

#410

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

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

BRISTOL, SS SUPERIOR COURT
FILED

SEP 22 2015

MARC J. SANTOS, ESQ.
CLERK/MAGISTRATE

COMMONWEALTH OF MASSACHUSETTS

v.

AARON HERNANDEZ

**DEFENDANT'S MOTION TO AUTHORIZE ISSUANCE OF SUBPOENA
TO IDENTIFY SUBSCRIBER OF INTERNET PROTOCOL ADDRESS**

Aaron Hernandez ["Hernandez"], the defendant in the above-captioned criminal case, hereby moves this Court for authority to issue the subpoena attached hereto as *Exhibit 1*. In support of this motion, defendant states:

1. As set forth in the accompanying *Affidavit of Charles W. Rankin*, on August 10, 2015, the parties were notified that the Office of Jury Commissioner received a completed survey on the evening of April 15, 2015 by someone who claimed to have served on the jury in this case. (The jury had returned its verdict earlier that day.) The Office of Jury Commissioner furnished the internet protocol ("IP") address from which the survey was submitted.
2. Question 23 of the survey stated, "Please provide any additional comments or feedback in regards to your experience serving as a juror." In response to that question, the person completing the survey stated in part, ""Even though we weren't supposed to talk about things with others, I find it humorous now that nobody knows we did talk amongst ourselves and you still believed we didn't."

3. The survey response raises the possibility that the jury or some members of the jury violated the Court's orders to refrain from talking about the case with anyone, including each other.
4. The Court should permit discovery of the identity of the subscriber of the IP address so that further investigation can be conducted to determine whether the survey was submitted by a juror. If it was submitted by a juror, then the parties and the Court can address what further steps are warranted.
5. The defendant has identified the internet service provider ("ISP") which furnished that IP address, MSTAR.NET, LLC. Counsel has learned that MSTAR.NET will furnish the subscriber information in response to a Court-authorized subpoena issued to MSTAR.NET, LLC, and emailed to billing@mstar.net.

Respectfully submitted,

AARON HERNANDEZ

By his attorneys,



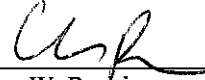
Michael K. Fee, BBO #544541
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James L. Sultan, BBO #488400
Charles W. Rankin, BBO #411780
Rankin & Sultan
151 Merrimac Street, Second Floor
Boston, MA 02114
(617) 720-0011

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing document upon the Commonwealth by e-mail and by mailing a copy thereof, US mail, postage prepaid, to: William McCauley, Patrick Bomberg, and Roger Michel, Assistant District Attorneys, Bristol County, 888 Purchase Street, New Bedford, MA 02740 on September 18, 2015.



Charles W. Rankin

Exhibit 1

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

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

COMMONWEALTH OF MASSACHUSETTS

v.

AARON HERNANDEZ

SUBPOENA FOR RECORDS

To: MSTAR.NET LLC
Attention: Legal Response Center at billing@mstar.net
265 East 100 South, Suite 260
Salt Lake City, UT 84111

You are hereby commanded, in the name of the Commonwealth of Massachusetts, in accordance with the provisions of Rule 17(a)(2) of Massachusetts Rules of Criminal Procedure and M.G.L.c. 233, § 78, and as requested by the defendant, to produce copies of the books, records, documents or objects described herein by delivering same, certified as true and complete copies, to John F. Losowski, Assistant Clerk, Bristol Superior Court, 186 Main Street, Fall River, MA 02720 by October 10, 2015.

The documents requested by this Subpoena are as follows:

1. Subscriber name, address, telephone number, and other identifying information for subscriber IP address 72.8.64.224 on or about the date of April 15, 2015.
2. Any and all e-mail addresses associated with the aforementioned IP address.
3. Any and all forwarding information (i.e., newly assigned IP addresses or account changes) in the event that the account has either been disconnected or the IP address is dynamically assigned.

Hereof fail not, as you will answer your default under the pains and penalties the law in that behalf made and provided.

Dated at Boston the _____ day of _____ 2015.

Notary Public or Justice of the Peace

My commission expires: _____

Upon receipt, please contact Attorney Charles W. Rankin, Rankin & Sultan, 151 Merrimac Street, Second Floor, Boston, MA 02114, telephone (617) 720-0011.

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

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

COMMONWEALTH OF MASSACHUSETTS

v.

AARON HERNANDEZ

**AFFIDAVIT OF CHARLES W. RANKIN IN SUPPORT OF
DEFENDANT’S MOTION TO AUTHORIZE ISSUANCE OF SUBPOENA
TO IDENTIFY SUBSCRIBER OF INTERNET PROTOCOL ADDRESS**

Being duly sworn according to law, Charles W. Rankin states:

1. I am a member of the bar of the Supreme Judicial Court and I represent the defendant Aaron Hernandez.
2. On August 10, 2015, our office received the responses to a jury questionnaire which had been submitted to the Office of Jury Commissioner (“OJC”). A redacted version of the email transmitting the responses is attached hereto as Exhibit A.¹
3. On September 17, 2015, I spoke to Pamela J. Wood, the Jury Commissioner, in an effort to determine whether the questionnaire was only available to people who had actually served on a jury, or whether it was available more broadly. Commissioner Wood advised me that the survey is available on the OJC website to anyone who chooses to complete it, whether or not the person actually served on a jury.

¹ The redaction deletes the identifying information of the employee of the OJC who forwarded the response to the Court.

4. I am informed by information technology specialists working for my firm that the Internet Service Provider for Internet Protocol address 72.8.64.224 is MSTAR.NET, LLC and that a subpoena for the subscriber information for that IP address can be served on billing@mstar.net.

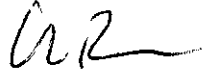
Signed under the penalty of perjury on September 18, 2015.



Charles W. Rankin

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing document upon the Commonwealth by e-mail and by mailing a copy thereof, US mail, postage prepaid, to: William McCauley, Patrick Bomberg, and Roger Michel, Assistant District Attorneys, Bristol County, 888 Purchase Street, New Bedford, MA 02740 on September 18, 2015.



Charles W. Rankin



11a. Slow
ass
workers
some of
you are.

3a. And I got
selected
again for

1. Fall River
Superior

2. 1/20/2015

3. Yes

4. Phone

5. No

6. Yes

7. Yes

8a. Yes

8b. Yes

9. Yes

10. Yes

11. No

12. Yes

13. Yes

14. No

15. No

16. Yes

17. No

18. Yes

19. Yes

20. Yes

21. Yes

22. Diminished

23. I'm glad the trial is over. Even though we weren't supposed to talk about things with others, I find it humorous now that nobody knows we did talk amongst ourselves and you still believed we didn't. What you don't know doesn't hurt you after we convicted him (- too trustworthy you people are. I hope you pick us again so we can do it again to another thug.

19a. The witnesses on this case were very boring I'm glad we convicted him

20. Yes

21. Yes

22. Diminished

23. I'm glad the trial is over. Even though we weren't supposed to talk about things with others, I find it humorous now that nobody knows we did talk amongst ourselves and you still believed we didn't. What you don't know doesn't hurt you after we convicted him (- too trustworthy you people are. I hope you pick us again so we can do it again to another thug.

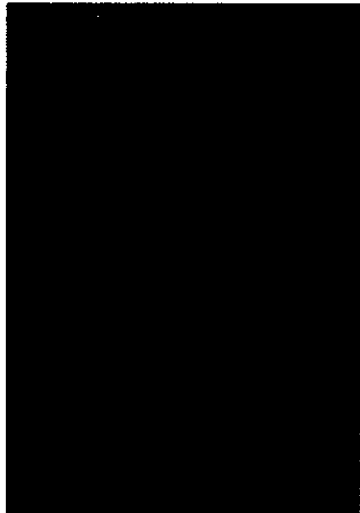


Exhibit A

Jury Service Survey

Thank you for participating in this survey. Your answers to the following questions will help improve jury service. All responses are voluntary and confidential. You are not required to answer all of the questions. You may choose to answer only one or some of the questions, but you must complete the first question to take the survey.

1. Please indicate at which court, if any, you served as a juror (required)

Choose One

2. Please indicate the day on which you started your jury service

mm/dd/yyyy

3. Have you ever performed jury service before?

- Yes
 No

Comments:

3a.

Text

4. Was your summons for jury service clear and easy to understand?

- Yes
 No

Comments:

Text

5. How did you respond to your summons?

- Juror Confirmation Form
- Phone
- Website
- E-mail
- Did Not Respond

Comments:

Text

6. Was the Office of Jury Commissioner (OJC) representative friendly and helpful?

- Yes
- No
- Did not contact the OJC

Comments:

Text

7. Was the website easy to use?

- Yes
- No
- Did not use website

Comments:

Text

8. Did you use the OJC's directions to the courthouse for your scheduled service date?

- From the Reminder Notice

- Yes
- No
- b. From the Website
- Yes
- No

Comments:

Text

Next Page

Powered by Verint. Conduct your own online surveys (<http://www.verint.com/solutions/enterprise-workforce-optimization/products/enterprise-feedback-management/index>)

Jury Service Survey

9. Were the directions to the courthouse accurate and easy to understand?

Yes

No

Comments:

Text

10. Were you able to get to the courthouse easily (car, parking, public transportation)?

Yes

No

Comments:

Text

11. When you arrived in the jury pool, was your check-in processed quickly?

Yes

No

Comments:

11a. Text

12. Did the Jury Pool Officer give information about the courthouse and amenities in the jury pool (i.e. location of bathrooms, vending machines, local lunch spots, etc?)

Yes

No

Comments:

Text

13. Were you welcomed by a judge?

Yes

No

Comments:

13a.

Text

14. Did you find the Juror Orientation video helpful?

Yes

No

Comments:

Text

15. Was there reading material available in the jury pool?

Yes

No

Comments:

Text

16. Was there free access to water in the jury pool?

Yes

No

Comments:

Text

17. Was the jury pool clean and comfortable?

Yes

No

Comments:

Text

18. Were you kept informed by the Jury Pool Officer throughout the day?

Yes

No

Comments:

Text

19. Were you brought into a courtroom?

Yes

No

Comments:

19a. Text

20. Did you participate in an impanelment?

Yes

No

Comments:

Text

21. Did you receive your Service Certificate and/or reimbursement in a timely manner?

Yes

No

Comments:

Text

22. Has your opinion of jury service improved, diminished, or stayed the same as a result of your service?

Improved

Diminished

Stayed the Same

Comments:

Text

Please provide any additional comments or feedback in regards to your experience serving as a juror.

23.

Text

Submit Survey

Powered by Varint survey software (<http://www.varint.com>)

RANKIN & SULTAN
ATTORNEYS AT LAW

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E-MAIL CRANKIN@RANKIN-SULTAN.COM

September 18, 2015

John F. Losowski
Assistant Clerk
Bristol Superior Court
186 Main St.
Fall River, MA 02720

Re: Commonwealth v. Aaron Hernandez, No. 2013-983

Dear Mr. Losowski:

Enclosed for filing are the following pleadings:

1. Defendant's Motion to Authorize Issuance of Subpoena to Identify Subscriber of Internet Protocol Address, with Proposed Subpoena; and,
2. Affidavit of Charles W. Rankin in Support of Defendant's Motion to Authorize Issuance of Subpoena to Identify Subscriber of Internet Protocol Address, with Proposed Subpoena.

Best regards,



Charles W. Rankin

cc:
William McCauley
Assistant District Attorney
888 Purchase St.
New Bedford, MA 02740
(via email and first class mail)