

1 JAMES C. BRAZELTON  
District Attorney  
2 Stanislaus County  
Courthouse  
3 Modesto, California  
Telephone: 525-5550

4 Attorney for Plaintiff  
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7

FILED  
MAY 6 - 2003  
BY MICHAEL A. TOZZI CLERK  
Deputy Corralles  
DEPUTY

8 STANISLAUS COUNTY SUPERIOR COURT  
9 STATE OF CALIFORNIA

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10 D.A. No.1056770

11 THE PEOPLE OF THE STATE OF CALIFORNIA )

No.1056770

12 Plaintiff, )

MOTION TO MAINTAIN  
SEAL ON AFFIDAVITS;  
DECLARATION; and  
ORDER

13 vs. )

14 SCOTT LEE PETERSON, )

Hrg: 5-27-03  
Time: 8:30 a.m.  
Dept: 2/8

15 Defendant. )

16 -----o0o-----

17 Comes now the People of the State of California to submit  
18 the following Points and Authorities in support of a MOTION TO  
19 MAINTAIN SEAL ON AFFIDAVITS:

20 **FACTS**

21 During the later part of December, 2002 the Modesto Police  
22 Department commenced an investigation which has resulted in the  
23 filing of this herein action. During the course of the  
24 investigation the police obtained numerous search warrants and/or  
25 an arrest warrant. The media, in separate actions (Stanislaus  
26 County Superior Court #1045098 - The Modesto Bee; and Stanislaus  
27 County Superior Court #1045188 - Contra Costa Newspapers, Inc.  
28 and San Jose Mercury News, Inc.) and separate from the instant

1 action have attempted to unseal and/or obtain access to the  
2 warrants, affidavits and returns. On May 5, 2003 the Fifth  
3 District Court of Appeal ruled on a writ taken in action #1045098  
4 that the above sought materials should remain sealed. The  
5 Appellate Court's order is not final in that action and is not a  
6 published decision.

7 The People and the Defense are hereby moving for an order  
8 that a new search warrant issued on 4-24-03 and the affidavit in  
9 support of the Ramey warrant be sealed. This request is made for  
10 the following reasons and Pursuant to Rule of Court 243.1 and  
11 243.2 now that a criminal action has been filed.

#### 12 ARGUMENT

13 1. The search warrant and arrest documents should be sealed and  
14 remain sealed until defendant can review them and make any  
objection prior to release.

15 The change in procedural posture since the Modesto Bee filed  
16 its request - defendant's arrest and the filing of a complaint  
17 against him - requires that the defendant have an opportunity to  
18 review the search warrant and arrest documents and make any  
19 objection prior to any potential release of the material. A  
20 failure of the court to seal the new documents and/or a lifting  
21 of the seal challenged by the media in the other two actions  
22 would undoubtedly result in pervasive disclosure of the  
23 documents' contents in the local and national press. Without  
24 arguing the factual or legal merits of any such assertion at this  
25 time, failure to seal or lifting of the seal might possibly  
26 implicate defendant's right to a trial free of prejudicial  
27 publicity.

1           Regarding pre-trial publicity, the United States Supreme  
2 Court states that "[w]e have always held that the atmosphere  
3 essential to the preservation of a fair trial -- the most  
4 fundamental of all freedoms -- must be maintained at all costs.<sup>1</sup>  
5 In holding that pre-trial proceedings on the admissibility of a  
6 confession be held in camera, our Court of Appeal quoted this  
7 language, and further observed:

8           "It is the same right of a fair trial, to one  
9 accused of crime, that guarantees all other  
10 freedoms, including freedom of speech and of  
11 the press. For without the right to a fair  
12 trial those freedoms would lack any means of  
13 vindication in the face of governmental  
14 oppression."<sup>2</sup>

15           Craemer v. Superior Court<sup>3</sup> and Rosato v. Superior Court<sup>4</sup>  
16 hold that a defendant's right to a fair trial outweighs any  
17 statutory or common law right of pre-trial public access to  
18 public documents. A defendant whose fair-trial rights are  
19 implicated by the potential lifting of a seal on public records<sup>5</sup>  
20 must be given the opportunity to review those documents and to  
21 object before a seal is lifted.<sup>6</sup> A court's duty to provide a  
22 fair trial justifies maintaining a seal on public documents until  
23 such time as the parties can litigate the admissibility of the  
24 materials contained in those documents.<sup>6</sup>

24           <sup>1</sup> *Estes v. Texas* (1965) 381 U.S. 532, 540.

25           <sup>2</sup> *Allegreza v. Superior Court* (1975) 47 Cal.App.3d 948, 952.

26           <sup>3</sup> (1968) 265 Cal.App.2d 216, 226-227 ["Craemer"].

27           <sup>4</sup> (1975) 51 Cal.App.3d 190.

28           <sup>5</sup> *Craemer*, at pp. 226-227.

<sup>6</sup> *Id.*, at p. 226; *Oziel v. Superior Court (CBS Inc.)* (1990) 223 Cal.App.3d 1284, 1294-1295 ["Oziel"].

1 2. Despite any right of public access to court records, this  
2 court has the inherent authority to seal search warrant records  
3 if there is a probability that disclosure will result in  
4 prejudicial pre-trial publicity.

5 Members of the press have no greater right to sealed court  
6 records than any other members of the public. "At issue here are  
7 rights of public access to public court records and in this  
8 respect members of the press have no greater rights or privileges  
9 than do members of the general public."<sup>7</sup> Nor is an order to seal  
10 judicial records a "gag order." "Accordingly, the so-called  
11 'clear and present danger test' does not apply, and the issue is  
12 the reasonableness of the trial court's sealing and unsealing  
13 orders under the circumstances of the case. [Citations.]"<sup>8</sup>  
14 Although not a party to this criminal action, any member of the  
15 public, including the press, can assert the common law privilege  
16 granting public access to most judicial records.<sup>9</sup>

17 The United States Supreme Court has recognized that this is  
18 a qualified right which must on occasion yield when there is a  
19 compelling and overriding need to maintain secrecy of court  
20 proceedings, records and exhibits. "[T]he Court has made clear  
21 that the right to an open trial may give way in certain cases to  
22 other rights or interests, such as the defendant's right to a  
23 fair trial or the government's interest in inhibiting disclosure

24 <sup>7</sup> *Estate of Hearst, supra*, 67 Cal.App.3d, at p. 785, emphasis added.

25 <sup>8</sup> *Id.*, at p. 783.

26 <sup>9</sup> *Globe Newspaper Co. v. Superior Court* (1982) 457 U.S. 596, 609, fn. 25 [73 L.Ed.2d  
27 248, 102 S.Ct. 2613]; *Wilson v. Science Applications Internat. Corp.* (1997) 52 Cal.App.4th  
28 1025, 1031-1032. "But this opportunity extends no farther than the persons actually present  
at the time the motion for closure is made, for the alternative would require substantial delays  
in trial and pretrial proceedings while notice is given to the public." (*Gannett Co. v.*  
*DePasquale* (1979) 443 U.S. 368, 401 [61 L.Ed.2d 608, 99 S.Ct. 2898] [Powell, J.,  
concurring].)

1 of sensitive information."<sup>10</sup>

2 The holding and analysis of *Craemer*, supra, which decides a  
3 news-media challenge to a trial court's order sealing grand jury  
4 transcripts, is significant here. Grand jury transcripts, like  
5 search warrant documents, are made confidential by statute  
6 pending certain procedural events. The indicted defendants had  
7 been arrested, and trial was pending. The news media argued that  
8 former Penal Code section 938.1, making grand jury transcripts  
9 confidential until arrests are made, no longer applied and  
10 freedom of the press and the right to a public trial required  
11 unsealing the transcripts.<sup>11</sup>

12 *Craemer* holds that the seal did not implicate the right to a  
13 public trial, and only indirectly implicated any issue of a free  
14 press. Rather, it states:

15 "The key issue here is whether access to and  
16 inspection of public records may be withheld  
17 in order to insure that a defendant in a  
18 criminal action will receive a fair trial, a  
19 right which is guaranteed by the United  
20 States and California Constitutions."<sup>12</sup>

21 After analyzing the constitutional principles involved, *Craemer*  
22 applied a "countervailing public policy" test and determined that  
23 the need to protect fair-trial rights outweighed the public right  
24 of access.<sup>13</sup> It holds that the trial court, in order to "reduce  
25 the appearance [in the press] of prejudicial material by

26 <sup>10</sup> *Waller v. Georgia* (1984) 467 U.S. 39, 45 [81 L.Ed.2d 31, 104 S.Ct. 2210].

27 <sup>11</sup> *Craemer*, at pp. 218-219. Former section 938.1 provided, in relevant part, that after  
28 an indictment has been found "The county clerk shall not exhibit the transcript to any person  
other than the district attorney nor divulge any of its contents until after the defendant is in  
custody."

<sup>12</sup> *Craemer*, at pp. 219-220.

<sup>13</sup> *Id.*, at pp. 219-223.

1 removing, through its directive, a public record from the  
2 inspection of the public," properly sealed the transcripts.<sup>14</sup>  
3 This action was justified because grand jury transcripts often  
4 contain information which might later be ruled inadmissible at  
5 trial,<sup>15</sup> just as search warrant affidavits do.

6 In performing the court's duty to protect a defendant from  
7 prejudicial publicity, "...a judge may require the removal from  
8 public scrutiny of a public record containing data or material  
9 which, if publicized prior to trial, could result in publicity so  
10 inherently prejudicial as to endanger a fair trial." Craemer  
11 found that an order sealing public records need not be based on  
12 evidence showing a reasonable likelihood of prejudice from  
13 disclosure, but merely upon "the probability of unfairness."<sup>16</sup>  
14 Another court has found the "reasonable likelihood" test  
15 applies.<sup>17</sup>

16 **3. No First Amendment right exists to challenge this court's  
17 inherent discretionary power to seal and protect its search  
18 warrant and arrest records; the issue is one for this court's  
19 sound discretion.**

19 "While the law favors disclosure of judicial records, the  
20 right of access is not absolute. Nondisclosure may be appropriate  
21 'for compelling countervailing reasons.' [Citations.]"<sup>18</sup>

22 "Clearly, a court has inherent power to control its own records  
23

24 <sup>14</sup> *Id.*, at pp. 225-226.

25 <sup>15</sup> *Id.*, at p. 226.

26 <sup>16</sup> *Id.*, at pp. 225-226.

27 <sup>17</sup> *Rosato v. Superior Court, supra*, 51 Cal.App.3d 190, 208

28 <sup>18</sup> *People v. Rhodes* (1989) 212 Cal.App.3d 541, 550, original italics, quoting *Pantos v. City and County of San Francisco* (1984) 151 Cal.App.3d 258, at p. 263; citing *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 651-652; Gov. Code, § 6255. See also *Oziel, supra*, 223 Cal.App.3d, at p. 1295.

1 to protect rights of litigants before it... ."19 However, "...where  
2 there is no contrary statute or countervailing public policy, the  
3 right to inspect public records must be freely allowed."20 Only  
4 one California case, *Oziel v. Superior Court (CBS Inc., et*  
5 *al.)*,21 addresses these principles in the context of search  
6 warrant documents after warrant service and after charges have  
7 been filed. Under *Oziel*, no First Amendment claim exists, and  
8 maintenance of the seal on the search warrant and arrest  
9 documents here is a matter of this court's sound discretion.22

10 Oziel decides a public-access claim by news organizations to  
11 items seized under a search warrant. At issue were video  
12 recordings of a special master's service of the warrant on the  
13 offices of a psychotherapist who had treated two brothers charged  
14 in a high-profile case with murdering their parents.23 The  
15 psychotherapist challenged an order releasing a redacted version  
16 of the recordings two months after service of the warrant,24  
17 arguing a violation of his right to privacy and his Fourth  
18 Amendment rights, as well as tortuous consequences in release of  
19 the tapes.25 The news media intervenors argued a First Amendment  
20 right of access, and " 'disclosure of the videotapes will allow  
21 the public to monitor the activities of police authorities in  
22 carrying out their duties.' "26 Oziel frames the issue as:

23 19 *Estate of Hearst* (1977) 67 Cal.App.3d 777, 783; see also: *Oziel, supra*; *Pantos v. City*  
24 *and County of San Francisco, supra*.

20 *Craemer*, at p. 222.

21 *Oziel, supra*, 223 Cal.App.3d 1284.

22 *Id.*, at p. 1302.

23 *Id.*, at pp. 1288-1289.

24 *Id.*, at p. 1289.

25 *Id.*, at p. 1290.

26 *Id.*, at p. 1295.

1 "whether the public, including the media, has  
2 any right to disclosure of the videotapes  
3 before they have been offered as an exhibit  
4 or admitted into evidence in any court  
5 proceeding, and before either [the therapist  
6 or the defendants] have been afforded a  
7 hearing on the issues of the suppression or  
8 return of the videotapes or suppression of  
9 any items depicted thereon."<sup>27</sup>

6 Most important here is the denial of a First Amendment  
7 claim. Although Oziel treats the tapes as property seized under  
8 the warrant, and holds that items of seized property are not  
9 "documents and records of the court relating to the warrant"  
10 under section 1534,<sup>28</sup> it assumes the contrary in dismissing the  
11 First Amendment claim to pre-trial access to search warrant  
12 records.<sup>29</sup>

13 Even if the tapes were judicial records, Oziel decides,  
14 there is no First Amendment right to pre-trial public access to  
15 them. The United States Supreme Court, in *Press Enterprise Co.*  
16 *v. Superior Court [II]*, set out a two-part standard for  
17 addressing First Amendment claims of access to criminal  
18 proceedings.<sup>30</sup> The High Court stated:

19 "Our decisions have emphasized two  
20 complementary considerations. First ... we  
21 have considered whether the place and process  
22 have historically been open to the press and  
23 general public. ... [¶] Second, in this  
24 setting the Court has traditionally  
25 considered whether public access plays a  
26 significant positive role in the functioning  
27 of the particular process in question."<sup>31</sup>

24 Facts satisfying both prongs of this test will establish a

25 <sup>27</sup> *Id.*, at pp. 1294-1295.

26 <sup>28</sup> *Id.*, at p. 1299.

27 <sup>29</sup> *Id.*, at p. 1295.

28 <sup>30</sup> (1986) 478 U.S. 1.

<sup>31</sup> *Id.*, at pp. 8-9.



1 qualified First Amendment right of public access.<sup>32</sup> Oziel  
2 decides that its facts satisfy neither. In brief, the court  
3 found the intervenors had not shown any historical right of  
4 public access to property seized under a warrant, nor  
5 demonstrated any positive public benefit from disclosure of the  
6 tapes.<sup>33</sup> The same applies here.

7 Intervenor in Oziel failed to establish any historical  
8 right of public access to search warrant proceedings, because  
9 none exists. The Supreme Court has acknowledged the common law  
10 held no right to pre-trial public access,<sup>34</sup> and that "[t]he  
11 investigation of criminal activity has long involved imparting  
12 sensitive information to judicial officers who have respected the  
13 confidentiality involved."<sup>35</sup> California has established a  
14 statutory privilege against divulging "official information," and  
15 it applies to information in search warrant documents.<sup>36</sup> Other  
16 statutory exceptions to the right of public access to court and  
17 law enforcement documents exist.<sup>37</sup> No historic right of access  
18 exists.

19 The public interest in fair and effective administration of  
20 justice will be protected by the defendant and his use of the  
21 mechanisms available to deter abuse of the warrant process, not

22 <sup>32</sup> *Id.*, at p. 9.

23 <sup>33</sup> *Oziel*, at pp. 1296-1297.

24 <sup>34</sup> *Gannett Co. v. DiPasquale* (1979) 443 U.S. 368, 389-390.

25 <sup>35</sup> *U.S. v. U.S. District Court (Plamondon)* (1972) 407 U.S. 297, 320-321.

26 <sup>36</sup> Evid. Code §§ 1040, et seq.; *People v. Hobbs* (1994) 7 Cal.4th 948, 974; *People v. Lutzenberger* (1990) 50 Cal.3d 1, 9-11.)

27 <sup>37</sup> *Craemer*, at p. 220, and fn.4, citing inter alia: Veh. Code § 20012, accident reports  
28 confidential; Pen. Code § 1203.10, access to probation records limited; Welf. & Inst. § 827,  
limited access to juvenile court records; Pen. Code § 25, pre-indictment grand jury transcript  
sealed; Evid. Code § 1040, official information privileged, and; Pen. Code § 1203.45, certain  
criminal records sealed.

1 by the news media. An in camera review of the documents will  
2 show they hold nothing which might advance public knowledge about  
3 the search warrant process, in general, or the specific process  
4 here.<sup>38</sup>

5 Here, as in *Oziel*, there is no First Amendment right to  
6 public access to search warrant documents. Whether to seal or  
7 unseal the documents is a matter for this court's sound  
8 discretion.<sup>39</sup>

9  
10 4. Pursuant to Rule of Court 243.1 and 243.2 the People move to  
11 seal a search warrant issued on 4-24-03 and to seal the affidavit  
in support of the Ramey warrant.

12 California Rule of Court Rule 243.2, sets forth the  
13 procedures for sealing documents:

14 "(a) [Court approval required] A record must not be filed  
15 under seal without a court order. The court must not permit  
a record to be filed under seal based solely upon the  
16 agreement or stipulation of the parties.

17 (b) [Motion to seal a record]

18 (1) A party requesting that a record be filed under seal  
must file a noticed motion for an order sealing the record.  
The motion must be accompanied by a memorandum of points and  
19 authorities and a declaration containing facts sufficient to  
justify the sealing.

20 (2) The party requesting that a record be filed under seal  
must lodge it with the court under (d) when the motion is  
made, unless good cause exists for not lodging it. Pending  
the determination of the motion, the lodged record will be  
21 conditionally under seal.

22 (3) If necessary to prevent disclosure, the motion, any  
opposition, and any supporting documents must be filed in a  
public redacted version and lodged in a complete version  
23 conditionally under seal.

24 (4) If the court denies the motion to seal, the clerk must  
return the lodged record to the submitting party and must  
not place it in the case file.

25 (c) [References to nonpublic material in public records]

26 <sup>38</sup> *Oziel*, at pp. 1296-1297, citing *Gannett Co. v. DiPasquale*, *supra*, 443 U.S., at p. 383;  
27 *Times Mirror Co. v. U.S.* (1989, 9th Cir.) 873 F.2d 1210, 1218.

28 <sup>39</sup> *Oziel*, at pp. 1302-1303.

1 A record filed publicly in the court must not disclose  
2 material contained in a record that is sealed, conditionally  
under seal, or subject to a pending motion to seal.

3 (d) [Lodging of records that a party is requesting be placed  
under seal]

4 (1) The party requesting that a record be filed under seal  
must put it in a manila envelope or other appropriate  
5 container, seal the envelope or container, and lodge it with  
the court.

6 (2) The envelope or container lodged with the court must be  
labeled "CONDITIONALLY UNDER SEAL."

7 (3) The party submitting the lodged record must affix to the  
envelope or container a cover sheet that:

8 (i) Contains all the information required on a caption page  
under rule 201; and

9 (ii) States that the enclosed record is subject to a motion  
to file the record under seal.

10 (4) Upon receipt of a record lodged under this rule, the  
clerk must endorse the affixed cover sheet with the date of  
its receipt and must retain but not file the record unless  
11 the court orders it filed.

(e) [Order]

12 (1) If the court grants an order sealing a record, the clerk  
must substitute on the envelope or container for the label  
13 required by (d)(2) a label prominently stating, "SEALED BY  
ORDER OF THE COURT ON (DATE)," and must replace the cover  
14 sheet required by (d)(3) with a filed-endorsed copy of the  
court's order.

15 (2) The order must state whether--in addition to records in  
the envelope or container--the order itself, the register of  
16 actions, any other court records, or any other records  
relating to the case are to be sealed.

17 (3) The order must state whether any person other than the  
court is authorized to inspect the sealed record.

18 (4) A sealed record must not be unsealed except upon order  
of the court.

19 (f) [Custody of sealed records] Sealed records must be  
securely filed and kept separately from the public file in  
20 the case.

21 (g) [Custody of voluminous records] If the records to be  
placed under seal are voluminous and are in the possession  
of a public agency, the court may by written order direct  
22 the agency instead of the clerk to maintain custody of the  
original records in a secure fashion. If the records are  
23 requested by a reviewing court, the trial court must order  
the public agency to deliver the records to the clerk for  
24 transmission to the reviewing court under these rules.

25 (h) [Motion to unseal records] A party or member of the  
public, or the court on its own motion, may move to unseal a  
26 record. Notice of the motion to unseal must be filed and  
served on the parties. The motion, opposition, reply, and  
27 supporting documents must be filed in a public redacted  
version and a sealed complete version if necessary to comply  
28 with (c)."

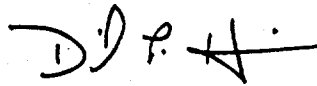
1 The People submit the following declarations in support of  
2 this motion and incorporate the declarations submitted by the  
3 attorneys for the defendant as part of this request to seal and  
4 to maintain said seal in this case.

5 Dated: May 6, 2003

6 Respectfully submitted,

7 JAMES C. BRAZELTON

8 District Attorney

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10 By:

11 David P. Harris  
12 Deputy District Attorney  
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1 JAMES C. BRAZELTON  
District Attorney  
2 Stanislaus County  
Courthouse  
3 Modesto, California  
Telephone: 525-5550  
4 Attorney for Plaintiff  
5

6  
7 STANISLAUS COUNTY SUPERIOR COURT

8 STATE OF CALIFORNIA  
9

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D.A. No.1056770

11 THE PEOPLE OF THE STATE OF CALIFORNIA	)	No.1056770
	)	
12 Plaintiff,	)	ORDER PENDING
	)	HEARING
13 vs.	)	
	)	
14 SCOTT LEE PETERSON,	)	Hrg: 5-27-03
	)	Time: 8:30 a.m.
15 Defendant.	)	Dept: 2/8

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17 It is hereby ORDERED by the court pursuant to California  
18 Rule of Court rule 243.2 that the search warrant issued on April  
19 24, 2003 and the affidavit in support of the Ramey warrant are  
20 hereby sealed pending further order of this court.  
21  
22

23 Dated: \_\_\_\_\_

\_\_\_\_\_  
A. Girolami  
Judge of the Superior Court  
24  
25  
26  
27  
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1 JAMES C. BRAZELTON  
District Attorney  
2 Stanislaus County  
Courthouse  
3 Modesto, California  
Telephone: 525-5550  
4 Attorney for Plaintiff  
5  
6  
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8 STANISLAUS COUNTY SUPERIOR COURT  
9 STATE OF CALIFORNIA

10 -----o0o-----

11 D.A. No. )  
12 THE PEOPLE OF THE STATE OF CALIFORNIA ) No. 1056770  
13 Plaintiff, ) DECLARATION OF DEPUTY  
DISTRICT ATTORNEY  
14 vs. ) RICK DISTASO  
15 )  
16 SCOTT LEE PETERSON, )  
17 Defendant, )  
18 )

19 -----o0o-----

20 I, Rick Distaso, declare as follows:

21 I am a Deputy District Attorney, and I am licensed to practice in all courts of the State of  
22 California. As an attorney of record for the Plaintiff, I am familiar with the circumstances of the  
23 case.

24 I request that the information contained in the Probable Cause Statement for the Affidavit  
25 in Support of the Ramey Warrant; and the information contained in the Search Warrant issued on  
26 April 24, 2003, the Affidavit of Probable Cause for said Search Warrant, and said Search Warrant  
27 Return, be sealed pending further hearing.  
28

1 In light of the extensive pretrial publicity the case has received, I believe that release of the  
2 above information, at this time, could compromise the defendant's ability to receive a fair trial.  
3 During the investigation certain specific details have been established at the scene of the search  
4 warrants, and through statements of key witnesses. Said information is contained in the above  
5 referenced documents. The details present in these documents are known to police detectives and  
6 law enforcement officials, but not the general public. Disclosure of these details to the public  
7 could compromise the defendant's ability to receive a fair trial because such information would be  
8 widely disseminated through the media. To release the information at this time with the defense  
9 not having had the opportunity to review the information might prejudice the defendant.

10 Further, disclosure of the information would also frustrate further law enforcement  
11 investigation for the same reasons. Detectives of the Modesto Police Department are still actively  
12 investigating this double homicide. The release of previously unknown case details would  
13 seriously jeopardize further case investigation.

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

15 Dated this 6<sup>th</sup> day of May, 2003, at Modesto, California.

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17   
18 Rick Distaso

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1 Kirk W. McAllister, State Bar No. 47324  
2 McALLISTER & McALLISTER, INC.  
3 A Professional Law Corporation  
4 1012 - 11th Street, Suite 100  
5 Modesto, CA 95354  
6 Tel: (209) 575-4844

FILED  
MAY 6 - 2003  
BY MICHAEL A. TOZZI CLERK  
DEPUTY

5 Attorney for Defendant

7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS

9 PEOPLE OF THE STATE OF CALIFORNIA, : Case No. 1056770

10 Plaintiff,

11 v.

12 SCOTT LEE PETERSON,

13 Defendant.

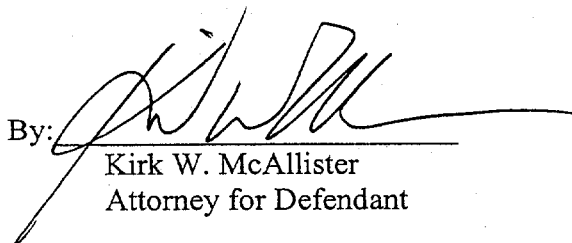
:  
:  
: DECLARATION OF KIRK W.  
: McALLISTER TO PLACE AFFIDAVITS  
: UNDER SEAL  
:  
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15 I am counsel of record in the above-entitled matter. I am informed and believe that there  
16 are affidavits in support of search warrants and an arrest warrant.

17 It is the defendant's request that these affidavits be placed under seal after a copy has  
18 been provided to the defense so that we may determine whether or not the release of this  
19 information may unfairly prejudice our client's right to a fair trial.

20 McALLISTER & McALLISTER, INC.

24 Dated: May 5, 2003

21  
22  
23  
24 By:   
Kirk W. McAllister  
Attorney for Defendant

McALLISTER & McALLISTER, INC.  
A Professional Law Corporation  
1012 - 11<sup>th</sup> Street, Suite 100  
Modesto, CA 95354



McALLISTER & McALLISTER  
1012 - 11<sup>th</sup> Street, Suite 100  
Modesto, CA 95354  
Tel: (209) 575-4844

**PROOF OF SERVICE**

I am a citizen of the United States and am employed in Stanislaus County; I am over the age of eighteen (18) years and not a party to the within action; my business address is 1012 - 11<sup>th</sup> Street, Suite 100, Modesto, California, 95354.

On May 6, 2003, I served the following document(s):

**DECLARATION OF KIRK W. McALLISTER TO PLACE AFFIDAVITS UNDER SEAL**

by placing a true copy thereof enclosed in a sealed envelope and served in the manner and/or manners described below to each of the parties herein and addressed as follows:

Stanislaus County District Attorney  
1100 I Street, Room 200  
Modesto, CA 95354

**BY MAIL:** I caused such envelope(s) to be deposited in the mail at my business address, addressed to the addressee(s) designated. I am readily familiar with McAllister & McAllister's practice for collection and processing of correspondence and pleadings for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.

**BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the address(es) designated.

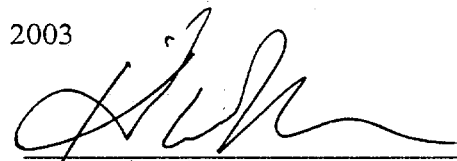
**EXPRESS SERVICE CARRIER:** I caused such envelope(s) to be delivered by an authorized courier or driver authorized by **XXX**, an express service carrier to receive documents, with delivery fees paid or provided for, to the addressee(s) designated.

**OVERNIGHT COURIER SERVICE:** I caused such envelope(s) to be delivered by courier service, with delivery fees paid or provided for, to the addressee(s) designated.

**BY FACSIMILE:** I caused said document(s) to be transmitted to the telephone number(s) of the addressee(s) designated.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Modesto, California on May 5, 2003

  
\_\_\_\_\_  
Kirk W. McAllister