

ORIGINAL

GERAGOS & GERAGOS

A PROFESSIONAL CORPORATION

LAWYERS

39TH FLOOR

350 S. GRAND AVENUE

LOS ANGELES, CA 90071-3480

TELEPHONE (213) 625-3900

FACSIMILE (213) 625-1600

MARK J. GERAGOS SBN 108325

Attorneys for Defendant

SCOTT LEE PETERSON

FILED
SAN MATEO COUNTY

FEB - 9 2004

Clerk of the Superior Court

By Mary M. Smith
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

SCOTT LEE PETERSON, et al.,

Defendant.

Case No. 55500-A STANCO-1056770

NOTICE OF MOTION AND MOTION
IN LIMINE TO EXCLUDE
STATEMENTS MADE BY SCOTT
LEE PETERSON TO THE MEDIA

[Evidence Code sections 350, 352, 402]

DATE: February 9, 2004

TIME: 9:00 a.m.

PLACE: Dept. 2M

TO: STANISLAUS COUNTY DISTRICT ATTORNEY; and

TO: CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that on February 9th at the hour of 9:00 a.m., or as soon thereafter as counsel can be heard, Defendant Scott Lee Peterson ("Mr. Peterson"), through counsel Mark J. Geragos, will move this Court for an order excluding all statements made to the media by Mr. Peterson, or, alternatively, an order requiring that a hearing be held to determine the admissibility of any such evidence the prosecution seeks to introduce.

The motion will be based upon the grounds that the evidence is irrelevant and that the probative value of the evidence is substantially outweighed by the probability that its

NOTICE OF MOTION AND MOTION IN LIMINE TO EXCLUDE STATEMENTS
MADE BY SCOTT LEE PETERSON TO THE MEDIA

1 admission will necessitate undue consumption of time, confuse the issues, mislead the
2 jury, and create a substantial danger of undue prejudice to Mr. Peterson.

3 The motion will be based on this notice, the attached memorandum of points and
4 authorities, the pleadings and records on file herein, and upon such other and further
5 argument as may be presented to the Court at the hearing of this matter.

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7 Dated: February 9, 2004

Respectfully submitted,


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GERAGOS & GERAGOS

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By:



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MARK J. GERAGOS
Attorney for Defendant
SCOTT LEE PETERSON

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Laci Peterson went missing on December 24, 2002. Thereafter, Mr. Peterson
5 repeatedly went before local and national media in an attempt to facilitate the safe return
6 of his pregnant wife. Regrettably, as time wore on, Mr. Peterson's media appearances
7 grew to be characterized by questions concerning his relationship with Amber Frey rather
8 than on the search for Laci. In the prosecution's own words:

9 During the investigation the defendant went before the
10 national media (Good-Morning America, Prime-Time Live,
11 etc.) with his family to make please for the safe return of his
12 wife and unborn child. Early in the interviews the defendant
13 stirred the media's interest by dodging questions and speaking
14 fondly of his mistress. [Exhibit reference] The defense makes
15 much of the fact that the media has referred to the defendant
16 as an adulterer, but it was the defendant who admitted it on
17 national television.

18 (See January 2, 2004 Opposition to Motion for Change of Venue at 9:7 - 15.)

19 The defense agrees with the prosecution's characterization of Mr. Peterson's
20 media statements in that it sets forth the two sole subjects of Mr. Peterson's statements:
21 (1) the continuing search for Laci, and (2) Mr. Peterson's admission of an adulterous
22 relationship with Amber Frey.^{1/} Since neither of these topics is relevant to the facts
23 alleged in the complaint, the Court must find that all of Mr. Peterson's statements to the
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26 ^{1/}Mr. Peterson does take exception to the prosecution's characterization of his comments
27 regarding Amber Frey as displaying fondness. In any event, it should be self-evident that Mr.
28 Peterson was "fond" of some attribute of Amber Frey or else he would not have been involved in an
adulterous relationship with her. Hence, there is no dispute that Mr. Peterson must have been "fond"
of Amber Frey.

1 media are inadmissible. Additionally, the prejudicial effect of admitting Mr. Peterson's
2 media statements would far outweigh any probative value the statements may have.

3 4 II.

5 THE COURT LACKS AUTHORITY TO ADMIT MR. PETERSON'S 6 IRRELEVANT STATEMENTS TO THE MEDIA

7 "No evidence is admissible except relevant evidence." (Evidence Code section
8 350.) "'Relevant evidence' means evidence, including evidence relevant to the
9 credibility of a witness or hearsay declarant, having any tendency in reason to prove or
10 disprove any disputed fact that is of consequence to the determination of the action."
11 (Evidence Code section 210.) "The trial court has broad discretion in determining the
12 relevance of evidence but lacks discretion to admit irrelevant evidence." (*People v.*
13 *Scheid* (1998) 16 Cal.4th 1, 13 - 14, internal citations omitted.) It is also well-settled
14 under California law that "evidence presented on a [n]ondisputed issue is irrelevant and,
15 hence [i]nadmissible, as only relevant evidence is admissible in a trial." (*People v.*
16 *Coleman* (2nd Dist. 1979) 89 Cal.App.3d 312, 321, citing Evidence Code sections 210,
17 350, and *Krouse v. Graham* (1977) 19 Cal.3d 59.)

18 The Court must determine the relevance and admissibility of evidence before it can
19 be admitted. (See Evidence Code sections 400, 402. Given that (as the prosecution itself
20 has properly noted) Mr. Peterson's statements to the media were limited to statements
21 concerning the search for Laci (irrelevant to the charges of capital murder) and Mr. -
22 Peterson's admission of an adulterous relationship with Amber Frey (nondisputed issue) it
23 is clear that all such statements are irrelevant and therefore inadmissible.

24 25 III.

26 THE COURT HAS THE DISCRETION TO EXCLUDE EVIDENCE THAT IS

27 Even if the Court should determine that one or more of Mr. Peterson's statements
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1 to the media is admissible, the Court should exclude the statement(s).

2 Evidence Code section 352 provides:

3 The court in its discretion may exclude evidence if its
4 probative value is substantially outweighed by the probability
5 that its admission will (a) necessitate undue consumption of
6 time or (b) create substantial danger of undue prejudice, of
7 confusing the issues, or of misleading the jury.

8 The statements made to the media by Mr. Peterson have absolutely no probative
9 value at to the key issue raised in the complaint - - namely, did Mr. Peterson commit
10 capital murder? Comments made by a concerned husband regarding the search for his
11 missing, pregnant wife therefore should be excluded. Additionally the second category of
12 statements made by Mr. Peterson, to wit, those concerning his mistress Amber Frey are
13 not probative, but are exceptionally prejudicial.

14 Naturally the vast majority of potential jurors are likely to be predisposed against a
15 man who admittedly started an affair when his wife was nearly eight months pregnant.
16 Additionally, this evidence would be cumulative in that the People most certainly will call
17 Amber Frey as a witness and she will undoubtedly testify that she and Mr. Peterson were
18 having an adulterous relationship. As such, the Court has the discretion to exclude the
19 media statements on the ground that such evidence would be cumulative and necessitate
20 undue consumption of time.

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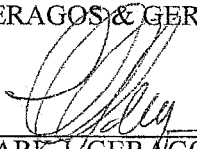
IV.
CONCLUSION

WHEREFORE, in light of the foregoing, Mr. Peterson respectfully requests that the Court issue an order excluding all statements made to the media by Mr. Peterson, or, alternatively, an order requiring that a hearing be held to determine the admissibility of any such evidence the prosecution seeks to introduce.

Dated: February 9, 2004

Respectfully submitted,
GERAGOS & GERAGOS

By:



MARK J. GERAGOS
Attorney for Defendant
SCOTT LEE PETERSON

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 350 S. Grand Avenue, 39th Floor, Los Angeles, California 90071.

On execution date set forth below, I served the following

DOCUMENTS OR DOCUMENTS DESCRIBED AS:

**NOTICE OF MOTION AND MOTION IN LIMINE TO EXCLUDE STATEMENTS
MADE BY SCOTT LEE PETERSON TO THE MEDIA**

_____ placing a true copy thereof enclosed in sealed envelopes with postage thereon fully prepaid, to the attorneys and their perspective addresses listed below, in the United States Mail at Los Angeles, California.

_____ transmitting by facsimile transmission the above document to the attorneys listed below at their receiving facsimile telephone numbers. The sending facsimile machine I used, with telephone number (213) 625-1600, complied with C.R.C. Rule 2003(3). The transmission was reported as complete and without error.

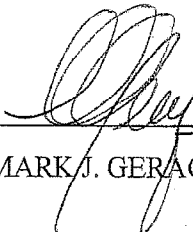
X personally delivering the document(s) listed above to the party or parties listed below, or to their respective agents or employees.

PARTIES:

**Rick Disatso, DDA
David P. Harris, DDA
(SERVED IN COURT)**

Executed on February 9, 2004, at Los Angeles, California.

I declare under penalty of perjury that the above is true and correct.



MARK J. GERAGOS