

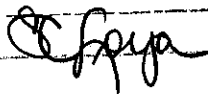
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6 Hearst Communications, Inc. dba *San Francisco Chronicle*,
Contra Costa Newspapers, Inc., San Jose Mercury News, Inc.,
7 KNTV, Inc. and National Broadcasting Company, Inc.

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03 JUN 24 AM 10:19

CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS

BY  DEPUTY

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9
10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF STANISLAUS

12
13 The People of the State of California,

Case No. 105670

14 Petitioner

**Newspapers' Opposition to People's
Motion to Seal Search Warrant**

15 v.

16 Scott Lee Peterson

Date: June 26, 2003

Time: 8:30 a.m.

Dept: 2

Hon. Al Girolami

17 Defendant

18 _____ /

19
20 *The Modesto Bee, San Francisco Chronicle, Los Angeles Times, San Jose Mercury,*
21 *Contra Costa Times, KNTV and National Broadcasting Company, Inc.* submit this
22 memorandum of points and authorities in opposition to the People's motion to seal another
23 post-arrest search warrant, filed June 20, 2003. The motion makes *no* showing with respect to
24 these documents but asserts only that following the requirements of Rules of Court, rules
25 243.1 and 243.2, is "a waste of judicial resources."

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ARGUMENT

I. THE PUBLIC HAS A STATUTORY AND CONSTITUTIONAL RIGHT OF ACCESS TO THE CONDITIONALLY SEALED DOCUMENTS

Not only Penal Code section 1534, but also the United States Supreme Court *Press-Enterprise* decisions require public access to court documents and proceedings. The exceptions are narrowly limited and the People have failed to make any showing that would support findings necessary to continue sealing the documents at issue in this motion. *See Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501 (1984) (access to voir dire and to related court documents); *Press-Enterprise Co. v. Superior Court of California*, 478 U.S. 1(1986) (access to preliminary hearings).

The People must, in order to support the requested sealing, make a showing that supports the findings required by rule 243.2, including, for example, the applicability and weight of exceptions described in the case law, primarily *People v. Hobbs*, 7 Cal. 4th 948 (1994). The People have not attempted to make *any* showing that might be sufficient to support sealing of all or a portion of the conditionally sealed documents.

The People do *not* claim that a potential suspect might be alerted, that evidence would likely be destroyed or that witnesses would conceivably disappear, much less that a confidential informant requires protection. *See* Opinion filed May 5, 2003 in F042848, p. 5. Since the People will provide *all* of the sealed information to the *defendant*, it would seem that the People agree that the concerns identified by the court of appeal do not apply to these documents.

Instead, the People rely on generalizations *insufficient as a matter of law* to permit sealing of statutorily open judicial records. The governing authorities require the court to reject such generalizations and to refuse to continue sealing of the conditionally sealed documents.

II. OPENNESS IN RECORDS AND PROCEEDINGS ENHANCES FAIRNESS AND PUBLIC CONFIDENCE

Openness in court proceedings and documents "enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system."

1 *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569-571 (1980). "When the public is
2 aware that the law is being enforced and the criminal justice system is functioning, an outlet is
3 provided for these understandable reactions and emotions. Proceedings held in secret would
4 deny this outlet and frustrate the broad public interest" *Press-Enterprise I*, 464 U.S. at
5 508-09.

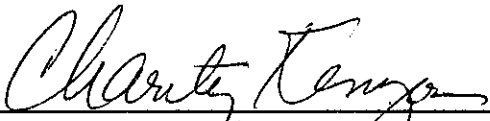
6 **CONCLUSION**

7 For these reasons, and based on this authority and on our prior points and authorities
8 incorporated by this reference, the court should deny the motion to seal. The experience of the
9 California courts is that, even in the most high profile cases, the courts are able to protect the
10 constitutional rights of criminal defendants and of the public. The court cannot make the
11 specific findings that, first, there is a *substantial probability* that the defendant's right to a fair
12 trial would be prejudiced by publicity that sealing would prevent and, second, reasonable
13 alternatives to sealing cannot adequately protect the defendant's fair trial rights. *Press-*
14 *Enterprise I*, 464 U.S. at 510.

15 DATED: June 23, 2003

RIEGELS CAMPOS & KENYON LLP

17
18 By


19 CHARITY KENYON
20 Attorneys for *The Modesto Bee*, *San*
21 *Francisco Chronicle*, *Los Angeles Times*,
22 *Contra Costa Times*, *San Jose Mercury*
23 *News*, KNTV, Inc. and National
24 Broadcasting Company
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1 **PROOF OF SERVICE**

2 I am a resident of the State of California, over the age of eighteen years, and not a
3 party to the within action. My business address is Riegels, Campos & Kenyon, LLP, 2500
4 Venture Oaks Way, Suite 220, Sacramento, CA 95833. On June 23, 2003, I served the following
5 document(s) by the method indicated below:

6 **Newspapers' Opposition to People's Motion to Seal Search Warrant**

7 by transmitting via facsimile on this date from fax number (916) 779-7120 the
8 document(s) listed above to the fax number(s) set forth below. The transmission was
9 completed before 5:00 p.m. and was reported complete and without error. The
10 transmission report, which is attached to this proof of service, was properly issued by
11 the transmitting fax machine. Service by fax was made by agreement of the parties,
12 confirmed in writing. The transmitting fax machine complies with Cal.R.Ct 2003(3).

13 by placing the document(s) listed above in a sealed envelope with postage thereon fully
14 prepaid, in the United States mail at Sacramento, California addressed as set forth
15 below. I am readily familiar with the firm's practice of collection and processing of
16 correspondence for mailing. Under that practice, it would be deposited with the U.S.
17 Postal Service on that same day with postage thereon fully prepaid in the ordinary
18 course of business. I am aware that on motion of the party served, service is presumed
19 invalid if the postal cancellation date or postage meter date is more than one day after
20 the date of deposit for mailing in this Declaration.

21 Kirk McAllister
22 McAllister & McAllister
23 1012 11th St. #100
24 Modesto CA 95354

Rick Distaso
Sr. Deputy District Attorney
DA Stanislaus County
1100 I Street #200
Modesto CA 95354-2325

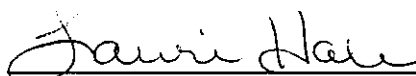
25 FAX: 209-575-0240

FAX 209-525-5545

26 Mark Geragos
27 Geragos & Geragos
28 350 S. Grand Avenue, #3900
Los Angeles, CA 90071-3480

FAX: (213) 625-1600

I declare under penalty of perjury under the laws of the State of California that the above is true
and correct. Executed on June 23, 2003, at Sacramento, California.


LAURI HALE