

1 HOGAN & HARTSON L.L.P.
Kenneth D. Klein (Cal. Bar No. 085231)
032 UN Amy M. Gallegos (Cal. Bar No. 211379)
500 South Grand Avenue
Suite 1900
Los Angeles, California 90071
Telephone: (213) 337-6700
Facsimile: (213) 337-6701

CLERK OF
COUNTY

BY 4

5 Attorneys for Petitioners
6 Rita Cosby
7 Greta Van Susteren

FILED
03 JUN -4 PM 1:12
CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS
BY *Cindy Clark* DEPUT

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF STANISLAUS

Filed By Fax

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

17 *People v. Scott Peterson*

Case No. 1056770

NOTICE OF MOTION AND MOTION
FOR ORDER AUTHORIZING
INSPECTIONS OF INTERCEPTED
COMMUNICATIONS; DECLARATION
OF AMY M. GALLEGOS IN
SUPPORT THEREOF

[Penal Code Section 629.68]

Date: 6/6/03
Time: 8:30 a.m.
Dept: 2

19 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

20 PLEASE TAKE NOTICE that on June 6, 2003, at 8:30 a.m. in Department 2 of
21 this Court, located at 1100 "I" Street, Modesto, California 95353, Rita Cosby and Greta
22 Van Susteren ("Petitioners") will and hereby do move this Court for an order, pursuant to
23 Penal Code § 629.68, authorizing them, their authorized representatives, and
24 Petitioners' counsel to inspect certain Intercepted communications. Specifically,
25 Petitioners seek an order permitting them to obtain a copy of any intercepted
26 conversations between themselves and Scott Peterson.

27 //
28 //


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

This motion is brought on the ground that the interests of justice are served by permitting Petitioners to ascertain which of their communications were intercepted and the content of same so that they may evaluate whether it is necessary for them to protect their rights pursuant to Article 1, Section 2(b) of the California Constitution.

This motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declaration of Amy M. Gallegos, and on all such other matters as may be presented to the Court at the hearing.

Date: June 4, 2003

HOGAN & HARTSON L.L.P.

By: 
Amy M. Gallegos
Attorneys for Petitioners
Rita Cosby
Greta Van Susteren

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **I. Introduction**

4 The issue before the court is whether two non-party journalists should be
5 permitted to obtain transcripts, or review recordings, of conversations that were
6 intercepted by wiretap, where such a review is necessary if they are to protect their
7 rights under the Shield Law (Article 1, Section 2 of the California Constitution), and
8 where there is no countervailing government interest in maintaining the confidentiality of
9 the intercepted conversations.

10
11 **II. Factual Background**

12 Petitioners Rita Cosby and Greta Van Susteren are television journalists
13 employed by the FOX News Network. Ms. Van Susteren is the anchor of the television
14 show "On the Record with Greta Van Susteren." Ms. Cosby is a senior correspondent
15 for several FOX News programs including "FOX News Live with Rita Cosby."

16 In or about January 2003, Ms. Van Susteren and Ms. Cosby each made a number
17 of telephone calls to Scott Peterson, in the course of their duties as television journalists,
18 concerning the disappearance of his wife, Laci Peterson. At the time these calls were
19 made, Mr. Peterson was under investigation by the police in connection with his wife's
20 disappearance.

21 On or about May 2, 2003, Ms. Cosby and Ms. Van Susteren received copies of a
22 Penal Code Section 629.68 inventory, notifying them that during the period of January
23 10, 2003 through February 4, 2003, Mr. Peterson's telephones had been wiretapped,
24 and communications had been intercepted. (Declaration of Amy M. Gallegos ["Gallegos
25 Decl.," Exh. A.]

26 By this motion, Ms. Van Susteren and Ms. Cosby seek an order permitting them
27 to obtain a copy of any conversations between them and Mr. Peterson that were
28 intercepted.

1 **III. An Order Permitting Ms. Cosby and Ms. Van Susteren to Inspect the**
 2 **Intercepted Communications would Serve the Interests of Justice**

3 Penal Code Section 629.68 states: "The judge, upon filing of a motion, may, in
 4 his or her discretion, make available to the person or his or her counsel for inspection the
 5 portions of the intercepted communications . . . that the judge determines to be in the
 6 interest of justice." An order permitting Ms. Cosby and Ms. Van Susteren to receive a
 7 transcript of, or listen to, those portions of the intercepted communications that reflect
 8 their conversations with Mr. Peterson would serve the interests of justice.

9 Such an order would permit Ms. Cosby and Ms. Van Susteren to learn precisely
 10 which conversations were intercepted, and would aid them in the future should a
 11 situation arise where they must determine whether to assert their rights under Article I,
 12 Section 2(b) of the California Constitution (the "Shield Law"). Under the Shield Law, a
 13 prosecutor cannot compel a journalist to reveal unpublished information "obtained in the
 14 process of gathering, receiving, or processing information for communication to the
 15 public." Miller v. Superior Court, 221 Cal. 4th 883, 890 (1999); See also Cal. Const. Art.
 16 I, § 2(b). The Shield Law serves the important public interest of safeguarding the
 17 autonomy of the press. See Miller, 221 Cal. 4th at 898. Ms. Van Susteren's and Ms.
 18 Cosby's conversations with Mr. Peterson occurred in the course of their coverage of the
 19 investigation of the disappearance of Laci Peterson; thus, these conversations fall
 20 squarely within the protection of the Shield Law. Because conversations that are clearly
 21 covered by the Shield Law were intercepted, Ms. Cosby and Ms. Van Susteren should
 22 be permitted to discover precisely what was heard and recorded so that this knowledge
 23 can guide their future actions with respect to information obtained in their conversations
 24 with Mr. Peterson.

25 Moreover, there is no compelling need to keep the contents of Ms. Cosby and Ms.
 26 Van Susteren's conversations with Mr. Peterson confidential. There is no ongoing
 27 investigation to protect: the police investigation of Mr. Peterson has presumably
 28 concluded, as he has been arrested and charged with his wife's murder. Thus, an order


1 permitting Ms. Van Susteren and Ms. Cosby to receive a transcript of, or listen to, those
 2 portions of the intercepted communications that reflect their conversations with Mr.
 3 Peterson would be in the interest of justice.

4
 5 **IV. Conclusion**

6 For all of the foregoing reasons, Ms. Cosby and Ms. Van Susteren respectfully
 7 request that this court issue an order permitting them to obtain a copy of any
 8 conversations between them and Mr. Peterson that were intercepted.

9
 10 Date: June 4, 2003

HOGAN & HARTSON L.L.P.

11
 12 By: 
 13 Amy M. Gallegos
 14 Attorneys for Petitioners
 15 Rita Cosby
 16 Greta Van Susteren

17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

PROOF OF SERVICE

I, Rhonda J. Hurt, declare as follows:

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Los Angeles, State of California, and not a party to the above-entitled cause. My business address is Hogan & Hartson L.L.P., Biltmore Tower, 19th Floor, 500 South Grand Avenue, Los Angeles, California 90071-2611.

On June 4, 2003, I served the foregoing document described as **NOTICE OF MOTION AND MOTION FOR ORDER AUTHORIZING INSPECTIONS OF INTERCEPTED COMMUNICATIONS; DECLARATION OF AMY M. GALLEGOS IN SUPPORT THEREOF** on following person(s) in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST.

- BY MAIL** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- BY FACSIMILE** I caused said document to be transmitted by facsimile transmission to the number indicated after the address(es) noted above.
- BY PERSONAL SERVICE** I caused such envelope to be delivered by hand to the office of the addressee.
- BY FEDERAL EXPRESS** I caused such envelope to be delivered to Federal Express for overnight courier service to the offices of the addressee(s) listed above.
- STATE** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- FEDERAL** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on June 4, 2003 at Los Angeles, California 90071-2611.

Rhonda J. Hurt
Name

Rhonda J. Hurt
Signature

Service List

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Mark Geragos
 GERAGOS & GERAGOS
 350 S. Grand Avenue, #3900
 Los Angeles, CA 90071

Fax: (213) 625-1600

Rick Disatso
 STANISLAUS COUNTY
 DISTRICT ATTORNEY'S OFFICE
 800 11th Street, Room 200
 Modesto, CA 95353

Fax: (209) 525-5545

1 HOGAN & HARTSON L.L.P.
 2 Kenneth D. Klein (Cal. Bar No. 085231)
 3 Amy M. Gallegos (Cal. Bar No. 211379)
 4 500 South Grand Avenue
 5 Suite 1900
 6 Los Angeles, California 90071
 7 Telephone: (213) 337-6700
 8 Facsimile: (213) 337-6701
 9
 10 Attorneys for Petitioners
 11 Rita Cosby
 12 Greta Van Susteren

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 COUNTY OF STANISLAUS

Filed By Fax

11 IN THE MATTER OF THE APPLICATION
 12 OF THE DISTRICT ATTORNEY OF THE
 13 COUNTY OF STANISLAUS, FOR AN
 14 ORDER AUTHORIZING THE
 15 INTERCEPTION OF WIRE
 16 COMMUNICATIONS,
 17
 18 *People v. Scott Peterson*

Case No. 1056770

**DECLARATION OF AMY M.
 GALLEGOS IN SUPPORT OF
 MOTION OF RITA COSBY AND
 GRETA VAN SUSTEREN FOR AN
 ORDER PERMITTING INSPECTION
 OF INTERCEPTED
 COMMUNICATIONS**

**[NOTICE OF MOTION AND MOTION;
 REQUEST FOR ORDER
 SHORTENING TIME FILED
 CONCURRENTLY HEREWITH]**

Date: June 6, 2003
 Time: 8:30 a.m.
 Dept: 2

22 I, Amy M. Gallegos, declare as follows:

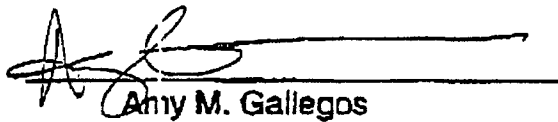
23
 24 1. I am an attorney duly licensed to practice law in the State of California and
 25 am presently an attorney with Hogan & Hartson, L.L.P., attorneys of record for Rita
 26 Cosby and Greta Van Susteren in connection with the above-captioned matter. I have
 27 personal knowledge of the facts stated below and could and would testify to them under
 28 oath if called upon to do so.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. Attached as Exhibit A is a true and correct copy of a document entitled "Inventory Pursuant to California Penal Code Section 629.68." I am informed and believe that Rita Cosby and Greta Van Susteren each received a copy of Exhibit A.

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

Date: June 4, 2003


Amy M. Gallegos

JUN-04-2003 12:28

Jun-04-03 10:47am From HOGAN & HARTSON

2133376/III

209 948 0806 P.15/18
T-685 P.016/018 P-316

EXHIBIT

EXHIBIT A

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**

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

10 **IN THE MATTER OF THE APPLICATION OF) WIRETAP NO. 2**
11 **THE DISTRICT ATTORNEY OF THE)**
12 **COUNTY OF STANISLAUS, FOR AN ORDER) INVENTORY PURSUANT TO**
13 **AUTHORIZING THE INTERCEPTION OF) PENAL CODE SECTION 629.68;**
14 **WIRE COMMUNICATIONS)**

15 Pursuant to Penal Code Section 629.68, you are hereby notified:

16 On January 10, 2003, the Stanislaus County Superior Court authorized Stanislaus County
17 Wiretap No. 2, authorizing the interception of wire communications for a period of thirty days
18 commencing on that date. Monitoring of communications under this order was terminated on
19 February 4, 2003. During the period covered by the order, communications were intercepted.

20 Dated: May 2nd, 2003.

21 Respectfully submitted,

22 **JAMES C. BRAZELTON,**
23 **District Attorney**
24 **County of Stanislaus**
25 **State of California**

26 By: 
27 **Rick Distaso**
28 **Deputy District Attorney**

PROOF OF SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I, Rhonda J. Hurt, declare as follows:

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Los Angeles, State of California, and not a party to the above-entitled cause. My business address is Hogan & Hartson L.L.P., Biltmore Tower, 19th Floor, 500 South Grand Avenue, Los Angeles, California 90071-2611.

On June 4, 2003, I served the foregoing document described as **DECLARATION OF AMY M. GALLEGOS IN SUPPORT OF MOTION OF RITA COSBY AND GRETA VAN SUSTEREN FOR AN ORDER PERMITTING INSPECTION OF INTERCEPTED COMMUNICATIONS** on following person(s) in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST.

- BY MAIL** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- BY FACSIMILE** I caused said document to be transmitted by facsimile transmission to the number indicated after the address(es) noted above.
- BY PERSONAL SERVICE** I caused such envelope to be delivered by hand to the office of the addressee.
- BY FEDERAL EXPRESS** I caused such envelope to be delivered to Federal Express for overnight courier service to the offices of the addressee(s) listed above.
- STATE** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- FEDERAL** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on June 4, 2003 at Los Angeles, California 90071-2611.

Rhonda J. Hurt
Name

Rhonda J. Hurt
Signature

Service List

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Mark Geragos
GERAGOS & GERAGOS
350 S. Grand Avenue, #3900
Los Angeles, CA 90071

Fax: (213) 625-1600

Rick Disataso
STANISLAUS COUNTY
DISTRICT ATTORNEY'S OFFICE
800 11th Street, Room 200
Modesto, CA 95353

Fax: (209) 525-5545

FILED

03 JUN -4 PM 1:15

CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS

BY Cindy Curtis DEPUTY

1 HOGAN & HARTSON L.L.P.
2 Kenneth D. Klein (Cal. Bar No. 085231)
3 Amy M. Gallegos (Cal. Bar No. 211379)
4 500 South Grand Avenue:
5 Suite 1900
6 Los Angeles, California 90071
7 Telephone: (213) 337-6700
8 Facsimile: (213) 337-6711

9 Attorneys for Petitioners
10 Rita Cosby
11 Greta Van Susteren

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF STANISLAUS

14 **Filed By Fax**

15 IN THE MATTER OF THE APPLICATION
16 OF THE DISTRICT ATTORNEY OF THE
17 COUNTY OF STANISLAUS, FOR AN
18 ORDER AUTHORIZING THE
19 INTERCEPTION OF WIRE
20 COMMUNICATIONS,

21 *People v. Scott Peterson*

Case No. 1056770

**DECLARATION OF AMY M.
GALLEGOS REQUESTING ORDER
SHORTENING TIME FOR HEARING
ON THE MOTION OF RITA COSBY
AND GRETA VAN SUSTEREN FOR
AN ORDER AUTHORIZING
INSPECTIONS OF INTERCEPTED
COMMUNICATIONS; ORDER**

Date: June 6, 2003
Time: 8:30 a.m.
Dept: 2

22 I, Amy M. Gallegos, declare:

23 1. I am an attorney duly licensed to practice law in the State of California and
24 am presently an attorney with Hogan & Hartson, L.L.P., attorneys of record for Rita
25 Cosby and Greta Van Susteren in connection with the above-captioned matter. I have
26 personal knowledge of the facts stated below and could and would testify to them under
27 oath if called upon to do so.

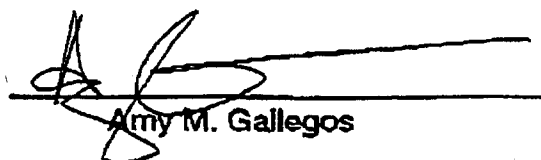
28 2. Prior to seeking this order, I served, via facsimile, a copy of this request for
an order shortening time, and a copy of the notice of motion and motion of Rita Cosby

1 and Greta Van Susteren for an Order Authorizing Inspections of Intercepted
2 Communications on the Stanislaus County district attorney's office and on defendant's
3 counsel, Geragos & Geragos.
4

5 3. There is good cause for an order shortening the time for hearing of Ms.
6 Cosby and Ms. Van Susteren's Motion for an Order Authorizing Inspections of
7 Intercepted Communications. At 8:30 on June 6, 2003, all of the parties to this matter
8 will be before the court, and the court will hear the motions of other non-party journalists
9 which raise identical issues. Thus, it would be expedient for the court to address Ms.
10 Cosby and Ms. Van Susteren's motion at this time.
11

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct.
14

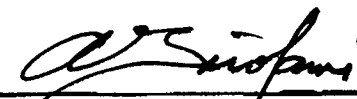
15 Date: June 4, 2003

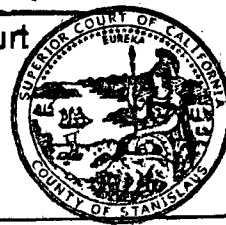

Amy M. Gallegos

18
19 **ORDER**

20
21 Good cause appearing, IT IS ORDERED that the time for service of the NOTICE
22 OF MOTION AND MOTION FOR ORDER AUTHORIZING INSPECTIONS OF INTERCEPTED
23 COMMUNICATIONS filed concurrently herewith is shortened so that the motion, served
24 and filed on June 4 may be heard on June 6, 2003, at 8:30 a.m.

25 Date: June 4, 2003


Judge of the Superior Court
A. GIROLAMI



1 **PROOF OF SERVICE**

2 I, Rhonda J. Hurt, declare as follows:

3 I, the undersigned, certify and declare that I am over the age of 18 years,
4 employed in the County of Los Angeles, State of California, and not a party to the
5 above-entitled cause. My business address is Hogan & Hartson L.L.P., Biltmore
6 Tower, 19th Floor, 500 South Grand Avenue, Los Angeles, California 90071-2611.

7 On June 4, 2003, I served the foregoing document described as
8 **DECLARATION OF AMY M. GALLEGOS REQUESTING ORDER SHORTENING
9 TIME FOR HEARING ON THE MOTION OF RITA COSBY AND GRETA VAN
10 SUSTEREN FOR AN ORDER AUTHORIZING INSPECTIONS OF INTERCEPTED
11 COMMUNICATIONS; ORDER** on following person(s) in this action by placing a true
12 copy thereof enclosed in a sealed envelope addressed as follows:

13 **SEE ATTACHED SERVICE LIST.**

- 14 **BY MAIL** I am "readily familiar" with the firm's practice of collection and
15 processing correspondence for mailing. Under that practice it would be deposited
16 with U.S. Postal Service on that same day with postage thereon fully prepaid at
17 Los Angeles, California in the ordinary course of business. I am aware that on
18 motion of the party served, service is presumed invalid if the postal cancellation
19 date or postage meter date is more than one day after date of deposit for mailing
20 in affidavit.
- 21 **BY FACSIMILE** I caused said document to be transmitted by facsimile
22 transmission to the number indicated after the address(es) noted above.
- 23 **BY PERSONAL SERVICE** I caused such envelope to be delivered by hand to the
24 office of the addressee.
- 25 **BY FEDERAL EXPRESS** I caused such envelope to be delivered to Federal
26 Express for overnight courier service to the offices of the addressee(s) listed
27 above.
- 28 **STATE** I declare under penalty of perjury under the laws of the State of California
that the above is true and correct.
- FEDERAL** I declare that I am employed in the office of a member of the bar of
this court at whose direction the service was made. I hereby declare under
penalty of perjury that the foregoing is true and correct.

Executed on June 4, 2003 at Los Angeles, California 90071-2611.

25 Rhonda J. Hurt
26 Name

Rhonda J. Hurt
Signature

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Service List

Mark Geragos
GERAGOS & GERAGOS
350 S. Grand Avenue, #3900
Los Angeles, CA 90071

Fax: (213) 625-1600

Rick Disatano
STANISLAUS COUNTY
DISTRICT ATTORNEY'S OFFICE
800 11th Street, Room 200
Modesto, CA 95353

Fax: (209) 525-5545