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FILED  
04 JAN -2 AM 9:50  
CLERK OF THE SUPERIOR COURT  
COUNTY OF STANISLAUS  
BY *[Signature]* DEPUTY

8 STANISLAUS COUNTY SUPERIOR COURT  
9 STATE OF CALIFORNIA  
10 -----o0o-----

11 D.A. No.1056770

12 THE PEOPLE OF THE STATE OF CALIFORNIA )

No.1056770

13 Plaintiff, )

OPPOSITION TO MOTION  
FOR CHANGE OF VENUE;

14 vs. )

DECLARATION OF DR.

EBBE EBBESEN, MARK

SMITH, CAITRIONA

GOSS; POINTS AND

AUTHORITIES IN

OPPOSITION TO CHANGE

15 SCOTT LEE PETERSON, )

OF VENUE

16 Defendant. )

Hrg: 1-8-04

Time: 9:30 a.m.

Dept: 2

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19

20 Comes now the People of the State of California to submit the  
21 following OPPOSITION TO DEFENDANT'S MOTION FOR A CHANGE OF VENUE:

22 **FACTS**

23 The defendant, Scott Lee Peterson, has been charged with two  
24 counts of murder in violation of Penal Code §187. A preliminary  
25 hearing was conducted in this case and the defendant was held to  
26 answer for the charges. The defendant has pled not guilty.

27 The People strongly dispute the remainder of the defense's  
28 assertions of fact in the Motion for a Change of Venue. The defense

1 has failed to substantiate any of the claimed facts by admissible  
2 evidence, except for one: this criminal prosecution has received  
3 widespread media attention. (The term media, as used in this  
4 response will refer to radio, print and electronic forms of news  
5 coverage.) For the most part, the media has attempted to portray  
6 this case in a factual format (See defense **exhibit A**, the  
7 "allbundeled" file.). A few "tabloid" publications have exaggerated  
8 claims, or speculated on evidence but these publications are not  
9 accepted by the general public as legitimate news sources.

10 As for the claimed facts contained within footnotes 1 and 2,  
11 the defense motion is devoid of evidence. However, similar claims  
12 have been made before in defense counsel's other cases (See **exhibits**  
13 **A**, and People's **exhibit 4**) and this court should not consider them  
14 as valid. Lastly, as will be discussed below, jurors in Stanislaus  
15 County have not made up their minds and the defense's own survey  
16 says they will wait until they hear evidence in court. (See **exhibits**  
17 **E** and People's **exhibit 1** and **1A**.)

#### 18 **LAW**

19 The general rule of law is that there is a preference for trying  
20 felony cases in the county in which the crimes were committed. (See  
21 Penal Code § 777.) Penal Code §1033 sets forth the court's  
22 responsibilities when considering a change of venue:

23 "In a criminal action pending in the superior court, the  
24 court shall order a change of venue:

25 (a) On motion of the defendant, to another county when it  
26 appears that there is a reasonable likelihood that a fair and  
27 impartial trial cannot be had in the county. When a change of  
28 venue is ordered by the superior court, it shall be for the  
trial itself. All proceedings before trial shall occur in the  
county of original venue, except when it is evident that a  
particular proceeding must be heard by the judge who is to  
preside over the trial.

1 (b) On its own motion or on motion of any party, to an  
2 adjoining county when it appears as a result of the exhaustion  
3 of all of the jury panels called that it will be impossible to  
4 secure a jury to try the cause in the county."

5 Only the defendant can move for a change of venue on the ground  
6 that there is a "reasonable likelihood" that a fair trial cannot be  
7 had in the county in which the crimes were committed. People v.  
8 Powell (1891) 87 Cal. 348, 360; Jackson v. Superior Court (1970) 13  
9 Cal.App.3d 440, 443.

10 Defendant bears the burden of proof since he is the party  
11 seeking the order granting a change of venue. People v. Bonin (1988)  
12 46 Cal.3d 659, 673, citing People v. Boyce (1982) 128 Cal.App.3d  
13 850, 856-859 and People v. Whalen (1973) 33 Cal.App.3d 710, 716  
14 [Bonin overruled on other grounds in People v. Hill, (1998) 17  
15 Cal.4th 800.].

16 The court should also consider the following Rule of Court  
17 before ordering a change of venue:

18 Rule 4.160. Policies to be considered before ordering and  
19 transferring a criminal case on change of venue:

20 (a) [Attempt to impanel jury] Before ordering a change of venue  
21 in a criminal case, the court should consider impaneling a jury  
22 that would give the defendant a fair and impartial trial.

23 Please note, under section 1033(b), that if it becomes apparent  
24 that a jury cannot be selected during the process of voir dire, a  
25 change of venue may be granted to an adjoining county at the time of  
26 trial, even when the motion has been denied pretrial, or the court  
27 on its own motion may move the case to an adjacent county even  
28 without the consent of the parties under such a circumstance.

#### 29 FACTORS TO BE CONSIDERED BY THE COURT

30 The California Supreme Court has repeatedly set out what steps

1 a trial court should follow when trying to determine if a change of  
2 venue motion should be granted. As the court has said:

3 "To make that decision, we examine five factors: the nature and  
4 gravity of the offense, the nature and extent of the news  
5 coverage, the size of the community, the status of the  
6 defendant in the community, and the popularity and prominence  
7 of the victim."

8 People v. Weaver (2001) 26 Cal.4th 876, 905.

9 **1. Nature and Gravity of the Crime**

10 The first factor the court must consider is "the nature and  
11 gravity of the offense." The term "nature of the offense" has been  
12 defined as those peculiar facts of the crime that bring it to the  
13 attention of the community. The gravity of a crime refers to the  
14 seriousness and potential consequences to the accused if he is found  
15 guilty. Where the defendant is facing the possibility of a death  
16 sentence, this factor adds weight to a motion to change venue, but  
17 does not in itself require a change. (People v. Howard (1992) 1  
18 Cal.4th 1132, 1167.) Since every capital case involves a serious  
19 crime, this factor is not dispositive. (People v. Pride (1992) 3  
20 Cal.4th 195, 224; People v. Hart (1999) 20 Cal.4th 546, 598.)

21 In fact, many capital cases have been tried in their counties  
22 of origin despite motions for change of venue demonstrating that the  
23 gravity and nature of the crime, standing alone, will not support a  
24 change of venue. (People v. Hart, supra, 20 Cal.4th at p. 598; see  
25 also, People v. Staten (2000) 24 Cal.4th 434, 449-450; People v.  
26 Jenkins, (2000) 22 Cal.4th 900, 943; People v. Hayes (1999) 21  
27 Cal.4th 1211, 1251.)

28 The court is asked to take judicial notice of the fact that, in  
this county alone, numerous capital murder trials over the years

1 have received extensive media attention and yet still were  
2 prosecuted here in the Stanislaus County. In this case, the  
3 defendant is facing a potential sentence of death. The offenses with  
4 which he is charged, however, are not "spectacular," such as the  
5 crimes charged in the Corona (Corona v. Superior Court (1972) 24  
6 Cal.App.3d 872, 877) or Harris (People v. Harris (1981) 28 Cal.3d  
7 935) cases. This case does not concern any prominent public figures,  
8 mass murder, or community threats of race riots, and the defendant's  
9 ability to select a fair and impartial jury in this case has not  
10 been compromised.

## 11 2. Nature and Extent of Publicity

12 The next factor the court must consider is the "nature and  
13 extent of publicity." This step is broken into two parts: "nature"  
14 and "extent" of the publicity. This motion will address the latter  
15 first.

16 The extent of coverage in any given case, even if extensive and  
17 widespread, does not give rise to a presumption of prejudice to the  
18 defendant. There is "...no presumption of a deprivation of due  
19 process of law arising from juror exposure to publicity concerning  
20 the case." (People v. Proctor (1992) 4 Cal.4th 499, 527.)

21 "...it should be emphasized that the controlling cases  
22 "cannot be made to stand for the proposition that juror  
23 exposure to information about a state defendant's prior  
24 convictions or to news accounts of the crime with which he is  
25 charged alone presumptively deprives the defendant of due  
26 process." (Murphy v. Florida, supra, 421 U.S. at p. 799.) "It  
27 is not required ... that the jurors be totally ignorant of the  
28 facts and issues involved. In these days of swift, widespread  
and diverse methods of communication, an important case can be  
expected to arouse the interest of the public in the vicinity,  
and scarcely any of those best qualified to serve as jurors  
will not have formed some impression or opinion of the merits  
of the case. This is particularly true in criminal cases. To  
hold that the mere existence of any preconceived notion as to

1 the guilt or innocence of an accused, without more, is  
2 sufficient to rebut the presumption of a prospective juror's  
3 impartiality would be to establish an impossible standard. It  
4 is sufficient if the juror can lay aside his impression or  
5 opinion and render a verdict based on the evidence presented in  
6 court." (Emphasis added.)

7 People v. Harris (1981) 28 Cal.3d 935, 949-950 , citing Irvin  
8 v. Dowd (1961) 366 U.S. 717, 722-723.

9 The Harris case, which resulted in Robert Alton Harris being  
10 executed, showed that widespread publicity does not automatically  
11 require a venue change. (In the Harris case, 90% of the jurors had  
12 been exposed to publicity about the case - supra, at page 981.)

13 The defense, at pages 11-12 of their motion, makes generalized  
14 claims about the coverage of this case by the media and uses that to  
15 support a claim that only Stanislaus County jurors cannot be fair.  
16 However, the defendant's exhibits demonstrate that this case has  
17 been a staple of the networks and cable TV (page 12 of the defense  
18 motion) and has garnered international coverage. (See defense  
19 **Exhibit A** and People's **exhibit 2**, and 3.) As the Harris case held,  
20 to require jurors to be ignorant of the case is not the law.

21 This was proven again in Proctor, supra, at page 524, where 80%  
22 of prospective jurors had heard about the case and 31% **believed in**  
23 **the defendant's guilt**. Proctor affirmed the denial of a change of  
24 venue from Shasta County, which, at that time, had a population of  
25 122,100. (Id, at page 525.)

26 The second part of this factor is the "nature" of the coverage.  
27 The defense fails to present any evidence of "prejudicial" press  
28 coverage. Apparently, it must be inferred that somewhere in defense  
exhibit A, that an article or report contains some kind of  
prejudicial materials. This failure to specify the prejudicial

1 feature of the evidence must be taken to mean that there is none.  
2 (People v. Shafer, (1950) 101 Cal.App.2d 54, 61; People v. Britton,  
3 (1936) 6 Cal.2d 10, 13; People v. Hermes, (1946) 73 Cal.App.2d 947,  
4 950.)

5 Even if this court were to assume that there has been  
6 widespread prejudicial or speculative media coverage (not caused by  
7 the defense - discussed infra), it would not make a difference in  
8 this case. As the defendant's own motion shows, the case has been  
9 covered throughout the world, extensively in the United States and  
10 unrelentingly across the entire State of California. (See defense  
11 **exhibit A** and People's **exhibit 2**, and 3.) In cases where there is so  
12 much publicity, a different rule applies:

13 "In cases of pretrial publicity, a court may assume that the  
14 resulting prejudice is stronger in the locality of the offense,  
15 which is likely also to be the locality of the publicity; in  
16 those cases, the defendant need not necessarily show lack of  
17 prejudice in other counties. **Where pretrial publicity has been**  
18 **geographically widespread and pervasive, however, a court may**  
19 **deny change of venue on the sensible ground that it would do no**  
20 **good.** (See, e.g., People v. Manson (1976) 61 Cal.App.3d 102,  
21 174-177; cf. People v. Edwards, supra, 54 Cal.3d at p. 808  
22 [prospective jurors in any county would feel sympathy for  
23 victims under facts of case].)" (Emphasis added.)

24 People v. Venegas (1994) 25 Cal.App.4th 1731, 1738.

25 The Venegas case took place in Del Norte County, with a  
26 population of 27,300. The defendant was a Pelican Bay prison inmate  
27 and a defense survey showed that 82.5% believed that such an inmate  
28 could not be trusted. The trial court denied a change of venue and  
this was affirmed by the Court of Appeals. Both courts reasoned that  
"A change of venue, however, is by its very nature an effective  
remedy only for local bias or prejudice." (Venegas, at page 1738.)  
In that case, the defense failed to show that any other community

1 would not feel the same bias as Del Norte County and therefore no  
2 venue change was warranted.

3 The same is true in the instant case. The defendant has proven  
4 that "pretrial publicity has been geographically widespread and  
5 pervasive" and has failed to prove that jurors in any other county  
6 would view this case differently. The People, on the other hand,  
7 have taken that extra step to show that the attitudes of Stanislaus  
8 County jurors are no different from the attitudes of other jurors.  
9 (See People's exhibit 1, and 1A.)

10 Venegas relied on the Manson case. The Manson case is legal  
11 precedent and a case of historical value in comparison to the  
12 instant case. The Manson case, even more so than this case, involved  
13 horrendous crimes (factor 1), massive publicity (factor 2),  
14 aberrant/outcast defendants (factor 4) and famous/prominent victims  
15 (factor 5) and no change of venue was granted. A change of venue was  
16 denied because there was no place to go, and as the court said:

17 "The journalistic energy spawned by this case goes beyond the  
18 material we have mentioned. [Footnote omitted] It is patently  
19 clear that the crimes charged, as well as the identity and the  
20 involvement of appellants, permeated every corner of this state  
21 with varying degrees of intensity. The ubiquity of media  
22 coverage made any such differential one of insignificant  
23 degree. A change of venue offered no solution to the publicity  
24 problem. Even if venue had been changed, nothing could have  
25 prevented the public media from swinging its attention to that  
26 place. The magnetic pull of such notorious cases is compelling.  
27 [FN68]"

28 "FN68 "Change of venue leaves open the obvious possibility  
that publicity will also be engendered in the area to  
which the trial has been transferred. [Citation.] Also,  
**change of venue is useless if the publicity has been  
nationwide, or, in a court of limited jurisdiction, if the  
publicity has been spread through the entire  
jurisdiction.**" (Prejudicial Publicity in Trials of Public  
Officials (1975) 85 Yale L.J., 123, fn. 2.)" (Emphasis  
added.)

People v. Manson, supra, 61 Cal.App.3d 102, 176-177.



1 The Venegas case, combined with the Manson case, is on all fours  
2 and controlling in this regard. The publicity factor in this case  
3 does not favor a change of venue.

4 **A. Playing to the media**

5 The publicity in the instant case has to a great extent been  
6 caused by and perpetuated by the defendant, the defense attorney and  
7 the defense team. During the investigation the defendant went before  
8 the national media (Good-Morning America, Prime-Time Live, etc.)  
9 with his family to make pleas for the safe return of his wife and  
10 unborn child. Early in the interviews the defendant stirred the  
11 media's interest by dodging questions and speaking fondly of his  
12 mistress. (Defense exhibit A, #A7676, #A7643, etc. )The defense  
13 makes much of the fact that the media has referred to the defendant  
14 as an adulterer, but it was the defendant who admitted it on  
15 national television.

16 Defendant's attorney, Mark Geragos, prior to becoming the  
17 defendant's attorney of record, was a frequent panelist on  
18 television shows condemning the defendant's behavior. (Defense  
19 exhibit A, #A7569, #A4959, etc.) After Geragos became counsel of  
20 record, he continued to appear on TV even holding press-conferences  
21 on the courthouse steps promising to prove the defendant's innocence  
22 and produce the real killers. (Defense exhibit A, #A3255.) The  
23 defense has fueled the interest of the media with accusations of  
24 Satanist involvement and a "mystery women" witness. (See defense  
25 exhibit A, #A4336, #A4032, etc.) Attorney Geragos has recently  
26 referred to his client as "stone-cold innocent." (Exhibit 5.) The  
27 effect of this media grandstanding has resulted not only in  
28

1 increased media coverage, but also in changed attitudes about this  
2 case (See **exhibit 1** and **1A** and **Surveys**, *infra.*)

3 To this day, the defense "team" of experts (Jury consultant  
4 Jo-Ellan Dimitrius, Dr. Ceril Wecht and Henry Lee) continues to  
5 violate this court's protective order and trumpet the defense theory  
6 and/or the innocence of the defendant. (**Exhibit 3.**)

7 It would be absurd to reward the defense by granting a change  
8 of venue for their conduct that has caused much of the publicity of  
9 which they complain. As said in other cases "the doctrine of invited  
10 error operates to estop a party from asserting an error when the  
11 party's own conduct has induced its commission (People v. Perez  
12 (1979) 23 Cal.3d 545, 549-550, fn. 3), and from claiming to have  
13 been denied a fair trial by circumstances of the party's own making  
14 (People v. Hammond (1960) 54 Cal.2d 846, 852.)" (People v. Lang  
15 (1989) 49 Cal.3d 991, 1031-1032.)

#### 16 **B. Surveys**

17 The defense retained the services of Paul Strand to conduct a  
18 survey of jurors from Stanislaus County. Strand claims 39% believe  
19 that the defendant is guilty. His data reports, in Q1a (page A2 of  
20 exhibit E) that 114 people said "did commit" out of 301 in the  
21 survey - that is 37.9%. He also says there is a 5.5% +/- error rate;  
22 this means that as little as 32.4% have prejudged the defendant's  
23 guilt. The defense trumpets this as some divine sign that a change  
24 of venue is required, but other courts have said higher  
25 prejudgements aren't enough for a change of venue.

26 In People v. Welch (1999) 20 Cal. 4<sup>th</sup> 701, 744-745, the court  
27 held that even though 50% had prejudged the defendant's guilt, this  
28

1 fact alone was not enough to require a change of venue. In People v.  
2 Murtishaw (1989) 48 Cal. 3d 1001, 1016, the court also rejected a  
3 venue change even though 45% of the surveyed jurors knew the  
4 defendant had previously received the death penalty and 44% said  
5 they would vote for death knowing this fact. The Murtishaw court  
6 went further in rejecting the defenses "survey" saying that there  
7 was "no showing these findings would not be duplicated in other  
8 counties." (Id, at page 1016.)

9 The defendant has failed to test their survey across county  
10 lines. He has also failed to ask the next logical question and ask  
11 how many people could set their opinion aside and decide the case  
12 based on the evidence. The People's survey did both. (See People's  
13 exhibits 1 and 1A.)

14 Dr. Ebbesen, (whose curriculum vitae is on file with the court  
15 as an attachment to a prior motion) found that :

16 "Evidence from our survey suggests that potential jurors  
17 from Stanislaus can keep an open mind and set aside whatever  
18 they know and feel about this case. **About 80% of the**  
19 **respondents from Stanislaus said that they could keep and open**  
20 **mind.** The large majority (about 90%) said that they would be  
21 able to ignore comments and opinions from friends and relatives  
22 were they selected as jurors. **A little over 80% said that they**  
23 **would be able to follow judicial instructions to set aside what**  
24 **they knew and begin their service as potential jurors with the**  
25 **presumption that Scott was innocent.**

26 \*\*\*

27 Evidence from our survey suggests that potential jurors in  
28 Stanislaus do not harbor any greater or lesser degree of  
prejudice against Scott than potential jurors from Los Angeles  
or Sacramento. Virtually every comparison among the three  
counties found no difference among them. Potential jurors from  
the three counties were equally open minded, able to set aside  
what they knew, and evaluate evidence in this case in an  
equally unbiased manner.

29 We found no evidence from our survey that moving to  
30 another venue would make any difference in the ability of Scott  
31 Peterson to receive a fair trial." (People's exhibit 1A,  
32 conclusion.) [Emphasis added.]

1 The defense also makes use of a survey by Stephen Schoenthaler  
2 of California State University, Stanislaus - this survey again  
3 disproves their point. As pointed out by Dr. Ebbessen, time has  
4 changed the results from when Schoenthaler did his survey and the  
5 older survey did not take into account all jurors attitudes. (See  
6 People's exhibit 1.) Schoenthaler's survey isn't even in evidence.

### 7 3. Size of the Community

8 In defendant's motion, he describes the population of  
9 Stanislaus County as "small." This is not true. The defense cites  
10 Fain v. Superior Court (1970) 2 Cal.3d 46, Griffin v. Superior Court  
11 (1972) 26 Cal.App.3d 672, and People v. Miller (1973) 33 Cal.App.3d  
12 1005, as proof of Stanislaus County's "small" size. He neglects to  
13 point out that these cases are thirty (30) years old. In those  
14 thirty years, society has changed from 8-track tapes to cd-roms, UHF  
15 to cable/satellite television, from punchcard computers to laptops  
16 and the Internet. Stanislaus County has also changed - and grown.

17 The court should consider that California is the most populous  
18 of our fifty United States and Stanislaus County is now ranked as  
19 the 16th largest out of 58 California counties. The City of Modesto  
20 where the crime occurred is ranked as the 15<sup>th</sup> largest city in the  
21 state. According to data collected by the United States 2000 census  
22 and available from the State of California, Department of Finance  
23 website (at <http://www.dof.ca.gov/html/Demograp/druhpar.htm>),  
24 Stanislaus County had a population of 481,600. [Exhibit 6.]

25 The court's analysis of this factor focuses on whether the size  
26 of the community neutralizes or dilutes the impact of news reports.  
27 The size of the community is not dispositive of the issue. Multiple  
28

1 cases have held that the prejudicial effect of news reports is  
2 considerably diminished in a community with a "large metropolitan  
3 area." The larger the community, the less the chance that a change  
4 of venue will be required. People v. Dennis (1998) 17 Cal.4th 468,  
5 523; People v. Massie (1998) 19 Cal.4th 550.

6 In People v. Fauber (1992) 2 Cal.4th 792, the California  
7 Supreme Court specifically rejected a defendant's claim that in a  
8 capital case venue should be moved from Ventura County based on its  
9 size and nature.

10 "The size and nature of the community do not support a  
11 venue change. The population of Ventura County in 1987 was  
12 619,300, making it the 13th largest county in the state. (Cal.  
13 Statistical Abstract (27th ed. 1987) Dept. of Finance, sec. B,  
14 p. 20.) Venue changes are seldom granted from counties of such  
15 a large size; the larger the local population, the less likely  
16 it is that preconceptions about the case have become embedded  
17 in the public mind. (People v. Balderas (1985) 41 Cal.3d 144,  
18 178 [222 Cal.Rptr. 184, 711 P.2d 480] [motion to change venue  
19 from Kern County, 14th largest in state, properly denied].)  
20 Defendant argues for a different conclusion because death  
21 penalty trials are not very common in Ventura County, and  
22 because Ventura is less urban in character than, for example,  
23 Los Angeles. We reject defendant's argument. (See Odle v.  
24 Superior Court (1982) 32 Cal.3d 932, 938 [187 Cal.Rptr. 455,  
25 654 P.2d 225] [upholding denial of venue change from Contra  
26 Costa County, "as much suburban as rural"].)"

19 People v. Fauber (1992) 2 Cal.4th 792, 818.

20 The size of Stanislaus County in 2003/2004 is much more similar to  
21 Ventura County in the Fauber case, than to the small county it was  
22 in the Fain case. With a diverse population of over 481,600, the  
23 routine local news reports documenting defendants' crime and the  
24 progress of the case through the court system have not transformed  
25 defendants' case into a "spectacular" or "notorious" case which  
26 would result in prejudice to the defendant absent a change of venue.

1    4.    Status of the Accused

2            Where a defendant is viewed with hostility by the community  
3 because of something inherent to him, a change of venue may be  
4 necessary. (Frazier v. Superior Court (1971) 5 Cal.3d 287, 293-294  
5 [defendant was viewed as a "hippie" by an antagonistic community];  
6 Williams v. Superior Court (1983) 34 Cal.3d 584 [black defendant,  
7 stranger to the community, charged with the rape/murder of a white  
8 woman of some "limited prominence"].)

9            In this case, defendant contends that the media has labeled him  
10 as an outsider - but fails to cite to a single article out of the  
11 8319 documents attached as exhibit A to his motion to prove this  
12 point. Instead, he cites to a single Modesto Bee article (#A99 of  
13 the Modesto Bee articles) which quotes a defense attorney saying the  
14 defendant may have a hard time empaneling a fair jury. This is  
15 hardly competent evidence.

16           The article also quotes the former Modesto Mayor, but fails to  
17 mention that the former mayor was under investigation by the  
18 District Attorney's Office at the time the comment was made and has  
19 subsequently been charged in a felony criminal complaint.

20           (Stanislaus County Superior Court case # 1061284, and of which this  
21 court may take judicial notice of pursuant to Evidence Code  
22 §452(d).) A quote such as this was previously rejected in Harris,  
23 supra. In the dissent, at page 968, then Chief Justice Rose Bird  
24 argued that a statement made by a chief deputy district attorney  
25 should have influenced the majority:

26           "The chief deputy further admitted that it might be  
27 difficult to empanel an impartial jury in the county after  
28 the published reports of Daniel's confession which laid  
the blame for the shootings on appellant."

1        Nowhere in article #A99 does the press denigrate the defendant.  
2        He has been described as an ordinary, nice and sociable person whom  
3        nobody suspected of responsibility for the crimes with which he is  
4        charged. (**Exhibit A**, "allbundled" file #A7151.) Although defendant  
5        is not known outside a small circle of family and friends, he is a  
6        resident of Stanislaus County who has friends living in the  
7        community. There is nothing inherently unusual about the defendant  
8        other than his commission of this crime and nothing prejudicial  
9        about the defendant's status in the community which supports a  
10       change of venue.

11       Sympathetic and positive coverage weighs against a change of  
12       venue. People v. Pride (1992) 3 Cal.4th 195, 225. A change of venue  
13       is therefore unwarranted on the basis of defendant's status in the  
14       community.

#### 15       **5.    Popularity and Prominence of the Victim**

16       When a victim has prominence or status within the community,  
17       this is a factor which may favor a change of venue. If the victim  
18       does not have any particular prominence in the greater-county area  
19       outside of a small isolated area, this would not be a factor in  
20       favor of venue change. People v. Proctor (1992) 4 Cal.4th 499, 526.  
21       The Proctor case involved the rape/murder of a popular school  
22       teacher in Shasta County, population 122,100 [ranked 28th of 58  
23       counties]. The denial of defendant's venue motion was affirmed on  
24       appeal following his conviction in this capital case.

25       Defendant stresses the "outpouring of sympathy" toward the  
26       murder victims in this case as a factor in favor of a change of  
27       venue. Any prominence achieved by a victim through news reports  
28

1 following the crime does not support a change of venue. Where the  
2 victim or the circumstances surrounding the victim's death generates  
3 a sympathetic response in the heart of a stranger, prospective  
4 jurors would sympathize with the victim and her family wherever the  
5 case is tried. People v. Dennis (1998) 17 Cal.4th 468, 523, citing  
6 People v. Webb (1993) 6 Cal.4th 494, 514-515. In Webb, at page 514,  
7 the court noted, "Contrary to what defendant argues, any "posthumous  
8 prominence" achieved by the victims through news accounts of their  
9 deaths did not favor a change of venue."

10 In this case, the status of the victims prior to their murders  
11 was exactly the same as the defendant's. Laci Peterson was married  
12 to and lived in the same Modesto house as the defendant; she had the  
13 same circle of acquaintances as the defendant did. Conner Peterson  
14 was the unborn son of Laci Peterson and the defendant; his status in  
15 the community was exactly the same as the defendant's. The status  
16 of the victims in this case does not favor a change of venue.

#### 17 POLITICAL OVERTONES

18 There are no political overtones in this case - the defense  
19 confuses politicians making public statements about a case with  
20 trying to further their careers at the expense of an accused. There  
21 are no factors present in this case as was present in the Powell  
22 case, cited by the defendant. In Harris, the Supreme Court affirmed  
23 the trial court's denial of a change of venue despite the fact that  
24 the District Attorney and the U.S. Attorney were waging a war to try  
25 the defendant first and obtain the most severe punishment - coupled  
26 with dueling press statements and accusations of political  
27 motivation. (Supra at p.969-971, 982.)



1 In the instant case, the defendant merely points to political  
2 events and tries to imply these events have affected his case - he  
3 has failed: the Attorney General is not prosecuting this case and  
4 his comments cannot be said to be representative of this  
5 prosecution; that the Board of Supervisors has discussed this case  
6 amounts to nothing - in fact the defense fails to even allege what  
7 was discussed; that the family has supported federal legislation  
8 again has no impact, directly or indirectly, on this case and the  
9 defense again fails to explain how it could possibly make a  
10 difference in his case; and lastly, the claim that legislators  
11 introduced legislation to reimburse costs incurred because of the  
12 defendant's actions somehow injects "politics" into his case is  
13 wrong - it is what legislators do, and if this fact were proof of  
14 "political overtones" in this case, then the legislation should have  
15 passed (Legislation was vetoed by the Governor, see exhibit #7.) As  
16 can be seen, the claimed "political overtones" in this case are a  
17 desperate stretch by the defendant.

#### 18 EVIDENCE

19 The California Supreme Court reviewed what evidence could be  
20 considered by the trial court in determining whether or not to order  
21 a change of venue in the case of Maine v. Superior Court (1968) 68  
22 Cal.2d 375, 383:

23 "This determination may be based on such evidence as qualified  
24 public opinion surveys or opinion testimony offered by  
25 individuals, or on the court's own evaluation of the nature,  
26 frequency, and timing of the material involved. A showing of  
27 actual prejudice shall not be required."

28 Other cases have also indicated that witness testimony is  
admissible in deciding a venue motion. Corona v. Superior Court,

1 supra, 24 Cal.App.3d 872, 877; citing to Frazier v. Superior Court  
2 (1971) 5 Cal.3d 287.) The defense has submitted several declarations  
3 and the People object to them being considered by the court since  
4 they are hearsay and the People are entitled to cross-examine their  
5 witnesses.

6 It is elementary that inadmissible hearsay must be stricken on  
7 objection and must be disregarded by the court. (Ziegler v. Reuze,  
8 (1945) 27 Cal.2d 389, 398-399; Houghtaling v. Superior Court (1993)  
9 dissent at 17 Cal.App.4th 1128, 1149-1150.) A declaration of a  
10 defendant was offered in People v. Williams, (1973) 30 Cal.App.3d  
11 502, in support of a pretrial motion. The court ruled:

12 "It is a commonly known rule that no witness, even a defendant  
13 in a criminal case, will be permitted to testify concerning a  
14 matter while refusing cross-examination as to the same matter.  
15 In such situations the constitutional privilege against  
16 self-incrimination as to the subject matter of his direct  
17 examination is deemed waived." (Id. at p. 510; similarly see  
18 Overby v. Municipal Court (1981) 121 Cal.App.3d 377, 386, fn. 5  
19 [disapproved on other grounds in Serna v. Superior Court,  
20 (1985) 40 Cal.3d 239, 262, fn. 16].)

21 Affidavits may not be used in evidence unless permitted by  
22 statute, by stipulation of the parties, or by failure to object.  
23 (Estate of Fraysher, (1956) 47 Cal.2d 131, 135; People v. Dickinson,  
24 (1976) 59 Cal.App.3d 314, 319.) Such affidavits are inadmissible  
25 hearsay because they are prepared without the opportunity to  
26 cross-examine the affiant. (Windigo Mills v. Unemployment Insurance  
27 Appeals Board, (1979) 92 Cal.App.3d 586, 597.)

28 The defense declarations are exactly the kind of inadmissible  
hearsay that is prohibited. The People object to the court's receipt  
of them as evidence. If the court is not inclined to strike the  
defense declarations, the People demand the right to cross-examine

1 the declarant(s) as essential to ensure the search for the truth.

2 Lastly, since the court has not ruled on whether witnesses will  
3 be allowed to testify at the venue hearing, the People have included  
4 declarations of its witnesses as well - the People will have these  
5 witnesses available to testify on the date of the hearing.

#### 6 CONCLUSION

7 It is the People's position that the defendant has not met his  
8 burden of establishing a "reasonable likelihood" that he cannot  
9 receive a fair trial in this county. The five factors break down as  
10 follows: 1) the nature of the crime **favors the defendant**, but as a  
11 factor standing alone it would not support a change of venue, 2)  
12 publicity , when all of the factors are considered weighs against a  
13 change of venue and **favors the prosecution**, 3) the size of the  
14 community weighs against a change of venue and **favors the**  
15 **prosecution**, 4) status of the victim weighs against a change of  
16 venue and **favors the prosecution**, 5) status of the defendant weighs  
17 against a change of venue and **favors the prosecution**.

18 The defendant has also not shown that moving his case will  
19 enable a jury to be chosen that has not heard all of the same  
20 pretrial publicity that a Stanislaus County jury has heard. This  
21 case is known worldwide and is indistinguishable from the Manson  
22 case - when there has been this much publicity there is no point in  
23 a change of venue. As the Manson case prophetically predicted:  
24 "Modern means of news communication have taken away many of the  
25 reasons for the transfer of the cause celebre which may have existed  
26 fifty years ago." (Id., at page 190.) Additionally, when jurors up  
27 and down the state hold the same feelings "in general," there is no  
28

1 point in moving venue. (People v. Venegas , supra, 25 Cal.App.4th  
2 1731, 1738.)

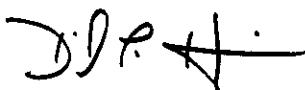
3 Lastly, rather than making a speculative pretrial determination  
4 that a change of venue is in order, the process of voir dire will  
5 allow the court to determine with accuracy whether a fair and  
6 impartial jury can be selected in this case. Several Supreme Court  
7 cases have approved the process of jury selection as a means of  
8 demonstrating the presence or absence of impartiality. Voir dire may  
9 demonstrate that pretrial publicity had no prejudicial effect. Voir  
10 dire may also demonstrate that comments to the media from people who  
11 have no involvement with this case, such as the Sheriff's spokesman,  
12 have had little effect on jurors and only demonstrate that many  
13 people will go to great lengths to try and achieve their fifteen  
14 minutes of fame. [These kinds of people exist everywhere and will be  
15 weeded out in court in the solemnity of legal proceedings and the  
16 voir dire process will ensure the defendant's rights are protected.]  
17 The People request that this court deny defendant's motion or, in  
18 the alternative, delay the ruling until such time as a venire  
19 demonstrably cannot be empaneled in this county.

20 Dated: 1-2-04

Respectfully submitted,

JAMES C. BRAZELTON  
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23 By:

  
24 David P. Harris  
25 Sr. Deputy District Attorney  
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