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STANISLAUS COUNTY SUPERIOR COURT
COUNTY OF STANISLAUS

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JAMES C. BRAZELTON
District Attorney
Stanislaus County
Courthouse
Modesto, California
Telephone: 525-5550

Attorney for Plaintiff

STANISLAUS COUNTY SUPERIOR COURT

STATE OF CALIFORNIA

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D.A. No.1056770

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff,

vs.

SCOTT LEE PETERSON,

Defendant.

No.1056770

) REQUEST FOR
) COURT REVIEW OF
) WIRETAP RECORDINGS
) RECOVERED FROM AUDIO
) BUFFER

) Hrg: 6-26-03
) Time: 8:30 a.m.
) Dept: 2

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Comes now the People of the State of California to request that the court review 176 audio recordings recovered from the collection servers used in Stanislaus County Wiretap Nos. 2 and 3.

Stanislaus County Wiretap No. 2 was authorized by the Stanislaus County Superior Court on January 10, 2003. Stanislaus County Wiretap No. 3 was authorized by the Court on April 15, 2003.

Pen-link software was used for Stanislaus County Wiretap Nos. 2 and 3. On June 13, 2003, Investigator (Inv.) Steve Jacobson was working with a representative from the company (Dr. Kevin Clements) to ensure that all wiretap audio recordings

1 ordered discovered by the court on June 6, 2003, were discovered.
2 Inv. Jacobson asked Dr. Clements to examine the audio collection
3 servers used during both wiretaps. During his examination of
4 both servers Dr. Clements recovered 176 audio recordings that
5 were stored in the computer "buffers." These calls were stored
6 on the collection server but were never sent to the monitoring
7 agents during the conduct of Stanislaus County Wiretap Nos. 2 and
8 3.

9 The reason such calls were not sent to the monitoring agents
10 is technologically complex (See Dr. Clements attached affidavit
11 for a full explanation). However, since the calls were not sent
12 to the monitoring agents, they have not been minimized. Thus,
13 pertinent, non-pertinent, and privileged information might be
14 contained on some of the calls.

15 Inv. Jacobson was directed to not listen to the calls, save
16 the calls to a CD, seal the CD, and place it in a secure location
17 to await further order of the court (See Inv. Jacobson's
18 declaration for a full explanation).

19 In order to ensure proper minimization procedures are
20 followed regarding the dissemination of the 176 audio recordings,
21 the People request that the court adopt one of the technical
22 options as outlined in Inv. Jacobson's affidavit.

23 Dated: June 18, 2003

24 Respectfully submitted,

25 JAMES C. BRAZELTON
26 District Attorney

27 

28 RICK DISTASO
Deputy District Attorney

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
11 IN THE MATTER OF THE APPLICATION OF) WIRETAP NO. 2 AND 3
12 THE DISTRICT ATTORNEY OF THE)
13 COUNTY OF STANISLAUS) AFFIDAVIT OF STEVEN P.
14) JACOBSON
15)

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

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

18 2. On May 27, 2003, I met with Kirk McAllister at his law office in Modesto, Ca.

19 While retrieving information back from Mr. McAllister and Mr. Geragos pursuant to an order
20 of the court, I had a brief conversation with Kirk McAllister concerning Stanislaus County
21 Wiretaps #2 and #3. In our conversation, I offered to show and/or train defense counsel on
22 the technical aspects of wire intercepts.

23 3. On June 4, 2003, at approximately 0900 hours, I noticed an advanced training class
24 being held on the Pen-Link software and Lincoln system, which was the same software and
25 system used in Stanislaus County Wiretap #2 and #3. I believed by attending the advanced
26 class, I would be better prepared to train and/or teach others regarding specific technical
27 aspects of the wire intercepts used in Stanislaus County Wiretap #2 and #3. Unfortunately,
28

1 due to monetary constraints, the Stanislaus County District Attorney's Office could not send
2 me to such training.

3
4 4. On June 4, 2003, I called the Pen-Link software Lincoln systems support staff in
5 Lincoln, Nebraska. I was transferred to Kevin Clements, who is the company's Director of
6 Training Services. I asked Kevin Clements if he would be providing any advanced training in
7 California, wherein I could attend. Kevin Clements stated he would not be coming out to
8 California for any formal classroom instruction but stated that on June 9, 2003, he would be
9 coming out to a law enforcement agency in California to provide training and technical
10 assistance for a court authorized wire intercept. Kevin Clements said he would check with the
11 law enforcement supervisor responsible for the court authorized intercept, to see if I could
12 work with him as he set up the intercept system.

13
14 5. On June 6, 2003, at 1000 hours, I was ordered by the Honorable Judge Al Girolami
15 to provide defense counsel with copies of all documents pertaining to Stanislaus County
16 Wiretap #2 and #3 and the existing audio, with exception of media related calls. In addition,
17 I was ordered to provide to the People of the State of California, copies of all of the
18 aforementioned documents and the existing audio, with the exception of media related calls
19 and any calls or conversations between Scott Peterson and Kirk McAllister or Gary Ermoian.

20
21 6. On June 9, 2003, after receiving permission from the supervisor of the out of
22 county law enforcement agency, I arrived and met with Kevin Clements. I trained with Kevin
23 Clements and other experienced technical specialists in setting up their wire intercept. I
24 explained to Kevin Clements some of the technical problems I was encountering with
25 Stanislaus County Wiretap #2 and #3, namely, that in carrying out the court's Order made on
26 June 6, 2003, I had to learn how to separate the content of a call in order to give the defense
27
28

1 and the prosecution portions of the same call. Kevin Clements explained and demonstrated
2 how to perform such separation.

3
4 7. On June 11, 2003, I provided a copy of the aforementioned audio recordings (in
5 .wav file format written to CD's) to the prosecution and to Scott Peterson's defense counsel. I
6 reviewed the audio recordings and believed that I had properly divided the calls pursuant to
7 the court's instructions.

8
9 8. After training with Kevin Clements, he agreed to come to the Stanislaus County
10 Drug Enforcement Agency (SDEA) to further consult on technical matters involving
11 Stanislaus County Wiretap #2 and #3.

12 9. On June 12, 2003, at approximately 1000 hours, I met Kevin Clements in Modesto,
13 Ca. Kevin Clements and I talked about the previous discovery request and I asked him if he
14 would double check the Collection Servers (Collection Servers and Lincoln Servers are one
15 and the same) audio buffers to ensure I had provided all known calls to both parties.
16

17 10. On June 13, 2003, at approximately 1300 hours, Analyst Stephen Wright and I
18 were with Kevin Clements as he checked both of the Lincoln servers used in Stanislaus
19 County Wiretap #2 and #3, in order to ensure all intercepted calls had been discovered.

20 11. While checking the first Lincoln server used in Stanislaus County Wiretap #2,
21 Kevin Clements showed me a total of one hundred and seventy five (175) buffered audio
22 recordings, ranging from January 16 to February 4, 2003. Kevin Clements randomly picked
23 one of the .wav file formatted calls and played it to determine if there was actual conversation
24 or if by chance the audio file was created by a dial tone or other line signaling. We listened to
25 several seconds of a call to determine such. Rather than hearing a dial tone or "off-hook dead
26 air" we heard a person with a Southern drawl talking to Scott Peterson in what appeared to be
27
28

1 a business related call. I am familiar with every call listed in Stanislaus County Wiretap #2
2 and #3 and this particular call had not been sent to the Pen-Link software at a monitoring
3 workstation.
4

5 12. Kevin Clements checked the new Lincoln Server used in the intercept of
6 Stanislaus County Wiretap #3. He found one (1) audio-buffered recording from April 16,
7 2003.

8 13. I notified DDA Rick Distaso and informed him of my findings. DDA Rick
9 Distaso told me he wanted the information on the Collection Servers transferred to CD's, then
10 sealed to prevent anyone from accessing such information. DDA Rick Distaso asked that I
11 prepare this affidavit to further inform the court as to what had transpired.
12

13 14. The original Lincoln server currently belongs to a law enforcement agency in
14 Fresno (Central Valley HIDTA). Because the original Lincoln Server no longer belonged to
15 the Stanislaus County Drug Enforcement Agency (SDEA), I asked Kevin Clements to transfer
16 the information he found onto a CD and to completely purge the information from the server
17 so that another law enforcement agency could not access this same information. When this
18 was completed, Analyst Stephen Wright provided me with two (2) identical copies of the
19 audio recordings, which had been written to CD-R's. These CD's have been placed into
20 evidence storage at the Stanislaus County Drug Enforcement Agency (SDEA).
21
22

23 15. It is unknown how many of these calls contain actual conversations versus simple
24 dial tones, or "dead air" until each call is listened to. Therefore, without listening to these
25 calls, I am unable to determine the nature of these 176 audio-buffered calls.

26 16. Except for listening to the several seconds of the randomly selected .wav file
27 mentioned in paragraph eleven (11), no monitoring occurred with the remainder of the one
28

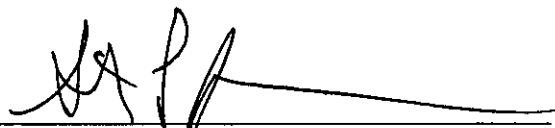
1 hundred and seventy five (175) calls by anyone. The sole reason Kevin Clements selected a
2 random .wav file was to determine if in fact these .wav files could contain conversations, or if
3 these .wav files contain some other "dead" audio. The exact .wav file briefly listened to is
4 unknown because it was randomly selected and, in order to find that exact file, I would have
5 to listen to all of the one hundred and seventy six (176) calls to determine which call it was.
6

7 17. Technical options which are available to the court include:

- 8 a. The 176 audio-buffered recordings could be placed back into the Lincoln
9 Server to be sent to the Pen-Link software to be monitored/minimized
10 according to law or further order of this court. This would allow the calls
11 to be placed into the overall computer logs and monitor synopsis sheets.
12
13 b. The 176 audio-buffered recordings (in .wav file format) can be played on
14 the court's computer, in camera, for further direction and order of the court.
15
16 c. Upon further order of the court, the court could appoint a Special Master to
17 assist in the review and the minimization (where appropriate) of the 176
18 audio-buffered recordings, and determine which calls each side is entitled
19 to receive.

20 I declare under penalty of perjury that the foregoing information is true and correct to the
21 best of my knowledge and belief.
22

23 Executed this 18th day of June 2003, in Modesto, California.
24

25 
26 _____
27 Steven P. Jacobson, Criminal Investigator II
28 Stanislaus County District Attorney's Office

25 system; e.g., the Telephone Number of the phone under surveillance, Case Identification, Date,
26 Time, Duration, Direction, Called Number, Calling Number, etc. The Call Content Channel
27 (CCC) carries the audio from the delivery system to the collection system. Hence, call data and
28 call content arrive at the collection point on two distinctly separate transmission channels. The
29 Collection System will receive the call data and call content and recombine them into a coherent
30 Call Record within the analytical database, along with the Monitor's comments and summaries
31 (Synopsis), and history of Minimization. When a call is placed or received by an AT&T
32 Wireless telephone under surveillance, AT&T Wireless must deliver the call data and call
33 content to the designated collection facility in near real time.

34 In the approach taken by AT&T Wireless, preliminary data messages are sent on the
35 CDC to indicate that a call has started (e.g., an *Origination Message* indicates that the phone is
36 placing a call; a *Termination Attempt Message* indicates that another party is attempting to call
37 the phone under surveillance). With AT&T Wireless, the CDC used to deliver these data
38 messages consists of a Virtual Private Network (VPN) connection between the collection system
39 and the AT&T Wireless Call Data Delivery Function (CDDF) in Bothell, WA. The CCC
40 carrying the audio consists of a standard "ring-down" circuit, from a local switching center, over
41 the Public Switched Telephone Network (PSTN). So, when audio becomes available during an
42 intercepted call, the local AT&T Wireless switching center essentially places a phone call to the
43 collection system, and places that call on a conference bridge to the call involving the phone
44 under surveillance. When the collection system "answers" the call from the switching center, it
45 becomes a passive third party to the call, so that the audio may be listened to and recorded.

46 Because of a peculiarity in the way AT&T Wireless interprets the J-STD-025, the
47 collection system must answer the call on the CCC before AT&T Wireless will send a *CCOpen*
48 message on the CDC, which is used to indicate that the Call Content Channel is open and content

49 is available. When the collection system receives the *CCOpen* message, the Monitor is notified
50 that audio is now available and the audio is passed through to the Monitoring workstation so that
51 the Monitor may listen and make Minimization determinations. Because the collection server
52 must "answer the call" on the CCC to trigger the AT&T Wireless delivery function to send the
53 *CCOpen* message over the CDC, there are circumstances under which audio may be recorded in
54 the server's Audio Buffer, but not passed on to the monitoring workstation and ultimately not
55 attached to a call record in the database. Under such circumstances, the monitor would not have
56 heard the conversation live, would not have had an opportunity to minimize the call, and would
57 not have been able to play back any buffered recording. When a situation like this occurs, there
58 will usually not even be a database record of a call having been placed or received. For example,
59 if AT&T Wireless "rings down" the CCC, but does not deliver any call data over the CDC (a
60 circumstance known to occur), then the collection server would answer the call on the CCC,
61 starting a timer. If no call data arrives for that call within 30 seconds, then the server
62 automatically stops recording. Such a recording would be no more than 30 seconds long (about
63 234 kilobytes in the audio file size) and would remain only in the buffer, in the absence of any
64 call data to attach to. Other, related situations can occur, resulting in a brief, unmonitored
65 recording in the buffer, even if the telephone under surveillance is not involved in any calling
66 activity. For example, keep in mind that the CCC in the case of AT&T Wireless is simply a
67 telephone line, with an actual phone number. If some third party should happen to dial that
68 phone number accidentally (a wrong number), then the server would "answer" the call and start
69 recording; the third party would most likely terminate the connection (hang up) after getting no
70 response over the phone. Of course, one would not expect the delivery of any call data over the
71 CDC in this circumstance, but the recording would remain in the buffer.


72 There are also times when a phone company's surveillance delivery system sends only
73 *some* data messages for a call event, but not enough to create a viable call record with attached
74 audio. Furthermore, if no *CCOpen* message is sent for a call, then the Content Channel will not
75 be opened for the Monitor to hear live audio. In situations like these, there would have been no
76 live audio heard, and no audio available for playback; there would simply be a recording in the
77 system's audio buffer.

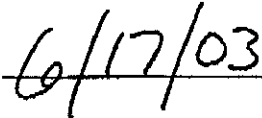
78 After having discussed these situations with Detective Jacobson, I was asked to check for
79 buffered audio, to see if any such recordings existed. There had been two different collection
80 systems used; one for the first intercept case that began on January 10, 2003, for telephones
81 (209) 505-0337 and (209) 499-8427, and a different one for the second intercept case that began
82 on April 15, 2003, for telephone (209) 505-0337. In order to check for buffered audio from the
83 first intercept case, I had to access the collection system server that was used during that time.
84 That server was inactive, so we had to unpack it, power it up, network it to the existing wireroom
85 LAN, and check. I checked the buffer from the original collection server on Friday afternoon,
86 June 13, 2003, at approximately 1:00 PM and found 175 buffered audio recordings, ranging from
87 January 16 through February 4, 2003. I also checked the buffer in the collection server that was
88 used for the second intercept case, and found one buffered recording, from April 16, 2003. I
89 immediately brought these findings to Detective Jacobson's attention. We listened to
90 approximately 10 seconds of one, randomly selected audio file, to confirm that at least some of
91 these files were indeed audio recordings containing conversation, rather than simply dial tone,
92 ring tones, other line signaling, or "dead air." Detective Jacobson notified Deputy DA, Rick
93 Distaso of the situation. Mr. Distaso advised Detective Jacobson that we should write these
94 audio files to Compact Disks and seal them into evidence. Detective Jacobson passed these

95 | instructions on to me and further decided that once the files were written to CDs, we should
96 | purge them from the collection servers.

97 | 176 audio recordings, in .wav file format, were written to a CD-R (not re-writable) at
98 | approximately 3:30 PM on Friday, June 13, 2003, using one of the workstations in the wireroom.
99 | A backup copy of that CD was also made. I then permanently wiped and purged the original
100 | files on the two LINCOLN Servers, beyond any possibility of recovery, using a method
101 | compliant with the U.S. DoD 5200.28-STD standard. The only existing copies of these files are
102 | on the two, aforementioned CD-Rs.

103 | I declare, under penalty of perjury, that the information contained in this document is
104 | accurate and truthful, to the best of my knowledge. Signed in Lincoln, NE, on June 17, 2003.

105 | 
106 | _____
107 | Kevin C. Clements, Ph.D.



June 17, 2003

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

7
8 STANISLAUS COUNTY SUPERIOR COURT
9 STATE OF CALIFORNIA

10 -----oOo-----

11 D.A. No. 1056770
THE PEOPLE OF THE STATE OF CALIFORNIA) No. 1056770
12)
Plaintiff,) Hrg: 6/6/03
13) Time: 8:30 a.m.
vs.) Dept: 2/8
14)
SCOTT LEE PETERSON,) **DECLARATION OF**
15) **SERVICE BY FAX**
Defendant.)
16 -----oOo-----

17 I, the undersigned, say:

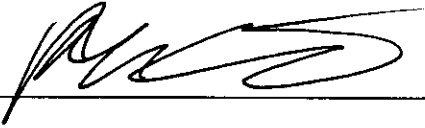
18 I was at the time of service of the attached REQUEST FOR
19 COURT REVIEW OF WIRETAPE RECORDINGS RECOVERED FROM AUDIO BUFFER
20 over the age of eighteen years. I served by fax a copy of the
21 above-entitled document(s) on the 18th day of June, 2003,
22 delivering a copy thereof to the office(s) of:

23 Mark Geragos
Attorney for Defendant
Fax No. (213) 625-1600

24 Kirk W. McAllister
25 Attorney for Defendant
26 Fax No. (209) 575-0240
27
28

1 I declare under penalty of perjury that the foregoing is
2 true and correct.

3 Executed this 18th day of June, 2003, at Modesto,
4 California.

5 
6 _____

7 dmh
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