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T. Brooks by D.W.

IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE, DIVISION I
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE	)	**evidentiary hearing requested**
	)	
vs.	)	No. 2004-D-3113
	)	
PERRY AVRAM MARCH	)	

DEFENDANT'S MOTION TO PERMIT INDIVIDUAL, SEQUESTERED VOIR DIRE

Comes now the Defendant Perry Avram March, by and through counsel, and moves this Court to permit individual, sequestered voir dire of prospective jurors in this case. For cause the Defendant would show that there is a significant possibility that prospective jurors have been exposed to potentially prejudicial material.

This motion is supported by affidavits attesting to pervasive media coverage of the instant case, as well as coverage of prior legal proceedings involving the Defendant Perry March, which affidavits (and the documents referenced therein) are here incorporated by reference. Much of this coverage has included matters which would likely be inadmissible at the trial of this cause.

Rule 24(a) of the Tennessee Rules of Criminal Procedure sets out the procedure to

be followed in voir dire of prospective jurors. In pertinent part that rule provides:

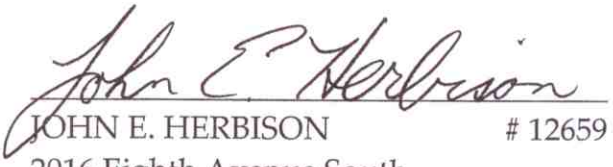
> (a) Examination -- . . . The court may put to the respective jurors appropriate questions regarding their qualifications to serve as jurors in the case, and shall permit questioning by the parties for the purpose of discovering bases for challenge for cause and enabling an intelligent exercise of peremptory challenges. The court, upon motion of a party or on its own motion, may direct that any portion of the questioning of a prospective juror be conducted out of the presence of the tentatively selected jurors and other prospective jurors.

The ultimate goal of voir dire is to see that jurors are competent, unbiased, and impartial, and the decision of how to conduct voir dire of prospective jurors rests within the sound discretion of the trial Court. *State v. Howell,* 868 S.W.2d 238, 247 (Tenn. 1993). See also, *Mu'Min v. Virginia,* 500 U.S. 415, 111 S.Ct. 1899, 114 L.Ed.2d 293 (1991). The Supreme Court of Tennessee has opined that where the crime is highly publicized, the better procedure is to grant the defendants individual, sequestered, voir dire. *Howell,* at 247.

Individual voir dire is mandated when there is a significant possibility that a juror has been exposed to potentially prejudicial material. *State v. Harris,* 839 S.W.2d 54, 65 (Tenn. 1992); *State v. Porterfield,* 746 S.W.2d 441, 447 (Tenn. 1988). Defense counsel respectfully submit that, if such a "significant possibility" does not exist in the instant case, it can exist in no case at all.

THE FOREGOING PREMISES CONSIDERED, the Defendant moves the Court to permit individual, sequestered voir dire of prospective jurors in this case.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a correct and complete copy of the foregoing has been hand-delivered to the Office of the District Attorney General, 222 Second Avenue North, Nashville, Tennessee 37201, this 16th day of February, 2006.

JOHN E. HERBISON

STATE OF TENNESSEE]
COUNTY OF DAVIDSON]

AFFIDAVIT

I, J. Michael Engle, being first duly sworn, make oath as follows:

1. I have prepared this Affidavit at the request of Attorney John Herbison with whom I am acquainted. His request followed a telephone conversation during which he solicited my opinion on several issues related to his representation of Perry March.

2. As background for my opinions, I am a licensed attorney in good standing. I have practiced law in Nashville for nearly thirty years. Much of my practice has concentrated upon criminal law. I have been an Assistant Metropolitan Public Defender for over eighteen years, all but nine months as a supervising attorney. For three other years, I had a private practice concentrating upon criminal law. I am certified as a Criminal Trial Advocate by the National Board of Trial Advocacy and recognized as a Criminal Trial Specialist by the Tennessee Commission on Continuing Legal Education and Specialization. Among other organizations, I am a member of both the National Association of Criminal Defense Lawyers and the Tennessee Association of Criminal Defense Lawyers.

Despite my family's impressions to the contrary, I do not spend all my time in the practice of law. My community involvements include my recent Fellowship with The Tennessee Justice Center and the Southern Poverty Law Center, teaching in the evenings at Tennessee State University, attempting to coach basketball, attending sporting events, and a role in my church. In these activities, laypersons frequently ask my advice about the law or solicit my comments about legal issues.

3. During my career as a criminal defense lawyer, I have represented several clients whose cases then attracted substantial pretrial publicity and public comment. Among these are several in which interest has since waned, including Louis Hinton Teck (approximately 1979, maximum security Federal inmates subpoenaed as defense witnesses), Willie Peoples (approximately 1980, incorrectly labeled in the press as "The Vampire Killer"), Chester "Chief Redwing" Dorman (approximately 1983, allegations of police coercion of an alleged confession), Cecil Johnson, Jr. (approximately 1982, the first Death Penalty trial in Nashville since 1964), Rose Horne Lephart (approximately 1983, physician accused of the murder of her husband, a dentist), and Paul Dennis Reid, Jr. (three Death Penalty trials in the late 1990s). At the time, these representations attracted substantial publicity and generated much public comment.

4. John Herbison asked if I thought the Perry March case to be the subject of the most comment in Nashville during the last thirty years. After more reflection, I suspect the matters surrounding Governor Ray Blanton earn that dubious distinction. Certainly, the arrest

and trials of Paul Dennis Reid, Jr. drew what then seemed to unprecedented public attention. I could certainly easily conclude that the maelstrom around Mr. March is matched by only a very few prosecutions during Nashville's last three decades.

5. Of greatest interest to me, however, is not just the amount of publicity, but the nature and quality of the public attention. It is not just that people are talking, but it is what they seem to be saying that should be of grave concern to a fair trial for Perry March.

Within seventy-two hours of Paul Reid's name first being associated with the three sets of murders in fast food vendors, Mr. Reid had an extended Preliminary Hearing, broadcast over live television. Thus, the public and the media had immediate details of crucial evidence and a clear impression of the parties' theories of the case. The irrepressible Mr. Reid added to public conjecture by a series of interviews with a resourceful reporter.

The tragic disappearance of Janet March, to the contrary, constitutes a classic whodunit with an attractive and talented victim, suggestions of wealth and privilege, scant physical evidence within the public realm, an immediate and plausible suspect who was painted as unlikable in the media, blatant outcry by the victim's family, pointed accusations in related civil proceedings, and responses by the accused that inflamed the speculations.

Thus, the March case evolved as a script for a mystery of love, perhaps grown to hate. Talking about these traditional themes of great drama became a near universal sporting event in Nashville with nearly all feeling competent to speculate and few hesitating to share their own theories and conjecture. Media covered each small development with endless attempts to relate the perhaps trivial to a plausible explanation of the still-vague whole. My impression is that few theories were unexamined in public reports and that even uninformed speculation was gravely weighed by the media and by the public.

Therefore, it is not helpful to compare and contrast the publicity and comment about March with other notorious crimes in the community. The critical point, I believe, is that the March investigation and much-later prosecution fueled speculation, chatter, and guesswork beyond my experience in any other local matter. In Reid, people talked of facts and wondered not about his guilt, although they pondered his mental health. In March, the slow developments converted much of the community into detectives, pleased to share their personal opinions and theories. Prior knowledge of acknowledged facts is a minor problem compared to that faced by March – widespread (if not universal) exposure to theories of his guilt.

6. Although the above analysis seems quite apparent to me, my role as a criminal defense lawyer in the community has led many to ask my opinion of Perry March or to hope that I might share some rare tidbit of inside information, not knowing that I have none. Last week, I lectured a class of paralegal students for ninety minutes on the preparation of a criminal case for court. At the end, I asked for questions and the only query was whether I thought Arthur March would testify against his son. Although I plan to rewrite that lecture which had not mentioned the case, this response well illustrates the community's obsession with this case. I, frankly, am tired of being asked about it, but I, too, eagerly read the latest newspaper account and marvel over my fellow lawyer's comments about developments. Everyone seems to have an

opinion which they are willing to share and Mr. Herbison must be aware that nearly all seem to think his client to be famously guilty.

7. Although I was asked to address the need for sequestration, it was not clear, when I sat to write, whether the focus should be upon sequestered individual voir dire as to pretrial publicity and formation of opinion, sequestration of jurors during the course of the trial, or both. In my opinion, both are essential and required if Perry March is to have a fair and impartial trial by the citizens of this Judicial District. I have serious doubts as to whether those measures of sequestration will suffice to find fourteen truly impartial jurors.

A competent defense attorney must inquire about these critical issues of exposure and opinion before deciding how to exercise meaningful challenges for cause and to best use preemptory challenges. Any attempt to do so in the presence of other potential jurors in this case is doomed and guaranteed to spread the speculation and misinformation. Yet, the detailed inquiry is imperative to protect Perry March's constitutional rights. Given the tortured history of the March case, I believe most potential jurors have such opinions and information. The challenge for the attorneys and for the Court is to identify these prejudices and to weigh their impact. Extraordinary measures will be necessary to approach this threshold of impartiality.

AND FURTHER, I say not.

J. MICHAEL ENGLE

KEITHA C. THOMPSON
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY, TENN.

Sworn to and subscribed before me on this 14th day of February, 2006.

NOTARY PUBLIC

My Commission Expires JAN. 24, 2009

My Commission expires: _____.

IN THE CRIMINAL COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDIDICAL DISTRICT, COUNTY OF DAVIDSON

STATE OF TENNESSEE	)	
	)	
Petitioner	)	
	)	
	)	
vs.	)	No. 2005-D-~~2854~~ 3113
	)	
PERRY MARCH	)	
	)	
Defendant	)	

AFFIDAVIT OF NICK BERES

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

After being first duly sworn, the undersigned states upon his personal knowledge as follows:

1. I am a news reporter employed by NewsChannel 5, WTVF in Nashville. I have worked for this television station since January, 1995.

2. The events surrounding the disappearance of Janet March and the subsequent arrest of Perry March have been one of the most heavily covered local news stories I have observed in Nashville. I have personally reported a number of news stories about these events.

3. Since August, 1996, NewsChannel 5 has broadcast over 3,700 news stories about Perry March. From my observation, the other local television stations and newspapers have also reported numerous stories relating to these events.

4. I am the on-air host of a television show called "MorningLine" on NewsChannel 5Plus. The format of that show is for listeners to call into the show and discuss topics of current interest. We have received, and continue to receive, a substantial number of telephone calls from viewers who wish to discuss the Perry March case. I know from talking to these callers that many of them have very strong opinions about Perry March and, specifically, about his guilt or innocence.
5. This affidavit is submitted at the request of defendant's counsel and is submitted in lieu of being required to appear at any hearing to testify as to the facts stated herein.

FURTHER THIS AFFIANT SAITH NOT.

Nick Beres

Nick Beres

Ruth C. Montgomery

Notary Public

My Commission Expires:

RUTH C. MONTGOMERY
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY, TENN.

My Commission Expires JAN. 26, 2008

Affidavit

I, Mary R. Freeman, after being duly sworn, make oath as follows:

1. I am an attorney licensed to practice law in Nashville, Tennessee. I obtained a master of science in journalism degree from Northwestern University in Evanston, Illinois. I also have a bachelor of arts degree with majors in journalism and political science from Middle Tennessee State University. Prior to entering the practice of law, I worked as a newspaper reporter in Tennessee and Washington, D. C.
2. I have reviewed news coverage in Nashville area newspapers of the Perry March case and the investigation of the Janet March disappearance. I reviewed stories published from September 1996 through Sept. 21, 2005.
3. Coverage in area newspapers has resulted in approximately 300 stories to date on this case. (Copies of these stories are attached as an exhibit to this affidavit) I found 46 stories in *The Nashville Banner,* an afternoon newspaper of general circulation in Nashville and Middle Tennessee. *The Nashville Banner* published stories about the March case from September 1996 through January 1998. (*The Banner* ceased publication in February 1998).
4. I was able to locate 236 stories about the March case and related events in *The Tennessean.* This newspaper is a daily newspaper of general circulation in Nashville and Middle Tennessee. *The Tennessean* has

published continuously during the last nine years, since September 1996, when Ms. March's disappearance became public knowledge.

5. Newspaper coverage of the March cases appears to far exceed coverage of any other trial or purported criminal activity in the Nashville area during the nine years of coverage I reviewed. In addition to the print stories, coverage of the March investigation and subsequent prosecution also has generated hundreds of area television news stories. One source I contacted, Corporate Video, Inc., a firm which documents area television news coverage, indicated that local television stations have aired over 800 stories on the March case in the past three years.

6. *The Nashville Scene* and *The Nashville City Paper* also have covered the March case. *The Nashville Scene* is a weekly news/feature magazine that is circulated throughout Davidson County. *The Nashville City Paper* is a weekday newspaper with circulation in Nashville. Reviewing these publications, I located 13 news and investigative stories about Perry March published in *The Nashville Scene* as well as satirical commentary about the case. I found 7 news stories about the March case that have appeared in *The Nashville City Paper* from October 2002 through Aug. 18, 2005.

7. Prominent placement of the March stories in these area publications indicates the significance of the stories to area editors and the amount of interest they think the story has for their readers. The March stories have consistently received prominent placement in area publications. Of the

approximately 236 stories about the March case which I found in *The Tennessean* 48 of these were front page (1A) stories. Another 63 stories appeared on the front page of the Local News (1B) section. Several other stories appeared on the front pages of other sections. *The Nashville Banner* placed similar importance on the March stories during its publication. Of the 46 stories I found, 15 were front page (A1) stories and another 11 stories appeared on the front of *The Nashville Banner's* Metro/Regional section, indicating placement as an important local news story. Significant events in the March cases such as the arrest of Perry March resulted in dedication of most of the front page of *The Tennessean* on Aug. 4, 2005 as well as two inside pages to events surrounding the March arrest and history of the case. *The Nashville Scene* also followed suite, choosing to put a mug shot photograph of Perry March on its cover on Aug. 10, 2005 with the headline "CHARGED!" spread across the tabloid's cover.

8. One Nashville television station, WTVF, created a special section of news stories and photographs for its web site on the March case following Mr. March's arrest. (Copies of these stories are attached.) Other television stations in Nashville: WSMV-TV, WKRN-TV and WZTV have carried stories on their web sites in addition to newscast coverage of the case.
9. The attention given the March case by Nashville media outlets is explained in part by the individuals involved. Perry March, the defendant in this case, was identified from the beginning of newspaper coverage as

the police's prime suspect. (See *The Tennessean and The Nashville Banner* stories on Sept. 18, 1996) Perry and Janet March, were wealthy young professionals who lived in the exclusive Forrest Hills neighborhood at the time of her disappearance in 1996. According to newspaper reports, she owed their family home, which had been built to her specifications and was valued in excess of $500,000.

10. Both were college-educated, having attended the University of Michigan. Mr. March was a partner in a Nashville law firm, and his wife was an artist whose paintings were displayed in upscale Nashville restaurants. Mr. March was a graduate of the Vanderbilt University School of Law. They had two young children who became the subject of a lengthy custody battle with her parents soon after Mrs. March's disappearance.

11. Mrs. March's parents were Lawrence Levine, an established Nashville attorney, and Carolyn Levine, a Nashville homemaker. The media have recognized Mr. Levine's personal focus on his struggle with Mr. March. (See *The Tennessean* July 9, 2000 p. 1A) An estrangement began between Perry March and the Levines in the weeks following the disappearance of Mrs. March that ultimately resulted in lawsuits, interstate and international disputes over the custody of the two March children, the Janet March estate and the separation of Mr. March from his father-in-law's law firm and the advocacy of criminal charges lodged against Mr. March.

12. In addition to the public attention given these individuals, the March

children, Samson and Tzipora, unfortunately, have become media property due to the very public and lengthy custody battle. Area newspapers have carried photographs of these minor children (See *The Tennessean* Aug. 4, 2005, p. 1A, 6A; April 22, 2001, p 6B for example), and at least one television station has contacted one of the children for an interview.

13. Area newspapers acknowledge that public opinion appears to be established in regard to Mr. March's guilt or innocence. Willy Stern wrote in *The Nashville Scene* in January 1997 that despite the apparent fact that no sound evidence existed at the time that Mrs. March was dead, "On the cocktail-party circuit, the case is deemed to be cut and dried: Janet March was a great mom; Perry March is a man with a troubled past....In short, Perry March has already been tried and convicted. Conventional wisdom holds that he killed his wife." (See *The Nashville Scene* Jan. 16, 1997, p 3). The presumption of Mrs. March's death, even prior to a ruling by Probate Judge Randy Kennedy in May 2004, appeared to be treated as fact by the media and by widespread public opinion in the weeks following Janet March's disappearance. Dozens of the television and newspaper stories covered searched for a body. Unfortunately, even a joke appearing in *The Nashville Scene* in 1997 which made reference a search for Janet March's body, received popular media attention. (See commentary by Joe Rodgers "The Media: Janet March 'joke points up the fixation the community has with this case" in *The Tennessean* on Aug. 3,

1997, p.1D. In this story Dr. Edward Kimbrell, former Mass Communications Department chairman at Middle Tennessee State University and veteran media observer, noted that there was area media competition to satisfy public interest in the March story and an eagerness on the part of the community to hear more about the story involving wealth, prominent community members, intrigue and religion.

14. Investigation of Mrs. March's disappearance has received extensive coverage. Perry March was identified as the police department's only suspect in a *Tennessean* story appearing Sept. 20, 1996 at page 2A. That designation has remained fixed for nine years of news coverage. News reports initially identified three searches of the March home, one with Mr. March's consent and two with search warrants (See *The Tennessean* Sept. 29, 1996.) Subsequently, the conservator for Mrs. March expected to permit the police to search the house again according to *The Tennessean* story of Nov. 15, 1996 at page 2 A).

15. Stories described searches of the home and surrounding area by police, cadaver dogs, well as overhead flights by army helicopters with heat-seeking devices designed to locate bodies. (See *The Nashville Banner* stories appearing Sept. 18, 1996, p. 1A; Sept. 25, 1996, p. 2B; *The Tennessean* Sept. 25, 1996, p. 4B; Sept. 26, 1996, p. 1B).

16. Geographic scope of the search for Janet March expanded throughout Davidson County and neighboring counties with newspaper reports of searches or Janet March in multiple area lakes (Radnor, Percy Priest)

at least two sites in the Cumberland River, a Bellevue farm and two quarries located in other Middle Tennessee communities east and south of Nashville (See *The Tennessean* Sept 19, 1996, Oct. 3, 1996, p. 2A; Oct. 11, 1996, p. 2B; Aug. 29, 1998, p. 6B; Aug. 30, 1998, p. 12B; Jan. 15, 2000, p. 6B; *The Nashville Banner* Jan 17, 1897, p. B-3; Jan 21, 1998, p. A-10.

17. Since the initial series of stories in 1996 and 1997 detailing the search for clues about Mrs. March's disappearance, area publications have written about potential new investigation leads. For example, a female tipster who contacted police in March 2001 was later found to "lack credibility." Recovery by police of a gun discovered in a bank box and an old laptop hard drive which once belonged to Mr. March received front page headlines. (See *The Tennessean* March 17, 2001, p. 1A; April 5, 2001, p.1A and March 30, 2003, p.1A).

18. The overall public image of Perry March has not fared well in Nashville. newspaper stories published since September 1996. The first stories concerning Mrs. March's disappearance identify her husband as a suspect. (*The Tennessean* Sept. 18, 1996, p. 1A, *The Nashville Banner* Sept. 18, 1996, p. 1A) A story in *The Tennessean* appearing Sept. 20, 1996 on page. 2A "Sources paint conflicting pictures of Perry March" quoted sources who acknowledged his sometimes brash, aggressive, tenacious behavior as well more complementary assessments including his scholarship, his easy going behavior and his "not being capable of

murdering his wife." The majority of the stories were critical of Mr. March's demeanor. *The Nashville Banner* soon published a story, within two weeks of the announcement of the investigation, that asserted that Mr. March lied to police and that a police detective swore in a search warrant that he had "verified reports of domestic violence." (See *The Nashville Banner* Sept. 27, 1996, p. 16A. During the investigation he was also accused of sexual harassment (*The Tennessean* Nov. 12, 1996, p. 1A) Upon Mr. March's arrest *The Tennessean* published a story on Aug. 6, 2005 (at p. 2A) quoting Mexican officials who said that Mr. March had lied to them about where he lived, had threatened a man in Mexico and had acted as an attorney for a Mexican firm without government authorization. Different stories described Mr. March's Tennessee law license as being suspended or stating that he had been disbarred. (See *The Tennessean* Oct. 23, 2001, p. 1B.)

19. Of parallel and overlapping interest to the criminal charges against Mr. March is a nine year history of disputes between Perry March and Lawrence and Carolyn Levine, the parents of Janet March. These disputes included a custody fight of international scope for the two March children; claims made by Mr. March for monies he believed were owed him by his former law firm and claims for the property once owned by Janet March.

20. One of the first signs of a split between the Levines and Mr. March be-

came public when the Levines filed a petition in Davidson County Juvenile Court to prevent Mr. March from taking his children out of Tennessee; however, Mr. March already had sent them to stay with relatives in Chicago. The Levines are quoted as saying that Mr. March refuses to allow them visitation until the financial disputes between the parties are settled (See *The Tennessean* Sept. 27, 1996 p. 1B). Charges of coercion, using the children as pawns and "blackmail" have been issued by the Levines during the ensuing custody disputes. (See *The Tennessean* Oct. 1, 1996 p.1B; Oct. 2, 1996, p.1B; April 26, 2000, p. 1B, July 20, 2001 p. 1A).

21. *The Tennessean* reported that allegations of child abuse against Mr. March children were investigated by Illinois officials following the referral of an abuse allegation in Tennessee from an unknown source. These allegations prompted the temporary removal of his children from his home but were found to be baseless. (See *The Tennessean* Oct. 3, 1996, p. 1A). Subsequently, the Levines included in Juvenile Court pleadings an allegation that Mr.March abused his children by killing their mother and by moving the children to Illinois and to Mexico (See *The Tennessean* October 2, 1996, p 3B and July 9, 2000, p.6A).

22. Mr. March made front page headlines again in of *The Tennessean* on Nov. 15, 1996 reporting that he invoked his Fifth Amendment privilege in a deposition. Mr. March's invocation of his Fifth Amendment privilege again received news coverage on Sept. 21, 2005 when a

deposition taken after his arrest was introduced in a civil court proceeding.

23. A civil suit filed by the Levines against Mr. March for the wrongful death of Janet March made gave front page headlines on July 22, 1999 in *The Tennessean* as well generating news reports by other area media outlets. By this time Mr. March and his family had moved to Mexico. Mr. March did not return to Nashville for additional depositions, and Judge Frank Clement awarded a default judgment on Jan. 14, 2000 to the Levines, issuing a finding that Mrs. March was dead. Two months later, a Davidson County Probate Court jury awarded a judgment of $113.5 million against Mr. March. (See *The Tennessean* Jan 15, 2000 p.1A; April 28, 2000, p. 1A.)

24. The award against Mr. March *in absentia* was the highest dollar award for any Tennessee lawsuit at the time accord to a Supreme Court spokes-woman cited by The Associated Press. Nashville attorney and legal scholar David Raybin was quoted by *The Tennessean* as noting that such a large award and the related publicity might affect any future criminal trial by raising questions as to where it should be held. (See *The Tennessean* April 28, 2000, p.2A). Area news media again revisited wrongful death claim and the award when the Court of Appeals overturned the verdict. (See *The Tennessean* March 18, 2003 p. 1 A)

25. Since 1996 area newspapers and television stations have provided line by line coverage of each litigant's actions in the custody dispute involving the March children. The litigation and the coverage continued

to date through a ruling announced in late August 2005, announcing the Davidson County Juvenile Court's award of custody to the Levines. Area news outlets covered court actions over the nine years in Tennessee, Illinois, Mexico, the federal district court and the federal appellate courts. Area media covered the Mr. March's move of his family to Illinois and to Mexico. Amazingly, Nashville media outlets covered Mr. March's remarriage and the birth of another child. Area reporters apparently anxious for March news have covered Mr. March's subsequent home and businesses in Mexico, sought the opinions of business customers, co-workers and government officials in Mexico.

26. One of the most audacious events covered in this media saga was the taking of the March children from their school in Mexico by the Levine family and the children's subsequent removal to Nashville. *The Tennessean* and area television stations chronicled the taking of the children ostensibly to comply with 39 days of uninterrupted visitation awarded by an Illinois court. (*The Tennessean* June 22, 2000, p. 1A; June 25, 2000, p.1A) The children were flown to the United States for a stay which eventually lasted approximately nine months, until the federal district and Sixth Circuit Court of Appeals ordered the return of the children to their father. (See *TheTennessean* Oct. 5, 2000, p. 1A and April 20, 2000, p. 1A).

27. A push by the Levine family to expand grandparent visitation rights garnered extensive coverage in 1999 when the Tennessee

General Assembly enacted legislation expanding the grounds for court ordered visitation. Their advocacy of the change included visits to Capitol Hill and attendance at a media-pitched public ceremonial signing of the new law. The Levines directly tied their interest in the legislation, which their son helped to draft, to their experiences in a court fights with Mr. March to be allowed to see the March children. (See *The Tennessean* July 8, 1997, p. 3 B; May 29, 1997, p. 4B, May 13, 1997, p. 1B, Feb. 27, 1997 p. 1B). This legislation, subsequently weakened by a U.S. Supreme Court ruling on parental rights, received widespread public attention including editorial support by *The Tennessean.* (See Editorial "Not just for grandparents" May 21, 1997 p. 14A). The issue received substantial attention in part because visitation disputes between parents and grandparents are not uncommon when families break apart.

28. There appears to be little difference between the media attention given the serious and the absurd in this case. For example, the sentencing of Mr. March for contempt for failure to return to the Levines items from the March household such as a baby quilt got prominent media attention. (See *The Tennessean* Aug.17, 1997 p. 7B). The media generally appear to be reluctant to limit coverage of any aspect of the case, whether or not the event under scrutiny is significant to the larger issues in the case.

29. Upon Mr. March's arrest and return to the United States in August 2005,

a flurry of stories rehashing the history of the case appeared. At least one Nashville television journalist, was aboard the airplane that returned Mr. March to Nashville in August. In another exceptional move, local television cameras filmed Mr. March's brief appearance before a night court commissioner on a sealed indictment. I do not recall seeing such extensive coverage for what is normally a routine procedure, the return of a defendant to the Metro jail.

30. In summary, the pervasive media coverage of the March case cannot fail to affect the criminal case itself. The hundreds of stories about Perry March, his family, the investigation of his wife's death and a lengthy history of civil litigation between Lawrence and Carolyn Levine and Mr. March have appeared on every Nashville television station, in newspapers and even in news commentary. These stories are fueled by community interest in the intrigue of a missing, beautiful young woman as well as the wealth and social prominence of the parties – the Marches and the Levines. Personal attacks against Mr. March have appeared for years in Nashville media coverage. The television and newspaper stories have underscored his assertion of his Fifth Amendment privilege in civil litigation. The Nashville media has covered the very public custody fight over the March children as a recurring headline story. The subsequent taking of the March children by the Levines and their eventual return to their father's home continued making headlines in news coverage. The Levines temporarily succeeded in winning an

unprecedented monetary judgment against Mr. March for the wrongful death of Janet March. While this judgment was eventually reversed, the media has continued to cover litigation between the Levines and the Marches over money. The news media covered throughout the 1997 legislative session the Levine family's efforts to expand the rights of grandparents to visitation. The March story as told by Nashville news outlets has permeated the Nashville community. Stories about the criminal investigation have expanded its boundaries throughout Middle Tennessee.

Further the affiant saith not.

Mary R. Freeman

Mary R. Freeman

State of Tennessee)
County of Davidson)

Sworn and subscribed before me on this the 22nd day of September, 2005

Janice Boone

Notary Public

My commission expires: 8-25-2007

JANICE BOONE
NOTARY PUBLIC AT LARGE
SUMNER CO., TENN.

AFFIDAVIT

I, Mary R. Freeman, after being duly sworn, make oath as follows:

1. I make this affidavit as a supplement to a prior affidavit I completed in September 2005 concerning media coverage of the Perry March criminal case and the events following the disappearance of Janet March.

2. Since Sept. 21, 2005 *The Tennessean,* a newspaper of general circulation in Nashville, Tennessee and surrounding counties, has printed stories, photographs and editorial content referring to Perry March approximately 99 times. Filed contemporaneously with this affidavit is an index from *The Tennessean* listing 546 stories and other editorial content published in various editions from 1996 to present referring to Perry March. Also filed is a more limited index of stories available through *The Tennessean's* website listing cases found under the search topic "Perry March" that appeared in the newspaper from Aug. 18, 2005 through Feb. 8, 2006. This listing includes about 40 stories. Some of these stories are also submitted contemporaneously.

3. Other newspapers including *The Nashville City Paper* and *The Nashville Scene* have covered some events in March case since Perry March's return to Nashville in early August 2005. (Approximately 14 stories appearing in *The Nashville City Paper* since the arrest of Perry March through February 7, 2006 also are being submitted contemporaneously. Copies of three stories that appeared in *The Nashville Scene*, not previously submitted, are included with this affidavit.)

4. Nashville's area television stations have generated more stories about the March case during this period. One example, included here is that of stories produced by WTVF

"News Channel 5." A search of the station's website found 81 stories pertaining to Perry March appearing on the station since Sept. 21, 2005. (Copies of the print versions of these stories that I have located on the station's website are being submitted contemporaneously.)

5. Other area television stations, such as WSMV for example, have run stories and commentary about the case as well. (A copy of WSMV's partial web index of these stories and print versions is being submitted.) Television coverage of the case appears to have accelerated since the arrest of Arthur March and his return to Nashville.

6. The number of stories, while of significance in evaluating coverage, does not by itself, reveal the complete impact of the stories themselves. Area media sources have done a number of stories on alleged plea negotiations or proposed "deals" in this case. These stories generally have an underlying premise that the defendant Perry March has considered various deals in exchange for a guilty plea. WTVF, Channel 5, has aired at least four stories discussing a possible deal in the case with information gained from "those close to the case" as described in "Pleas Deal Scratched at Last Minute" airing on Feb. 9, 2006. Two other stories" "Arthur Reveals Details of Janet's Murder" airing on Feb. 6, 2006 and "Possible Plea Bargain Offered in Perry March Case" airing Jan. 9, 2006 referred to the terms of alleged plea offers to Mr. March and requirements for taking the plea. The Feb. 9, 2006 story that stated that Perry March backed out of a proposed deal indicated the broad terms of a plea. Other media joined in the speculation about a plea deal. In his commentary entitled "Plea deals still on the table for the Marches" on Jan. 30, 2006, Larry Brinton, a WSMV reporter and commentator, discussed possible plea options for both Marches setting forth a proposed plea which he

said prosecutors offered to defense attorneys for the Marches including the sentence and stipulations for the plea. These speculative stories, without named attribution, float without support from either counsel for the state or defense attorneys who are unable to comment.

7. Media stories and commentaries have touched on other areas that would be inadmissible at trial. For example, references have been made in commentaries to the possibility of giving the defendants polygraph tests. One television commentator suggested on air that a polygraph of one of the defendants might resolve questions. A WTVF story "Will Perry March Consider A Plea Deal?" on Feb. 6, 2006 at least included an explanation by attorney Larry Woods that such results would not be admissible at trial as evidence.

8. Coverage of the March case in recent months has ranged from the serious to the sensational. In some stories the old has become new. WSMV last week offered viewers a review of a psychic's observations of Janet March's fate, including footage that aired several years ago, with the connection ostensibly being, the broadcast's comparison to Arthur March's guilty plea statements. The public has been offered other stories that include more conjecture than substantive information. One recent television story asked whether the Metro police department would bring a private forensic investigation service back to the Nashville area for another search for Janet March. The story included a phone interview with an investigator who declined comment on the case paired with footage from about several years ago when the company searched six sites in the Nashville area.

9. A story published by *The Tennessean* on Feb. 12, 2006 reported that Arthur and Perry March met together privately in the Metro jail in January 2006. The story then offered opinions that the meeting might have allowed the father and son codefendants to coordinate their stories. The area television stations picked up the scent with one commentator even offering his version of an imaginary conversation between the two. To a degree the discomfort of media sources with unanswered questions and perhaps an inherent mistrust of statements given at face value have fueled speculation.

10. Obviously, Perry and Arthur March as the defendants are the focus of substantial media coverage. In addition, other potential witnesses have given interviews. *The Nashville Scene* wrote a largely unfavorable story, "The Ultimate Retribution" on Nov. 3, 2005 about Russell Nathanial Farris. Mr. Farris sought to redefine himself in the public eye in a WTVF interview on Feb. 4, 2006 "Farris, Key Witness: I want to Reprogram Myself." Mr. Farris explained that he got no deal, but wanted to help the police in an effort to turn his life around. An earlier story "Murder for Hire Plot" also aired by WTVF on Oct. 28, 2005, indicated that some of the criminal charges pending against Mr. Farris had been dropped, but he still faced several charges. Months earlier, Paul Eichel, identified as a state's witness, denied any knowledge of any information relevant to the case.

11. The children of Janet and Perry March still face media scrutiny. A recent WSMV story included an interview with Nashville psychologist, Dr. Evelyn Frye. She offered her opinion on what the children must be feeling in light of their grandfather, Arthur March's guilty plea. The children's jailhouse visit with their father earlier became a news

story on WSMV. One story rehashed a reporter's interview years ago with a much younger Sammy March.

12. Even stories about Perry March's current wife and family in Mexico have made the local news reports.

Further the affiant saith not.

Mary R. Freeman

Mary R. Freeman

State of Tennessee)
County of Davidson)

Sworn and subscribed before me on this the 16th day of February, 2006

Janice Boone

Notary Public

My commission expires: 8-25-2007

JANICE BOONE
NOTARY PUBLIC AT LARGE
SUMNER CO., TENN.