

FILED

03 JUN 18 PM 2:53

SUPERIOR COURT
COUNTY OF STANISLAUS

Cindy Curtis
DEPUTY

1 GLORIA ALLRED, ESQ.
2 STATE BAR NO. 65033
3 JOHN S WEST
4 STATE BAR NO. 102034
5 LAW OFFICES
6 ALLRED, MAROKO & GOLDBERG
7 SUITE 1500
8 6300 WILSHIRE BOULEVARD
9 LOS ANGELES, CALIFORNIA 90048-5217
10 (323) 653-6530

Attorneys for Amber Frey, a potential witness

11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF STANISLAUS

Filed By Fax

13 THE PEOPLE OF THE STATE OF CALIFORNIA

CASE NO: 1056770

14 vs.

PRELIMINARY OPPOSITION OF
GLORIA ALLRED TO
DEFENDANT'S MOTION TO SET
OSC RE: CONTEMPT OF COURT

15 SCOTT PETERSON

16 Date: June 26, 2003
17 Time: 8:30 a.m.
18 Place: Dept. "2"

19 TO THE HONORABLE COURT, TO THE PROSECUTION, AND TO COUNSEL
20 FOR DEFENDANT:

21 On June 13, 2003, defendant Scott Peterson, through his counsel of record filed a
22 motion asking the Court to issue an OSC re: Contempt against Gloria Allred ("Ms. Allred"),
23 counsel for potential witness Amber Frey, for alleged violation of the Court's June 12, 2003
24 protective order (the "gag order"). For the reasons set forth in the memorandum to follow,
25 Ms. Allred respectfully submits (1) that she has not violated the Court's gag order in any way,
26 and (2) that there is otherwise no legal or factual basis for the Court to issue any contempt
27 citation against her. For those reasons, Ms. Allred opposes defendant's motion.


28 This preliminary opposition is filed so as to inform the Court of Ms. Allred's position
without delay, and is without prejudice to Ms. Allred's right to file such further opposition

1 papers as may be necessary and appropriate.

2 DATED: June 18, 2003

ALLRED, MAROKO & GOLDBERG

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


JOHN STEVEN WEST
Attorneys for GLORIA ALLRED

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

(A) Introduction

On June 12, 2003, the Court in this murder case issued a protective order which prohibited narrowly defined classes of persons from publicly commenting on, among other things, the evidence in this case. Attorney Gloria Allred, who serves as counsel for a potential witness named Amber Frey, is clearly not one of the members of those narrowly defined classes.

Although Ms. Allred is not covered by the protective order, counsel for defendant Scott Peterson has brazenly moved the Court for issuance of an OSC re: contempt against her for an alleged violation of its provisions. The pending motion by defense counsel, who is certainly no stranger to the media, is so utterly without legal or factual merit as to give rise to serious questions regarding his good faith. Indeed, when the facts of the matter are examined, it would appear that it is defense counsel who has violated the spirit of the protective order by filing a hopeless motion which itself has drummed up massive media attention.

(B) The June 12, 2003 protective order does not apply to Ms. Allred, although the Court was well aware of her status when it issued that order.

On May 27, 2003, the Court, on its own motion, advised the parties that it would consider the imposition of a protective order (commonly referred to as a "gag order") to protect the fairness of the trial in this matter. The prosecution and defense lawyers submitted their views in writing on the propriety and/or form of a gag order. Ms. Allred, in her capacity as counsel for potential witness Amber Frey, also submitted a brief opposing the imposition of a gag order as to Ms. Frey only. As the Court's own file will reflect, Ms. Frey had not commented on the defendant's guilt or innocence, and opposed the protective order because, among other things, it would prevent her from responding to attacks in the media upon her personal reputation.

1 After the parties, the media, and Ms. Frey (through Ms. Allred) had submitted their
2 briefs, the Court heard oral argument on the propriety of a protective order in this case. Ms
3 Allred personally appeared before the Court on June 6, 2003 to argue the case from Ms.
4 Frey's perspective as a witness whose reputation was under attack. At no time during the
5 hearing was there any mention of a gag order upon Ms. Allred personally. It was at the time
6 well known that Ms. Allred was frequently asked to comment and provide legal analysis on
7 matters in the media. Had there been any mention of Ms. Allred's role as a commentator, she
8 could have addressed any concerns of the Court at that time. There was, however, no such
9 concern expressed by the Court or defense counsel.

10 The Court then issued its June 12, 2003 order which, when coupled with defense
11 counsel's machinations, gave rise to this proceeding. For purposes of this discussion, it is
12 crucial to note that at the time the Court issued its June 12, 2003 order, it was well aware of
13 both Ms. Frey's status as a potential witness, and Ms. Allred's role in this matter. *With that*
14 *knowledge, the Court issued a carefully crafted order which, on its face, pertained only to*
15 (1) the "attorney connected with this case as *Prosecutor*...[and] any other attorney working in
16 [that] office...", (2) the "attorney connected with this case as ...*Defense Counsel*...[and] any
17 other attorney working in [that]office...", (3) "any *judicial officer or court employee*", (4)
18 "*law enforcement employee*...", and (5) "*persons subpoenaed or expected to testify* in this
19 matter..." (Emphasis added). Obviously, Ms. Allred is not a prosecutor, defense counsel,
20 judicial officer, court employee, law enforcement employee or witness in this matter. Equally
21 obviously, the order on its face does not cover Ms. Allred.

22 It was clear that the reason for the gag order was the multitude of leaks that had taken
23 place with respect to real or purported evidence in the case. At no time was there even the
24 slightest suggestion that Ms. Allred (or her client) were sources of any such leaks. Thus, the
25 order was never even remotely concerned with her conduct.

26 ///

27 (C) Ms. Allred has not violated the Court's June 12, 2003 order in any way.

28

1 The defendant's motion purports to stem from Ms. Allred's appearance on "Fox On
 2 the Record with Greta Van Susteren" on June 12, 2003.¹ A partial transcript of the broadcast
 3 on that date is attached as an exhibit to defendant's motion. That motion, however, does not
 4 even begin to offer an argument that Ms. Allred is covered by the order in question. In fact,
 5 the alternative relief that Mr. Geragos is requesting, i.e., clarification of the Court order, itself
 6 suggests that the order does not pertain to her.

7 A reading of the transcript reveals that Ms. Allred went to great lengths to point out
 8 that she was *not* speaking on behalf of Amber Frey, and that she was merely expressing her
 9 *personal* views. Since she was not covered by the June 12, 2003 order, and clearly was not
 10 speaking on behalf of any witness or party to the proceedings, there is no credible argument
 11 that she has acted in contempt of that order.

12 In this regard, the attention of the Court is respectfully invited to the following
 13 dialogue from the "Fox on the Record" broadcast. The dialogue, a transcript of which is
 14 attached to defendant's motion, took place during a discussion among panelists about a recent
 15 hearing to determine whether search warrants would be unsealed by the Court. On that
 16 subject, the following transpired:

17 (1) Ms. Allred stated: "*...of course this is all my personal opinion, not Amber's...*"
 18 (Emphasis added).

19 (2) In the same dialogue, Ms. Allred went on to propose that the program "run" the
 20 fact that she was merely expressing her personal views on the "Chyron", a device for
 21 broadcasting text over, or along with, television images.

22 (3) In the same dialogue, Ms. Allred stated that the fact she was expressing her
 23 personal opinion should be incorporated "*by reference for every time I'm on your show or*
 24 *any show.*" (Emphasis added).

25 (4) Later in the dialogue, Ms. Allred, when asked about the June 12, 2003 order, stated

26
 27 ¹ As noted above, the pending motion is a transparent effort to drum up pre-trial publicity,
 28 with the goal of somehow discrediting Amber Frey, through an attack on her counsel's personal
 remarks.

1 "...and Greta, I think you're right and Geoff as usual is right-- that *I am not covered by it.*"²

2 Ms. Allred obviously went to great lengths to make it clear that she was speaking only
3 for herself, and not for Amber Frey, during the appearance on "Fox on the Record." It is
4 equally obvious that the Court's June 12, 2003 order does not on its face apply to Ms. Allred,
5 and therefore cannot be interpreted to deprive Ms. Allred of her personal First Amendment
6 rights with respect to this matter. Since she did not speak on behalf of Ms. Frey, and does not
7 fall into any category covered by the order, Ms. Allred cannot validly be accused of violating
8 that order.³

9 Moreover, Mr. Geragos's main argument is that when Ms. Allred appeared on the
10 show "On the Record," her statements explaining the basis of Judge Beauchesne's ruling of
11 June 12th (which unsealed eight search warrants and affidavits in support thereof) somehow
12 constituted a violation of the June 12 gag order. Mr. Geragos completely misrepresented the
13 statements Ms. Allred made on that program. The subject matter under discussion by a
14 number of individuals, including Ms. Allred, was the basis of the judge's ruling unsealing the
15 search warrants. In that ruling the Court stated "The People have not produced any evidence
16 since Mr. Peterson's arrest to indicate they are investigating other suspects." The Court went
17 on to state that "Although news media accounts have quoted defense sources as indicating
18 other suspects are being investigated, the Court must decide the issue before it based upon
19 testimony under oath, not on news media reports. No evidence on the investigation of 'other
20 suspects' was presented at the in-camera hearing held on June 6, 2003." Ms. Allred did
21 nothing more than what commentators and legal analysts typically do, which is to explain in
22 layman's terms the basis of the Court ruling. At no time did Ms. Allred make any statements
23 along the lines of those attributed to her by Mr. Geragos. Specifically, she did *not* state in any

24
25 _____
26 ² It should be noted that the other panelists on the program, who plainly had read the order
27 in question, were also of the view that Ms. Allred was not covered by the order. See Fox News
28 transcript "Page 17" attached to the moving papers, dialogue between Van Susteren and Feiger.

³ Mr. Geragos goes so far as to quote from a Larry King interview which took place *before*
the gag order as proof of some violation that occurred after the order was issued.

1 way that there was no evidence favorable to the defense, or that there was no defense to this
2 case .⁴

3 **II.**

4 **THERE IS NO BASIS FOR THE COURT TO ISSUE AN ORDER TO SHOW CAUSE**
5 **RE: CONTEMPT AGAINST MS. ALLRED IN THIS MATTER.**

6 The defendant has no inherent right to have the Court cite Ms. Allred for contempt.
7 Before the Court issues an OSC re: contempt, it must first be "satisfied with the sufficiency of
8 the affidavit" setting forth the alleged contempt. Cedars-Sinai Imaging v. Superior Court, 83
9 Cal.App.4th 1281,1286, 100 Cal.Rptr.2d 320, 324 (2000). In this instance, the defendant's
10 "motion" does not even come close to establishing a basis for charging Ms. Allred with
11 contempt.

12 In a contempt proceeding, all inferences are to be drawn in favor of the accused and
13 no presumption can be made against him. Uhler v. Superior Court, 117 Cal.App.2d 147, 255
14 P.2d 29 (1953).⁵ More importantly, *a party cannot be held in contempt of court unless the*
15 *act constituting the alleged contempt is clearly and specifically prohibited in the terms of*
16 *the injunction to be enforced.* The relevant principles in this regard were summarized in the
17 case of Sorensen v. Superior Court, 269 Cal.App.2d 73, 78, 74 Cal.Rptr. 597, 600-601 (1969)
18 as follows: "To hold a person guilty of contempt for violating an injunction, the acts
19 constituting the contempt must be clearly and specifically prohibited by the terms of the
20 injunction. [citation] The party bound by an injunction must be able to determine from its

21 _____
22 ⁴ Mr. Geragos has taken issue with Judge Beauchesne's June 12, 2003 order in a recent
23 filing with the Court of Appeals. In his filing, he takes the position that the judge's order was
24 highly prejudicial to Mr. Peterson and that the judge's recitation is mistaken. Thus, it appears that
25 the real motive behind Mr. Geragos's motion regarding purported contempt is to point out what he
26 believes to be the unfairness of the gag order as applied to defense counsel (i.e., Geragos himself).
27 Ms. Allred has said nothing as Ms. Frey's attorney which would in any way, shape or form
28 deprive Mr. Peterson of a fair trial.

26 ⁵ "Because a contempt proceeding is criminal in nature, due to the penalties which might
27 be imposed (citation omitted), guilt must be established beyond a reasonable doubt." Conn v.
28 Superior Court, 196 Cal.App.774, 784, 242 Cal.Rptr. 148, 154 (1987). "[A]n alleged contemnor
is entitled to the presumption of innocence until proven guilty 'beyond a reasonable doubt'." In
Re Witherspoon, 162 Cal.App.1000, 1002, 209 Cal.Rptr. 67, 68 (1984).

1 terms what he may and may not do; he cannot be held guilty of contempt for violating an
2 injunction that is uncertain or ambiguous (Ibid.), just as he may not be held guilty of violating
3 a criminal statute that fails to give him adequate notice of the prohibited acts.' (citation
4 omitted) As a corollary to that principle it is sometimes said that any ambiguity in the
5 injunction must be resolved in favor of the accused.(citations omitted)"

6 It is beyond dispute that Ms. Allred does not fall under any category of persons
7 covered by the Court's June 12, 2003 protective order. As noted above, Ms. Allred is not a
8 prosecutor, defense counsel, judicial officer, court employee, law enforcement employee or
9 witness in this matter. Thus, the order does not clearly and specifically prohibited her from
10 exercising her fundamental First Amendment rights as a private citizen. She therefore cannot
11 reasonably be accused of contempt of that order merely for speaking as a private citizen.

12 Since Ms. Allred was not covered by the order, the only possible remaining basis for
13 contempt is an accusation that she somehow was acting on behalf of Ms. Frey, a potential
14 witness, when appearing on the Fox program. The transcript, however, demonstrates just the
15 opposite; Ms. Allred repeatedly stated that she was doing nothing more than expressing her
16 own personal (and constitutionally protected) views.

17 In short, the defendant has not shown that there is any even remotely satisfactory
18 reason to cite Ms. Allred with contempt. His motion should therefore be denied.

19 III.

20 CONCLUSION

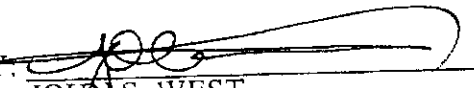
21 Immediately after he himself was "gagged" by the Court's protective order, defense
22 counsel Mark Geragos charged Ms. Allred with violation of that same order, even though it
23 plainly did not cover her. At the time of that accusation, Mr. Geragos knew that his ability to
24 court media attention to his theories had just been cut off, and he also knew that his
25 accusation of contempt, although baseless, would cause a swarm of media attention. It
26 therefore appears that the pending motion by Mr. Geragos represents an attempt to drum up
27 publicity, and, more importantly, an end run around the spirit of the protective order. Section
28

1 8 of the order prohibits Mr. Geragos from making any "statement as to the...effect of any
 2 testimony which may be given..." By attacking Ms. Allred without justification in the pending
 3 motion, Mr. Geragos appears to be indirectly impugning the credibility of her client, a
 4 potential witness in this matter, and therefore he is indirectly violating the order in question.

5 There is no basis upon which to cite Ms. Allred for contempt. On the other hand, it
 6 would appear that the conduct of defense counsel bears close scrutiny. For all of these
 7 reasons, it is respectfully submitted that the pending motion should be denied.

8 DATED: June 18, 2003

ALLRED, MAROKO & GOLDBERG

9
 10 BY: 
 JOHN S. WEST
 Attorneys for GLORIA ALLRED

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 6300 Wilshire Boulevard, Suite 1500, Los Angeles, California 90048.

On June 18, 2003, I served the foregoing document described as **PRELIMINARY OPPOSITION OF GLORIA ALLRED TO DEFENDANT'S MOTION TO SET OSC RE: CONTEMPT OF COURT** on the interested parties in this action

by placing the original a true copy thereof enclosed in a sealed envelope addressed as indicated on the attached mailing list.

*** BY MAIL:** I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California.

BY PERSONAL SERVICE: I caused such envelope to be hand-delivered to the offices of the addressee(s).

**** BY FAX:** by transmitting a true copy via facsimile transmission from telecopier number (323) 653-1660 located at 6300 Wilshire Blvd., Ste. 1500, Los Angeles, California 90048, to the following:

Executed on June 18, 2003, at Los Angeles, California.

(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 is made.

Brenda Jenkins

Brenda Jenkins
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

MAILING LIST
THE PEOPLE OF THE STATE OF CALIFORNIA vs. SCOTT PETERSON
CASE NO. 1056770

<p>MARK J. GERAGOS, ESQ. * ** GERAGOS & GERAGOS 350 S. Grand Ave., 39th Floor Los Angeles, CA 90071-3480 (213) 625-3900 - Fax: (213) 625-1600</p> <p>KIRK W. MCALLISTER, ESQ. ** MCALLISTER & MCALLISTER, INC. 1012 11th Street, Suite 100 Modesto, CA 95354 (209) 575-4844 - Fax: (209) 575-0240 <i>Attorneys for: Defendant Scott Lee Peterson</i></p>	<p>Rick Distaso, DDA ** OFFICE OF THE DISTRICT ATTORNEY Courthouse Modesto, California (209) 525-5550 - Fax: (209) 525-5545</p>
<p>Davis Harris, DDA ** OFFICE OF THE DISTRICT ATTORNEY Courthouse Modesto, California (209) 525-5550 - Fax: (209) 525-5545</p>	<p>Charity Kenyon, Esq. ** 2500 Venture Oaks Way, Suite 220 Sacramento, CA 95833 Fax: (916) 779-7120</p>