negative and prejudicial publicity regarding Aaron Hernandez will only multiply between now and trial. Recent coverage of the Baltimore Ravens running back Ray Rice's domestic violence episode has speculated about a proclivity for violence among NFL players. Despite the presumption of innocence upon which our judicial system is built, numerous stories have drawn parallels between the Ray Rice situation and Aaron

Hernandez. A Google search using the terms “Ray Rice Aaron Hernandez” yields about 554,000 hits. Fee Affidavit at Exhibit 19. What are the chances these stories portray Hernandez in a favorable or neutral light? The reality is that Aaron Hernandez has been the target of unprecedented, adverse pre-trial publicity. That publicity has fostered an overwhelming perception that Aaron Hernandez is a monster and must be guilty of murdering Odin Lloyd. Perhaps the comments of one New England Patriots blogger best sums up the challenge facing this Court in endeavoring to provide Hernandez a fair trial before an impartial jury: “The sooner Hernandez’s sentence is handed out and this story goes away, the better. I’d like to erase him from my memory as soon as possible.” Fee Affidavit at Exhibit 20.

B. A Professionally-Conducted Poll of Bristol County Adults Shows That Pre-Trial Publicity Has Generated Widespread Prejudice Against Hernandez Among the Potential Jury Pool.

Mindful of the media frenzy that has accompanied this case and concerned over the impact this torrent of negative media could have on the ability to assemble a fair and impartial jury for trial, counsel for Hernandez engaged a highly-regarded professional polling organization to sample the opinions held by Bristol County residents who compose the jury pool in this county. The qualifications of SocialSphere, Inc. (hereinafter “Social Sphere”) are described in the affidavit of John Della Volpe (hereinafter “Della Volpe Affidavit”) filed herewith.

After assessing the demographics of Bristol County, Social Sphere constructed a non-suggestive questionnaire to be used in a survey of 409 Bristol County adults, representing a cross section of the county’s population, with cohorts arranged by age, race, and income. In the opinion of Mr. Della Volpe, the poll was taken of a representative sample of adults that mirrored the adult population of the County. *See* Della Volpe Affidavit at Paragraph 15. Calls were placed by professionals over two days in August, 2014, to randomly-selected landlines and cell phones. *Id.* at Paragraph 14.

The results of the poll are staggering. Two-thirds of the adult population of Bristol County is following the Hernandez case “closely.” *Id.* at 16. To follow the case, of course, the residents turn to various forms of media, with 90% hearing about the case from television, 60% following the case via radio news, 55% reading about the case in local newspapers, 45% accessing national newspapers, and 41% listening to reports about the case on talk radio. *Id.* at Paragraph 20.

The effect of all of this media coverage is apparent in the poll’s most alarming finding: more than 7 in 10 Bristol County residents believe Aaron Hernandez is definitely or probably guilty of the murder of Odin Lloyd. *Id.* at Paragraph 18. Specifically, 14% of Bristol County residents agree with the statement: “I’m certain Aaron Hernandez is guilty of first degree murder and nothing could persuade me otherwise.” *Id.* Another 59% agree that with the statement: “I’m not 100% certain, but I think Aaron Hernandez is probably guilty.” *Id.*

In sum, the results of the poll portray a bleak picture for the prospects that Hernandez can receive a fair trial in Bristol County. When fewer than 3 out of every 10 potential jurors are not already convinced of Hernandez’s guilt, one must objectively conclude that presumptive prejudice exists in the community where this defendant is scheduled to be tried such that transfer to another county is necessary to protect his constitutional right to an impartial jury.

III. DISCUSSION

A. The Applicable Legal Standard.

The right to a fair trial is guaranteed by the Sixth Amendment of the U. S. Constitution and Article 12 of the Massachusetts Declaration of Rights. Both constitutional provisions ensure that a person accused of a crime shall have the right to a fair trial and an impartial jury.

Sheppard v. Maxwell, 384 U.S. 333, 362 (1966); Commonwealth v. Toolan, 460 Mass. 452, 462

(2011); Commonwealth v. Susi, 394 Mass. 784, 786 (1985) (“The failure to grant a fair hearing before an impartial jury violates even minimal standards of due process”).

Rule 37 of the Massachusetts Rules of Criminal Procedure provides a remedy which may be employed where an accused’s right to an impartial jury is in peril because he is scheduled to be tried before a jury that has been poisoned by extensive prejudicial pre-trial publicity.

Specifically, the rule states:

(1) Transfer for Prejudice. A judge upon his own motion or the motion of a defendant or the Commonwealth made prior to trial may order the transfer of a case to another division or county for trial if the court is satisfied that there exists in the community where the prosecution is pending so great a prejudice against the defendant that he may not there obtain a fair and impartial trial.

Mass. R. Crim. P. 37(b)(1).

As the rule states, a change of venue may be ordered prior to trial where “there exists in the community where the prosecution is pending so great a prejudice against the defendant that he may not there obtain a fair and impartial trial.” Commonwealth v. Clark, 432 Mass. 1, 6 (2000). A judge has substantial discretion to transfer a case to another county based on pretrial publicity. Commonwealth v. Gaynor, 443 Mass. 245, 259 (2005). “The mere existence of pre-trial publicity, even if it is extensive, does not constitute a foundation of fact sufficient to require a change of venue.” Commonwealth v. Colon-Cruz, 408 Mass. 533, 551 (1990). A trial judge should exercise his power to change the venue of a jury trial “only ‘with great caution and only after a solid foundation of fact has been first established.’” Commonwealth v. Toolan, 460 Mass. at 462, *citing* Commonwealth v. McCowen, 458 Mass. 461, 476 (2010), *quoting* Commonwealth v. Clark, 432 Mass. 1, 6 (2000).

The driving force behind a change of venue is juror prejudice. Prejudice can be inferred from extensive pretrial publicity or settled community opinion. Toolan, 460 Mass. at 462-463. It is well-established that “prejudice against the defendant sufficient to preclude a fair and

impartial trial may exist because the entire jury pool is tainted by exposure to pre-trial publicity.” Toolan, 460 Mass. at 463, *citing* Irwin v. Dowd, 366 U.S. 717, 726-728 (1961). In Commonwealth v. Hoose, 467 Mass. 395, 406 (2014), the Supreme Judicial Court once again confirmed that prejudice justifying a change of venue may be inferred from extensive pretrial publicity or settled community opinion. Citing its earlier decision in Toolan, as well as Skilling v. United States, 561 U.S. 358 (2010), the Court affirmed that the defendant had the burden of showing either presumptive prejudice or actual prejudice. Id. at 405-406.

Presumptive prejudice occurs when “the jury pool in the community has been so tainted by pretrial publicity that the entire venire may be presumed prejudiced regardless of the specific voir dire procedures utilized.” Hoose, 467 Mass. at 406, *citing* Toolan, 460 Mass. at 463. Prejudice, however, “is only presumed in truly extraordinary circumstances where the ‘trial atmosphere [is] utterly corrupted’ by media coverage.” Id., *citing* Skilling. Thus, in evaluating the existence of presumptive prejudice, the nature of the pretrial publicity, specifically whether it is both extensive and sensational, is a highly significant factor. Id.

B. Presumptive Prejudice Exists in Bristol County.

In assessing the presence of presumptive prejudice based on pervasive publicity, courts may take into consideration the influence of the media on the coverage of the trial, the size of the community, the content of the news stories, and the length of time between the publicity and the trial. Toolan, 460 Mass. at 463-464 (2011), *citing* Skilling.

1. The adverse publicity in Bristol County has had a dramatically adverse impact on the jury pool.

As discussed above, a professionally-conducted poll sought to measure the level of bias in Bristol County. That bias is staggering, with over 7 in 10 residents convinced of Hernandez’s guilt. That bias arises from the residents’ high level of awareness of the case, with two-thirds of

the residents reporting that they are following the case “closely.” How are these residents following the case? Through television, radio, local newspapers, national newspapers, talk radio and other media. *See Della Volpe Affidavit at Paragraph 20.*

The striking poll results in this case stand in stark contrast to pre-trial poll results that have been deemed insufficient to support a change of venue in other cases. For example, in Commonwealth v. Christian Karl Gerhartstreiter, a.k.a. Clark Rockefeller, Suffolk Superior Court Criminal Action No. 08-10899, the trial judge (Gaziano, J.) considered a poll of 300 residents of Suffolk County by the defendant. Unlike the results obtained in the instant case, the poll revealed that 77% of the respondents had heard or seen something about the case; however, a majority of residents polled had not formed any opinion about the defendant’s guilt. A minority (42%) reported harboring a belief that the defendant was guilty of the crimes charged. In the case before this Court, by contrast, a poll of a larger sample (409) of residents – generating a smaller margin of error – showed two-thirds of the population was following Hernandez’s case “closely,” and more than seven out of ten have already concluded that Hernandez is definitely or probably guilty.

2. The dissemination of sensational media coverage in Bristol County has tainted a relatively small population, making the empanelment of an impartial jury particularly unlikely.

Bristol County’s population is approximately 500,000, but when considering the potential pool of jurors, that total must be decreased by almost a quarter when persons under the age of 18 –ineligible for jury service – are removed. The pool of eligible juror is further reduced when non-citizens are deleted. The resulting population of 350,000 to 400,000 is not particularly large, especially when one considers that over 70% of that number have concluded Hernandez is guilty. As a result, Hernandez cannot count on a sizable jury pool to dilute the prejudice generated by the sensational media that has inundated Bristol County. Compare United States v. Tsarnaev, Cr.

No. 13-10200-GAO (D. Mass. September 24, 2014), appended to Fee Affidavit at Exhibit 21 (“[T]he Eastern Division of the District of Massachusetts includes about five million people. The division includes Boston, one of the largest cities in the country, but it also includes smaller cities as well as suburban, rural, and coastal communities. As the Court observed in Skilling, it stretches the imagination to suggest that an impartial jury cannot be selected from this large pool of potential jurors. See also United States v. Salameh, No. S593Cr.0180 (KTD), 1993 WL 364486, at *1 (S.D.N.Y. September 15, 1993) (declining to transfer trial of defendant accused of the 1993 World Trade Center bombing out of that district due in part to the district’s size and diversity)”).

In a recent case in which a change of venue was granted in part, the trial court took into consideration the impact of the prejudicial media on an even larger population area than Bristol County and found relief appropriate. In Commonwealth v. Dwayne Moore, Suffolk Superior Court Crim. No. 2011-10023, the trial court (Locke, J.) considered the impact of news coverage of the so-called “Mattapan Massacre” case on Suffolk County, an area the Court estimated was composed of 730,000 residents. Despite its size, the Court concluded that the jurors in this large county could be tainted by the coverage of the case, because Suffolk County is “geographically small and all parts are exposed to the Boston media market.” *Memorandum and Order on Defendant’s Change of Venue* at 3, appended to Fee Affidavit at Exhibit 22. Faced with an even smaller pool, this Court should reach a similar conclusion and empanel jurors from another county – one outside the pervasive reach of the Boston media market.

3. Publicity in this case has been pervasive and sensational.

At this stage of the proceedings, no actual voir dire has occurred and under Rule 37(b)(1), none need be attempted if this Court is convinced that community opinion has been irredeemably tainted. While this Court has advanced an admirable plan for jury selection that would under

ordinary circumstances help assure Hernandez of his right to a fair trial before an impartial jury, this case does not present ordinary circumstances. Indeed, if as the SJC has held, “presumptive prejudice exists only in truly extraordinary circumstances,” those circumstances clearly are present here. As discussed above, the pre-trial publicity in this case has been pervasive and unfairly prejudicial. It has ranged into a realm never before seen with a criminal defendant in this Commonwealth and, without question, produced a powerful and deeply-seated bias against Hernandez in Bristol County, as revealed by the poll results.

Evidence released by the Commonwealth in this case has been repeatedly splayed over television screens, including videos and photographs purportedly showing Hernandez with a gun in his hand. Even more damaging, allegations and characterizations relating to another murder case in Boston and other alleged bad acts wholly unrelated to the case pending in Bristol County have served as an endless source of grist for the media mill. Clearly, all of the adverse publicity described herein, as well as that already known to the Court, would qualify as “extensive and sensational,” which, according to the SJC, is a “highly significant factor” in the Court’s assessment of a request for a change of venue. Hoose, 467 Mass. at 406, *citing* Commonwealth v. Morales, 440 Mass. 536, 540 (2003). According to the SJC: “Publicity is sensational when it contains emotionally charged material that is gratuitous or inflammatory, rather than a factual recounting of the case.” Hoose, 467 Mass. at 407, *citing* Toolan, 460 Mass. at 464 n. 19 and United States v. Angiulo, 897 F.2d. 1169, 1181 (1st Cir. 1990). What could be more gratuitous and inflammatory than to be portrayed in the media as a multiple murderer, a gang member, a drug user, and a person who has committed previous, unpunished crimes -- most of them violent -- or to be touted as the second-ranked “Sleazebag” in sports or “Seventh Most Hated Man in America”? In addition what could be more “emotionally charged” than a three and one-half

minute interview of Odin Lloyd's mother aired on September 23, 2013, conducted at the office of the lawyer attempting to sue Hernandez for damages. Set to soft music, the piece is introduced by a 7 News anchorwoman who reminds viewers that it has been fifteen months since Lloyd was "brutally executed". The report contains home videos, described by the voiceover as images of Mr. Lloyd "like you have never seen him." After describing a family's "search for justice," the story closes with the family's trial lawyer stating, "[i]n the end, I think the goal really should be to make sure that folks remember the name Odin Lloyd long after they have forgotten the name Aaron Hernandez." Fee Affidavit at Exhibit 23. Video available at: <http://www.whdh.com/story/26599663/odin-lloyds-mother-trying-to-forgive-accused-murderer-hernandez>. The constitutional presumption of innocence that serves as the cornerstone of our system of criminal justice is reduced to nothing more than empty words in the face of such an unrelenting wave of poison flowing into the jury pool.

Under the standard articulated by the SJC, this Court has before it ample factual basis to act now; it does not have to wait for voir dire to see if the jury pool is tainted. The defendant contends that a change of venue in these circumstances is required as a matter of state and federal constitutional law to safeguard his right to an impartial jury. In the alternative, the extensive and sensational publicity described herein provides a sufficient factual basis for this court to exercise its discretion to order a transfer of the trial to another location. *See, e.g., Commonwealth v. Gaynor*, 443 Mass 245, 258-259 (2005).

While the relief sought through the instant motion is rarely awarded, this case presents unique circumstances and can be easily distinguished from cases in which changes of venue were denied. For example, in *Hoose*, the Court agreed with the trial judge that the publicity surrounding the case did not constitute pervasive publicity because it appeared only in a small

number of local news sources and the intensity of the reporting decreased over time, with no articles appearing between January and April, when the trial judge ruled on the motion. Hoose, 467 Mass. at 407. Here, the publicity has appeared in media channels broad enough to reach all of Bristol County and, as discussed above, it has been relentless and continuous up through the present day. Similarly, Toolan may be readily distinguished from the case at bar. In that case, despite the small size of the population of Nantucket, the SJC found that the jury pool was not pervasively biased by media coverage because there was not a carnival or raucous atmosphere at trial and the passage of almost three years from the time of the victim's death until trial likely "blunted the impact of initial media coverage." Toolan, 460 Mass. at 465. Here, there has been no lapse in media attention, and it is likely to intensify as trial approaches. Indeed, the intense media coverage of off-the-field violence by other NFL players is keeping the Hernandez case in the news almost daily and this trend alone, leaving aside other coverage of Hernandez, shows no sign of abating.

A motion for a change in venue was denied on September 24, 2014, in "the Boston Marathon Bombing" prosecution, a federal case that has been the subject of extensive media attention. While the defendant in that case argued that the media attention focused upon him prevented him from receiving a fair trial in Boston, the trial court disagreed, finding no presumption of prejudice, despite the submission of empirical evidence that could lead to a different conclusion (57.8% of Boston residents polled believed the defendant is definitely guilty). Tsarnaev, at 4-5.

Relying on Skilling, the U.S. District Court denied defendant Dzhokhar Tsarnaev's motion for a change of venue. The court's rationale illustrates the profound difference between the two cases and why the denial of the motion to change venue in that case has no persuasive

value in the instant case. First, as discussed above, the district court concluded that, as in Skilling, where the potential jury pool in Houston, Texas was composed of 4.5 million people, the population of the Eastern Division of the District of Massachusetts (“about five million people,” according to the court) provided a large and diverse pool from which to draw a trial jury. Tsarnaev, at 5. In contrast, Hernandez can access a pool in Bristol County of only around 350,000 to 400,000, if not fewer, and polling shows that between 70% and 80% of that pool is hopelessly biased. Second, the court in the Tsarnaev case found that while the media coverage of the case had been “extensive,” the defendant had not proven that the coverage was prejudicial. Again quoting Skilling, the court observed that “prominence does not necessarily produce prejudice, and juror impartiality does not require ignorance.” Tsarnaev, at 4, *quoting Skilling*, 561 U.S. at 360-361 (emphasis in original). The court found that the media coverage was not “blatantly prejudicial” and that the scope of articles cited was too broad. Tsarnaev, at 4. Here, by contrast, Hernandez has placed before the Court numerous examples of “prejudicial” media coverage, as that term is defined in Supreme Judicial Court precedent applicable to the case at bar, but not to Tsarnaev’s federal case. The tenor, tone, and content of those examples reach far beyond mere factual recitation of the alleged underlying crime. Tsarnaev has not been accused of other murders, other violent assaults, other bad acts. Indeed, the sympathy shown for Tsarnaev in the press, including his portrayal as an impressionable young man under the influence of his jihadi older brother, is in sharp contrast to the universally pejorative portrayal of Hernandez. Moreover, this Court is acutely aware of the presence of prejudicial publicity in this case, as the danger of prejudice formed the basis for the entry of the so-called “gag order” in February. Third, the court in Tsarnaev discounted the results of the defendant’s polling due to a low response rate and the use of a small sample that was not representative of the demographic

distribution of people in the Eastern Division. Tsarnaev, at 4-5. In contrast, the poll commissioned by Hernandez was professionally and appropriately designed to access a representative cross-section of the Bristol County population and had a relatively low margin of error. Fourth, the federal court found that after the passage of time since the Marathon bombings, the “decibel level of media attention [has] diminished somewhat.” *Id.* at 5, *quoting Skilling*, 561 U.S. at 361. In contrast, the relevance of “the passage of time” to Hernandez’s situation has been addressed several times above. While the decibel level may have decreased for Tsarnaev, it clearly has not for Hernandez.

4. It is Not Necessary to Conduct Voir Dire Before Acting on a Motion for a Change of Venue.

Rule 37(b)(1) empowers this Court to exercise its discretion to transfer a case to another county prior to trial. In the face of the evidence of great prejudice in Bristol County, this Court should transfer the case immediately. There is no need to summon citizens and attempt to impanel an impartial jury here. We know now that the likelihood of empaneling an impartial jury is very low. This square peg does not have to be crammed into what we know is a round hole. This Court should save the time and expense associated with summoning prospective jurors in Bristol County and use those resources elsewhere.

Recently, a trial judge presiding over a Massachusetts murder case in which a pre-trial change of venue was requested granted relief prior to conducting any voir dire. In Commonwealth v. Dwayne Moore, discussed above, the defendant moved for a change of venue from Suffolk County based on the existence of extensive pretrial publicity. The case was the retrial of one of the defendants in the so-called “Mattapan Massacre” case. In its opinion granting partial relief, the Court concluded that “[t]here is no question but that the instant case has been extensively reported in the media.” The Court in that case also had the benefit of

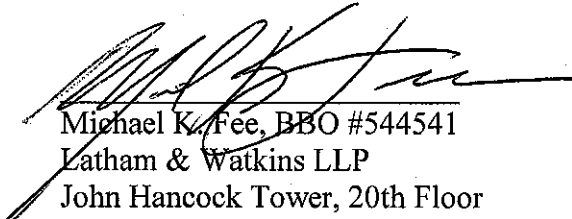
having seen the behavior of the media and the nature of its coverage in the defendant's first trial. The Court granted partial relief, keeping the trial in Suffolk County for the convenience of the witnesses, but using jurors from Worcester County, an area with towns "likely outside the peak subscription region of the Boston daily papers, and probably less focused on television news coverage of Boston cases or trials." Memorandum and Order, supra, at 5.

Like the court in Moore, this Court should exercise its discretion now and transfer this case for trial in a county outside the likely reach of the Boston media market. While any location in the Commonwealth will not be immune to the damaging press that has circulated about Hernandez, it is far more likely that an impartial jury could be found in a location beyond the Boston media market, such as Hampden or Worcester County.

CONCLUSION

The instant case is an extraordinary one. Extraordinary cases require extraordinary treatment. A change of venue is necessary here to ensure that Hernandez receives the fair trial to which he is entitled, one in which the members of the jury will weigh the admissible evidence, rather than the sensational, often fanciful, but consistently prejudicial stories about Hernandez that have been distributed by the media and prejudged him as guilty. Accordingly, for all the foregoing reasons, Aaron Hernandez respectfully asks this Court to grant this Motion for a Change of Venue, either as a matter of constitutional law or in its considered discretion.

Respectfully Submitted,
Aaron Hernandez, by his counsel

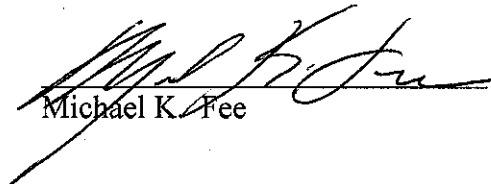


Michael K. Fee, BBO #544541
Latham & Watkins LLP
John Hancock Tower, 20th Floor
200 Clarendon Street
Boston, MA 02116
(617) 880-4600

James L. Sultan, BBO #488400
Charles W. Rankin, BBO #411780
Rankin & Sultan
151 Merrimac Street, Second Floor
Boston, MA 02114
(617) 720-0011

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing document upon the Commonwealth by hand in Court on September 30th, 2014.



Michael K. Fee

#134

BRISTOL, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CRIMINAL #2013-00983

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS SUPERIOR COURT
FILED

v.

SEP 30 2014

AARON HERNANDEZ

MARC J. SANTOS, ESQ
CLERK/MAGISTRATE

**AFFIDAVIT OF MICHAEL K. FEE IN SUPPORT OF
DEFENDANT'S MOTION FOR A CHANGE OF VENUE**

Michael K. Fee, being duly sworn according to law, hereby says and deposes as follows:

1. I am a member in good standing of the Bar of the Supreme Judicial Court of Massachusetts and Co-counsel for the Defendant in the above-captioned criminal case. I make this affidavit to support Defendant's Motion for a Change of Venue.
2. Attached as Exhibit 1¹ is a true and correct copy of an article from the Boston Globe entitled Police Search Home of Patriots' Hernandez: Follows discovery of body in town (June 19, 2013).
3. Attached as Exhibit 2 is a true and correct copy of an article from the Boston Globe entitled Probe Swirls Around Hernandez: Acquaintance is deemed victim of homicide (June 20, 2013).
4. Attached as Exhibit 3 is a true and correct copy of an article from the Boston Globe entitled A clue that Hernandez was with Man Found Slain: Officials cite video taken in Boston on day body was discovered (June 21, 2013).

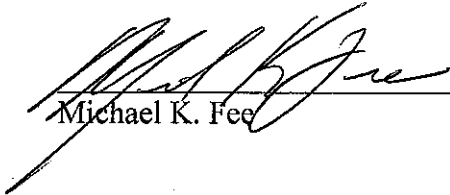
¹ As the Court knows, but to eliminate any chance of confusion by others who may read this affidavit, the words "true and correct" as used herein refer only to authenticity of the reproduction, not the substance or content of any news article.

5. Attached as Exhibit 4 is a true and correct copy of a search of the Boston Globe website using the term "Aaron Hernandez Lloyd" from June 14, 2013 through September 24, 2014.
6. Attached as Exhibit 5 is a true and correct copy of an article from the Boston Globe entitled Hernandez cousin guilty in contempt case: Judge orders her restricted to home 2 years (September 23, 2014).
7. Attached as Exhibit 6 is a true and correct copy of Fox 25's website devoted to Aaron Hernandez which contains 130 stories and videos about Aaron Hernandez.
8. Attached as Exhibit 7 is a true and correct copy of a search of WCVB's (Channel 5) website using the term "Aaron Hernandez" listing 482 stories and 190 video vignettes.
9. Attached as Exhibit 8 is a true and correct copy of an article from ABC News entitled Aaron Hernandez Destroyed Home Security System and Phone, Sources Tell ABC News: Murder Probe of Hernandez Associate Has Not Cleared Patriots Star, Sources Say (June 20, 2013).
10. Attached as Exhibit 9 is a true and correct copy of a search of 7 News New England (WHDH) website using the term "Aaron+Hernandez.
11. Attached as Exhibit 10 is a true and correct copy of a search of of WBZ's (Channel 4) website using the term "Aaron Hernandez."
12. Attached as Exhibit 11 is a true and correct copy of a search of The New England Cable News (NECN) website using the term "Aaron Hernandez."
13. Attached as Exhibit 12 is a true and correct copy of a Rolling Stone article entitled The Gangster in the Huddle: Aaron Hernandez might have been one of the NFL's all-time greats, but he could never escape drugs, guns and a life of violence (dated August 28, 2013).

14. Attached as Exhibit 13 is a true and correct copy of a Boston Globe article entitled What Rolling Stone got right, wrong on Aaron Hernandez (dated August 29, 2013).
15. Attached as Exhibit 14 is a true and correct copy of a search of CNN.com website using the term "Aaron Hernandez."
16. Attached as Exhibit 15 is a true and correct copy of a CNN.com link to one-hour documentary entitled Downward Spiral: Inside the case against Aaron Hernandez (dated June 24, 2013).
17. Attached as Exhibit 16 is a true and correct copy of a Google search using the terms "Aaron Hernandez Murder."
18. Attached as Exhibit 17 is a true and correct copy of a GQ Magazine article entitled The 25 Biggest Sleazebags in Sports (dated September, 2014).
19. Attached as Exhibit 18 is a true and correct copy of an article describing a May poll conducted by E-Poll Market Research and ESPN compiling a list of The Most Hated Men in America.
20. Attached as Exhibit 19 is a true and correct copy of a Google search using the terms "Ray Rice Aaron Hernandez."
21. Attached as Exhibit 20 is a true and correct copy of a blog cover32.com/patriots/author/mjaycox entitled I hate that Aaron Hernandez is still leaching off of the New England Patriots (dated July 3, 2014).
22. Attached as Exhibit 21 is a true and correct copy United States of America v. Dzhokhar Opinion and Order dated September 24, 2014.
23. Attached as Exhibit 22 is a true and correct copy of Commonwealth vs. Dwayne Moore Memorandum and Order on Defendant's Change of Venue,
24. Attached as Exhibit 23 is a true and correct copy of a whd.com story entitled Odin Lloyd's mother trying to forgive accused murder (dated September 23, 2014).

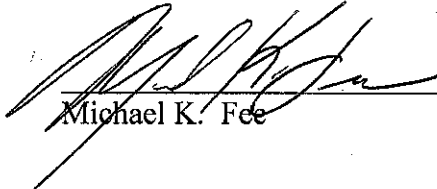
25. Attached as Exhibit 24 is a true and correct copy of a Herald.com article entitled No NFL for Aaron Hernandez: Jailed ex-Patriot can't watch games (dated January 12, 2014).
26. Attached as Exhibit 25 is a true and correct copy of a Boston Globe article What it's like for Aaron Hernandez in jail (dated July 16, 2013).
27. Attached as Exhibit 26 is a true and correct copy of a column entitled Why I Can't Justify Being a Patriots Fan Anymore, by Luke O'Neil, Special to Boston.com article (dated September 9, 2014).

Signed and sworn under the pains of perjury this 30th day of September, 2014.


Michael K. Fee

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing document upon the Commonwealth by hand in Court on September 30th, 2014.


Michael K. Fee

#134

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CRIMINAL #2013-983

COMMONWEALTH OF MASSACHUSETTS

v.

AARON HERNANDEZ

BRISTOL, SS SUPERIOR COURT
FILED

SEP 30 2014

MARC J. SANTOS, ESQ.
CLERK/MAGISTRATE

DECLARATION OF JOHN DELLA VOLPE

I, JOHN DELLA VOLPE, being duly sworn, declare as follows:

1. I am the Chief Executive Officer and Founder of SocialSphere, Inc. ("SocialSphere"), in Cambridge, Massachusetts. SocialSphere was founded in 2007 and is a highly-regarded, diversified global strategy firm that specializes in among other fields, assisting clients with market assessments and customer surveys, data analytics, social media surveillance and analytics and traditional public opinion polling.
2. I have been engaged in the field of public opinion polling since 1992. I have performed public opinion polling for clients that include The Boston Globe, Politico, the United States Marine Corps and many other national and international brands and organizations.
3. I also serve as Director of Polling at an affiliate of a major university in the Boston area.
4. I estimate that during my career, I have designed and conducted over 500 public opinion polls.
5. SocialSphere was engaged by counsel for Aaron Hernandez to design and construct an objective public opinion poll that would determine whether an atmosphere of bias against Mr. Hernandez exists in Bristol County, Massachusetts. Neither SocialSphere nor I have ever worked with Mr. Hernandez, or any member of Mr. Hernandez's Defense Team before.
6. When SocialSphere was engaged by Mr. Hernandez's defense team, we had no information or data relevant to Mr. Hernandez's case in Bristol County. SocialSphere personnel had not assembled any press or media coverage relating to prosecution of Mr. Hernandez for the alleged murder of Odin Lloyd.

7. I understood that the work product generated by SocialSphere, depending upon its content, might be used to support a motion by Mr. Hernandez's Defense Team seeking to change the venue for Mr. Hernandez's trial.

8. SocialSphere did not enter into this engagement with any pre-ordained notions of whether the population of Bristol County was favorably or unfavorably disposed to Mr. Hernandez. Moreover, SocialSphere was given complete, independent control over the overall design of the survey, including the identification of population to be surveyed, development of the questions to be used in our survey, the wording of those questions, and the sequencing of those questions.

9. Upon SocialSphere's engagement, counsel for Mr. Hernandez furnished me with a copy of a document entitled "American Society of Trial Consultants ("ASTC") Professional Code, Venue Surveys: Professional Standards." While neither SocialSphere, nor I, am a professional trial consultant, I took note of the professional standards promulgated by this organization and I am confident that the poll constructed and executed by SocialSphere comports with these standards.

Bristol County Jury Pool

10. I am aware that according to the census conducted the U.S. Census Bureau in 2010, Bristol County at that time had a total population of 548,285. The Census Bureau projected that by 2013, that total population had grown to 552,780.

11. To be considered for trial jury service in the Commonwealth of Massachusetts, a resident must be a U.S. Citizen over the age of 18. The U.S. Census Bureau estimates that in 2013, 21.4% of the total population of Bristol County was under the age of 18. While the Census Bureau does not publish the percentage of the County population that is not U.S. citizens, it has estimated that between 2008 and 2012, 11.8% of the total population of Bristol County was foreign born. As a result, I believe after giving effect to the population under age 18 and non-citizens, the pool of eligible jurors in Bristol County is between 350,000 and 400,000.

The Survey

12. Professionals at SocialSphere, acting under my supervision, assessed the population and demographics of Bristol County and determined that a scientific survey of N=409 adults age 18 and over would yield results that were not only statistically valid, but also result in a margin of error of +/- 4.8% at the 95% confidence level.

13. Mindful that the Massachusetts Supreme Judicial Court has offered guidance about the factors that are most salient to the consideration of a motion to change the venue of a criminal case, SocialSphere personnel devised a questionnaire that would, without revealing that the survey was being conducted on behalf of Mr. Hernandez's Defense Team, develop reliable information concerning:

- Awareness of the Bristol County case in which Mr. Hernandez is a defendant;
- Knowledge of the case;
- Sources of knowledge about Mr. Hernandez's case; and
- Established beliefs about Mr. Hernandez's guilt or innocence.

14. Using the polling instrument designed by SocialSphere, reliable contract personnel retained by SocialSphere conducted a telephone poll of N=409 adults age 18 and over from August 26 through August 27, 2014. The calls were placed by live interviewers using a probability based landline and cell RDD sample.

15. In my professional opinion, the poll was conducted of a representative sample of the adult population in Bristol County. For example, 53% of the respondents in the poll were female and 47% were male. U.S. Census Bureau Data amassed in 2013 found Bristol County to be 51.5% female and 48.5% male. 87% of the poll participants identified themselves as White (Census found 85% to 90.8% White), 2% identified as black or African American (Census found Bristol County to be 4.4% black or African American), 1% American Indian (Census found 0.6%) and 3% Hispanic, Latino or Spanish origin (Census found 6.6% in 2013). The correlation of other demographic features of the poll respondents establish in my professional opinion that the poll sampled the opinions of a representative cross-section of the adult population of Bristol County.

Survey Results

16. **Two-Thirds (66%)** of Bristol County residents are following Mr. Hernandez's case **closely**, with a cohort of **22%** responding that they are following the case **"very closely."** **Only 1% did not know of the case.**


17. A similar proportion (64%) of residents believe that they currently know 'a lot' (26%) or a little (48%) about the case. Only 9% said they knew "nothing at all" about the case, while only 17% said they do not "know much."

18. **More than 7-in-10 adults in Bristol County believe Aaron Hernandez is definitely, or probably guilty.** Providing responses that reveal a significant level of pre-judgment and thus bias against Mr. Hernandez, 14% of residents polled agreed with the statement, "I'm certain Aaron Hernandez is guilty of first degree murder and nothing could persuade me otherwise." A remarkable 59% of those polled agreed with the statement, "I'm not 100% sure, but I think Aaron Hernandez is probably guilty."

19. Only 5% responded that Mr. Hernandez is "probably not guilty," a cohort whose size is just outside the poll's 4.8% margin of error. An additional 21% said they did not know. When only those Bristol County residents with an opinion are analyzed, (i.e., the 79% who did not respond "I don't know,"), **93% are either certain of Mr. Hernandez's guilt (18%) or say he is probably guilty (75%).**

20. Media outlets have been particularly effective in raising awareness about the case. Indeed, awareness of the case involving Mr. Hernandez among residents of Bristol County is very high. **90%** of Bristol County residents have heard of the case from television news, 60% from radio news, 55% from print or online editions of local or Boston newspapers, 45% from print or online editions of national newspapers, 33% from social media such as Facebook, Twitter, or various blogs and 41% have heard about the case from talk radio stations.

Signed under the pains and penalties this 29th day of September 2014.


John Della Volpe