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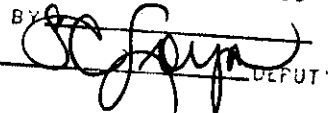
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FILED

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CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS

BY  DEPUT

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

FILED BY FAX

*Rec'd 8-4-03 p.m. civil
reca 8/5/03 sup-prim.*

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

SCOTT LEE PETERSON,

Defendant.

Case No. 1056770

NOTICE OF LODGING OF
REDACTED MOTION TO
SUPPRESS ILLEGALLY
OBTAINED WIRETAP
EVIDENCE

DATE: September 9, 2003
TIME: 8:30 a.m.
PLACE: Dept 2

TO: STANISLAUS COUNTY DISTRICT ATTORNEY; and

TO: CLERK OF THE ABOVE-ENTITLED COURT:

Pursuant to the Court's August 4, 2003, Order, Defendant Scott Lee Peterson hereby lodges a redacted version of his previously filed Motion to Suppress Illegally

1 Obtained Wiretap Evidence (Exhibit 1).

2 Dated: August 4, 2003

Respectfully submitted,

GERAGOS & GERAGOS

By:



MARK J GERAGOS
Attorney for Defendant
SCOTT LEE PETERSON

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EXHIBIT 1

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

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

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REDACTED MOTION TO
SUPPRESS ILLEGALLY OBTAINED
WIRETAP EVIDENCE

DATE: September 9, 2003
TIME: 8:30 a.m.
PLACE: Dept 2

TO: STANISLAUS COUNTY DISTRICT ATTORNEY; and

TO: CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that on September 9, 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 suppressing all evidence obtained pursuant to Stanislaus County Wiretaps numbers 2 and 3. Mr. Peterson is filing this Motion under seal and hereby requests that the hearing on the Motion be conducted in camera since the Motion relies heavily on citations to materials currently

1 4. Granting whatever other relief the Court may deem necessary to further the
2 ends of justice.

4 Dated: July 31, 2003

Respectfully submitted,
GERAGOS & GERAGOS

7 By: /S/
8 MARK J. GERAGOS
9 Attorney for Defendant
10 SCOTT LEE PETERSON
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 The use of wiretaps is disfavored under both California and United States law and
5 is prohibited except where expressly authorized by statute. The language of the federal
6 wiretapping statute is "clear and unambiguous; it provides that no part of the contents of
7 an unlawfully intercepted wire communication may be received in evidence in any
8 proceeding before any state or federal court." (*People v. Otto* (1992) 2 Cal.4th 1088,
9 1108.)

10 Although the technology to eavesdrop on wire communications has existed
11 virtually since the advent of wire communications, it was not until 1968 that the United
12 States set forth the law permitting the use of wiretaps by law enforcement. (Title III of
13 the Omnibus Crime Control and Safe Streets Act of 1968, Title 18 U.S.C. sections 2510 -
14 2520.) Nearly 30 years later, in 1995, the California legislature enacted Penal Code
15 sections 629.50, et seq. "in order to expand California wiretap law to conform to the
16 federal law." (See *People v. Zepeda* (2001) 87 Cal.App.4th 1183, 1196.)

17 As noted nearly 25 years ago by the United States Supreme Court, "[t]he need for
18 use of electronic surveillance against organized crime had been thoroughly considered
19 and documented, shortly before Congress began considering Title III, by a special
20 organized-crime Task Force of a Presidential Commission charged with considering
21 crime in the United States." (*United States v. Dalia* (1979) 441 U.S. 238, 252, footnote
22 13.) From *Dalia*, it is clear that Congress envisioned restricting the use of wiretaps to
23 cases where there was a criminal enterprise operating clandestinely, thereby thwarting law
24 enforcement's ability to obtain evidence through ordinary investigative techniques.

25 Here, the prosecution team has publicly (and in under seal filings) alleged that
26 Scott Peterson personally killed his wife and child.^{1/} If such was the case, this

27 _____
28 ^{1/}Mr. Peterson notes that he is factually innocent, but for purposes of this Motion, the
key inquiry must be into the prosecution's investigation and theories of the case.

1 investigation would not be unlike the thousands of other investigations into intra-family
2 violence that are routinely undertaken by law enforcement throughout California and the
3 United States. Additionally, at the time of the initial wiretap, Laci Peterson had been
4 missing for less than three weeks and, in fact, there was absolutely no physical (let alone
5 forensic evidence) that a crime had occurred. If Congress had envisioned the use of
6 electronic surveillance under the circumstances present here, it would have so stated.
7 Simply put, there was neither precedent nor statutory authorization that would have
8 permitted the wiretaps of Mr. Peterson. Additionally, the wiretap evidence must be
9 excluded because the affidavits submitted by the government in support of the wiretap
10 applications failed to demonstrate the required necessity for the wiretaps, and excluded
11 material facts that in and of themselves would have been fatal to the success of the
12 applications. As such, all evidence derived from the wiretaps and the fruits thereof must
13 be excluded.

14
15 **II.**

16 **THE AFFIDAVITS IN SUPPORT OF THE PROSECUTION'S APPLICATIONS**
17 **FOR AUTHORIZATION TO INTERCEPT WIRE COMMUNICATIONS**
18 **("APPLICATION") FAIL TO ESTABLISH THE**
19 **NECESSITY OF THE WIRETAPS**

20 Wiretaps are an investigative technique of last resort. As noted by the Court of
21 Appeal for the Second Appellate District in *People v. Munoz* (2001) 87 Cal.App.4th 239,
22 242:

23 A wiretap overhears all sides of all communications

24 Even where there is probable cause, the wiretap risks

25 overhearing communications unconnected with the facts

26 supporting the finding of probable cause Because of

27 these privacy interests, attempts to pass wiretap authorization

28 in California were unsuccessful until 1988, even though

1 federal law had authorized wiretapping since 1968 The
2 California wiretap legislation is modeled after federal law, *but*
3 *is more restrictive. In particular, California imposes*
4 *additional restrictions on the wiretap application process.*
5 (*Id.*, emphasis added.)

6 Although California law is more restrictive than federal law in terms of when the
7 government may use wiretaps, both federal and state law require a showing of necessity.
8 This showing is generally made by the filing of an affidavit.²¹ The necessity requirement
9 "exists in order to limit the use of wiretaps, which are highly intrusive," (*United States v.*
10 *Bennett, et al.* (9th Cir. 2000) 219 F.3d 1117, 1121, citing *United States v. Commito* (9th
11 Cir. 1990) 918 F.2d 95, 98.), and is to be interpreted in a practical and commonsense
12 fashion." (*United States v. Bennett, et al.*, *supra*, 219 F.3d at 1121, citing *United States v.*
13 *Bailey* (9th Cir. 1979) 607 F.2d 237, 241.)

14 The prosecution has correctly noted that *People v. Zepeda* (2001) 87 Cal.App.4th
15 1183, appears to be the only reported California case to address the necessity requirement.
16 In *Zepeda*, the Court of Appeal for the Sixth Appellate District found that the necessity
17 requirement had been met. After a review of several federal authorities, the *Zepeda* court
18 found that six factors supported the trial court's finding of necessity for the wiretap:

- 19 (1) The case against defendant was entirely circumstantial;
20 (2) It appeared that witnesses were reluctant to come forward other than in an
21 anonymous manner;
22 (3) The detective believed that questioning defendant about the shooting was
23 unlikely to produce any additional evidence;

24
25 _____
26 ²¹Specifically, California Penal Code section 629.50, subdivision (a)(4)(B) requires a
27 showing of "the fact that conventional investigative techniques had been tried and were
28 unsuccessful, or why they reasonably appear to be unlikely to succeed or to be too
dangerous." Federal law requires a showing that "normal investigative procedures have
been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too
dangerous." (See 18 U.S.C. section 2518(3)(c).)

- 1 (4) The defendant was unaware that he was the focus of the murder investigation;
2 (5) The defendant was unaware the police had seized evidence from his room and
3 his vehicle; and,
4 (6) The detective believed that the defendant was likely to alert others and ask
5 them to destroy other evidence.

6 Here, *Zepeda* factors 2, 4, 5, and 6 are clearly not present. The only reason factor
7 one is present is since Mr. Peterson is factually innocent there can be no direct evidence.
8 If factor one alone made a wiretap permissible, virtually every murder investigation could
9 employ a wiretap from the outset until the prosecution had obtained direct evidence
10 against a suspect. This absurd result would be inconsistent with California's (and the
11 United States') preference for normal, less invasive investigative techniques.

12 Additionally, as to Factor 2, the Jacobson Affidavit² ("Jacobson Affidavit") dated
13 January 10, 2003 indicates that not only were numerous witnesses coming forward, they
14 were anything but reluctant. There were no "anonymous" witnesses. (See *Zepeda* at
15 202.) A review of the *Zepeda* factors demonstrates that the prosecution has failed to
16 demonstrate necessity, and in fact implicitly admitted that the wiretaps were unnecessary.

17 Although the standards set forth in *Zepeda* necessitate suppression, a review of
18 relevant federal law on necessity is instructive as well. There are several illuminating
19 cases. In *United States v. Kalustian* (9th Cir. 1975) 529 F.2d 585 (rehearing and rehearing
20 en banc denied March 25, 1976), the Ninth Circuit, in finding that the government failed
21 to demonstrated necessity, stated:

22 [T]he utmost scrutiny must be exercised to determine whether
23 wiretap orders conform to Title III. The Act has been
24 declared constitutional only because of its precise
25 requirements and its provisions for close judicial scrutiny.
Our view of wiretap orders must ensure that the issuing
magistrate properly performed his function and did not serve
merely as a rubber stamp for the police.

26
27 ³Except where otherwise noted, references to the "Jacobson Affidavit" or "Affidavit"
28 are to the undated Affidavit filed in support of Wiretap No. 2 and signed by Judge Ladine on
January 10, 2003. The undated Affidavit in support of Wiretap No. 3 signed by Judge Ladine
on April 15, 2003 is addressed *infra* at Section IV.

1 (Kalustian at 589, internal citations and quotation marks omitted.)

2 In Kalustian, the Ninth Circuit found that investigating officials had improperly
3 decided that electronic surveillance was imperative:

4 They discarded alternative means of further
5 investigation because 'knowledge and experience' in
6 investigating other gambling cases convinced them that
7 'normal investigative procedures' were unlikely to succeed.
8 Agent Bren recites that searches are often fruitless because
9 gamblers keep no records, destroy them, or maintain them in
10 undecipherable codes. Use of the phone company's records
11 alone is inconclusive.

12 The affidavit does not enlighten us as to why this
13 gambling case presented any investigative problems which
14 were distinguishable in nature or degree from any other
15 gambling case. In effect the Government's position is that all
16 gambling conspiracies are tough to crack, so the Government
17 need show only the probability that illegal gambling is afoot
18 to justify electronic surveillance. Title III does not support
19 that view.

20 (Kalustian at 589.)

21 Although Kalustian involved gambling, the Ninth Circuit's comments are relevant
22 herein. For example, the affidavit of Stephen P. Jacobson ("Jacobson Affidavit") filed in
23 support of the wiretap application states, *inter alia*:

24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 (emphasis added) (Jacobson Affidavit at paragraph 11(c).)

28 * * *

29 [REDACTED]
30 [REDACTED]
31 [REDACTED]
32 [REDACTED]
33 [REDACTED]
34 [REDACTED]

35 (emphasis added) (Jacobson Affidavit at paragraph 26.)

36 From these two items alone, it is clear the government believed it had had great

1 success in obtaining evidence - - so much evidence that Jacobson was willing to state his
2 belief that [REDACTED]. On its
3 face, the Jacobson Affidavit not only fails to establish necessity, the Affidavit points to
4 the opposite conclusion - - namely, that in the prosecution's opinion, [REDACTED]
5 [REDACTED]

6 The Jacobson Affidavit also falls short of the requisite *Kalustian* standards in that
7 the Affidavit fails to set forth any reasons as to why this alleged spousal murder case (at
8 the time it should properly have been referred to as a missing person case) would be any
9 different than any other alleged domestic violence case. The defense team, having over a
10 century of collective criminal defense experience is unaware of any alleged case of
11 domestic violence in which the prosecution has sought a wiretap, much less been granted
12 one. Clearly, under the long-standing *Kalustian* standards, the Jacobson Affidavit falls
13 far short of establishing the degree of necessity required for the implementation of a
14 wiretap.

15 The Ninth Circuit recently provided further elaboration on the necessity
16 requirement in *United States v. Blackmon* (9th Cir. 2001) 273 F.3d 1204, a case in which
17 the court therein found that suppression of wiretap evidence was required. The *Blackmon*
18 court stated:

19 Taken together, §§ 2518(1)(c) and (3)(c) require a full and
20 complete statement establishing necessity. The purpose of
21 these requirements is to ensure that wiretapping is not
22 resorted to in situations where traditional investigative
23 techniques would suffice to expose crime. *United States v.*
Kahn, 415 U.S. 143, 153 n.12 (1974). [¶] Thus, we require a
24 full and complete statement of specific allegations indicating
25 why normal investigative procedures failed or would fail in
26 the particular case.
27 (*Blackmon* at 1207.)

28 Like *Kalustian*, the *Blackmon* court recognized that if traditional investigative
techniques will be effective, a wiretap is prohibited. As noted above, the Jacobson
Affidavit establishes that there was no necessity for the wiretap because traditional
investigative techniques had been so successful that the prosecution team had [REDACTED]

1 [REDACTED]. *Blackmon* also restates
 2 the need for a complete statement delineating the reasons which purportedly necessitate
 3 the wiretap. The Jacobson Affidavit fails in this regard because it merely sets forth
 4 boilerplate allegations that can hardly be characterized as "complete":

5 [REDACTED]
 6 [REDACTED]
 7 (Jacobson Affidavit at paragraph 28.)

8 * * *

9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]

15 (Jacobson Affidavit at paragraph 29.)

16 * * *

17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]

20 (Jacobson Affidavit at paragraph 33.)

21 * * *

22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

26 (Jacobson Affidavit at paragraph 37.)

27 * * *

28 [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(Jacobson Affidavit at paragraph 42.)

[REDACTED]

[REDACTED]

(Jacobson Affidavit at paragraph 45.)

[REDACTED]

[REDACTED]

[REDACTED]

(Jacobson Affidavit at paragraph 48.)

[REDACTED]

[REDACTED]

(Jacobson Affidavit at paragraph 52.)

Through the above-quoted boilerplate language, the prosecution has attempted to

[REDACTED]

1 demonstrate necessity.^{5/} Jacobson's assertions are ludicrous, particularly when put under
2 scrutiny and [REDACTED]

3 [REDACTED]

4 Although Jacobson claims that the wiretaps are necessary, he entirely neglects two
5 key facts. First, Jacobson acknowledges [REDACTED]
6 [REDACTED] (Jacobson Affidavit at
7 paragraph 27.) Second, Jacobson admits that on January 9, 2003, the day before the
8 wiretap application:

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 (Jacobson Affidavit at paragraph 35, emphasis added.)

17 The law on necessity is unambiguous - - "the purpose of [the necessity]
18 requirement[] is to ensure that wiretapping is not resorted to in situations where
19 traditional investigative techniques would suffice to expose the crime." (See *United*
20 *States v. Kahn* (1974) 415 U.S. 143, 153, n. 12.) In light of the prosecution's possession
21 of DNA samples as well as the possible recovery of Laci Peterson's body, there was no
22 necessity at the time of the wiretap application.^{6/}

23 _____
24 ^{5/}The defense of course reserves the right to challenge the wiretaps in the future
25 pursuant to Penal Code section 629.72 as further information is revealed concerning the
26 violations of Mr. Peterson's rights.

27 ^{6/}Mr. Peterson also notes that because of the nonexistence of any physical evidence of
28 a killing as of January 10, 2003, the wiretap should not have been authorized since wiretaps
are only permitted in connection with certain enumerated crimes, including murder, the crime
on which the Affidavit was premised. (See Affidavit at paragraph 5, and Penal Code §

1 In sum, because there was no necessity the order authorizing the wiretap was
2 invalid and all wiretap evidence must be excluded.

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4 III.

5 THE JACOBSON AFFIDAVIT OMITTED MATERIAL INFORMATION

6 Jacobson concedes that at the time he submitted the Affidavit in support of
7 Wiretap No. 2, [REDACTED]
8 [REDACTED] (Jacobson Affidavit at paragraph 37.) However, rather than providing a "full
9 and complete statement of the facts and circumstances" as required by Penal Code section
10 629.50(a)(4), Jacobson failed to advise Judge Ladine [REDACTED]
11 [REDACTED]
12 [REDACTED] obviating any
13 need for the wiretap.

14 Jacobson's failure to include this information did not merely render the Affidavit
15 less than a "full and complete statement" - it was worse. Jacobson's failure to include
16 that highly relevant information was an affirmative, material omission concerning the
17 necessity for the wiretap. [REDACTED]

18 [REDACTED]
19 [REDACTED]
20 [REDACTED] a fact that certainly should have been brought to the attention of Judge
21 Ladine, since it may well have affected his decision to authorize the wiretap.

22 In light of Jacobson's material omissions, all evidence derived from Wiretap No. 2
23 must be excluded.

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27 629.52 for crimes in which wiretaps are authorized.) On January 10, 2003, there was no
28 evidence that a murder had been committed, so Wiretap No. 2 should not have been
authorized.

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IV.

EVIDENCE DERIVED FROM WIRETAP NO. 3 MUST BE SUPPRESSED.

The considerations concerning Wiretap No. 3 are similar to those for Wiretap No. 2. The Jacobson Affidavit submitted in support thereof made no additional showing of necessity than did the January Affidavit. Specifically, the Affidavit in support of Wiretap No. 3 was deficient in the following regards:

1. Since the April Affidavit incorporated the earlier Affidavit by reference, all of the deficiencies present therein and described in Sections II and III above are present.

Specifically, Mr. Peterson notes that on or before January 10, 2003, [REDACTED]

[REDACTED]

[REDACTED]

2. Jacobson contradicts the January Affidavit by stating [REDACTED]

[REDACTED] (April

Affidavit at 34:20-24.) This contradiction is clear evidence that Jacobson was being less than candid with Judge Ladine in one or both of the Affidavits. In any case, this important contradiction violates the "full and complete statement" requirement of Penal Code section 629.50(a)(4).

3. Despite having intercepted thousands of phone calls during the course of Wiretap No. 2, Jacobson admits in the April Affidavit that there is no direct evidence of Mr. Peterson's guilt.²⁷ Jacobson offers nothing in the April Affidavit to indicate that a new wiretap will yield evidence that Wiretap No. 2 failed to produce.

4. Jacobson admits in the April Affidavit that Peterson was aware [REDACTED] [REDACTED], see April Affidavit at paragraph 75, and that Mr. Peterson believed [REDACTED]. (April Affidavit at paragraph 58.) Despite these facts, Jacobson contends that useful information will be obtained through a wiretap and that the wiretap is thus necessary. Given Mr. Peterson's [REDACTED]

²⁷This is because Mr. Peterson is factually innocent.

1 [REDACTED] Jacobson's contention is preposterous on its face.

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V.

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CONSTITUTIONAL VIOLATIONS REQUIRE SUPPRESSION.

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As alleged in Mr. Peterson's previous filings, the prosecution has committed grave prosecutorial misconduct throughout this matter, and in particular, in connection with the entire wiretapping procedure. Even if the Court determines that the wiretap evidence should not be suppressed because of the deficient applications, suppression is the appropriate sanction for the misconduct previously alleged, and as follows:

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A. The prosecution failed to make the application to the presiding judge of the Superior Court or one other judge designated by the presiding judge, and in fact engaged in forum-shopping by filing a motion to disqualify the presiding judge.

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Penal Code section 629.50 requires, in pertinent part:

Each application for an order authorizing the interception of a wire, electronic pager, or electronic cellular telephone communication shall be made in writing upon the personal oath or affirmation of . . . a district attorney. . . to the presiding judge of the superior court or one other judge designated by the presiding judge.

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On January 10, 2003, the presiding (criminal) judge of the Stanislaus County Superior Court was the Hon. Aldo Girolami. Upon information and belief, the defense does not believe that Judge Girolami had made any order designating any judge other than himself to rule upon requests for wiretaps.^{8/} As such, the prosecutor failed to comply with

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^{8/} The defense believes that the prosecution may attempt to explain its conduct by claiming to have relied upon a March 6, 2001 order issued by Hon. William A. Mayhew, a former presiding judge. Such reliance would necessarily violate the clear requirements of Section 629.50 and would evidence further prosecutorial misconduct for failure to present the application to Judge Girolami.

1 Section 629.50.

2 As noted by the Court of Appeal for the Second Appellate District in *People v.*
3 *Munoz* (2nd Dist. 2001) 87 Cal.App.4th 239, review denied, certiorari denied (Oct. 1, 2001
4 *see* 122 S.Ct. 171):

5 The provision was 'designed to prevent judge shopping and
6 foster uniform standards and procedures concerning
7 surveillance applications and orders.' (Assem. Com. on Public
8 Safety, Rep. On Sen. Bill No. 159 (1985-1986 Reg. Sess.) As
9 amended July 9, 1985, p. 3.)
10 (*Munoz* at 244.)

11 **B. The prosecution failed to have any of the proceedings related to the**
12 **wiretaps stenographically recorded despite the fact the prosecution**
13 **knew this would be a death penalty case.**

14 As the prosecution is well-aware, Penal Code section 190.9 requires all
15 proceedings to be conducted on the record with a court reporter present. (*See* Section
16 190.9 and *Dustin v. Superior Court*, 99 Cal.App.4th 1311, 1322.) One would hope that in
17 light of the Court of Appeal's opinion the Stanislaus County District Attorney would be
18 concerned with protecting the rights of individuals accused of capital murder.
19 Regrettably, it appears that is not the case.

20 The prosecution has treated this as a death penalty case virtually from the moment
21 of Laci Peterson's disappearance. No later than January 10, 2003, the prosecution
22 believed:

23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 (Jacobson Affidavit at paragraph 42.)

27 The prosecution also believed at the time of the wiretap application that there was
28 evidence that:

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[REDACTED]
[REDACTED]

(Jacobson Affidavit at paragraph 26.)

Moreover the prosecution [REDACTED]

[REDACTED]. In fact, the prosecution was so intent on moving forward with a death penalty case that an offer was made to Mr. Peterson through his lawyer in January in which the prosecution indicated it would not seek the death penalty if Mr. Peterson would provide the location of Laci Peterson's body.^{9/}

The fact that an indictment had not yet come down should not be dispositive here. As a practical matter, the prosecution had concluded (incorrectly) that Mr. Peterson had killed his wife and that the prosecution would therefore seek the death penalty. DDA Distaso's contention that Section 190.9 is therefore inapplicable is untenable. Indeed, to quote the Court of Appeal (again referring to DDA Distaso):

In this death penalty case, the prosecutor takes the art of relying on technicalities to new heights, a practice often attributed to defense counsel.

(*Dustin*, supra, 99 Cal.App.4th at 1314.)

As in *Dustin*, this Court should condemn the tactics employed by the Office of the District Attorney for Stanislaus County. Despite being excoriated by the Court of Appeal ^{10/} it appears that the prosecution remains on a mission to deprive citizens of California of their lives at any cost.^{11/} As the *Dustin* court stated, "[n]ow is the time to

^{9/}Mr. Peterson, of course, did not accept the offer because he is factually innocent and did not know the location of his wife.

^{10/}The DA's Petition for Review in *Dustin* was denied on September 25, 2002 - - just three months before Laci Peterson's disappearance.

^{11/}As stated by the Deputy District Attorney in *Dustin*, "[t]here is no reason for the People to take every case that comes down and interpret it in a fashion, you know, most favorable to the defense so we're continually giving the defendants more than they're legally entitled to." (*Dustin* at 1324.)

1 rectify the prosecutor's error while it is still relatively easy and economical to do so - - not
 2 wait 20 years down the appellate road. (*Dustin* at 178.) This is precisely why this Court
 3 should not only exclude any wiretap information garnered in this matter, it should also
 4 require the prosecution to prove that any evidence it seeks to introduce is not the product
 5 of the illegally obtained wiretaps.

6 **C. Penal code section 629.80 is unconstitutional.**

7 In the instant case wiretapping was conducted under the authority of Penal Code
 8 sections 629.50 et seq. The procedures sanctioned by Chapter 1.4 of the Penal Code
 9 actually allow the interception of privileged communications. Penal Code section 629.80
 10 authorizes peace officers to intermittently intercept privileged information and then
 11 resume interception after a hiatus of at least two minutes until the communication ends.^{12/}
 12 As written, Penal Code section 629.80 violates the Due Process clause of the Fourteenth
 13 Amendment.

14 As stated in previous moving papers, Penal Code section 629.80 is
 15 unconstitutional on its face, since it allows the interception of messages of
 16 communications between lawyer and client. Additionally, the defense investigator, Mr.
 17 _____

18 _____
 19 ¹²Section 629.80 provides: No otherwise privileged communication intercepted in
 20 accordance with, or in violation of, the provisions of this chapter shall lose its privileged
 21 character. When a peace officer or federal law enforcement officer, while engaged in
 22 intercepting wire, electronic pager, or electronic cellular telephone communications in the
 23 manner authorized by this chapter, intercepts wire, electronic pager, or electronic cellular
 24 telephone communications that are of a privileged nature he or she shall immediately cease
 25 the interception for at least two minutes. After a period of at least two minutes, interception
 26 may be resumed for up to 30 seconds during which time the officer shall determine if the
 27 nature of the communication is still privileged. If still of a privileged nature, the officer shall
 28 again cease interception for at least two minutes, after which the officer may again resume
 interception for up to 30 seconds to redetermine the nature of the communication. The
 officer shall continue to go online and offline in this manner until the time that the
 communication is no longer privileged or the communication ends. The recording device
 shall be metered so as to authenticate upon review that interruptions occurred as set forth in
 this chapter. Added Stats 1995 ch 971 § 10 (SB 1016). Amended Stats 2002 ch 605 § 18
 (AB 74).

1 Ermoian's, conversations are likewise covered by the attorney-client privilege.

2 Thus, Penal Code section 629.80 is deficient in two regards. First, it allows the
3 authorities to listen in on the conversation. Second, it empowers the police officer to
4 decide what is privileged and what is not. It contains no prophylactic device as is found
5 in Penal Code section 1524, wherein a special master acts as the gatekeeper, deciding
6 initially whether or not documents or other items are covered by the attorney-client
7 privilege.
8
9

10 To allow the police to intercept such communications and then decide what is or is
11 not privileged is in fact to allow the police to become the judge and jury in depriving a
12 citizen of a right recognized as fundamental by the Fourteenth Amendment. This
13 legislation thus is not narrowly drawn as is required by the Fourteenth Amendment.
14 Since Section 629.80 suffers from a fatal constitutional flaw, its use and the gathering of
15 information based on this section must be ruled unlawful.
16
17

18 For these reasons it is respectfully submitted that all conversations and other
19 interceptions made by the use of wiretaps in the instant case are illegal and inadmissible,
20 and Mr. Peterson urges this court to so rule.
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VI.
CONCLUSION

In light of the foregoing, Mr. Peterson respectfully requests that the Court grant the relief requested.

Dated: July 31, 2003

Respectfully submitted,
GERAGOS & GERAGOS

By: /S/
MARK J. GERAGOS
Attorney for Defendant
SCOTT LEE PETERSON

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:

**NOTICE OF LODGING OF REDACTED MOTION TO SUPPRESS
ILLEGALLY OBTAINED WIRETAP EVIDENCE; AND
REDACTED MOTION TO SUPPRESS ILLEGALLY OBTAINED
WIRETAP EVIDENCE**

 x placing a true copy thereof enclosed in sealed prepaid FedEx packaging (overnight service), 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.

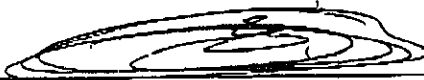
 personally delivering the document(s) listed above to the party or parties listed below, or to their respective agents or employees.

PARTIES SERVED BY FAX:

**Rick Distaso, DDA
David P. Harris, DDA
Stanislaus County District Attorney
800 11th Street, Room #200
Modesto, California 95353**

Executed on August 4, 2003, at Los Angeles, California.

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



RAFFI NALJIAN