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FILED
03 JUN 20 PM 3:57
CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS
BY Cindy [Signature] DEPUTY

FILED BY FAX

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

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

SCOTT LEE PETERSON,

Defendant.

Case No. 1056770

MOTION FOR SETTING OF A HEARING ON OSC RE CONTEMPT OF COURT BY STANISLAUS COUNTY DISTRICT ATTORNEY JAMES BRAZELTON

DATE: June 26, 2003
TIME: 8:30 a.m.
PLACE: Dept. 2

TO: JAMES BRAZELTON, STANISLAUS COUNTY DISTRICT ATTORNEY; and
TO: CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that on June 26, 2003 at the hour of 8:30 a.m., or as soon thereafter as counsel can be heard, Defendant Scott Lee Peterson ("Mr. Peterson"), through counsel Mark J. Geragos, will move this Court for an order setting a hearing re contempt of the June 12, 2003 protective order by Stanislaus County District Attorney James Brazelton ("Brazelton").

1 The Motion will be made upon the grounds that on or about June 20, 2003,
 2 Brazelton brazenly violated this Court's protective order in statements made to *The*
 3 *Modesto Bee*.

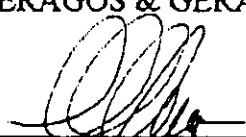
4 The Motion will be based on this Notice, the attached memorandum of points and
 5 authorities, the pleadings and records on file herein, and upon such other and further
 6 argument as may be presented to the Court at the hearing of this matter.

8 Dated: June 20, 2003

Respectfully submitted,

GERAGOS & GERAGOS

11 By:



 MARK J. GERAGOS
 Attorney for Defendant
 SCOTT LEE PETERSON

15 MOTION

16 Scott Lee Peterson, by and through counsel, hereby moves the Court for:


- 17 1. An order setting a hearing re contempt of the June 12, 2003 protective order
 18 by Stanislaus County District Attorney James Brazelton; and,
 19 2. An order granting whatever other relief the Court may deem necessary to
 20 further the ends of justice.

22 Dated: June 20, 2003

Respectfully submitted,

GERAGOS & GERAGOS

25 By:



 MARK J. GERAGOS
 Attorney for Defendant
 SCOTT LEE PETERSON

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

On June 12, 2003 this Court issued a protective order that, *inter alia*, ordered:

It is the Order of this Court that no attorney connected with this case as Prosecutor or Defense Counsel, nor any other attorney working in those offices... shall do any of the following:

3. Make any statement for public dissemination as to the existence or possible existence of any document, exhibit, photograph or any other evidence, the admissibility of which may have to be determined by the Court;

* * *

4. Express outside of court an opinion or make any comment for public dissemination as to the weight, value, or effect of any evidence as tending to establish guilt or innocence;

* * *

7. Make any out-of-court statement as to the nature, source, or effect of any purported evidence alleged to have been accumulated as a result of the investigation of this matter;

In an article published on <ModestoBee.com> Stanislaus County District Attorney Brazelton is quoted as having said, *inter alia*:

“The longer this drags on, the more stories get bandied about out there.” Brazelton said, “and about 95 percent is pure

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fiction and fabrication. By putting on a prelim, they're going to see some stuff that might open some eyes."

"We spend all our time running down this phoney baloney stuff they throw up."

(Exhibit 1)

* * *

"We are criticized by some talking heads for not doing a grand jury. . . Too bad. They can handle their cases. We'll handle ours."

(Exhibit 1)

II.

STANISLAUS COUNTY DISTRICT ATTORNEY JAMES BRAZELTON HAS BRAZENLY DISOBEYED THE AUTHORITY OF THIS COURT AND MUST BE FOUND IN CONTEMPT

The first statement quoted above is in clear violation of the protective order. District Attorney Brazelton, is not only a prosecutor involved in this case, he is the District Attorney in whose name this death penalty prosecution has been brought." It goes without saying that District Attorney Brazelton is covered by the protective order. In fact, he acknowledges such by citing the protective order in referring to the evidence is "that might open some eyes". (Exhibit 1 page 2). Despite clearly being aware of a protective order which he himself sought in limited form, District Attorney Brazelton by his comments specifically violates the portion of the order which prohibits "express[ing] outside of court an opinion or make any comment for public dissemination as to the weight, value, or effect of any evidence as tending to establish guilt or innocence". Brazelton's comments were to a Modesto Bee reporter, were in response to questions about why the District Attorney's office is proceeding by way of a preliminary hearing

1 and obviously Brazelton is trying to disseminate to the public and media the weight of
2 the evidence establishing guilt against Mr. Peterson. This is nothing less than outrageous.
3 Not only do Brazelton's comments violate this Court's protective order, it would appear
4 that Brazelton is in violation of Rule of Professional Responsibility 5-120, which reads in
5 part,

6 "A member who is participating or has participated in the investigation
7 or litigation of a matter shall not make an extrajudicial statement that a
8 reasonable person would expect to be disseminated by means of public
9 communication if the member knows or reasonably should know that it
10 will have a substantial likelihood of materially prejudicing an
11 adjudicative proceeding in the matter." (Emphasis supplied) (See
12 Brazelton's June 4, 2003, "Points and Authorities in Support of Limited
13 Protective Order" filed on behalf of the People at 3:21-24.)

14 Brazelton in his second quote listed above when read in conjunction with his first
15 quote appears to have hit the trifecta of prosecutorial misconduct, violation of the
16 protective order and at the same time transgressing the Rules of Professional Conduct.
17 Here, District Attorney Brazelton is now quantifying "evidence" in the public domain,
18 (95%), and making statements about the "effect of any purported evidence alleged to have
19 been accumulated as a result of the investigation of this matter". In fact, one would be
20 hard pressed to imagine how much more disdain one could express for the order of this
21 Court when Brazelton utters "we spend all our time running down this phoney baloney
22 stuff they throw up."

23 This investigation has been characterized by leaks both pre and post arrest of Mr.
24 Peterson. Those leaks have continued after the imposition of a protective order. It is quite
25 obvious that most of those leaks could only have come from sources close to the
26 prosecution. That is not unexpected. What is unexpected is that while a motion to clarify
27 the protective order is pending before this Court, while the Fifth District has issued an
28 order to the District Attorney to respond to the writ petition filed by the defense, that the

1 elected District Attorney of Stanislaus County chooses to wantonly and brazenly violate
 2 this Court's protective order. Apparently, District Attorney Brazelton's believes that
 3 being criticized by fellow prosecutors about his legal strategy, in his mind, outweighs this
 4 Court's orders, the Rules of Professional conduct and by the way, Mr. Peterson's right to
 5 a fair trial. Or as the Fifth District wrote in dismissing another recent death penalty
 6 prosecution by Brazelton's office:

7 When asked why he [instructed the court reporter to leave
 8 grand jury proceedings during his opening and closing
 9 argument to a grand jury in a death penalty case], the [District
 10 Attorney] basically replied this is how grand jury proceedings
 11 are conducted in Stanislaus County - - with no apparent
 12 thought to the fact that his is a death penalty case.

13 *Dustin v. Superior Court* (2002) 99 Cal.App.4th 1311, 1314

14 This prosecution is also a death penalty case. While the prosecution's conduct may
 15 not be surprising when read in the context of its almost pathological trampling of this
 16 innocent defendant, in light of recent history as recounted by the Court of Appeal,
 17 Brazelton's brazen disregard of this Court's Order should shock the Court's conscience
 18 and a hearing should be set regarding Brazelton's contempt. Brazelton's conduct in
 19 apparently attacking both the defense or the media when using terms such as "phoney
 20 baloney" while Mr. Peterson and the defense are bound by the gag order is reprehensible
 21 and should not only be condemned by this Court in the strongest terms but appropriate
 22 sanctions should be imposed..

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III.

CONCLUSION


WHEREFORE, in light of the foregoing, Mr. Peterson respectfully requests that the relief prayed for herein be granted.

Dated: June 20, 2003

Respectfully submitted,

GERAGOS & GERAGOS

By:



MARK J. GERAGOS
Attorney for Defendant
SCOTT LEE PETERSON

EXHIBIT 1

Modbee.com

DA calls for public hearing

By GARTH STAPLEY
BEE STAFF WRITER

A longing to reveal closely guarded evidence against Scott Peterson, and to debunk rumors and wild speculation, helped prosecutors decide to start the case with a public preliminary hearing instead of meeting in secret with a grand jury to ask for an indictment, Stanislaus County District Attorney James Brazelton said Thursday.

But both sides of the double-murder case are likely to ask for a delay in the public hearing, possibly until September, sources close to the case said Thursday. The hearing is now set for July 16 in Superior Court.

"The longer this drags on, the more stories get bandied about out there," Brazelton said, "and about 95 percent is pure fiction and fabrication. By putting on a prelim, they're going to see some stuff that might open some eyes."

The defense, however, could file a motion to close the preliminary hearing from public view.

Brazelton's office is seeking the death penalty against Peterson, 30, who is accused of murdering his wife, Laci, and their unborn son, Conner. Peterson has pleaded not guilty.

The case has played out on national television since the 27-year-old substitute teacher with the broad smile was reported missing Christmas Eve from her Modesto home. Rumors discussed on television shows, in news articles and in tabloids across North America include satanic cults, infidelity, date-rape drugs and mystery witnesses.

During a preliminary hearing, the prosecution presents at least some of its evidence in trying to persuade a judge that a full trial is warranted. The district attorney's decision to opt for a preliminary hearing instead of a grand jury indictment is one of dozens of frequently discussed topics.

Some legal analysts have questioned the preliminary hearing route, noting that grand jury proceedings would keep prosecutors' evidence under wraps until the trial. That could take two years or more.

"We are criticized by some talking heads for not doing a grand jury," Brazelton said Thursday. "Too bad. They can handle their cases. We'll handle ours."

Laying cards on the table to counter inaccurate reporting "was one of the factors" playing a part in the decision to go the public route, Brazelton said.

"We spend all our time running down this phoney baloney stuff they throw up," he said.

Another, more tactical factor concerns witness testimony, he said.

Witnesses at preliminary hearings are cross-examined under oath by opposing attorneys. If a witness changes his or her testimony at the trial -- "We call it 'going sideways,'" Brazelton said -- he or she could face perjury penalties.

Defense attorneys are not allowed to attend grand jury proceedings. Testimony there, without being exposed to questioning by the other side, has less weight than at a preliminary hearing, Brazelton said.

Brazelton refused to discuss the evidence "that might open some eyes," citing a gag order imposed by Judge Al Girolami.

The judge last week muzzled attorneys, investigators, judicial officers, court employees, law enforcement officers and potential witnesses. He provided exceptions for existing public records and "communications heretofore disseminated to the public."

Brazelton's office favored the gag order, while Peterson's defense team and media lawyers argued stridently to keep communications open. Defense attorney Mark Geragos had argued that a gag order would prevent him from correcting inaccurate reports.

Girolami also has sealed autopsy reports, wiretap recordings and related documents.

Bee staff writer Garth Stapley can be reached at 578-2390 or gstapley@modbee.com.

Posted on 06/20/03 06:10:08

<http://www.modbee.com/local/story/6992040p-7926150c.html>

PROOF OF SERVICE BY FAX
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 350 S. Grand Avenue, 39th Floor, Los Angeles, California 90071.

On execution date set forth below, I served the following
DOCUMENTS OR DOCUMENTS DESCRIBED AS:

**MOTION FOR SETTING OF A HEARING ON OSC RE CONTEMPT OF
COURT BY STANISLAUS COUNTY DISTRICT ATTORNEY JAMES
BRAZELTON**

_____ placing a true copy thereof enclosed in sealed envelopes with postage thereon fully prepaid, to the attorneys and their perspective addresses listed below, in the United States Mail at Los Angeles, California.

transmitting by facsimile transmission the above document to the attorneys listed below at their receiving facsimile telephone numbers. The sending facsimile machine I used, with telephone number (213) 625-1600, complied with C.R.C. Rule 2003(3). The transmission was reported as complete and without error.

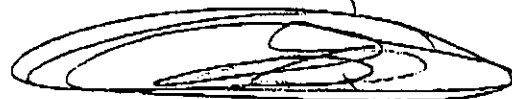
_____ personally delivering the document(s) listed above to the party or parties listed below, or to their respective agents or employees.

PARTIES SERVED BY FAX:

**Rick Disatso, DDA
David P. Harris, DDA
Fax No.: 209-525-5545**

Executed on June 20, 2003, at Los Angeles, California.

I declare under penalty of perjury that the above is true and correct.



Raffi Naljian

TRANSMISSION VERIFICATION REPORT

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FAX COVER SHEET

From: Raffi Najjian for Mark J. Geragos
Client/Matter: People vs. Peterson
Date: June 20, 2003
Pages: 12 (INCLUDING COVER)

RECIPIENT	FACSIMILE NUMBER
Deputy District Attorneys Rick Distaso	(209) 525-5545