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FILED

03 MAY 14 PM 2:38

CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS
[Signature]
DEPUTY

6 Attorneys for Non-Party Journalist
7 TED ROWLANDS

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF STANISLAUS

Case # 1051270

11 IN THE MATTER OF THE
12 APPLICATION OF THE DISTRICT
13 ATTORNEY OF THE COUNTY OF
14 STANISLAUS FOR AN ORDER
15 AUTHORIZING THE INTERCEPTION
16 OF WIRE COMMUNICATIONS.

Wiretap No. 2; Wiretap No. 3

NOTICE OF MOTION AND MOTION BY
NON-PARTY JOURNALIST FOR ORDER
AUTHORIZING INSPECTION OF
INTERCEPTED COMMUNICATIONS;
MEMORANDUM OF POINTS &
AUTHORITIES; DECLARATION OF
GRACE K. WON IN SUPPORT THEREOF

Date: *June 6 03* ~~May 16~~, 2003
Time: 8:30 a.m.
Dept: 2
Judge: Hon. A. Girolami

BY FAX

19 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

20 PLEASE TAKE NOTICE that on May 16, 2003, at 8:30 a.m., in Department 2 of this
21 Court, located at 1100 I Street, Modesto, CA 95353, non-party journalist Ted Rowlands will and
22 hereby does move this Court pursuant to Cal. Penal Code § 629.68, for an Order authorizing Mr.
23 Rowlands to inspect intercepted communications involving him. On May 13, 2003, counsel for
24 Mr. Rowlands gave notice to the Stanislaus County District Attorney, and Mark J. Geragos,
25 defense counsel for Scott Peterson, of his intent to request a hearing on this matter on May 16,
26 2003.

27 Granting Mr. Rowlands' request to inspect the intercepted communications will serve the
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1 interests of justice by allowing Mr. Rowlands to determine which of his communications were
2 intercepted, to evaluate the content of those communications, and to decide whether he needs to
3 take additional steps to protect against improper disclosure of any intercepted communications.

4 This Motion is based upon this Notice, the attached Memorandum of Points and
5 Authorities, the attached Declaration of Grace K. Won In Support of the Motion to Inspect
6 Intercepted Communications, and other matters that may be presented to this Court.

7
8 DATED: May 13, 2003

FARELLA BRAUN & MARTEL LLP

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10 By: 
Grace K. Won

11 Attorneys for Non-Party Journalist Ted
12 Rowlands
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Motion Filed By Non-Party Journalist Ted Rowlands To Inspect Intercepted Communications

1 **I. INTRODUCTION**

2 On May 11, 2003, Ted Rowlands, a journalist for KTVU, a television station located in
3 Oakland, California, received notice from the Stanislaus County District Attorney that certain
4 communications he had with Scott Peterson, a criminal defendant charged with the murder of his
5 wife Laci Peterson, were intercepted pursuant to two separate wiretaps authorized by the
6 Stanislaus County Superior Court on January 10, 2003 and April 15, 2003, respectively. (A copy
7 of that notice is attached to the Declaration of Grace K. Won as Exhibit A.) Those wiretaps
8 lasted from January 10 to February 4, 2003, and April 15 to April 18, 2003.

9 The fact that Mr. Rowlands' conversations with Mr. Peterson were recorded came as a
10 great surprise to Mr. Rowlands, who was not aware that he was being recorded at anytime. Mr.
11 Rowlands believes that the intercepted communications referred to in the District Attorney's
12 notice involve conversations Mr. Rowlands had with Scott Peterson during Mr. Rowlands'
13 coverage and reporting on the investigation into the death of Mr. Peterson's wife.

14 When Mr. Rowlands contacted the District Attorney's office about these wiretaps, he was
15 informed that he could have access to those recordings if he filed a motion with this Court.
16 Accordingly, pursuant to Penal Code § 629.68, Mr. Rowlands hereby seeks an order allowing him
17 and/or his counsel to receive a copy or transcript of the recorded communications, or in the
18 alternative, to be afforded the opportunity to listen to the recordings.

19 Good cause supports Mr. Rowlands' request for access: First, California law provides all
20 citizens with substantial protection against the interception and recording of telephone
21 conversations without the consent of all parties. See e.g. Cal. Penal Code §§ 629.50 et. seq. and
22 630 et. seq. Second, as a reporter, communications made by Mr. Rowlands in the course of his
23 reporting are covered by California's Shield Law, which prevents public dissemination of
24 unbroadcast material gathered in the course of reporting. The Shield Law embodies the
25 fundamental right grounded in both the California Constitution and the First Amendment that
26 prevents journalists from being compelled to disclose unpublished information. To determine if
27 these rights are threatened by these wiretaps, Mr. Rowlands and his counsel require copies of the
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1 recordings, or in the alternative, access to the recordings. Therefore, Mr. Rowlands respectfully
2 moves this Court for an order granting his request.

3 **II. ARGUMENT**

4 **A. Pursuant To Cal. Penal Code § 629.68, This Court Should Allow Mr.
5 Rowlands To Inspect the Intercepted Communications.**

6 Penal Code § 629.68 requires the agency which requests a wiretap to notify all parties to
7 the intercepted communication of the order allowing interception, the period of interception, and
8 to disclose whether or not communications were intercepted. The statute further provides, "[t]he
9 judge, upon filing of a motion, may, in his or her discretion, make available to the person, or his
10 or her counsel for inspection the portions of the intercepted communications, applications, and
11 orders that the judge determines to be in the interest of justice." Here, it is in the interest of
12 justice to allow Mr. Rowlands access to the recorded communications of his conversations with
13 Mr. Peterson because unless he receives a copy of the recordings or access to them he cannot
14 determine if his constitutional rights are in jeopardy.

15 **1. The California Constitution and First Amendment of the United States
16 Constitution Protect Against Disclosure of Unpublished Information
17 Acquired By Journalists in the Course of News Gathering.**

18 Article I, section 2(b) of the California Constitution specifically provides that a journalist
19 employed by a radio station, television station, or newspaper shall not be held in contempt for
20 refusing to disclose a source of information or unpublished information obtained or prepared in
21 the process of gathering or receiving information to be reported to the public. The Article goes
22 on to define "unpublished information" as information not reported to the public, including
23 "outtakes, photographs, tapes, or other data of whatever sort not itself disseminated to the public
24 through a medium of communication." Cal. Const. Art. I § 2(b); Cal. Evid. Code § 1070 (setting
25 forth the similar "Newsmen's Privilege").

26 This right, also known as the Shield Law, prevents a prosecutor from compelling a
27 journalist to reveal unpublished information acquired in the process of gathering news, even in
28 the course of a law enforcement action. Miller v. Superior Court, 21 Cal. 4th 883, 890, 897
(1999). It provides a journalist with absolute immunity from contempt for refusing to disclose

1 unpublished information obtained in the newsgathering process. Id. The Shield Law also
2 protects any unpublished information, regardless of whether or not it is confidential. Delaney v.
3 Superior Court, 50 Cal. 3d 785, 799-800 (1990).

4 The First Amendment of the United States Constitution provides a similar privilege for
5 journalists in the process of gathering news, as the journalists must be protected to protect the
6 freedom of the press. Branzburg v. Hayes, 408 U.S. 665, 681 (1972); Shoen v. Shoen, 48 F.3d
7 412, 416 (9th Cir. 1995). This privilege allows journalists to resist the disclosure of information
8 obtained during the process of gathering news. Shoen v. Shoen, 5 F.3d 1289 1292 (9th Cir. 1993).

9 Here, any conversations between Mr. Rowlands and Mr. Peterson were conducted in the
10 coursed of Mr. Rowlands' reporting activities. Therefore, they fall firmly within the protections
11 of the privileges established by the Shield Law and the First Amendment. Prosecutors could not
12 compel Mr. Rowlands to testify about the substance of his discussions with Mr. Peterson. It
13 follows that the government's wiretap should not allow the government to circumvent the well-
14 established privileges set forth above.

15 Yet, the only way to protect these privileges is for Mr. Rowlands and his counsel to have
16 access to the recordings so they can determine the content of the communications. Absent access
17 to the recordings, Mr. Rowlands would be unable to adequately protect himself from being
18 compelled to testify in a future proceeding. Accordingly, this Court should grant Mr. Rowlands'
19 request for either a copy of those recordings or access to them.

20 **2. The California Penal Code Provides Significant Protections Against**
21 **The Nonconsensual Interception And Recording Of Telephone**
22 **Conversations.**

23 Penal Code sections 631 and 632 bar interception and recording of confidential
24 communications without the consent of both parties involved. Although these sections do not
25 apply to lawful government investigations, the government must meet a heavy burden and
26 comply with a detailed set of rules to receive court authorization for a wiretap. See e.g. Cal.
27 Penal Code §§ 629.50 et. seq. and 630 et. seq.; People v. Zepeda, 87 Cal App. 4th 1183, 1187
28 (2001) (requiring a showing of "necessity" before a wiretap may be authorized). Even where a
wiretap has been authorized by the Court, Penal Code section 629.80 strictly prohibits monitoring

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Motion Filed By Non-Party Journalist Ted Rowlands To Inspect Intercepted Communications

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1 of privileged communications. Penal Code § 629.80 (setting forth specific instructions to law
2 enforcement officers to ensure that they do not monitor or record privileged communications).
3 Penal Code section 629.80 further states that "no otherwise privileged communication intercepted
4 in accordance with, or in violation of, the provisions of this chapter shall lose its privileged
5 character."

6 As discussed above, Mr. Rowlands' communications with Mr. Peterson fall within the
7 journalist's privilege allowing a journalist to refuse to disclose unpublished information obtained
8 in the process of gathering news. Therefore, under Penal Code section 629.80, Mr. Rowlands'
9 conversations with Mr. Peterson remain privileged despite their interception by law enforcement
10 officials during the wiretap. Mr. Rowlands must be given a copy or afforded the opportunity to
11 review the intercepted communications to determine if he needs to take further action to protect
12 his constitutionally protected privileges.

13 **III. CONCLUSION**

14 For the reasons set forth above, Mr. Rowlands requests that the Court order the District
15 Attorney to provide him with a copy and/or transcript of the recordings, or in the alternative,
16 grant him and his counsel access to the recordings.

17 DATED: May 13, 2003

FARELLA BRAUN & MARTEL LLP

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19 By: 
20 Grace K. Won

21 Attorneys for Non-Party Journalist Ted
22 Rowlands
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