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FILED
5/27/03
CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS
BY *[Signature]*
DEPUTY

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

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

SCOTT LEE PETERSON, et al.,

Defendant.

Case No. 1056770

OPPOSITION TO PEOPLE'S MOTION FOR RELEASE OF AUDIO RECORDINGS FROM STANISLAUS COUNTY WIRETAP NO. 2 AND 3 RECORDS

DATE: May 27, 2003
TIME: 8:30 a.m.
PLACE: Dept 2 / 8

Scott Lee Peterson ("Peterson") hereby opposes the Peoples' Motion for Release of Audio Recordings from Stanislaus County Wiretap No. 2 and 3 Records ("Motion"). Mr. Peterson's opposition is made on the following grounds:

- (1) the Prosecutions' admitted monitoring of conversations between Mr. Peterson and his attorney was in violation of well-established California law;
- (2) the Prosecution failed to properly advise investigators that all conversations between Mr. Peterson and his counsel were absolutely privileged, and in fact, apparently encouraged the investigators to engage in prohibited monitoring of privileged communications; and
- (3) the Affidavit of Steven P. Jacobson and all of the exhibits thereto should be disregarded for failure to comply with Code of Civil Procedure section 2015.5.

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I.

INTRODUCTION

The Motion by the prosecution reflects a fundamental misunderstanding of one of the most sacred of all privileges - - that between a client and his attorney. As the Court of Appeal for the Second Appellate District recently stated:

The [attorney-client] privilege is absolute and disclosure may not be ordered, without regard to relevance, necessity or any particular circumstances peculiar to the case.

(Solin v. O'Melveny & Myers, LLP (2nd Dist. 2001) 89 Cal.App.4th 451, 457).

* * *

In sum, there can be no balancing of the attorney-client privilege against the right to prosecute a lawsuit to redress a legal wrong.

(Id.)

* * *

While it is perhaps somewhat of a hyperbole to refer to the attorney-client privilege as sacred, it is clearly one which our judicial system has carefully safeguarded with only a few specific exceptions.

(Id.)

Despite the bedrock nature of the attorney-client privilege both Constitutionally and statutorily, and bereft of any case law to the contrary, the Stanislaus County District Attorney authorized investigators to monitor conversations between Peterson and his counsel.¹ As a result, the prosecution has conceded that a minimum of three privileged

¹Peterson notes that the People admit to having monitored privileged communications between Peterson and a private investigator (Gary Ermoian) known by the People to have been

1 conversations between Peterson and his counsel or counsel's investigator were
2 (improperly) monitored.

3 As a result of this misconduct, Mr. Peterson respectfully requests that:

4 (1) the Court deny the prosecution motion in its entirety;

5
6 (2) the Court Order the immediate disclosure (both written and electronically
7 recorded or stored) to counsel for Mr. Peterson all intercepted and/or monitored
8 conversations between Mr. Peterson and his counsel or his counsel's investigator;

9
10 (3) the Court set an in camera hearing during which DDA Distaso, among others,
11 may be questioned as to the circumstances surrounding the improper monitoring
12 and intrusion into the defense camp. Counsel for Mr. Peterson also plan to address
13 who initially told Mr. Distaso that the conversations were not recorded (See
14 Declaration of Kirk McAllister at paragraphs 3 and 4), and when Distaso received
15 information that apparently directly contradicted his previous statements to Mr.
16 McAllister. In addition, the defense respectfully requests that the investigators
17 who conducted the improper monitoring be placed under oath so that they may be
18 thoroughly examined as to the nature and scope of the privileged communications
19 overheard by them;

20
21 (4) the Court Order the immediate disclosure to Peterson of any and all notes taken
22 by the People's investigators in connection with the improper monitoring.

23
24 (5) the Court Order the immediate disclosure to the defense only of all transcripts
25 of the January 17, 2003 meeting between Judge Ladine, DDA Distaso, and
26 investigator Jacobson and any other transcripts of related hearings, applications

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28 hired by Peterson's counsel. This Opposition specifically addresses the law and facts as to attorney-
client communications and the same principles apply to the conversations between Peterson and his
attorney's investigator.

1 (whether or not granted) and declarations by all involved that there are no other
 2 eavesdropping of Mr. Peterson and his counsel, investigators or experts either pre
 3 or post arrest.

4 Counsel for Mr. Peterson believe the relief requested above is a necessary
 5 threshold requirement to allow the defense an opportunity to properly assess the
 6 egregiousness and taint of the admitted prosecutorial misconduct and make a proper
 7 determination as to the appropriate sanction.

8
 9 **II.**

10 **THE PEOPLES' ADMITTED MONITORING OF CONVERSATIONS**
 11 **BETWEEN PETERSON AND HIS ATTORNEY WAS IN**
 12 **VIOLATION OF CALIFORNIA LAW**

13 Apparently the prosecution will seek refuge in Penal Code section 629.80.^{2/}
 14 However, reliance on this section is misplaced at best. Nowhere does this Penal Code
 15 section justify the monitoring of attorney-client communications. In fact, the defense is
 16 unaware of any reported case even relying on this section at all for any proposition of law

17
 18 ²Penal Code section 629.80 provides:

19 No otherwise privileged communication intercepted in accordance
 20 with, or in violation of, the provisions of this chapter shall lose its
 21 privileged character. When a peace officer or federal law
 22 enforcement officer, while engaged in intercepting wire, electronic
 23 pager, or electronic cellular telephone communications in the manner
 24 authorized by this chapter, intercepts wire, electronic pager, or
 25 electronic cellular telephone communications that are of a privileged
 26 nature he or she shall immediately cease the interception for at least
 27 two minutes. After a period of at least two minutes, interception may
 28 be resumed for up to 30 seconds during which time the officer shall
 determine if the nature of the communications is still privilege. If
 still of a privileged nature, the officer shall again cease interception
 for at least two minutes, after which the officer may again resume
 interception for up to 30 seconds to redetermine the nature of the
 communication. The officer shall continue to go online and offline
 in this manner until the time that the communication is no longer
 privileged or the communication ends. The recording device shall be
 metered so as to authenticate upon review that interruptions occurred
 as set forth in this chapter.

1 let alone authorizing the repeal of the 6th amendment of the United States Constitution or
2 Evidence Code section §954 et. seq.. To the contrary, this section as no applicability to
3 eavesdropping on attorney client communications because by their very nature they are
4 privileged as a matter of fact and law.

5 **A. The People knew that Peterson had retained Attorney Kirk McAllister**
6 **in this matter and that all communications between McAllister and**
7 **Peterson were absolutely privileged under California law.**

8 The prosecution motion states that "Stanislaus County Wiretap No. 2 was
9 authorized by the Stanislaus County Superior Court on January 10, 2003. Stanislaus
10 County Wiretap No. 3 was authorized by the Court on April 15, 2003." (Motion at 1:21-
11 24.) The People, through the Affidavit of Steven P. Jacobson ("Jacobson Affidavit"),
12 also state that "[the People are] familiar with criminal defense attorney Kirk McAllister.
13 Prior to joining the investigation, *around the first week of January 2003, [the People]*
14 *were told by Detectives of the Modesto Police Department that Scott Peterson and or*
15 *family members had retained Kirk McAllister."* (emphasis added) (Jacobson Affidavit at
16 paragraph 8.) Knowing that (a) McAllister is a criminal defense attorney, (b) that Scott
17 Peterson knew he was the target of an investigation by the Modesto Police department,
18 and (c) that Peterson had retained McAllister, the People cannot credibly contend they did
19 not know that all communications between McAllister and Peterson were absolutely
20 privileged.^{3/} Moreover, the People admit that on January 10, 2003, before the improper
21 monitoring, "Agent Bill Pooley informed [Affiant Steven P. Jacobson] that he entered
22 Kirk McAllister's name and listed business telephone number of (209) 575-4844 into [the
23 People's] newly created interception computer database." (Jacobson Affidavit at
24 paragraph 11.) The People also admit that McAllister's name and business telephone had
25 been placed on a dry eraser board over the monitoring area and that the People knew
26 when McAllister was calling Scott Peterson (presumably through caller ID or some

27
28 ³As noted above, the California courts have held that the attorney-client privilege is absolute
but for a few very limited exceptions which are wholly irrelevant to these proceedings. (See *Solin*
v. O'Melveny & Myers, LLP (2nd Dist. 2001) 89 Cal.App.4th 451, 457.)

1 similar technology). (See Jacobson Affidavit at paragraphs 11, 12, and 15.)

2 As to one of the calls that was improperly monitored the Jacobson Affidavit states
3 "Agent Hoek stated as soon as he recognized the unknown caller's voice was that of Kirk
4 McAllister (and it did not appear to him that Kirk McAllister was planning the
5 commission of any other crimes, nor personally involved in Laci Peterson's
6 disappearance), he minimized the conversation." (Jacobson Affidavit at paragraph 13.)

7 This statement clearly indicates the prosecution also, unbelievable as it may seem, intends
8 to rely at least in part on the crime-fraud exception to justify the improper monitoring.
9 Such a reliance is not only disingenuous and utterly without merit, but insulting to this
10 Court and Counsel.

11 As discussed at length by the Court of Appeal for the Second Appellate District in
12 *State Farm Fire and Casualty Company v. Superior Court* (2nd Dist. 1997) 54
13 Cal.App.4th 625, *rehearing denied, review denied*:

14 Evidence Code section 956 is the so-called crime/fraud
15 exception: 'There is no privilege under this article if the
16 services of the lawyer were sought or obtained to enable or
17 aid anyone to commit or plan to commit a crime or a fraud.'

18 'To invoke the Evidence Code section 956 exception to
19 the attorney-client privilege, the proponent must make a prima
20 facie showing that the services of the lawyer 'were sought or
21 obtained' to enable or to aid anyone to commit or plan to
22 commit a crime or fraud. (Citation.)' (*BP Alaska Exploration,*
23 *Inc. v. Super Court* (1988) 199 Cal.App.3d 1240, 1262, 245
24 Cal.Rptr. 682)
25 (*State Farm* at 643.)

26 * * *

27 On its face, [the facts of this case] fall[] within the traditional
28 application of the attorney privilege in a litigation setting; the

1 client has already committed an alleged crime or a civil fraud
 2 and retains the attorney to provide a defense to the action.
 3 *The information exchanged between the attorney and the*
 4 *client is totally privileged, even if the client confesses the*
 5 *wrongdoing to the attorney.*
 6 (emphasis added) (*State Farm* at 644.)

7 The instant matter is no different. Investigators from the inception of this missing
 8 persons investigation, focussed their almost undivided investigative resources and efforts
 9 on Mr. Peterson. Mr. Peterson, knowing he was the target of an investigation into the
 10 disappearance of his wife, retained Attorney McAllister to provide a defense to these false
 11 allegations. Consequently, as the *State Farm* court properly found, all information
 12 exchanged between Peterson and McAllister is totally privileged. Moreover, as set forth
 13 above, the prosecution not only knew of the attorney-client relationship, they actively
 14 monitored the privileged communications and subsequently misled the Court and Counsel
 15 as to their actions.

16 In the face of this admitted prosecutorial misconduct, this Court is also requested
 17 to stay all pending motions by the media and others concerning the inspection of all
 18 communications intercepted by the prosecution until such time as a plenary hearing can
 19 be held. In light of the failure of the prosecution to heed the Constitution of California as
 20 to privileged attorney-client communications, we respectfully request that this Court stay
 21 the other pending motions until this motion is resolved and a subsequent anticipated
 22 motion for sanctions. The defense believes that the People's failure to obey the laws of
 23 California may be so great that all intercepted communications are tainted by the
 24 prosecutorial misconduct and should therefore remain sealed and unavailable for
 25 inspection by anyone other than the defense.

26 **B. Penal Code section 629.80 did not authorize the People to monitor any**
 27 **communications between Peterson and McAllister.**

28 As noted above, Penal Code section 629.80 governs the monitoring of privileged

1 communications. However, Section 629.80 expressly permits monitoring only to
 2 "determine if the nature of the communication is still privileged." (Section 629.80.) As
 3 such, *when there is no possibility that the communication is not privileged, no monitoring*
 4 *is permitted.* Moreover, this fact was recognized by Judge Ladine during the January 17,
 5 2003 meeting between Judge Ladine, DDA Distaso, and investigator Jacobson:

6 Judge Ladine expressed his concern about the monitoring of
 7 any communications between Scott Peterson and Kirk
 8 McAllister.

9 (Jacobson Affidavit at paragraph 19.)

10 * * *

11 Judge Ladine stated he was not comfortable with the idea of
 12 any spot checks being performed upon conversations between
 13 Scott Peterson and Kirk McAllister. Judge Ladine told us that
 14 once conversations were initiated, Agents should be off the
 15 line all together. Judge Ladine said he felt the monitoring or
 16 spot-checking of any conversations between Scott Peterson
 17 and Kirk McAllister would be inappropriate and could cause
 18 problems.

19 (*Id.*)

20 * * *

21 Judge Ladine was concerned about the District Attorney's
 22 Office using a wiretap to obtain statements from a suspect
 23 who had counsel and had already expressed to the police that
 24 he didn't wish to make any statements, yet under the spot
 25 check police would be able to hear portions. . . of potential
 26 privileged communications. . . Judge Ladine stated once again
 27 he did not like the idea of spot checks being performed and
 28 instructed me to pass on to the monitors to fully minimize or

1 not monitor the calls being made between Scott Peterson and
2 Kirk McAllister.

3 (Id.)

4 Judge Ladine's concern was well-founded and prescient. At the time the attorney-
5 client communications were eavesdropped upon the prosecution not only knew Peterson
6 had retained McAllister, but the prosecution concedes that communications between
7 McAllister and Peterson were obviously totally privileged. So, they come hat in hand to
8 this court on one hand claiming that they knew that the communications were privileged
9 and as soon as they recognized that it was Mr. McAllister that they turned off the
10 recording equipment and on the other hand now admitting that there are three entire
11 conversations that were not only listened to but recorded as well! This Court should not
12 condone the People's brazen disregard of Peterson's rights and the laws of California. As
13 such, the Court must grant the relief requested.

14 III.

15 THE PROSECUTION FAILED TO PROPERLY ADVISE INVESTIGATORS
16 THAT ALL CONVERSATIONS BETWEEN PETERSON
17 AND HIS COUNSEL WERE ABSOLUTELY PRIVILEGED, AND IN FACT,
18 DIRECTED THE INVESTIGATORS TO ENGAGE IN PROHIBITED
19 MONITORING OF PRIVILEGED COMMUNICATIONS

20 As set forth in Section II herein, the People knew that all communications herein
21 between Mr. Peterson and Attorney McAllister were totally privileged. Nevertheless,
22 Deputy District Attorney (DDA) Rick Distaso prepared
23 'wiretap instructions' and discussed them with all potential
24 monitors and supervisors to ensure the proper monitoring and
25 interception of wire communications over cellular telephone
26 numbers (209) 505-0337 and (209) 499-8427."

27 (Jacobson Affidavit at paragraph 9.)

28 * * *

1 As part of the 'wiretap instructions' DDA Distaso advised
2 monitors and supervisors of conversations, which may trigger
3 the attorney client privilege, specifically conversations
4 between Scott Peterson and Kirk McAllister. DDA Distaso
5 briefed all monitors and supervisors on California Penal Code
6 [s]ection 629.80 pertaining to 'privileged communications.'
7 DDA Distaso read nearly verbatim the language used in
8 Section 629.90 and included such language in his 'wiretap
9 instructions." DDA Distaso further told all monitoring and
10 supervising agents to become familiar with all telephone
11 numbers regarding any attorney consulting with Scott
12 Peterson, specifically those belonging to criminal defense
13 attorney Kirk McAllister.

14 (Jacobson Affidavit at paragraph 10.)

15 From the above it is clear that despite the implicit Section 629.80 prohibition
16 against monitoring communications that could not conceivably be privileged (and in this
17 case were *actually known* by the People to be totally privileged), the prosecution clearly
18 and improperly instructed the investigators to monitor these protected attorney-client
19 communications under the auspices of Section 629.80. Hence, the prosecution knowingly
20 and in violation of well-established law, orchestrated eavesdropping on totally privileged
21 attorney-client communications.

22 Not unexpectedly, the United States Supreme Court and the courts of California
23 have frowned upon this type of grave prosecutorial misconduct. The United States
24 Supreme Court has recognized that in cases of egregious prosecutorial misconduct
25 resulting in prejudice to a criminal defendant, dismissal of a case, with prejudice, is
26 appropriate. (See *United States v. Morrison* (1981) 449 U.S. 361, 101 S.Ct. 665.)

27 Expanding on this proposition, California courts have found that,

28 Where, as here, the prosecutor orchestrates an eavesdropping

1 upon a privileged attorney-client communication in the
2 courtroom and acquires confidential information, the court's
3 conscience is shocked and dismissal is the appropriate
4 remedy. Even when the issue is narrowed to a Sixth
5 Amendment violation, dismissal is still appropriate because
6 here there is a 'substantial threat of demonstrable prejudice'
7 as a matter of law.

8 (*Morrow v. Superior Court* (2nd Dist. 1994) 30 Cal.App.4th
9 1252, 1261, citing *United States v. Morrison* (1981) 449 U.S.
10 361, 365.)

11 The prosecutorial misconduct orchestrated here is no different than that which
12 occurred in *Morrow*. Indeed, even more shockingly, knowing that all communications
13 between Mr. Peterson and Attorney McAllister were totally privileged, the prosecution
14 instructed their investigators to repeatedly monitor the privileged communications.

15 As noted by the *Morrow* court,

16 It is also true today, as it was 100 years ago, that an attorney
17 . . . owes the duty of good faith and honorable dealing to the
18 judicial tribunals before whom he practices his profession.
19 He is an officer of the court - - a minister in the temple of
20 justice. His high vocation is to correctly inform the court
21 upon the law and the facts of the case, and to aid it in doing
22 justice and arriving at correct conclusions. He violates his
23 oath of office when he resorts to deception or permits his
24 clients to do so.'

25 (*Morrow* at 1261-1262, citing *People ex rel. Attorney General*
26 *v. Beattie* (1891)127 Ill. 553, 574 [27 N.E. 1096, 1103].)

27 Here, not only were investigators directed to monitor totally privileged attorney-
28 client communications, but the prosecution admits that they become privy to confidential

1 information. "The third call occurred on January 23, 2003, at 1019 hours, where Scott
2 Peterson called McAllister's office and confirmed an appointment."⁴ (Jacobson Affidavit
3 at paragraph 21.) As discussed at length above, all communications between McAllister
4 and Peterson were totally privileged. Nevertheless, the prosecution not only obtained
5 privileged information from these communications but compounds the matter by
6 publishing this privileged information in papers not filed under seal.

7 As the court in *Morrow* aptly noted,

8 We would be remiss in our oaths of office were we to
9 discount or trivialize what occurred here. The judiciary
10 should not tolerate conduct that strikes at the heart of the
11 Constitution, due process of law, and basic fairness. What
12 has happened here must not happen again. The prosecutor
13 used methods that offend a sense of justice. This is conduct
14 which shocks the conscience.

15 (internal citations and quotation marks omitted) (*Morrow* at
16 1263.)

17 In light of the grave prosecutorial misconduct described herein, this Court must
18 grant the relief requested herein so that Peterson may prepare and file any and all
19 appropriate motions.

20 IV.

21 **THE DISTRICT ATTORNEY'S INVESTIGATORS IMPROPERLY RELIED**
22 **ON FEDERAL STANDARDS GOVERNING THE MONITORING OF**
23 **ATTORNEY-CLIENT COMMUNICATIONS**

24 This matter is pending in a California state court. Subsequent to the passage of
25 Proposition 8, federal authority (other than cases decided by the United States Supreme
26 Court) is not binding on this Court. Nevertheless, investigator Jacobson repeatedly makes

27
28 ⁴ Counsel for Mr. Peterson submits that this exemplifies the urgency of the relief requested
so that the defense can, in camera, question all those involved in the improper monitoring as to the
scope of information from these calls that has been provided to the prosecution.

1 reference to, and apparently relied upon federal law. This misplaced reliance has further
2 deprived Peterson of the protections of California law detailed herein. A few examples of
3 Jacobson's improper reliance are,

4 His thirty-one (31) second minimization went beyond the
5 standard thirty (30) second non-pertinent minimization rule
6 used by the Federal Government here in the Eastern District
7 of California.

8 (Jacobson Affidavit at paragraph 29, page 10, lines 2-4.)

9 * * *

10 After waiting thirty-six (36) seconds more, once again which
11 is more than the Federal 'golden rule' of thirty (30) seconds
12 used by Federal and Task Force Agents here in our Eastern
13 District of California, he chose to spot check the conversation.

14 (Jacobson Affidavit at paragraph 33, page 11, lines 19-21.)

15 * * *

16 This time he more than doubled the normal Federal 'golden
17 rule' of thirty (30) seconds by staying off the line for 1 minute
18 and seven (7) seconds.

19 (Jacobson Affidavit at paragraph 33, page 11, line 27 - page 12, line 1.)

20 These examples are particularly disturbing in that not only do they reflect the
21 investigators' improper reliance on federal law, *the conclusively demonstrate that the*
22 *investigators failed to even heed DDA Distaso's purported 'wiretap instructions'*. As
23 noted previously, DDA Distaso allegedly read "nearly verbatim" the language in Section
24 629.80. Section 629.80 provides in pertinent part, "[a]fter a period of *at least two*
25 *minutes*, interception may be resumed." (See Section 629.80, emphasis added.)
26 According to the Jacobson Affidavit, the *longest* the agents stayed off the line was sixty-
27 seven (67) seconds - - barely over one-half the time required under California law.

28 Hence, not only was their improper monitoring and intrusion into the defense camp

1 but the investigators failed to even follow the requirements of their very own instructions.
2 This failure demonstrates the necessity for the defense to have an opportunity to question
3 the investigators and prosecutors in camera as to the events surrounding the improper
4 monitoring of privileged attorney-client communications.

5 V.

6 **THE AFFIDAVIT OF STEVEN P. JACOBSON FAILS TO COMPLY WITH**
7 **CODE OF CIVIL PROCEDURE SECTION 2015.5**

8 Code of Civil Procedure section 2015.5 sets forth the requirements of
9 affidavits/declarations submitted to California courts. Specifically, Section 2015.5
10 requires that these submissions state the location at which they are executed and requires
11 that they be signed under penalty of perjury of the laws of California. The Affidavit of
12 Steven P. Jacobson fails to comply with these requirements and is therefore improper.

13 Additionally, Peterson notes that some of the statements reflect the fact that the
14 District Attorney, rather than place himself in the position of being called as a witness,
15 has chosen to improperly allege his own actions through Jacobson's Affidavit. For
16 example,

17 Deputy District Attorney (DDA) Rick Distaso prepared
18 'wiretap instructions' and discussed them with all potential
19 monitors and supervisors. . .

20 (Jacobson Affidavit at paragraph 9.)

21 * * *

22 DDA Distaso advised monitors and supervisors of
23 conversations. . .

24 (Jacobson Affidavit at paragraph 10.)

25 * * *

26 DDA Distaso briefed all monitors and Supervisors. . .

27 (*Id.*)

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DDA Distaso read nearly verbatim the language used in
Section 629.80. . .

(*Id.*)

* * *

DDA Distaso further told all monitoring and supervision
agents to become familiar with all telephone numbers
regarding any attorney consulting with Scott Peterson,
specifically those belonging to criminal defense attorney Kirk
McAllister.

(*Id.*)

These statements are of particular interest because the Jacobson Affidavit fails to
indicate that Jacobson attended the meeting at which DDA Distaso purportedly took the
above-alleged actions and made the alleged statements. Peterson also notes that the
Motion itself (signed by DDA Distaso) contains numerous statements that should have
been presented to the Court in the form of an affidavit signed under penalty of perjury,

Investigator Jacobson informed me. . .

(Motion at 2:11.)

* * *

Inv. Jacobson informs me that . . .

(Motion at 3:4.)

* * *

Investigator Jacobson also informs me that. . .

(Motion at 3:10.)

* * *

According to Inv. Jacobson. . .

(Motion at 3:22.)

* * *

Finally, according to Inv. Jacobson. . .

1 (Motion at 4:15.)

2 None of these statements refers to the Jacobson Affidavit. As such, they constitute
3 testimony given by Mr. Distaso without the protection of his attestation under penalty of
4 perjury that the statements are true. These examples further demonstrate the need for an
5 in camera opportunity to question Mr. Distaso, among others, under oath, as to the
6 improper monitoring orchestrated by him.

7

8

VI.

9

CONCLUSION

10 In light of the foregoing Mr. Peterson respectfully requests that:

11 (1) the Court deny the Peoples' Motion in its entirety;

12 (2) the Court Order the immediate disclosure to the defense only (both written and
13 electronically recorded or stored) of all intercepted and/or monitored conversations
14 between Peterson and his counsel or his counsel's investigator;

15 (3) the Court set an in camera hearing during which (a) Deputy District Attorneys
16 involved, including Mr. Distaso may be questioned as to who initially told him that the
17 conversations were not recorded, and when Mr. Distaso received information that directly
18 contradicted his previous statements, and (b) Mr. Peterson will be given the opportunity
19 to place under oath the investigators who conducted the improper monitoring so they can
20 be thoroughly examined as to the nature and scope of the privileged communications
21 overheard by them, and;

22 (4) the Court Order the immediate disclosure to the defense only of any and all
23 notes taken by the People's investigators in connection with the improper monitoring,
24 and;

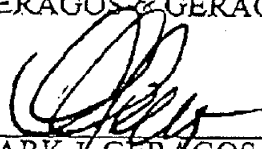
25 (5) the Court Order the immediate disclosure to the defense only of all transcripts
26 of the January 17, 2003 meeting between Judge Ladine, DDA Distaso, and investigator
27 Jacobson and any other related hearings or requests for wiretaps. Additionally, Peterson
28 respectfully requests that the Court stay all pending motions by the media and others

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concerning the inspection of all communications intercepted by the People.

Dated: May 26, 2003

Respectfully submitted,
GERAGOS & GERAGOS

By: 
MARK J. GERAGOS
Attorney for Defendant
SCOTT LEE PETERSON

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DECLARATION OF KIRK MCALLISTER

I, KIRK MCALLISTER, declare as follows:

1. I am an attorney duly admitted to practice law in the State of California. I have personal knowledge of the following facts and if called as a witness, I could and would competently testify thereto.

2. I am co-counsel representing Scott Lee Peterson in the criminal matter currently pending before this Court.

3. On or about May 11, 2003, I spoke with DDA Rick Distaso. Mr. Distaso told me that I would receive notices of interception of conversations with my client, Scott Peterson. He also indicated that he expected that these interceptions would be reported in the media. Mr. Distaso assured me that my privileged attorney client conversations had neither been recorded nor listened to.

4. During this same phone conversation DDA Distaso told me that investigators had intercepted Scott's phone calls, however, if it was me on the line than the recording was shut off immediately. Mr. Distaso never mentioned listening to my attorney client conversations for any period of time. Having read the Peoples' Motion, it is apparent that Distaso's statement that attorney-client conversations had not been recorded nor listened to was untrue.

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

Executed this _____ day of May 2003, in _____, California.

ORIGINAL SIGNED BY

KIRK MCALLISTER