

SUPERIOR COURT OF CALIFORNIA COUNTY OF STANISLAUS

800 - 11th Street, Room 100
Modesto, California 95354
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Michael A. Tozzi
Executive Officer
Jury Commissioner

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Court Administrator

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Deputy Executive Officer

PRESS RELEASE

FOR IMMEDIATE RELEASE
May 23, 2003

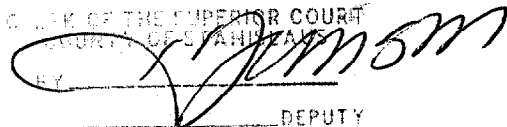
CONTACT: Michael A. Tozzi
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MODESTO, CA- Two additional documents were filed this morning. The document entitled "Release of Audio Recordings From Stanislaus County Wiretap No. 2 and 3 Records" is a request for an in-camera hearing on May 27th to release information in preparation for the hearing on June 6th before Judge Girolami. The mere filing of the document does not ensure that an in-camera hearing will be granted. That decision will be made by Judge Girolami on May 27th.

The other document entitled "Additional Points and Authorities in Support of Sealing Records" was filed by Deputy District Attorney Harris and is part of the hearing that will take place on Tuesday, May 27th.

Both documents are attached.

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

FILED
03 MAY 23 AM 9:35
CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS
BY  DEPUTY

7 STANISLAUS COUNTY SUPERIOR COURT
8 STATE OF CALIFORNIA

9 -----o0o-----

10 D.A. No.1056770
THE PEOPLE OF THE STATE OF CALIFORNIA) No.1056770
11)
Plaintiff,)
12)
vs.)
13)
SCOTT LEE PETERSON,)
14)
Defendant.)
15)
16)

RELEASE OF AUDIO
RECORDINGS FROM
STANISLAUS COUNTY
WIRETAP NO. 2 AND 3
RECORDS
Hrg: 5-27-03
Time: 8:30 a.m.
Dept: 2 /8

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

17 Comes now the People of the State of California to request
18 that the Court authorize the release of audio recordings obtained
19 from Stanislaus County Wiretaps No. 2 and 3.

20 **FACTS**

21 Stanislaus County Wiretap No. 2 was authorized by the
22 Stanislaus County Superior Court on January 10, 2003. Stanislaus
23 County Wiretap No. 3 was authorized by the Court on April 15,
24 2003. The original audio recordings are in the possession of the
25 court. A copy of the audio recordings are in the possession of
26 District Attorney Criminal Investigator Steve Jacobson at the
27 Stanislaus County Drug Enforcement Unit.

28 The prosecuting attorneys have not listened to any audio

1 recording from either wiretap, preferring to have the court
2 sanction the release of the audio recordings. They were also not
3 involved in the actual monitoring of any wire intercepts as such
4 monitoring requires peace officer status, and certification
5 through the Attorney General's Office (See Penal Code Section
6 629.94).

7 Investigator (Inv.) Steve Jacobson is a certified wireroom
8 operator and was the wireroom supervisor for Wiretap Nos. 2 and
9 3. He has listened to, and is familiar with, all calls made
10 during both wiretaps.

11 Inv. Jacobson informed me that on May 15, 2003, he
12 personally reviewed every intercepted call between the defendant,
13 Defense Attorney Kirk McAllister, and Private Investigator Gary
14 Ermoian. During the conduct of Wiretap Nos. 2 and 3, a total of
15 69 calls were intercepted between Mr. McAllister and the
16 defendant. A total of two calls were intercepted between Mr.
17 Ermoian and the defendant.

18 Interception of a call does not necessarily mean that a call
19 was monitored or recorded. Interception simply means that a call
20 was received to, or from, a target telephone and the wireroom
21 personnel were notified.

22 Monitoring of a call is different from interception of a
23 call. Monitoring involves actively listening to, or recording a
24 call. Agents can choose to start or stop monitoring a call
25 depending on the nature of each particular call. A call may be
26 monitored in its entirety, or the call can be broken down into
27 monitored and unmonitored portions. If a monitored call does
28

1 not relate to the subject matter of the investigation (i.e. a
2 non-pertinent call), or is of a privileged nature, the call is
3 minimized (not monitored at all, or monitoring is stopped).

4 Inv. Jacobson informs me that during the conduct of Wiretap
5 Nos. 2 and 3, segments of two phone calls between Mr. McAllister,
6 and the defendant were monitored and recorded. The monitoring
7 involved short segments of only two calls, out of the total of
8 sixty nine calls that were intercepted between the defendant and
9 Mr. McAllister. The remainder of the intercepted calls were not
10 monitored. Investigator Jacobson also informs me that during the
11 conduct of Wiretap No. 2, one call between the defendant and Mr.
12 Ermoian was monitored and recorded.

13 According to Inv. Jacobson, on January 14, 2003, Agent Steve
14 Hoek of the Stanislaus County Drug Enforcement Unit inadvertently
15 monitored a brief conversation between Mr. McAllister and the
16 defendant because he did not initially recognize Mr. McAllister's
17 voice. Upon recognizing Mr. McAllister's voice he stopped
18 monitoring. While I have not been informed of the content of the
19 call monitored, Inv. Jacobson reported that no substantive
20 information was obtained as a result of that call being
21 monitored.

22 According to Inv. Jacobson, on January 15, 2003, Agent Jesse
23 Tovar of the Stanislaus County Drug Enforcement Unit briefly
24 monitored a conversation between Mr. McAllister and the
25 defendant, pursuant to Penal Code Section 629.80 [This section
26 governs the "spot monitoring" of privileged communications to
27 ensure that they remain privileged].

1 Agent Tovar listened to the initial portion of the call for
2 six seconds. This involved approximately one to two seconds of
3 actual conversation. He did not wait to determine if the call
4 was privileged but immediately minimized (stopped monitoring) the
5 call for 36 seconds. Agent Tovar then conducted a spot check of
6 the call of 6 seconds to ensure that the defendant and his
7 attorney were still conversing. He again immediately minimized
8 the call. Agent Tovar then waited one minute and seven seconds
9 and conducted another spot check of 6 seconds. He then minimized
10 for the remainder of the call. The total time that the call was
11 monitored, including all spot checks, was 18 seconds. While I
12 have not been informed of the content of the call monitored, Inv.
13 Jacobson reported that no substantive information was obtained as
14 a result of that call being monitored.

15 Finally, according to Inv. Jacobson, on January 29, 2003, a
16 conversation was monitored between the defendant and Gary
17 Ermoian. At the time of the interception, Inv. Jacobson did not
18 know that Mr. Ermoian was a private investigator employed by Mr.
19 McAllister. While I have not been informed of the content of the
20 call monitored, Inv. Jacobson reported that no substantive
21 information was obtained as a result of that call being
22 monitored.

23 Please see the attached declaration by Inv. Jacobson for a
24 full accounting of the three calls at issue. As stated above,
25 the prosecuting attorneys have not listened to any audio
26 recording from either Wiretap No. 2 or 3, and said recordings
27 have remained in the possession of the court and Inv. Jacobson.
28

1 The only personnel who are privy to the knowledge contained in
2 the above mentioned recordings are Inv. Steve Jacobson, Agent
3 Steve Hoek, and Agent Jesse Tovar.

4 5 UNSEALING PROCEDURE

6 The People are satisfied that Wiretap Nos. 2 and 3 were
7 conducted in accordance with the provisions of Penal Code Section
8 629.50, et. al, and all applicable case law. However, it is the
9 People's position that, to ensure the confidential nature of any
10 attorney client communication, the court should follow the below
11 listed procedure regarding the release of audio recordings
12 obtained during Wiretap Nos. 2 and 3:

13 1. The court should listen, *In Camera*, to the recordings of
14 the above mentioned three calls to determine if the court
15 believes that any privileged information is involved.

16 2. If the court finds that the calls involve privileged
17 information, or if the court can not make that determination
18 based on the brevity of the monitored portion of the calls, the
19 People request that all audio recordings, and accompanying
20 documentation be ordered released under seal to Inv. Jacobson for
21 copying and dissemination to the defense.

22 3. The People next request that all audio recordings,
23 except for the three recordings mentioned above, and all
24 accompanying documentation, except for documentation for the
25 three recordings mentioned above, be released under seal to Inv.
26 Jacobson for copying, and dissemination to the People.

1 4. Once copied for both parties, all such released
2 information should then be returned to the court and promptly
3 resealed.

4 5. The court should further order Inv. Jacobson, Agent
5 Hoek, and Agent Tovar to not communicate the content of the three
6 calls to any person.

7 6. The court should order that neither party shall release,
8 disseminate, or disclose any of the information contained within
9 the audio recordings without further order of the court.

10 **Conclusion**

11
12 For the above-cited reasons, the People request the court 1)
13 conduct an in-camera hearing regarding the privileged nature of
14 the three calls at issue, and 2) seal all of the audio recordings
15 and documents in question in accordance with the above procedure
16 pending use by the parties in court.

17 Dated: May 23, 2003

18 Respectfully submitted,

19 JAMES C. BRAZELTON
20 District Attorney

21 By:

22 
23 RICK DISTASO
24 Deputy District Attorney
25
26
27
28

1 JAMES C. BRAZELTON
2 Stanislaus County District Attorney
3 800 11th Street, Room #200
4 Modesto, California 95353
5 (209) 525-5550
6 Attorneys for Applicant
7 The People of the State of California

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

IN THE MATTER OF THE APPLICATION OF) WIRETAP NO. 2 AND 3
THE DISTRICT ATTORNEY OF THE)
COUNTY OF STANISLAUS) AFFIDAVIT OF STEVEN P.
) JACOBSON
)

I, **Steven P. Jacobson**, being duly sworn, depose and state as follows:

1. I am a sworn Federal Task Force Agent currently assigned to the Stanislaus Drug Enforcement Agency (SDEA). I am a District Attorney Criminal Investigator with the Stanislaus County District Attorney's Office assigned to the Major Narcotic Vender Prosecution (MNVP) team. I have been a sworn California peace officer, within the meaning of California Penal Code Section 830.1, for over eleven (11) years. Prior to my employment with the Stanislaus County District Attorney's Office, I was employed as a Police Officer with the Modesto, Oakdale and Waterford Police Department's.

2. I have been deputized by the Administrator of the U.S. Drug Enforcement Administration to exercise the powers of enforcement as set forth in Section 878, Title 21, United States Code and am therefore, an investigative or law enforcement officer of the United States within the meaning of title 18 U.S.C. Section 2510(7), and I am empowered by law to conduct investigations and make arrests for federal felony offenses.

1 3. I am certified by the California State Attorney General's Office in the practical,
2 technical, and legal aspects of California State court ordered wiretaps. (California Penal Code
3 Section 629 et seq.)
4

5 4. During my career, I have conducted and participated in approximately six (6) State and
6 Federal wire intercepts. I have been the case agent, affiant, wire room supervisor and/or
7 surveillance team member in the court-authorized interception of wire, oral and electronic
8 communications, which has made me familiar with the legal, practical and technical aspects of
9 such intercepts.
10

11 5. I am the affiant and case agent assigned to Stanislaus County Wiretaps #2 and #3;

12 6. On May 14, 2003, I was asked to, and did, prepare supplemental report #4 detailing the
13 nature and scope of any intercepted or monitored calls between Scott Peterson and Kirk McAllister
14 (and/or his office) and between Scott Peterson and Gary Ermoian.

15 7. All exhibits referred to in this affidavit have been sealed and are being maintained
16 in the Stanislaus County District Attorney's Office Investigations Division pending further
17 Court order. The exhibits referred to in this affidavit are the same as the exhibits I referred to
18 in my previous Supplemental Report #4.
19

20 8. I am familiar with criminal defense attorney Kirk McAllister. Prior to joining the
21 investigation, around the first week of January 2003, I was told by Detectives of the Modesto
22 Police Department that Scott Peterson and/or family members had retained Kirk McAllister.
23

24 9. Having this information in mind, on January 10, 2003, at 2000 hours, Deputy
25 District Attorney (DDA) Rick Distaso prepared "wiretap instructions" and discussed them
26 with all potential monitors and supervisors to ensure the proper monitoring and interception of
27 wire communications over cellular telephone numbers (209) 505-0337 and (209) 499-8427.
28

1 10. As part of the "wiretap instructions" DDA Distaso advised monitors and
2 supervisors of conversations, which may trigger the attorney client privilege, specifically
3 conversations between Scott Peterson and Kirk McAllister. DDA Distaso briefed all monitors
4 and supervisors on California Penal Code Section 629.80 pertaining to "privileged
5 communications." DDA Distaso read nearly verbatim the language used in Section 629.80
6 and included such language in his "wiretap instructions." DDA Distaso further told all
7 monitoring and supervising agents to become familiar with all telephone numbers regarding
8 any attorney consulting with Scott Peterson, specifically those belonging to criminal defense
9 attorney Kirk McAllister.
10

11
12 11. On January 10, 2003, after the minimization training and before the interception
13 began, Agent Bill Pooley informed me that he entered Kirk McAllister's name and listed
14 business telephone number of (209) 575-4844 into our newly created interception computer
15 database. Upon my visual inspection of the "wire room" prior to the beginning of the
16 intercept, I too noticed Kirk McAllister's name and business telephone number placed on a
17 dry eraser board over the monitoring area. Agent Rob Jackson said before the intercept began,
18 he was the individual who placed Kirk McAllister's name and business telephone in this
19 prominent location within the wire room. This was done to further comply with DDA
20 Distaso's "wiretap instructions."
21

22 12. On January 14, 2003, at 1624 hours, Kirk McAllister called Scott Peterson. The
23 wire room supervisor, Agent Steve Hoek, was the actual monitor of the telephone call. Agent
24 Hoek told me that the volume on the speaker had been turned down to a degree that he could
25 not hear the initial greeting between the unknown caller and Scott Peterson. Agent Hoek told
26 me that upon turning the volume up, he heard Scott Peterson talking about his computer
27
28

1 software. Agent Hoek believed the conversation was turning into a business related, non-
2 pertinent call. Agent Hoek told me he then minimized the conversation. Agent Hoek said he
3 came back on the line to spot check and heard the unknown caller ask Scott Peterson a
4 question regarding the investigation. It was at that point that Agent Hoek recognized the
5 voice of the unknown caller to be that of Kirk McAllister.
6

7 13. Agent Hoek stated as soon as he recognized the unknown caller's voice was that
8 of Kirk McAllister (and it did not appear to him that Kirk McAllister was planning the
9 commission of any other crimes, nor personally involved in Laci Peterson's disappearance),
10 he minimized the conversation all the way through to the end, without performing any more
11 spot checks. Agent Hoek told me that he thought he saw Kirk McAllister's name as the
12 subscriber of the incoming call pop up on the computer screen, but by the time he scrolled the
13 call box up, he had already recognized McAllister's voice and had fully minimized the
14 remainder of the call.
15

16 14. Agent Hoek said after this intercepted call, he entered Kirk McAllister's home
17 telephone number (209-664-1208), his Turlock office telephone number (209-668-0488) and
18 his secondary office number of (209-575-4881) into the computer database. Agent Hoek said
19 he did this in order for subsequent monitors and supervisors not familiar with Kirk
20 McAllister's voice to be alerted if Kirk McAllister called Scott Peterson from any other
21 telephone numbers not previously entered. This was done to further alert monitors and
22 supervisors to avoid the interception of potential privileged information between Scott
23 Peterson and Kirk McAllister.
24

25 15. On January 15, 2003, at 1120 hours, Kirk McAllister called Scott Peterson. Agent
26 Jesse Tovar was the monitor for the intercept and Agent Bill Pooley was the "wire room"
27
28

1 supervisor. Agent Tovar stated he intercepted communications between Scott Peterson and
2 Kirk McAllister and believed he followed the appropriate provisions listed in California Penal
3 Code Section 629.80 and the "wiretap instructions" as provided by DDA Distaso. Agent
4 Tovar told me he believed that he had effectively minimized then later "spot checked" briefly
5 two times in order to confirm Scott Peterson and Kirk McAllister were still conversing.
6

7 16. On January 17, 2003, DDA Distaso and I met with the Honorable Judge Ladine. I
8 presented Judge Ladine with "72-Hour report #2." In this report, I stated the following:

9 "During this reporting period, we have intercepted seven (7) calls made to and/or from
10 telephones being used by Kirk McAllister, attorney at law. At this present time, we do
11 not suspect Kirk McAllister is criminally involved or conspiring in any way with Scott
12 Peterson. It is my understanding Kirk McAllister, is currently being retained by the
13 family. These calls have been effectively minimized to maintain and ensure
14 attorney/client privilege."

15 17. While presenting this information to Judge Ladine, he asked that I inform him as to
16 what exact minimization procedures were being followed. As I explained it to Judge Ladine, he
17 stated he wanted me to reduce our procedures to writing and include it in the "72-hour report
18 #2." Judge Ladine asked that I redo this portion of the report, to include what was being done
19 with Kirk McAllister's intercepted telephone calls.

20 18. On January 17, 2003, I rewrote the "72-hour report #2" upon Judge Ladine's request
21 and stated the following:

22 "During this reporting period, we have intercepted seven (7) calls made to and/or
23 from telephones being used by Kirk McAllister, attorney at law. At this present
24 time, we do not suspect Kirk McAllister is criminally involved or conspiring in
25 any way with Scott Peterson. It is my understanding Kirk McAllister, is currently
26 being retained by the family. These calls have been effectively minimized to
27 maintain and ensure attorney/client privilege. The minimization procedure was as
28 follows: As soon as the monitor(s) recognized the voices of Kirk McAllister and
Scott Peterson, the calls were minimized (the recording and listening devices were
deactivated). Spot checks were periodically made to ensure that Kirk McAllister
and Scott Peterson were still conversing. As soon as this was confirmed, the calls
were once again minimized according to the above procedures and in accordance

1 with the law. During the initial reception of the calls, and the periodic spot-
2 checks to ensure Scott Peterson was still conversing with Kirk McAllister, no
substantive information was obtained.”

3 19. On January 17, 2003, I presented the corrected report (“72-hour report #2”) to
4 Judge Ladine. While reading the additional information presented, Judge Ladine expressed his
5 concern about the monitoring of any communications between Scott Peterson and Kirk
6 McAllister. I assured Judge Ladine that as soon as the monitors recognized a greeting
7 between Kirk McAllister and Scott Peterson, the calls were minimized. DDA Distaso asked
8 me if the monitors were all familiar with Kirk McAllister’s voice and if there had been any
9 problems with the minimization. I told DDA Distaso and Judge Ladine that one Agent (Steve
10 Hoek) had not recognized McAllister’s voice initially, but shortly thereafter, and as soon as he
11 did, he minimized the entire conversation and did not perform any spot checks at all. Judge
12 Ladine stated he was not comfortable with the idea of any spot checks being performed upon
13 conversations between Scott Peterson and Kirk McAllister. Judge Ladine told us that once
14 conversations were initiated, Agents should be off the line all together. Judge Ladine said he
15 felt the monitoring or spot-checking of any conversations between Scott Peterson and Kirk
16 McAllister would be inappropriate and could cause problems. DDA Distaso agreed. As
17 Judge Ladine continued voicing his concern, he asked DDA Distaso a question about the
18 admissibility of any information obtained during one of these spot checks. Judge Ladine was
19 concerned about the District Attorney’s Office using a wiretap to obtain statements from a
20 suspect who had counsel and had already expressed to the police that he didn’t wish to make
21 any statements, yet under the spot check, police would be able to hear portions (up to 30
22 seconds by law) of potential privileged communication. DDA Distaso and I provided a brief
23 answer somewhat explaining what a spot check was. Judge Ladine stated once again he did
24 not like the idea of spot checks being performed and instructed me to pass on to the monitors
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1 to fully minimize or not monitor the calls being made between Scott Peterson and Kirk
2 McAllister.

3
4 20. According to the reports given to me by Intelligence Analyst (I/A) Steven Wright,
5 during the first court order (January 10 to February 4, 2003) there were fifty-eight (58)
6 interceptions between Scott Peterson and Kirk McAllister (or his office personnel) over
7 cellular telephone number (209) 505-0337. Every one of these calls (with the exception of the
8 first two intercepted/monitored calls previously documented in this report) were fully
9 minimized (without any spot checks), or not monitored at all (exhibit "A"). After Judge
10 Ladine's order on January 17, 2003, calls between Scott Peterson and Kirk McAllister were
11 no longer spot-checked.
12

13 21. According to the reports given to me by I/A Steven Wright, during the first court
14 order (January 10 to February 4, 2003) there were three (3) interceptions between Scott
15 Peterson and Kirk McAllister (or his office personnel) over the cellular telephone number
16 (209) 499-8427. The first call occurred on January 20, 2003, at 0935 hours, where Kirk
17 McAllister called Scott Peterson. After their greeting, the call was fully minimized without
18 any spot checks being made. The second call occurred on January 20, 2003, at 1732 hours,
19 and was not monitored due to audio problems. The third call occurred on January 23, 2003, at
20 1019 hours, where Scott Peterson called McAllister's office and confirmed an appointment
21 (exhibit "B").
22

23
24 22. According to the reports given to me by I/A Steven Wright, during the second
25 court order (April 15-18, 2003) there were eight (8) interceptions between Scott Peterson and
26 Kirk McAllister (or his office personnel) over cellular telephone number (209) 505-0337.
27 Each call was fully minimized, without any spot checks being made (exhibit "C").
28

1 23. To my knowledge, I do not know Gary Ermoian (at least by name) and I'm not
2 familiar with Gary L. Ermoian Investigations. On January 20, 2003, at 2210 hours, an
3 interception occurred between Scott Peterson and Amber Frey. I reviewed this interception
4 and noted Scott Peterson had told Amber Frey he knew that the National Enquirer had hired a
5 private investigator because his private investigator had told him that the National Enquirer
6 tried to hire him. This was the first time I was made aware of the fact that Scott Peterson had
7 an unidentified private investigator working on this case.
8

9 24. Later, on January 22, 2003, at 1809 hours, an interception occurred between Jodi
10 Hernandez (a media reporter) and Scott Peterson. I reviewed this interception and noted that
11 Jodi Hernandez asked Scott Peterson if he and/or his family hired a private investigator. Scott
12 Peterson didn't answer her question directly. Scott Peterson subsequently told her he believed
13 he was being followed around by private investigators from the National Enquirer.
14

15 25. On January 26, 2003, at 1828 hours, an interception occurred between Scott
16 Peterson and his parents, Jackie and Lee Peterson. While reviewing the interception, I noted
17 that Scott Peterson's parents asked him if he still had his "hired guy" working for him. Scott
18 Peterson responded by asking them if they meant "Gary." They responded they did. This was
19 the first time I was made aware of the fact that Scott Peterson's "hired guy" was known by the
20 first name of "Gary" and was possibly the same private investigator he had told Amber Frey
21 about on January 20, 2003.
22

23 26. On January 29, 2003, at 1404 hours, an interception occurred between Scott
24 Peterson and his mother, Jackie Peterson. While reviewing the interception, I noted Jackie
25 Peterson asking Scott Peterson if he wanted her to pay his "detective." Scott Peterson told his
26 mother he did, that the detectives name was "Gary" and she could make the check out to Kirk
27
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1 McAllister. This was the first time I was made aware of the fact that "Gary," the private
2 investigator, was working for Kirk McAllister and was being paid through him.

3
4 27. Approximately 31 minutes later (at 1435 hours on January 29, 2003), an
5 interception occurred between Scott Peterson and a subject identifying himself as Gary
6 Ermoian. While reviewing the interception, I noted Gary Ermoian called Scott Peterson to
7 warn him that the media was outside of his residence on Coven. I subsequently checked the
8 telephone number Gary Ermoian used in communicating with Scott Peterson. The telephone
9 number appeared to be a listed number subscribed to Gary L. Ermoian Investigations. I then
10 believed Gary Ermoian was "Gary," the "hired guy," the "detective" and the private
11 investigator.
12

13 28. After this last call, one other interception occurred on January 29, 2003, at 2232
14 hours, between Scott Peterson and Gary Ermoian but the conversation was not monitored. No
15 other interceptions between Gary Ermoian and Scott Peterson occurred over the first court
16 order (exhibit "D"), nor were there any other interceptions that occurred between Gary
17 Ermoian and Scott Peterson during the second court order (April 15-18, 2003).
18

19 29. On May 15, 2003, I reviewed every intercepted call between Scott Peterson and
20 Kirk McAllister (as shown in exhibits "A, B and C"). I checked the meter (time measuring
21 device) for each intercepted call, specifically Agent Hoek and Agent Tovar's aforementioned
22 interceptions (on January 14, 2003 and January 15, 2003, respectively). As shown in the
23 transcription of Agent Hoek's call, Agent Hoek minimized the first time for a total of thirty-
24 one (31) seconds before coming back on the line to spot check the conversation. He did this
25 for the purpose of re-determining the nature of the call (to see if the conversation had changed
26 from a business related call to anything pertinent). Agent Hoek did not know the identity of
27
28

1 the caller at this time, nor that it was a privileged communication (as they were discussing
2 events that had transpired in the investigation). His thirty-one (31) second minimization went
3 beyond the standard thirty (30) second non-pertinent minimization rule used by the Federal
4 Government here in the Eastern District of California. When Agent Hoek came back on the
5 line, he monitored the communication for forty-one (41) seconds before recognizing Scott
6 Peterson was talking to his attorney, Kirk McAllister, and that they were communicating
7 about information specific to this case (making it a privileged communication). As Agent
8 Hoek realized this, he completely minimized the remainder of the call. This intercepted call
9 has been transcribed (exhibit "E").
10
11

12 30. While reviewing Agent Tovar's aforementioned interception of Scott Peterson and
13 Kirk McAllister using the time measuring device, I noted that Agent Tovar listened to the
14 initial portion of the call for six (6) seconds, then he minimized for thirty-six (36) seconds.
15 He came back on the line to spot check for another six (6) seconds then minimized for one (1)
16 minute and seven (7) seconds. He then listened again for six (6) seconds then minimized the
17 remainder of the call (twenty-four [24] seconds).
18

19 31. On May 15, 2003, after learning this information I spoke with Agent Tovar.
20 Agent Tovar stated on the specific interception in question, he believed he had effectively
21 minimized the conversation between Kirk McAllister and Scott Peterson. Agent Tovar stated
22 he only came back on for a brief period of time, (six [6] seconds each time), to confirm Scott
23 Peterson was still talking with Kirk McAllister. Agent Tovar said at no time did he ever learn
24 the nature of their communication. This intercepted call has been transcribed (exhibit "F").
25

26 32. In summary, between both Stanislaus County Wiretap #2 and #3, there were sixty-
27 nine (69) intercepted communications between Kirk McAllister and Scott Peterson. The very
28

1 first two (2) intercepted calls (with audio attached) were intercepted and were monitored with
2 spot checks being performed. The first of which, Agent Hoek explained he did not recognize
3 Kirk McAllister's voice initially. As shown above, once Agent Hoek recognized the call was
4 from Kirk McAllister and privileged in nature he immediately ceased (minimized) the
5 interception and never returned back on the line. After Agent Hoek ceased monitoring the
6 call, two (2) minutes and forty (40) seconds remained for the duration of the call. By law (PC
7 629.80), after minimizing for the two (2) minutes of the "privileged" conversation, Agent
8 Hoek could have come back on the line for up to another thirty (30) seconds to re-determine if
9 the call was still "privileged." But being overly cautious and acknowledging his previous
10 mistake in not making the initial identification between the two, Agent Hoek chose to forgo
11 that right and cease monitoring it all together.

14 33. With Agent Tovar's interception of Kirk McAllister calling Scott Peterson, Agent
15 Tovar minimized after they both said each other's name (approximately one second of actual
16 conversation). By law he could have continued to monitor (for up to 30 seconds) to determine
17 the nature of the conversation, yet he chose in the abundance of caution to minimize
18 immediately. After waiting thirty-six (36) seconds more, once again which is more than the
19 Federal "golden rule" of thirty (30) seconds used by Federal and Task Force Agents here in
20 our Eastern District of California, he chose to spot check the conversation. During his spot
21 check he heard Scott Peterson mid-sentence saying thirteen (13) words, which didn't form a
22 complete sentence (actual time of conversation approximately five (5) seconds). After hearing
23 Scott Peterson's voice, he was satisfied Scott Peterson was still talking to Kirk McAllister. In
24 the abundance of caution, he minimized again, without finding out if the conversation was in
25 fact "privileged." This time he more than doubled the normal Federal "golden rule" of thirty
26
27
28

1 (30) seconds by staying off the line for 1 minute and seven (7) seconds. After effectively
2 minimizing, Agent Tovar came back on the line and heard Scott Peterson say five (5) more
3 words, which didn't make a complete sentence. He heard Scott Peterson's attorney say one
4 (1) word. He then heard Scott Peterson agree and his attorney state a few more words. This
5 time after hearing both Scott Peterson and Kirk McAllister briefly communicate, he chose to
6 once again minimize the conversation. This minimization lasted until the end of the call
7 (twenty-four seconds later). I believe Agent Tovar, in the abundance of caution, did not fully
8 monitor the call enough to learn the nature of the communication between Scott Peterson and
9 Kirk McAllister. At no time do I believe Agent Tovar heard any privileged communication
10 between Scott Peterson and Kirk McAllister triggering the requirements of Penal Code
11 Section 629.80. I believe that the recorded audio verifies and confirms this.
12

13
14 34. Furthermore, after Judge Ladine and DDA Distaso, who, in my opinion chose to
15 be more conservative than the provision of 629.80 dictates, mandated that I fully minimize on
16 all communications between Kirk McAllister and Scott Peterson (and no longer perform spot
17 checks), such orders were in fact carried out by my supervisors and monitors, as depicted in
18 exhibits "A, B, and C." I have reviewed all calls presented in the aforementioned exhibits and
19 believe the listed synopsis properly and accurately represents the incoming and outgoing
20 intercepts involving Kirk McAllister, Scott Peterson and Gary Ermoian. I find no other
21 incoming or outgoing intercepted communications between Scott Peterson and Kirk
22 McAllister where the calls were not minimized, or any other call, besides the aforementioned
23 calls concerning Agents Hoek and Tovar, where spot checks were performed.
24
25

26 I declare under the penalty of perjury that the foregoing is true and correct to the best of
27 my ability.
28

DATED: May 22, 2002.



Steven P. Jacobson, Criminal Investigator II
County of Stanislaus, State of California

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1 AFFIDAVIT OF SERVICE BY MAIL (C.C.P 1013a)

2 STATE OF CALIFORNIA)
3 COUNTY OF STANISLAUS)

4 I, the undersigned, say:

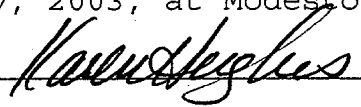
5 That I am a citizen of the United States, over 18 years of
6 age, a resident of Stanislaus County, and not a party to the within
7 action.

8 That affiant's business address is Stanislaus County
9 Courthouse, Modesto, California.

10 That affiant served a copy of the attached RELEASE OF AUDIO
11 RECORDINGS FROM STANISLAUS COUNTY WIRETAP NO. 2 AND 3 RECORDS,
12 AFFIDAVIT OF STEVEN P. JACOBSON, by placing said copy in an
13 envelope addressed to Mark J. Geragos, 350 South Grand Avenue, 39th
14 Floor, Los Angeles, CA, 90071, which envelope was then sealed and
15 postage fully prepaid thereon, and thereafter was on May 23rd, 2003
16 deposited in the United States mail at Modesto, California. That
17 there is delivery service by United States mail at the place so
18 addressed, or regular communication by United States mail between
19 the place or mailing and the place addressed.

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

22 Executed this 23rd day of May, 2003, at Modesto, California.

23 
24 _____
KAREN HUGHES

25 People v. PETERSON
26 D.A. No. 1056770
27 Court No. 1056770
28

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

FILED
03 MAY 23 AM 9:35
SUPERIOR COURT
COUNTY OF STANISLAUS
BY J. M. M.
DEPUTY

8 STANISLAUS COUNTY SUPERIOR COURT
9 STATE OF CALIFORNIA

-----oOo-----

10 D.A. No.1056770
11 THE PEOPLE OF THE STATE OF CALIFORNIA) No.1056770
12)
12 Plaintiff,) ADDITIONAL POINTS
13) AND AUTHORITIES IN
13 vs.) SUPPORT OF SEALING
14) RECORDS
14 SCOTT LEE PETERSON,) Hrg: 5-27-03
15) Time: 8:30 a.m.
15 Defendant.) Dept: 2 / 8

-----oOo-----

17 Comes now the People of the State of California to submit
18 the following Additional Points and Authorities in support of
19 SEALING RECORDS:

20 FACTS

21 See previous statements of fact.

22 ARGUMENT

23 1. The term "Public" does not automatically mean discoverable.
24 The media has now filed a supplemental opposition stating
25 that the coroners report is public and therefore subject to
26 inspection. This simplistic logic is absurd. Any document that
27 may allow the government to better do the job can become public,
28 but that does not mean that it is discoverable. Examples abound,

1 such as tax records, mental health records, "rap sheets," and
2 investigative records, which are public records but are not
3 subject to disclosure. (See Government Code §6254.)

4 The media have attached a letter from Contra Costa's County
5 Counsel to "prove" that the records are public and quote two
6 lines from the letter. This court should read the entire letter
7 to see the four pages of reasons Contra Costa used to **deny** access
8 to the records under the CPRA. The letter cites §§6254(a),
9 (c), (f), (k), and §6255(a) to show an exception to disclosure; this
10 was not mentioned by the media.

11 **2. The People have standing.**

12 Intervenors argue that the District Attorney has no standing
13 to object to disclosure by Contra Costa. The media is wrong. In a
14 criminal case, which this is, the District Attorney is
15 responsible for the evidence in possession of the "prosecution
16 team." (Brady v. Maryland, (1963) 373 U.S. 83; Kyles v. Whitley,
17 (1995) 514 U.S. 419; In re Brown, (1998) 17 Cal.4th 873, 879.)
18 Contra Costa is part of this team.

19 **3. The defendant's right to a fair trial.**

20 The media claims that by filing the autopsy reports with the
21 court the records have become judicial records and "subject to
22 inspection by the public." They cite no authority for this
23 proposition. Secondly they claim that by the defense obtaining
24 copies of the reports they should have access to the records as
25 well. They also fail to cite any authority for that proposition.
26 What the media fails to grasp, is the defendant is entitled to a
27 fair trial. (See previous points and authorities.) The court is
28

1 responsible to ensure this right is protected. The defendant is
2 also entitled to discovery. (Penal Code §1054.1.) This court has
3 assumed control over all discovery matters in this case and
4 should decide these issues. The media is not a "party" and is not
5 entitled to discovery, which is a separate process from the CPRA.

6 **Conclusion**

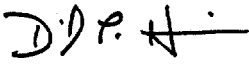
7
8 For all of the above-cited reasons, the People request the
9 court, 1) grant an in-camera hearing, 2) seal all of the
10 documents in question pending use by the parties in court, and 3)
11 deny the intervenor's request to have access to the documents.

12
13 Dated: May 22, 2003

14 Respectfully submitted,

15 JAMES C. BRAZELTON
16 District Attorney

17 By:

18 
19 David P. Harris
20 Deputy District Attorney
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