

ORIGINAL

GERAGOS & GERAGOS

A PROFESSIONAL CORPORATION  
LAWYERS  
39<sup>TH</sup> FLOOR  
350 S. GRAND AVENUE  
LOS ANGELES, CA 90071-3480  
TELEPHONE (213) 625-3900  
FACSIMILE (213) 625-1600

MARK J. GERAGOS SBN I08325  
Attorneys for Defendant  
SCOTT LEE PETERSON

FILED  
SAN MATEO COUNTY

FEB - 9 2004

Clerk of the Superior Court  
By *Mary Muth*  
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 SEQUESTER THE  
JURY

[Penal Code section 1121]

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 sequestering the jury for the duration of the trial in this matter.

The motion will be based upon the grounds that sequestration is required due to the extensive and prejudicial media coverage that has plagued this case.

The motion will be based on this notice, the attached memorandum of points and authorities, the pleadings and records on file herein, and upon such other and further

1 argument as may be presented to the Court at the hearing of this matter.

2

3 Dated: February 9, 2004

Respectfully submitted,

GERAGOS & GERAGOS

By: 

MARK J. GERAGOS  
Attorney for Defendant  
SCOTT LEE PETERSON

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2   **I.**

3   **BACKGROUND**

4                   [I]n the unique facts of this case, there is a clear and present  
5                   danger [of serious imminent threat to a protected interest]  
6                   because of the modern media's capability easily to store and  
7                   recall bits of information in order to relate them at any time  
8                   including during jury selection. Further compounded in this  
9                   case is the effect that the publicity is nationwide and cannot  
10                  be automatically cured by a change of venue or extensive voir  
11                  dire.

12               (Exhibit A - - Judge Girolami's June 12, 2003 protective order/decision at page 3,  
13               emphasis added.)

14   \* \* \*

15               [T]he potential for prejudice from the release of the [sealed]  
16               Materials is enhanced rather than diminished by the arrest of  
17               [Mr. Peterson] and the filing of the complaint against him.  
18               The relationship of petitioner to the victims only serves to  
19               stimulate the public's appetite for the case, an appetite we  
20               would expect the media to satisfy. Release of the [sealed]  
21               Materials would undoubtedly be followed by their widespread  
22               dissemination and dissection in every sort of media medium,  
23               including daily television with parades of 'experts' endlessly  
24               commenting about likely prosecution and defense strategies,  
25               opining about the strengths, weaknesses and admissibility of  
26               the various factual tidbits disclosed by the Materials, and  
27               venturing predictions about the probable outcome of the trial  
28

1 against petitioner. How a fair trial for both parties - - and  
2 particularly how an untainted jury could be found anywhere -  
3 in the aftermath of such a frenzy escapes us.

4 (Exhibit B - - Opinion, *Scott Lee Peterson v. Superior Court*, Fifth Appellate District case  
5 number F043260 at 7, emphasis added.)

6 \* \* \*

7 As the defendant's own motion [for a change of venue]  
8 shows, the case has been covered throughout the world,  
9 extensively in the United States and unrelentingly across the  
10 entire state of California.

11 (Exhibit C - - People's January 2, 2004 "Opposition to Motion for Change of Venue" at  
12 7:8 - 10, emphasis added.)

13 \* \* \*

14 The defendant has proven that 'pretrial publicity has been  
15 geographically widespread and pervasive' and has failed to  
16 prove that jurors in any other county would view this case  
17 differently.

18 (Exhibit C at 8:3 - 6.)

19 \* \* \*

20 This case is known worldwide and is indistinguishable from  
21 the Manson case. . .

22 (Exhibit C at 19:20 - 22.)

23 The above-quoted ruling, appellate opinion, and prosecution filing illustrate two  
24 irrefutable and undisputed facts: (1) the intense unrelenting media frenzy surrounding this  
25 case poses a clear and present danger of causing actual prejudice to Mr. Peterson's (and  
26 the prosecution's) right to a fair trial; (2) the volume of media coverage has been virtually  
27 uniform throughout the United States (and certainly Redwood City, less than 100 miles  
28

1 from Modesto).

## 2 II.

### 3 INTRODUCTION

4 This is a death penalty case. "In capital cases, appellate courts and legislatures  
5 have long recognized the compelling need for ensuring reliability in determining whether  
6 death is the appropriate punishment. The reason for this disparate treatment is obvious --  
7 the death penalty is qualitatively different even when compared to a life sentence." (See  
8 *Dustin v. Superior Court* (5<sup>th</sup> Dist. 2002) 99 Cal.App.4th 1311, 1313-1314, review denied  
9 September 25, 2002.)

10 As the Fifth Appellate District implicitly noted in *Dustin*, a capital defendant is  
11 entitled to every possible safeguard to ensure that he receives a fair trial. The *Dustin*  
12 court also correctly noted that it is desirable to ensure that a capital defendant's  
13 substantial rights are protected in the first instance rather than on appeal.<sup>1/</sup>

14 Given that (1) there is no dispute that the media coverage of this matter has been  
15 both extensive and prejudicial, and (2) that the coverage has, as the prosecution aptly put,  
16 been "unrelenting[] across the entire state of California", (3) evidence that the volume  
17 and hostility of the "media circus" has, if anything, increased as trial in San Mateo  
18 County approaches.<sup>2/</sup> As such, the only way to avoid "injecting error" into this capital

19  
20  
21 <sup>1/</sup>"We cannot fathom why any prosecutor would want to inject error into a case that  
22 carries the potential of death, knowing that if there is a conviction, the error will follow the  
23 case for the rest of its appellate life. Now is the time to rectify the prosecutor's error while  
24 it is still relatively easy and economical to do so -- not wait 20 years down the appellate  
25 road." (*Dustin v. Superior Court, supra*, 99 Cal.App.4th at 1314.) Although the court was  
26 addressing a particular prosecutor's error, the same reasoning naturally applies universally  
27 to everyone involved in a capital case.

28 <sup>2/</sup>See Exhibit D, "New venue, but same media circus" Modbee.com, February 3, 2004,  
in which it was reported that this Court had to order removal of a radio station's (KNEW)  
trailer where a guilt poll was being conducted. In that regard, a check of the KNEW website  
revealed that (1) the front page features a like labeled "Vote on Scott Peterson Verdict"; and  
(2) 82.5% of individuals participating in the KNEW guilt poll believe (continued. . .)

1 case is to sequester the jury to protect Mr. Peterson's right to a fair and prejudiced jury  
2 trial.

3  
4 **III.**

5 **THE COURT HAS THE AUTHORITY TO SEQUESTER THE JURY**

6 Sequestration of the jury is a matter left to the sound discretion of the trial court.  
7 (See *People v. Ruiz* (1988) 44 Cal.3d 589, 616; *People v. Gallego* (1991) 52 Cal.3d 115,  
8 169.) Although there are no set factors the Court must examine in ruling on a motion to  
9 sequester the jury, the Supreme Court has provided some guidance. For example, in  
10 disagreeing with the defendant's argument that sequestration in capital cases should be  
11 required, the Supreme Court in *Ruiz, supra*, stated:

12 First, defendant has failed to demonstrate that the publicity in  
13 the present case was either extensive or unduly prejudicial to  
14 his defense; it is noteworthy that defendant did not choose to  
15 move for a change of venue. Defendant acknowledges that  
16 the California cases appear to require some showing of actual  
17 prejudice in order to complain of denial of a motion to  
18 sequester the jury.

19 (*People v. Ruiz, supra*, 44 Cal.3d at 616.)

20 As set forth above, both the trial court and appellate court have previously  
21 determined that the publicity surrounding this case has been extensive and prejudicial.  
22 Additionally, as described in footnote 2 above the new venue actually appears to be more  
23 hostile than Modesto, so the fact of the venue change should have no bearing on this  
24 Court's analysis of the extent and degree of prejudice likely to occur during the trial.  
25 (Certainly if the KNEW death billboard and related poll are harbingers of things to come,

26  
27 (. . .cont) Mr. Peterson is guilty. (See Exhibit E) Indeed, at first blush the new venue  
28 appears to be even more hostile than Modesto.

1 the jurors will require exceptionally meticulous handling by the deputies to ensure they are  
2 not exposed to such inflammatory and irresponsible press activity.)<sup>3/</sup> In any event, there  
3 can be no dispute that the prejudicial media frenzy is likely to reach an even higher pitch  
4 once trial begins. As such, the jury must be sequestered.

5 In another instructive ruling the Supreme Court hinted that sequestration may be  
6 required upon a showing of "special problems which ma[k]e sequestration especially  
7 appropriate." (See *People v. Morales* (1989) 48 Cal.3d 527, 563.) The defense cannot  
8 envision a "special problem" requiring sequestration more graphic than "guilt/death"  
9 polls conducted in front of the courthouse.

10  
11 IV.

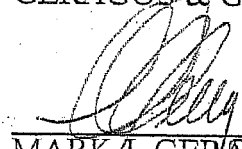
12 CONCLUSION

13 WHEREFORE, in light of the foregoing, Mr. Peterson respectfully requests that  
14 the jury be sequestered for the duration of trial.

15  
16 Dated: February 9, 2004

Respectfully submitted,  
GERAGOS & GERAGOS

17  
18  
19 By:

  
MARK J. GERAGOS  
Attorney for Defendant  
SCOTT LEE PETERSON

20  
21  
22  
23  
24  
25  
26  
27 <sup>3</sup>To quote the Court of Appeal, "so far as we are aware, the presumption of innocence is still  
28 a fundamental constitutional right available to all criminal defendants" - - including Mr. Peterson.  
(See Exhibit B at 6.)

Ex A



SUPERIOR COURT, STATE OF CALIFORNIA, COUNTY OF STANISLAUS

THE PEOPLE OF THE STATE OF CALIFORNIA VS. SCOTT LEE PETERSON

NATURE OF HEARING: PROTECTIVE ORDER/DECISION

NO: 1056770

JUDGE: A. GIROLAMI

Bailiff: Larry Sweatman

Date: June 12, 2003

Clerk: J. Carvalho

Reporter: none

Modesto, California

Appearances: none

On May 27, 2003 the Court informed the parties that it was concerned about the tremendous amount of pre-trial publicity in this case and the fact that there had been dissemination of information currently under seal. The Court noted that the Rules of Professional Conduct 5-120 were not specific enough and that they only applied to the attorneys and not to other individuals. The Court indicated it would have a hearing on the subject of a Protective Order on June 6, 2003 and suggested written comments from the parties.

For the hearing of June 6, the Court had received the following filings: Opposition to a Protective "Gag" Order from the Media represented by Charity Kenyon, Esq.; Opposition of Potential Witness Amber Frey to Proposed Gag Order filed by Gloria Allred, Esq.; Points and Authorities In Support of Limited Protective Order from the Prosecution; and Memorandum in Response to Courts Inquiry regarding "Gag" or Protective Order from the Defense. All were filed on June 4, 2003.

On June 6, 2003 the Court heard arguments of counsel and also received a proposed order from the Prosecution. Having considered the oral comments of counsel and the Points and Authorities submitted, the Court hereby finds as follows:

That the amount and nature of the pre-trial publicity has been massive. The local print media rarely does not have a daily front page article on this matter. Besides extensive local television and radio coverage, the national television media has embraced this case with a passion providing frequent commentaries from notables like Larry King, Geraldo Rivera, and Katie Couric. In addition, there have been a number of national programs where professionals involved in the criminal justice system have opined their views on the evidence and possible trial strategy. Even Defense Counsel was a regular commentator prior to the Defendant's arrest and his being retained on the case. Also, Second Counsel gave a lengthy televised interview prior to the arrest. During the investigation, the Modesto Police Department made a number of press releases covering various aspects of the investigation. Not only the families of both the Defendant and the Decedent but even the Defendant, prior to his arrest, was involved in a lengthy nationally televised interview with Diane Sawyer. The families also recently gained national attention over a dispute regarding the possession of personal belongings of the Decedent.

Following the filing of the Complaint, the Clerk's office of the Superior Court was inundated with calls and visits from the Media requesting copies of the complaint and all other documents in the file. This problem, which impacted staff resources, was significantly reduced with a creation of a website specifically for the Media where representatives can easily obtain copies of any unsealed paper filed in this action. From April 30, 2003 to the present date, there have been over 12,000 hits. In order to foster accuracy in reporting, the Court allowed cameras in the courtroom pursuant to Rules of Court 980.

The nature of the publicity is especially troubling as it often involves leaks of information that could be considered favorable for one side or the other. For example, even though the autopsy report had been sealed along with a specific protective order, information was publicized regarding facts contained only in that document. Periodically, there have been reports of defense theories of a possible serial killer or a satanic cult being responsible in this case. On the prosecution side, there have been comments by the Attorney General regarding the weight of the evidence and by the District Attorney comparing his capital case record against that of the original defense attorney. When the Defense fielded a comment regarding a brown van being possibly involved in the killing, the Prosecution subsequently made a public announcement that the investigation had cleared that van of any involvement in the killings.

Pre-complaint, there were a number of comments in the media that certain specific items had been found in searches of Defendant's property even though the search warrants had been sealed by Court order. Also, pre-complaint, there were reports regarding the amount of cooperation or lack of cooperation on the part of the Defendant during the investigation. Post filing, there have been reports of information gleaned from an examination of the Defendant's computer.

Even though the main purpose of a Protective Order is to allow the Defendant to have a fair trial, and at this time the Defense is opposing such an order, the Court is mindful of the directions from Sheppard v. Maxwell (1966) 384 US 333, 359:

"[t]he Court should have made some effort to control the release of leads, information, and gossip to the press by the police officers, witnesses, and counsel for both sides. Much of the information thus disclosed was inaccurate, leading to groundless rumors and confusion."

The Court has reviewed the sealed documents and the wiretap evidence and much contained therein would likely be determined to be irrelevant and/or inadmissible. The Sheppard case gave further direction at page 360:

People vs. Peterson  
Case #1056770  
Page 3

"[i]t is obvious that the judge should have further sought to alleviate this problem by imposing control over the statements made to the news media by counsel, witnesses and especially the Coroner and police officers. The prosecution repeatedly made evidence available to the news media, which was never offered in the trial. Much of the "evidence" disseminated in this fashion was clearly inadmissible. The exclusion of such evidence in court is rendered meaningless when news media make it available to the public."

The Court has considered two different standards applicable to imposing a Protective Order. Specifically, there is the "clear and present danger of serious imminent threat to a protected competing interest", Hurvitz v. Hoefflin (2000) 84 Cal App. 4th 1232, or the "reasonable likelihood of prejudicial news which would make difficult the impaneling of an impartial jury and tend to prevent a fair trial " standard, Younger v. Smith (1973) 30 Cal App. 3rd 138. Even though Hurvitz is more recent and mentions the federal cases, it ignores the Younger case which the Court finds is more applicable in a criminal case.

If this case were to proceed to trial without a Protective Order in place until shortly before jury selection, all the statements by the witnesses, all of the rumors and gossip would be rehashed shortly before trial thereby making it extremely difficult to select a fair and impartial jury. Even though the Court is applying the Younger standard, in the unique facts of this case, there is a clear and present danger because of the modern media's capability easily to store and recall bits of information in order to relate them at any time including during jury selection. Further compounded in this case is the fact that the publicity is nationwide and cannot be automatically cured by a change of venue or extensive voir dire. If witnesses are allowed to discuss publicly their expected testimony or if trial counsel or their staff are allowed to comment on strategy or on the weight of the evidence, even if jurors can be found that are willing to be fair and impartial, it may never be known if a juror were to rely consciously or subconsciously on the out-of-court information.

Although the Court is extremely concerned with the due process and fair trial rights in this case, it is also keenly aware of the public's right of access to the proceedings herein and the right of free speech of the participants. However, after balancing these rights, and in order to protect against the disruption of the proper administration of justice, the Court finds that good cause exists for the issuance of a pre-trial Protective Order.

The Court has considered less restrictive alternatives. First, a change of venue and extensive voir dire are not especially helpful in this case because of the exceptional amount of publicity which has been broadcast throughout this state and country. Secondly, the Court has previously reminded the parties of the Rules of Professional Conduct, but the problem has persisted.

Being mindful of the necessity of narrowly tailoring such an order, the Court hereby orders:

**ORDER**

It is the Order of this Court that no attorney connected with this case as Prosecutor or Defense Counsel, nor any other attorney working in those offices, nor their agent's, staff, or experts, nor any judicial officer or court employee, nor any law enforcement employee of any agency involved in this case, nor any persons subpoenaed or expected to testify in this matter, shall do any of the following:

1. Release or authorize the release for public dissemination of any purported extrajudicial statement of either the defendant or witnesses relating to this case;
2. Release or authorize the release of any documents, exhibits, photographs, or any evidence, the admissibility of which may have to be determined by the Court;
3. Make any statement for public dissemination as to the existence or possible existence of any document, exhibit, photograph or any other evidence, the admissibility of which may have to be determined by the Court;
4. Express outside of court an opinion or make any comment for public dissemination as to the weight, value, or effect of any evidence as tending to establish guilt or innocence;
5. Make any statement outside of court as to the nature, substance, or effect of any statements or testimony that have been given;
6. Issue any statement as to the identity of any prospective witness, or the witness's probable testimony, or the effect thereof;
7. Make any out-of-court statement as to the nature, source, or effect of any purported evidence alleged to have been accumulated as a result of the investigation of this matter.
8. Make any statement as to the content, nature, substance, or effect of any testimony which may be given in any proceeding related to this matter.

People vs. Peterson  
Case #1056770  
Page 5

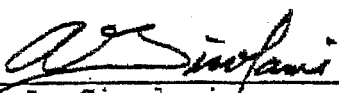
Any violation of this order will result in a contempt action for any offender within the jurisdiction of this Court.

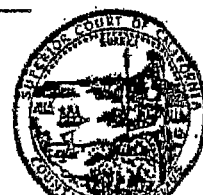
This order does not include any of the following:

1. Factual statements of the accused persons name, age, residence, occupation and family status.
2. The circumstances of the arrest, namely, the time and place of the arrest, the identity of the arresting and investigating officers and agencies, and the length of the investigation.
3. The nature, substance, and text of the charge, including a brief description of the offenses charged.
4. Quotations from, or any reference without comment to, public records of the Court in the case, or to other public records or communications heretofore disseminated to the public.
5. The scheduling and result of any stage of the prejudicial proceedings held in open court in an open or public session.
6. A request for assistance in obtaining evidence.
7. Any information as to any person not in custody who is sought as a possible suspect or witness, nor any statement aimed at warning the public of any possible danger as to such person not in custody.
8. A request for assistance in obtaining of evidence or the names of possible witnesses.
9. Any witness may discuss any matter with any Prosecution or Defense Attorney in this action, or any agent thereof; and if represented may discuss any matter with his/her own attorney.

A copy of this order shall be provided to any prospective witness which a party intends to call for any proceeding in this action. If held to answer at the preliminary hearing, the Court will consider at the arraignment whether this order should be modified or terminated pending jury selection. Any objections or suggested modifications to the continuation of this order should be filed in writing five days prior to the arraignment.

Dated: 6/12/03

  
A. Girolami  
Judge of Stanislaus Superior Court



People vs. Peterson  
Case #1056770  
Page 6

Copy sent to:

✓ Mark Geragos, Esq.  
350 South Grand Avenue  
39th Floor  
Los Angeles, California 90071

✓ Kirk W. McAllister, Esq.  
1012 11th Street, Suite 101  
Modesto, California 95354

✓ Rick Distaso, DDA  
Office of the District Attorney  
Courthouse  
Modesto, California

✓ David Harris, DDA  
Office of the District Attorney  
Courthouse  
Modesto, California

✓ Gloria Allred, Esq.  
6300 Wilshire Blvd.  
Los Angeles, California 90048

✓ Charity Kenyon, Esq.  
2500 Venture Oaks Way, Suite 220  
Sacramento, California 95833

SUPERIOR COURT, STATE OF CALIFORNIA, COUNTY OF STANISLAUS

THE PEOPLE OF THE STATE OF CALIFORNIA VS. SCOTT LEE PETERSON

---

NATURE OF HEARING: AMENDED PROTECTIVE ORDER/DECISION

NO: 1056770

JUDGE: A. GIROLAMI

Bailiff: Larry Sweatman

Date: July 1, 2003

Clerk: J. Carvalho

Reporter: none

Modesto, California

---

Appearances: none

The Court, having considered the Points and Authorities submitted and having heard the arguments of Counsel hereby amends the Protective Order of June 12, 2003 as follows:

1. The Defendant is clearly specified as being subject to the order.

2. Those expected to testify are limited to those so notified by the Prosecution or Defense.

3. Paragraph 2 of the prohibitions is modified to delete the last phrase and insert "that may be relevant to the guilt or innocence of the Defendant herein in that the document, exhibit, or photograph or any other evidence tends to either prove or disprove a material fact in issue in this matter."

4. Paragraph 3 of the prohibitions is modified in the same manner as paragraph 2. Also, "or authorize" is inserted after the first word.

Attachment: Amended Order of July 1, 2003

**AMENDED ORDER  
(JULY 1, 2003)**

It is the Order of this Court that no attorney connected with this case as Prosecutor or Defense Counsel, nor any other attorney working in those offices, nor their agents, staff, or experts, nor the Defendant himself, nor any judicial officer or court employee, nor any law enforcement employee of any agency involved in this case, nor any persons subpoenaed or have been told by the Prosecution or the Defense that they are expected to testify in this matter, shall do any of the following:

1. Release or authorize the release for public dissemination of any purported extrajudicial statement of either the defendant or witnesses relating to this case;

2. Release or authorize the release of any documents, exhibits, photographs, or any evidence that may be relevant to the guilt or innocence of the Defendant herein in that the document, exhibit, or photograph or any other evidence tends to prove or disprove a material fact in issue in this matter;

3. Make or authorize any statement for public dissemination as to the existence or possible existence of any document, exhibit, photograph or any other evidence that may be relevant to the guilt or innocence of the Defendant herein in that the document, exhibit, or photograph or any other evidence tends to prove or disprove a material fact in issue in this matter;

4. Express outside of court an opinion or make any comment for public dissemination as to the weight, value, or effect of any evidence as tending to establish guilt or innocence;

5. Make any statement outside of court as to the nature, substance, or effect of any statements or testimony that have been given;

6. Issue any statement as to the identity of any prospective witness, or the witness's probable testimony, or the effect thereof;

7. Make any out-of-court statement as to the nature, source, or effect of any purported evidence alleged to have been accumulated as a result of the investigation of this matter.

8. Make any statement as to the content, nature, substance, or effect of any testimony which may be given in any proceeding related to this matter.

Any violation of this order will result in a contempt action for any offender within the jurisdiction of this Court.




This order does not include any of the following:

1. Factual statements of the accused persons name, age, residence, occupation and family status.
2. The circumstances of the arrest, namely, the time and place of the arrest, the identity of the arresting and investigating officers and agencies, and the length of the investigation.
3. The nature, substance, and text of the charge, including a brief description of the offenses charged.
4. Quotations from, or any reference without comment to, public records of the Court in the case, or to other public records or communications heretofore disseminated to the public.
5. The scheduling and result of any stage of the judicial proceedings held in open court in an open or public session.
6. A request for assistance in obtaining evidence.
7. Any information as to any person not in custody who is sought as a possible suspect or witness, nor any statement aimed at warning the public of any possible danger as to such person not in custody.
8. A request for assistance in obtaining of evidence or the names of possible witnesses.
9. Any witness may discuss any matter with any Prosecution or Defense Attorney in this action, or any agent thereof; and if represented may discuss any matter with his/her own attorney.

A copy of this order shall be provided to any prospective witness that a party intends to call for any proceeding in this action. If held to answer at the preliminary hearing, the Court will consider at the arraignment whether this order should be modified or terminated pending jury selection. Any objections or suggested modifications to the continuation of this order should be filed in writing five days prior to the arraignment.

Dated: 7/1/03

  
A. Girolani  
Judge of Stanislaus Superior Court

People vs. Peterson  
Case #1056770  
Page Four

**Copy sent to:**

Mark Geragos, Esq.  
350 South Grand Avenue  
39th Floor  
Los Angeles, California 90071

Kirk W. McAllister, Esq.  
1012 11th Street, Suite 101  
Modesto, California 95354

Rick Distaso, DDA  
Office of the District Attorney  
Courthouse  
Modesto, California

David Harris, DDA  
Office of the District Attorney  
Courthouse  
Modesto, California

Gloria Allred, Esq.  
6300 Wilshire Blvd.  
Los Angeles, California 90048

Charity Kenyon, Esq.  
2500 Venture Oaks Way, Suite 220  
Sacramento, California 95833

Ex B

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**  
**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**  
**FIFTH APPELLATE DISTRICT**

SCOTT LEE PETERSON,

Petitioner,

v.

THE SUPERIOR COURT OF STANISLAUS  
COUNTY,

Respondent;

CONTRA COSTA NEWSPAPERS, INC.,

Real Party in Interest.

F043260

(Super. Ct. Nos. 1045098, 1045188,  
1056770)

**OPINION**

COURT OF APPEAL  
FIFTH APPELLATE DISTRICT  
**FILED**

JUL 30 2003

Eve Sproule Court Administrator/Clerk  
By \_\_\_\_\_ Deputy

**THE COURT**\*

ORIGINAL PROCEEDINGS; petition for writ of mandate. Roger M.  
Beauchesne, Judge.

Mark Geragos, for Petitioner.

No appearance for Respondent.

Charity Kenyon, for Real Party in Interest, Contra Costa Newspapers, Inc., and  
David P. Harris, for The People.

-ooOoo-

---

\*Before Dibiaso, A.P.J., Vartabedian, J., and Buckley, J.

In his petition for writ of mandate, petitioner Scott Lee Peterson contends the trial court abused its discretion by authorizing, upon certain conditions, the release to the media of pre-arrest search warrants, affidavits and returns (hereafter Materials) filed in connection with the police investigation into the deaths of Laci Peterson and her unborn son and currently under seal by order of the trial court. We agree and therefore issue the writ.

## I.

The Materials were gathered after the victims' disappearance during December 2002. A petition (first petition) to release the Materials to the media was filed in the trial court, as action No. 1045098, by real party in interest McClatchy Newspapers, Inc. Other members of the media, including Contra Costa Newspapers, Inc., another real party in interest in the instant proceeding, joined in the first petition.<sup>1</sup> After an in camera hearing on the first petition, the trial court entered an order (first order) on April 10, 2003, which denied the first petition "in its entirety" but then provided in effect that the Materials would be released on July 9, 2003, or alternatively on the date when "a criminal complaint is filed," whichever was earlier. The first order was accompanied by detailed findings of fact (Findings), which included the following:

"Testimony at the hearing [on the first petition] also established that revelation of confidential information contained in the [Materials] would irreparably harm the investigation. Investigation techniques, clues and focus on future avenues of inquiry by law enforcement personnel would unduly alert any potential suspect. Evidence would likely be destroyed and witnesses would be reluctant to provide information."

"Any information released at this time from any of the [Materials] would harm the reliability of information already gleaned and to be gleaned in the future. Furthermore, any information released to the public

---

<sup>1</sup> Hereinafter, when referred to collectively, all media real parties will be identified together as CCN.