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FILED

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CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS

BY

Rose Ann Alfaro
DEPUTY

8 STANISLAUS COUNTY SUPERIOR COURT
9 STATE OF CALIFORNIA

-----o0o-----

10 D.A. No.1056770

11 THE PEOPLE OF THE STATE OF CALIFORNIA)

No.1056770

12 Plaintiff,)

MOTION TO RECONSIDER
CHANGE OF VENUE

13 vs.)

14)
15 SCOTT LEE PETERSON,)

Hrg: 1-20-04
Time: 9:00 a.m.
Dept: 2

16 Defendant.)
17 -----o0o-----

18 Comes now the People of the State of California to submit the
19 following:

20 **FACTS**

21 On January 8, 2004 this court granted the defendant's request
22 for a Change of Venue. Part of the evidence submitted by the defense
23 was an exhibit and subsequent testimony of Stephen Schoenthaler.
24 (Transcript page 91, lines 18-21; page 95, line 19 to page 144, line
25 5.) The exhibit was a venue "survey" conducted by the professor's
26 students who were allowed to go home and make approximately 1000
27 long distance phone calls. (Page 119-120.) After a very limited
28 cross-examination of this witness, and the testimony of Dr. Ebbesen,

1 the court affirmed its tentative ruling granting the change of
2 venue. In the tentative ruling, the court specifically relied on (at
3 page 91-92) Schoenthaler's survey; it characterized that survey as
4 the "most thorough" of the three surveys that were offered (at page
5 91).

6 The court went on to rule that the venue change was required
7 and, in discussing the appropriate recommendations to the
8 Administrative Office of the Courts (AOC), excluded all of the
9 valley counties based on what the court had "heard" and "seen."
10 (Page 210-211.) The People recommended Sacramento and commented that
11 the court had just excluded that county by its statement. (Page
12 212.) The court then stated: " Again, my criteria, and based on the
13 surveys, also, I'm satisfied we can get a fair trial in all of those
14 except for Sacramento." (Page 212, line 10-12.)

15 Subsequent to the court's ruling, according to published
16 reports in the Modesto Bee (**Exhibit 1**), several (nine at last count)
17 of the professor's students have come forward and told reporters
18 that they faked the results/data. The professor has also told the
19 Bee he failed to detect the fraud.

20 The Bee also reported that the professor's employer, California
21 State University Stanislaus, advised that students who had falsified
22 the surveys could face expulsion. This has severely diminished the
23 People's ability to identify the students. The People have requested
24 the records that would allow us to identify and interview the
25 students, but this request has been refused. However, one witness
26 has come forward and provided a statement to an Investigator.

27 This witness has known Schoenthaler for a long time and worked
28

1 for him for a number of years. She has personal knowledge of
2 Schoenthaler falsifying research data in the past; she told the
3 investigator that Schoenthaler directed her to remove data that did
4 not fit within his projected outcome of a research project (**Exhibit**
5 **2**).

6
7 **LAW**

8 In light of these developments, the People ask the court to
9 reconsider the prior ruling, and address this fraud that has been
10 perpetrated on the court.

11 "From the beginning there has existed along side the term rule
12 a rule of equity to the effect that under certain
13 circumstances, one of which is after-discovered fraud, relief
will be granted against judgments regardless of the term of
their entry."

14 Hazel-Atlas Glass Co. v. Hartford-Empire Co. (1944) 322 U.S.
15 238, 244; overruled on other grounds in Standard Oil Co. of
California v. U. S., (1976) 429 U.S. 17.

16 "Indeed, prior to the adoption of Penal Code section 1538.5,
17 the predecessor to Code of Civil Procedure section 128,
subdivision (a)(8), was held to be the source of a trial
court's inherent authority to modify a suppression order.
18 (People v. Beasley (1967) 250 Cal.App.2d 71, 77.) Accordingly,
we conclude that Code of Civil Procedure section 128,
19 subdivision (a)(8), gives the court the discretion to modify
the factual findings of a denied suppression order, as
20 requested by the prosecution or sua sponte, in the interests of
justice."

21 People v. Jackson, (1996) 13 Cal.4th 1164, 1205.

22 "[T]he power to grant rehearings is inherent, -is an essential
23 ingredient of jurisdiction, and ends only with the loss of
jurisdiction." (In re Jessup (1889) 81 Cal. 408, 468; accord,
24 Metropolitan Water Dist. v. Adams (1942) 19 Cal.2d 463, 469.) "
25 'One of the powers which has always been recognized as inherent
in courts, which are protected in their existence, their powers
and jurisdiction by constitutional provisions, has been the
26 right to control its order of business and to so conduct the
same that the rights of all suitors before them may be
27 safeguarded. This power has been recognized as judicial in its

1 nature, and as being a necessary appendage to a court organized
2 to enforce rights and redress wrongs.' "

3 People v. Castello (1998) 65 Cal.App.4th 1242, 1248.
4

5 **CONCLUSION**

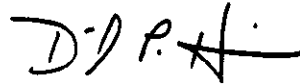
6 The People ask: 1) that the court reconsider the venue motion;
7 2) the court reconsider contacting the AOC to determine whether
8 Sacramento would accept a venue change; and 3) striking all of
9 Schoenthaler's testimony, his report and survey. If the People are
10 required to move this trial away from Stanislaus county, it should
11 be because of competent, factual and verifiable evidence, and not
12 because of incompetent/fraudulent evidence offered to the court.

13 Dated: 1-16-04

14 Respectfully submitted,

15 JAMES C. BRAZELTON
16 District Attorney

17 By:



18 David P. Harris
19 Sr. Deputy District Attorney
20
21
22
23
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26
27
28

Exhibit 1

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Allegations arise in Peterson trial surveyBy GARTH STAPLEY and JOHN COTÉ
BEE STAFF WRITERS

Last Updated: January 9, 2004, 11:34:16 AM PST

Several university students said Thursday that they fabricated survey results factored into a judge's decision to move Scott Peterson's capital murder trial out of Modesto.

Judge Al Girolami learned of the phony-poll allegation just before 5 p.m. and, through a court intermediary, refused to comment.

"We falsified the info," said a 20-year-old criminal justice student at California State University, Stanislaus. "The stuff we submitted wasn't true."

He referred to the 10-county Peterson bias survey compiled by 65 students and overseen by Professor Stephen Schoenthaler.

Informed Thursday evening of the students' claims, Schoenthaler said, "I'm stunned and I find it hard to believe. It seems impossible that I could have missed something like that."

University Vice Provost Diana Demetrulias said her office will launch an investigation today.

Chief Deputy District Attorney John Goold suggested that the revelation could cause Girolami to reconsider his decision.

"Oh, my God," Goold said when informed of the students' claims. "It certainly sounds like this would affect the underpinnings of the judge's decision."

The student and five others -- all seniors -- said Thursday that they made up every answer on all the surveys they submitted because they found it difficult to gather legitimate data.

They did it, they said, because they were short on time and money. They were required to participate in the survey for 20 percent of their grade and were given no money for dozens of lengthy long-distance phone calls, they said.

Another senior said she struggled to complete half of her required surveys, then gave up and faked the rest. Another said she refused to cheat but didn't have the resources to do the survey, so she didn't -- knowing that her grade could be lowered from A to C.

Three of the eight said they used answers from friends



Scott Peterson confers with defense attorney Mark Geragos during Thursday's hearing. Peterson is due back in court next week.

- Map of possible venues
 - Survey Results
 - Survey questionnaire (PDF format 1.6MB)
- AL GOLUB/THE BEE



Stanislaus State Professor Stephen Schoenthaler explains in court Thursday about the Peterson bias survey that he said his students compiled and he oversaw. Several students are now claiming that they fabricated the survey's results.

AL GOLUB/THE BEE

and relatives on some surveys, also in violation of survey ethics.

Goold said his office would discuss a course of action. Regarding the judge, Goold said, "If he is aware of impropriety, he can notify the parties to be in court tomorrow" to address "falsity before the court."

Peterson attorney Mark Geragos of Los Angeles said, "Hypothetically speaking, one should never put any credence in anonymous sources."

All students requested anonymity.

On the witness stand Thursday, Schoenthaler insisted that his methodology was sound when prosecutor Dave Harris questioned the survey's integrity.

"Is it possible that college students went home and simply made these numbers up?" Harris said later in court. "I think there is a significant likelihood of that."

Phone numbers not verified

Harris' arguments appeared to have little effect on Girolami, who said his decision to move the trial was heavily based on a "massive amount of publicity."

In conducting the survey, Schoenthaler said he required students to include the phone numbers they supposedly called when submitting data, but that he had not verified any by calling them himself.

But formulas developed to detect fraud didn't alert him to anything unusual, the professor said.

Before The Bee published the survey results Sunday, Schoenthaler said he used 65 students to poll 1,175 prospective jurors randomly by telephone in late November and early December. He said from 114 to 122 people responded in each of California's eight largest counties, plus Stanislaus and San Joaquin counties.

The survey suggested that more jurors without bias could be found in the Bay Area and Southern California than in Stanislaus County. Geragos submitted the survey as an official case exhibit, and the judge cited it when explaining his decision to move the trial.

Schoenthaler testified that no one hired him or paid him to do that survey or a smaller one in May. He has said he hoped to provide a public service and perhaps save taxpayer money.

In court Thursday, Harris questioned Schoenthaler's motives, suggesting the professor sought public distinction. He said the survey was poorly designed and gave students the opportunity and motive to falsify their data.

"You have to ask yourself what else is wrong with (the survey) when you ask college students for credit to go back to their house or their dorms to make long-distance calls," Harris said.

The students said Schoenthaler told them they could expect people further away to know less about the case. They said they fabricated the surveys accordingly.

"You just make it up," said a 21-year-old student.

Schoenthaler gave the students survey materials two days before Thanksgiving, he and they said.

"It's just an asinine thing to make a student do a week before finals," a 22-year-old student said. "There is no way (Schoenthaler) can say this is legitimate, because he wasn't there when we supposedly made it up."

A 21-year-old student said: "It's bogus."

Students unaware of survey use



Mark Geragos, center, attorney for Scott Peterson, left, addresses Stanislaus County Superior Court Judge Al Girolami during Thursday's session. At right is defense attorney Pat Harris.

AL GOLUB/THE BEE

Some students said they would have come forward earlier but they had no idea their fabrications would be used to help sway a judge making such an important decision.

A 35-year-old student said, "This is a death penalty case. This guy's life is on the line. I'm absolutely outraged."

University spokesman Don Hansen said discipline for dishonest work can range from writing a paper or community service to suspension or expulsion.

Vice Provost Demetrulias said her probe could take a week.

"We will initiate this in the morning," she said Thursday evening. "We take very seriously any scientific misconduct or suggestion of that. We will be working on it."

A class syllabus given to the students at the beginning of the fall semester states that 20 percent of the grade would be based on a class project. The description:

"Each student will be assigned to survey public opinion attitudes and knowledge on the telephone from 20 people in various parts of California to test hypotheses that will be done in class. The survey typically takes five or six hours to complete and an hour of practice."

Stephen Lubet of Northwestern University School of Law in Chicago said, "The point is to teach students, not obtain their labor."

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Falsified Peterson survey not a surprise to someBy MELANIE TURNER
BEE STAFF WRITER

Last Updated: January 10, 2004, 08:52:00 AM PST

TURLOCK -- The reputation of California State University, Stanislaus, could suffer following news that students apparently cheated on a change-of-venue survey related to the Scott Peterson murder trial, some students and faculty members said Friday.

"It's a sad state of affairs the way it is," said sociology professor Walter Doraz. "When someone admits they committed a fraud, then that's a problem."

Kyle Nugent of Modesto, a senior studying communications at Stanislaus State, said he had questions about the alleged cheating: Why didn't the students come forward sooner, knowing the survey results would factor into a judge's decision? And why did sociology professor Stephen Schoenthaler allow the cheating to happen?

"There should be some kind of disciplinary action," he said.

The survey, conducted in a class taught by Schoenthaler, found that Bay Area and Southern California residents are less likely than those in Stanislaus County to have decided that Scott Peterson is guilty of murder.

Six of the 65 students assigned to conduct the survey said Thursday they made up every answer they submitted because they were short on time and money.

They were required to participate in the survey for 20 percent of their grade and were given no money for dozens of lengthy long-distance phone calls, they said.

Faculty on campus Friday said they are concerned for the university's reputation and the research conducted there.

Diana Demetrulias, vice provost of academic affairs, launched an investigation Friday. University spokesman Don Hansen said the investigation would take a week.

Psychology professor Jamie McCreary said she will reserve judgment until the investigation is complete.

"I think most faculty are not making a judgment until we know what happened," McCreary said. "Until we do, I just feel very badly for the university, the students and Dr. Schoenthaler."

McCreary said the university has very high standards, and she's fearful that the community will have unwarranted distrust of research conducted there.

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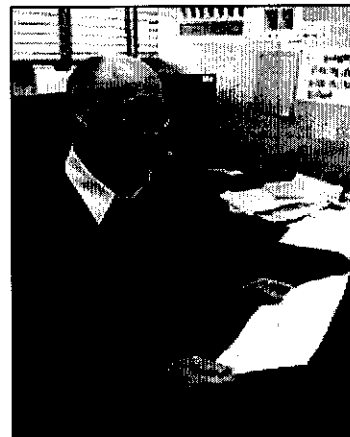
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Psychology professor Jamie McCreary fears the public's trust will be lost.

Survey Results
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MARTY BICEK/THE BEE



Steven Hughes, director of the university's Center for Public Policy Studies, said survey research isn't conducted at the center.
MARTY BICEK/THE BEE

"This accusation doesn't fit with the way I know we do things," said McCreary, who has taught at Stanislaus for 29 years.

She said she has several research contracts in the community, so she'd like the matter to be cleared up. She said students are paid to do work on her projects and "I'm with them every step of the project."

Steven Hughes, director of the university's Center for Public Policy Studies, also voiced concern. Hopefully, he said, people would be familiar enough with the center's research to know the work is legitimate.

Survey research, he said, is costly and time-consuming, and is not conducted at the center.

"It's evolved into a highly skilled specialty," Hughes said.

Phyllis Gerstenfeld, a professor of criminal justice, said: "I think there's a lot of concern about the reputation of the department."

She said because the students had time pressures and monetary costs to consider, she's not surprised they fabricated data.

"I would have been tempted to make stuff up," she said. "I wouldn't have done it, but I would have been tempted. It certainly would not have been the way I would have designed the research project."

Students also were disturbed by the news.

"It just kind of hurts the credibility of our school," said 25-year-old Joe Carranza, a graduate student in communication education.

But some students said fudging a survey assignment is not unusual.

"Most of us do it just to get it done," said 19-year-old Chris Fisher, a freshman who lives on campus. "You ask a couple people (and make up the rest)."





Josh Hoffler, a 26-year-old from Modesto, agreed.

"You think, 'Hey, it's just for a class. It's just for a grade,'" said Hoffler, who attends Modesto Junior College and was visiting Stanislaus State on Friday. "I don't think that the people that did it really thought it was going to be used in court."

Frances Estupinan, a 22-year-old liberal studies major from Turlock, said it was the "topic of the morning."

Estupinan added, "I think it's just embarrassing for the whole school."

Bee staff writer Melanie Turner can be reached at 578-2366 or mturner@modbee.com.

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Pollster told to be in courtBY GARTH STAPLEY
BEE STAFF WRITER

Last Updated: January 15, 2004, 08:02:00 AM PST

A judge Wednesday ordered a university professor at the center of a survey scandal to appear at accused killer Scott Peterson's next court date.

California State University, Stanislaus, Professor Stephen Schoenthaler attended Wednesday's hearing with his lawyer after receiving a Peterson prosecution subpoena.

Wednesday, Stanislaus County Superior Court Judge Marie Silveira denied a defense motion to dismiss the charges against Peterson. Peterson is set to return to court Tuesday, when Judge Al Girolami is to select a location for his double-murder trial.

Schoenthaler's lawyer, Ernie Spokes of Modesto, refused to immediately give authorities documents related to the survey. He cited student confidentiality laws and a desire not to interfere with a university investigation.

"There are two sides to every story," Schoenthaler said after Wednesday's hearing. Spokes directed him not to elaborate, saying, "Now is not the time."

Schoenthaler oversaw a 10-county, 1,175-person survey conducted by about 65 criminal justice students in November and December. Nine have said they fabricated some or all answers to the survey, which measured bias against Peterson, because they were short on time and money for lengthy, long-distance telephone calls.

Just before the revelation, Girolami had cited Schoenthaler's survey in a decision to move the double-murder trial from Modesto. However, Girolami made clear that the main reason for moving was massive publicity.

Prosecutors, hinting at a request for reconsideration on the change-of-venue ruling, said Wednesday that they need a class list to interview the unidentified students.

Defense attorney Mark Geragos speculated that a classmate who apparently is an intern in the district attorney's office spurred the students' claims that they faked the results. He did not identify the student.

Also appearing in court Wednesday were Stanislaus State Vice Provost Diana Demetrulias, who carried a plastic crate filled with files, and university attorney Karen Carr. Silveira said, "Certainly this is an important issue," and ordered them to return Tuesday as well.

Investigation could take months

After the hearing, Carr said the survey fiasco should not affect the Turlock university's credibility. The university is conducting an investigation that could take months, university President Marvalene Hughes said Tuesday.

"(Schoenthaler) has given us dedicated service in the past," Carr said after the hearing.

Spokes and Geragos said prosecutors abused their subpoena power by requiring Schoenthaler to attend



Professor Stephen Schoenthaler, left, and attorney Ernie Spokes leave Stanislaus County Courthouse.
AL GOLUB/THE BEE

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Complete Index ▶

Wednesday's hearing, which had nothing to do with his survey.

Prosecutors acknowledged that Girolami is the proper judge to consider ordering Schoenthaler to turn documents over to authorities. But Girolami has been on vacation and inaccessible, prosecutor Dave Harris said.

Spokes said Schoenthaler will comply with such an order if Girolami hands it down Tuesday.

A well-placed source said Professor Paul O'Brien, chairman of Schoenthaler's department at the university, received a subpoena and gave some documents to authorities Tuesday.

Weeks ago, while asking for a change of venue, Geragos had cited a bias survey conducted by his own expert, Paul J. Strand, a university dean in San Diego. That survey indicated that 38 percent of 300 respondents in Stanislaus County had prejudged Peterson.

After The Bee published Schoenthaler's 10-county survey Jan. 4, Geragos submitted the survey as an attachment to a court document. The survey suggested that 69 percent of 122 Stanislaus County respondents had already decided Peterson's guilt.

Schoenthaler testified last week that he wasn't paid for the survey but produced it as a public service.

Asked after Wednesday's hearing if he regretted emphasizing Schoenthaler's survey, Geragos said, "If I'm not mistaken, Schoenthaler's was an independent survey."

The professor has taken heat from professional pollsters and a national association who railed on surveys done without adequate training, supervision and compensation for surveyors' expenses. Also, Schoenthaler should have tried to verify some surveys by recontacting people who provided answers, experts said.

Attorney: Blame the students

Spokes, calling his client "well regarded in the community for his work," attempted to deflect blame toward students.

Spokes said Schoenthaler invited students to submit written reimbursement requests. Some of the students said he initially insisted that dozens of long-distance calls are reasonable costs for a university education, and that he suggested getting phone cards or using pay phones.

Some students who said they conducted a number of valid, 39-question surveys said each required about 20 minutes to conduct. Schoenthaler required students to submit 20 surveys, including 18 from counties outside Stanislaus.

But Spokes said the surveys should have lasted only eight minutes each, on average.

Also, time pressures between the Nov. 18 end of the Peterson preliminary hearing and last week's change-of-venue hearing left Schoenthaler little time to attempt verifying the students' data, Spokes said. The professor has been making callbacks since the students came forward last week, Spokes said, but refused to say what his client has found.

Spokes said students guilty of academic fraud should get "a swift boot out the door."

His client "is terribly devastated that students would embarrass him, this university and the entire polling industry," Spokes said.

Geragos, Spokes and Schoenthaler initially served as commentators on the Peterson case before becoming involved in it.

As a television pundit, Geragos appeared for months on national cable news talk shows before Peterson hired him in May. Spokes and Schoenthaler provided comment to The Bee and broadcast media.

Spokes said he had hired Schoenthaler to conduct two change-of-venue surveys for previous clients charged with murders; neither trial was moved.

Bee staff writer Garth Stapley can be reached at 578-2390 or gstapley@modbee.com.

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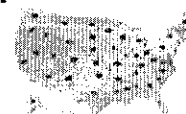
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Survey review could take months

By GARTH STAPLEY
BEE STAFF WRITER
Last Updated: January 14, 2004, 09:11:00
AM PST

A California State University, Stanislaus, investigation into a survey scandal involving the Scott Peterson double-murder case may last several weeks or months, President Marvalene Hughes said Tuesday.

A preliminary inquiry launched Thursday at the Turlock campus, which had been predicted to take a week, has evolved into the full-blown investigation, Hughes said.

"I want the community to have the patience that is needed in order to investigate this case thoroughly and appropriately," she said.

Stanislaus County Superior Court Judge Al Girolami cited the 10-county survey, overseen by Professor Stephen Schoenthaler, in a decision Thursday to move the Peterson trial out of Modesto. Girolami did not know about allegedly falsified survey data until later Thursday.

Peterson, 31, is charged with killing his pregnant wife, Laci, and their unborn son, Conner. Prosecutors are seeking the death penalty.

Also Tuesday:

- Another criminal justice student came forward to The Bee, bringing to nine the number who have claimed fabricating survey responses. All said they were pressed for time during finals and worried about telephone bills because they were required to make dozens of lengthy, long-distance calls with their own phones.

- A national association of pollsters issued a rare official statement, calling the survey a disgrace if the allegations are true.

- Another judge extended Sharon Rocha's authority over the estate of her daughter, Laci Peterson.

Schoenthaler continues to teach a course during Stanislaus State's winter term, university spokesman Don Hansen said, and is expected to teach other classes during the spring semester. Hughes said the professor will remain on the job during the investigation.

"I would like to give the community the absolute assurance that we will take all cautions necessary to protect the individuals involved," Hughes said, "and to protect the quality of the academic process at the university."

Schoenthaler initially said he did not believe the students' claims and later said he needed more information.

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Hughes said the investigation will take two tracks, one to scrutinize Schoenthaler and the other his students. Overseeing the probes are, respectively, Vice Provost Diana Demetrulias and Vice President for Student Affairs Stacey Morgan-Foster.

Tenured professors like

Schoenthaler enjoy many protections through a labor unit contract. Administrators, however, can levy discipline ranging from a reprimand to dismissal if an investigation determines policy was violated.

Hughes said no tenured professor has been fired during her 10 years as university president.

Discipline for students guilty of "academic dishonesty" ranges from probation to expulsion, she said.

Survey review an issue

In a press release, Hughes said the probe will review whether Schoenthaler submitted his plan for the survey to a university committee overseeing such research. Schoenthaler last week said he did not, maintaining that his surveys are exempt from federal regulations, but his division coordinator and Demetrulias said all such plans must be presented for review.

The investigation also will cover "identification of any costs associated with responsibilities" of Schoenthaler's students, according to the release.

Hughes said she will keep an appropriate distance from the probe and does not know whether Schoenthaler has cooperated so far.

"It's difficult for me, and it means it will be some time before I can even predict what the issues are," Hughes said.

"Taking the time to sort this out has been tedious," Hughes continued. "Now we have a handle on it, we know what the procedures are and we are prepared to move forward as expeditiously as possible."

Meanwhile, the 1,800-member American Association for Public Opinion Research issued a tersely worded condemnation of "unethical and irresponsible practices reported to have been used" in Schoenthaler's survey.

Bad publicity for pollsters

Association President Elizabeth Martin said from her office in Washington, D.C., that her group released the statement "because of all the publicity, and we don't want people to think this is how surveys are normally done."

The release states: "All reputable surveys monitor or check for the possibility of falsification by directly observing or by calling back a sample of cases to ensure interviews were done." Schoenthaler previously conceded that he did neither.

The statement added: "It is exploitative to require students to carry out a telephone survey with inadequate supervision and at their own expense."

Martin said Schoenthaler does not appear on her group's membership list.

A section of the association's Web page dedicated to press releases and official statements lists only one other condemnation of an ethics violation -- issued in 1997. A Virginia firm had failed to cooperate with an inquiry into a poll on the 1994 Republican Contract With America.

Also Tuesday, Superior Court Judge John G. Whiteside postponed a court date regarding Laci Peterson's estate until Feb. 10.

At issue is control of her property, including joint ownership with her husband of their home on Covena Avenue in Modesto, along with vehicles and other belongings.

Attorney Pat Harris of the Los Angeles law firm Geragos & Geragos, which represents Scott Peterson, said

Peterson's parents need more time to hire a probate lawyer.

Rocha appeared in court Tuesday, but did not speak.

Bee staff writer Garth Stapley can be reached at 578-2390 or gstapley@modbee.com.

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Exhibit 2

1 JAMES C. BRAZELTON
2 District Attorney
3 Stanislaus County
4 Courthouse
5 Modesto, California
6 Telephone: 525-5550
7
8 Attorney for Plaintiff
9

10
11 STANISLAUS COUNTY SUPERIOR COURT
12 STATE OF CALIFORNIA
13
14 -----oOo-----
15

16 D.A. No.1056770

17 THE PEOPLE OF THE STATE OF CALIFORNIA)

No.1056770

18 Plaintiff,)

19 vs.)

DECLARATION OF
KEVIN BERTALOTTO

20 SCOTT LEE PETERSON,)

MOTION TO
RECONSIDER

21 Defendant.)

Hrg: 1-20-04
Time: 9:00 a.m.
Dept: 2

22 -----oOo-----
23 I KEVIN BERTALOTTO, hereby declare:

24 1. I am employed as a criminal investigator by the
25 Stanislaus County District Attorney's Office. I have been a peace
26 officer for 26 years.

27 2. On 1-14-04 this Office was contacted by a witness who
28 indicated that she had information relating to this case and
Stephen Schoenthaler. I was assigned to contact the witness. I
talked to the witness by telephone and took a statement from her
in person.

3. The witness appeared to be an ordinary citizen, was not
in-custody or asking for any deals, agreements or favors. A check

1 of her criminal history revealed she had none.

2 4. The witness told me that she has known Stephen
3 Schoenthaler for a long period of time. She told me that she used
4 to work with him at California State University, Stanislaus.

5 5. The witness told me that she had participated in
6 Schoenthaler's research work in the past, till about 1991, and
7 worked personally for him gathering research data and inputting
8 that data. She was paid directly by Schoenthaler and worked very
9 closely with him.

10 6. The witness heard stories in the media about the students
11 falsifying the data in the Peterson survey and Schoenthaler's
12 response that he did not know about it. She felt it was important
13 to come forward.

14 7. The witness related that during the time she worked with
15 Schoenthaler he was conducting "nutrition " research to see if
16 vitamins/supplements would increase IQ. During the data input
17 process she was specifically ordered by Schoenthaler to delete
18 data that she referred to as anomalies. She said deleting this
19 data was done to match his expected outcome.

20 8. She told me that Schoenthaler kept all of the raw
21 materials/data at his home so that it would not be seen by
22 others. She did the majority of her work at Schoenthaler's home
23 as well.

24 9. She went on to state that Schoenthaler used the altered
25 nutrition research data to write a report and submit that report
26 for publication knowing that it was fraudulent.

27 10. The witness also told me that she consulted with at
28

1 least two faculty members of CSUS regarding the fraud and no
2 action was taken. The witness was concerned that CSUS would
3 attempt to punish the students in this case to protect
4 Schoenthaler.

5 11. The witness whose maiden name is Justine Pinto asked
6 that I not use her married name. The witness was advised that a
7 declaration would be prepared for the court summarizing her
8 statement to me. The witness agreed to this and agreed to allow
9 me to use her maiden name.

10 12. I have also been advised by an employee of CSUS that the
11 District Attorney's Office will not be allowed access to the
12 class lists without a court order.

13 13. I have been able to interview one CSUS student whose
14 roommate took part in the surveys. This student told me that he
15 believed his roommate did not make the required phone calls. I
16 have been unable to obtain a statement from the roommate.

17 14. I also received a call from a woman in Sacramento County
18 who told me she was called by a CSUS student to participate in
19 the survey. This woman told me the CSUS student assured her the
20 survey was only to be used for class discussion. The woman also
21 told me that she knew of the case and felt that she could set
22 aside her knowledge and that the defendant could get a fair trial
23 from her.

24 15. I have been unable to locate or interview any of the 65

25 ///

26 ///

27 ///

1 students that Schoenthaler has said took part in his survey.

2 I declare under penalty of perjury that the foregoing is
3 true and as to matters stated on information and belief, I
4 believe them to be true.

5
6
7 Dated:

1/16/04


Kevin Bertalotto

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1 DECLARATION OF FACSIMILE SERVICE

2 I, the undersigned, say:

3 I was at the time of service of the attached **PEOPLE'S**
4 **SUBMISSION REGARDING THE APPROPRIATE VENUE TRANSFER SITE AND**
5 **McGOWAN HEARING** over the age of eighteen years and not a party to
6 the above-entitled action. I sent a copy of the above-entitled
7 document(s) on the 16th day of January, 2004, by facsimile a copy
8 thereof to the office(s) of:

9 Mark Geragos
 213-625-1600

10 I declare under penalty of perjury that the foregoing is true
11 and correct.

12 Executed this 16th day of January, 2004, at Modesto, California
13

14 Karen M. Vella
15

16 People v. Scott Peterson

17 D.A. No. 1056770

18 Court No. 1056770
19

20 kv
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