

FILED

03 DEC 10 AM 8:29

Clerk OF THE SUPERIOR COURT  
COUNTY OF STANISLAUS

BY Andy Clark DEPUTY

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

7 STANISLAUS COUNTY SUPERIOR COURT  
8 STATE OF CALIFORNIA

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10 D.A. No.1056770

11	THE PEOPLE OF THE STATE OF CALIFORNIA	)	No.1056770
		)	
12	Plaintiff,	)	Amended
		)	MOTION TO CONDUCT
13		)	VENUE SURVEY;
	vs.	)	POINTS AND
14		)	AUTHORITIES IN
		)	SUPPORT OF VENUE
15	SCOTT LEE PETERSON,	)	SURVEY
		)	
16	Defendant.	)	Hrg: 12-12-03
		)	Time: 8:30 a.m.
17		)	Dept: 2

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19 Comes now the People of the State of California to submit  
20 the following MOTION TO CONDUCT A VENUE SURVEY:

21 **FACTS**

22 It is anticipated that the defense will be filing a Motion  
23 for a Change of Venue on the date set for this hearing. The  
24 People will then have eighteen (18) days to respond, which  
25 includes the Christmas holidays. During this time period the  
26 Stanislaus County Superior Court will not be summoning sufficient  
27 jurors for the People to conduct in-person surveys as has been  
28 previously requested. The People therefore withdraw the request

1 to provide surveys to current "potential" jurors and alter said  
2 request to have access to the juror list for the 2003 calender  
3 year.

4 The People still intend to conduct a survey, but to  
5 eliminate any of the court's or the defense's concerns over  
6 "going into the jury room" the People wish to survey jurors who  
7 have already been excused from service and will not be called  
8 back until at least 2005. If the court grants access to the list  
9 for the sole purpose of conducting this survey it will mean that  
10 the participants are "jury eligible" and speed up the survey  
11 process, and reduce costs.

12 The Superior Court has previously approved this procedure  
13 and has provide the People with the jury lists to conduct phone  
14 surveys in the past.

#### 15 ARGUMENT

16 The People have been advised by the expert conducting the  
17 survey that having a pre-qualified list will speed up the  
18 process, cost less money and help complete the task because of  
19 the time factor. The People contend that the survey is  
20 absolutely needed for the court to make a reasoned decision on  
21 the question of venue. This survey is designed to measure several  
22 aspects of potential juror 'mental content' relevant to whether  
23 the publicity in this case has been so extensive, inflammatory  
24 and prejudicial that there is a reasonable likelihood that,  
25 absent a change of venue, the defendant would not be able to  
26 receive a fair trial.

27 The People, as well as the defense, are entitled to conduct  
28

1 a public opinion survey in preparation for a hearing on a change  
2 of venue motion. (Maine v. Superior Court, (1968) 68 Cal. 2d 375,  
3 383; California Criminal Law, Procedure and Practice, Fifth Ed.  
4 Section 16.12 and 16.19.)

5 It is imperative in such a survey that the parties determine  
6 if prospective jurors are open to altering their opinions when  
7 presented with a series of new facts, as opposed to refusing to  
8 do so because of pre-trial publicity. It is not necessary that  
9 jurors be ignorant of prejudicial publicity, or that they have  
10 not formed an opinion concerning defendant's culpability. It is  
11 only necessary that they be willing to set aside all impressions  
12 and base their verdict only on the evidence presented in court.  
13 (People vs. Harris, (1981) 28 Cal. 3d 935, 949.)

#### 14 Procedure

15 The procedure that the People suggest is authorized by Code  
16 of Civil Procedure §237(a)(1) which states that:

17 "The names of qualified jurors drawn from the qualified  
18 juror list for the superior court shall be made available to the  
19 public upon request unless the court determines that a compelling  
20 interest, as defined in subdivision (b), requires that this  
21 information should be kept confidential or its use limited in  
22 whole or in part."

23 Subdivision (b) of CCP §237 relates to criminal jurors that  
24 have reached a verdict and have had their names sealed under  
25 §237(a)(2). The People are not seeking the sealed information and  
26 therefore the provisions of §237(b) do not apply. The People are  
27 only asking for the "qualified juror list" that is available to  
28 the public; the People also ask this court to issue an order  
allowing the People to obtain the corresponding lists of

1 Sacramento and Los Angeles counties.

2 **Conclusion**

3 The People request that this court grant an Order to allow  
4 the Jury Commissioner's Office to provide the People the list of  
5 qualified jurors excused in 2003 (not from sealed cases), and to  
6 grant access to the two other counties set forth above for the  
7 sole purpose of conducting a telephone survey.

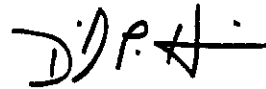
8 For all of the above-cited reasons, the People request the  
9 court to grant such an Order.

10  
11 Dated: December 9, 2003

12 Respectfully submitted,

13  
14 JAMES C. BRAZELTON

15 District Attorney

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17  
18 By:

19 David P. Harris  
20 Deputy District Attorney  
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ATTN: Mark Geragos  
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\*\*\*\*\*

SENDER'S NAME: D. Hill

OFFICE PHONE NO: (209) 525-5550

DEPARTMENT NAME: DA

COMMENTS: People v. Scott Lee Peterson, No. 1056770

SENT BY: DLH

DATED: 12/9/03 TIME: 9:30 a.m.

AFFIDAVIT OF SERVICE BY FAX

STATE OF CALIFORNIA )  
( ss.  
COUNTY OF STANISLAUS )

I, the undersigned, say:

I was at the time of service of the attached AMENDED MOTION TO CONDUCT VENUE SURVEY; POINTS AND AUTHORITIES IN SUPPORT OF VENUE SURVEY over the age of eighteen years. I served by fax a copy of the above-entitled document(s) on the 9<sup>th</sup> day of December, 2003, delivering a copy thereof to the office(s) of:

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

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

Executed this 9<sup>th</sup> day of December, 2003, at Modesto, California.

D. Hill

dmh