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**FILED**  
SUPERIOR COURT of CALIFORNIA  
COUNTY OF SANTA BARBARA

JAN 06 2004

GARY M. BLAIR, EXEC. OFFICER

By M. Hanson Deputy Clerk

**M. HANSON**

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **FOR THE COUNTY OF SANTA BARBARA**  
9 **SANTA MARIA DIVISION**

11 THE PEOPLE OF THE STATE OF CALIFORNIA,  
12 Plaintiff,  
13 v.  
14 MICHAEL JOE JACKSON,  
15 Defendant.

No. 1133603

PLAINTIFF'S REQUEST FOR  
PROTECTIVE ORDER  
BINDING BOTH PARTIES  
REGARDING PUBLIC  
STATEMENTS CONCERNING  
THIS CASE

DATE: January 16, 2004  
TIME: 8:30 a.m.  
DEPT: SM 2 (Melville)

18 **A. Introduction:**

19 The People respectfully seek a protective order binding upon the defendant, the  
20 attorneys for both parties, the investigators, assistants and others working with and on behalf of  
21 those attorneys in furthering their responsibilities for their respective clients, and all persons  
22 under subpoena or who have been informed they may be called as a witness in this matter,  
23 forbidding public comment by any of them concerning this case and its further progress.

24 In any other year, it could safely be said that the public attention being paid to this  
25 case is unique. But this is 2004, and there are two prosecutions pending in California that, for  
26 different reasons, are each the object of unrelenting comment and speculation in the tabloid  
27 press, "tabloid television" and even the regular purveyors of news: the Scott Peterson matter,  
28 because of its brutality, and the Michael Jackson matter, because of the celebrity of the

1 defendant and the nature of his alleged crime.

2 B. Parallels Between This Case And The Peterson Case:

3 The matter of *The People v. Scott Lee Peterson* pends in the Stanislaus County  
4 Superior Court, No. 1056770. It is a homicide prosecution of an individual who was unknown  
5 to the public prior to the reported disappearance of his pregnant wife and the later discovery of  
6 her body and that of her unborn child. The matter before this court alleges acts of child  
7 molestation by a celebrity among celebrities.

8 In terms of the attention both local and national media have paid to each of them,  
9 the two matters are strikingly similar.<sup>1</sup> The threat that media attention poses to the right of the  
10 People and the accused to a fair trial is as great in each case.

11 In the *Peterson* matter, the Stanislaus Superior Court requested written and oral  
12 argument from counsel for the parties and received and considered the submissions of counsel  
13 for the media and other concerned individuals. On June 12, 2003, by minute order, the court  
14 announced its decision and issued a protective order, binding on the attorneys for the parties,  
15 any other attorney working in the offices of those attorneys, their agents, staff, and experts; any  
16 judicial officer or court employee; all law enforcement employee of any agency involved in the  
17 case, and all persons subpoenaed or expected to testify in the matter.<sup>2</sup>

18 Judge Girolami summarized the facts he found to be pertinent to the issues whether  
19 a protective order was necessary and, if so, what the appropriate reach of such an order should  
20 be. The People append a copy of the Stanislaus Superior Court's published "Protective  
21 Order/Decision" dated June 12, 2003 as Exhibit "A."

22 Much of what the Stanislaus Superior Court found to be true in the *Peterson* matter  
23 is equally true in the above-captioned case:

24  
25  
26 <sup>1</sup> The cases are similar in another respect: lead counsel for the defense in each of them is the same.

27 <sup>2</sup> The documents filed with the Stanislaus Superior Court in Case No. 1056770 and not under seal may  
28 be accessed on the Internet at <http://www.stanislaussheriff.com>, under "Court Docs" on that website's  
"Site Road Map."

1 -- "[T]he amount and nature of the pre-trial publicity has been massive. . . .  
2 Besides extensive local television and radio coverage, the national television media has  
3 embraced this case with a passion providing frequent commentaries from notables like Larry  
4 King, Geraldo Rivera,<sup>3</sup> and Katie Couric.

5 -- "In addition, there have been a number of national programs where professionals  
6 involved in the criminal justice system have opined their views on the evidence and possible  
7 trial strategy. Even Defense Counsel was a regular commentator prior to the Defendant's arrest  
8 and his being retained on the case."

9 The Stanislaus Superior Court noted that "Not only the families of both the  
10 Defendant and the Decedent but even the Defendant, prior to his arrest, was involved in a  
11 lengthy nationally televised interview with Diane Sawyer." In the case at bench, Defendant  
12 Jackson was interviewed following his arrest by Ed Bradley for nearly half an hour on the CBS  
13 television program "60 Minutes" on December 28, 2003.<sup>4</sup> Defendant's brother Jermaine  
14 Jackson and Mark Geragos, his lawyer, were interviewed on CNN's "Larry King Live" show  
15 on December 18th. Jermaine and his parents were recently interviewed together on another  
16 national television "news" program. And as noted, Attorney Geragos was interviewed by  
17 Geraldo Rivera on his show, concerning this case, just two days ago on January 4th.

18 Attorney Geragos has not been shy about offering his own opinion about the  
19 supposed "financial motive" of the boy identified as the victim in this case and the boy's family  
20 for reporting their concerns to the authorities. In his interview with Larry King, Mr. Geragos  
21 characterized their report as a "shakedown," "no doubt about it" and said he had personally  
22 witnessed "this whole scam in action." He assured the television audience that his client  
23 "would never, ever, want to see anybody hurt a child, and he never has." "He's unequivocally,

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25 <sup>3</sup> The Fox News program "At Large With Geraldo Rivera" for Saturday, January 3, 2004 was a two-  
26 hour "special" which devoted an hour each to the cases of Michael Jackson and Kobe Bryant. The next  
27 evening, Mr. Rivera interviewed Attorney Mark Geragos by telephone concerning the *Jackson* case.

28 <sup>4</sup> A transcript of defendant's interview on "60 Minutes," obtained from "CBSNews.com" on the  
Internet, is attached as Exhibit "B."



1 unequivocally not guilty! He didn't do this. He's factually innocent."<sup>5</sup> Mr. Geragos repeated  
2 his "greed-motivated shakedown" accusation in his telephonic interview with Geraldo Rivera  
3 on January 4, 2004.

4 At the outset of his interview with Larry King on December 27, 2003, Mr. King  
5 observed, "Mr. Geragos, a frequent guest on this program, had to stop being a guest when a gag  
6 order was issued in the Scott Peterson case. And so you can not discuss that case at all, right?"  
7 Mr. Geragos replied, "Right; isn't that the greatest? There's nothing you can ask me that I can  
8 answer." (CNN.com Transcr., p. 1.)

9 For reasons that ought to be self-evident, Mr. Geragos should be similarly enjoined  
10 in this case.

11 C. A Protective Order Will Protect The People's Right To A Fair Trial:

12 The People, like the defendant, are entitled to an impartial jury in the trial of this  
13 case.

14 "[A] person accused of crime enjoys the fundamental right of a fair  
15 trial under the Sixth and Fourteenth Amendments. But strangely, the  
16 right of the People to a fair trial, as a correlative to that enjoyed by  
17 the accused, does not appear to be stated in constitutional terms.  
18 Nevertheless, it seems implicit in any concept of due process that  
19 society is entitled to a fair trial for redress of wrongs against it and  
20 that the victim of a criminal wrong is certainly entitled to the same  
right." (*Sun Co. of San Bernardino v. Superior Court* (1973) 29  
Cal.App.3d 815, 822.)

21 Indeed, a trial cannot be both "fair" to one party and "unfair" to the other. And the  
22 concept of an "impartial" jury necessarily comprehends a lack of partiality to either side in the  
23 lawsuit.

24 The People believe, and respectfully submit, that an order requiring the defendant,  
25 the lawyers for both parties, the associates and employees of those lawyers, relevant law  
26

27 <sup>5</sup> A transcript of Attorney Geragos' interview on "Larry King Live," obtained from "CNN.com" on the  
28 Internet, is attached as Exhibit "C." See CNN.com Transcr., p. 13; vocalized emphasis indicated by  
underline.

1 enforcement personnel, court officers and attachés, and likely witnesses to abstain from  
2 discussing this case with any representative of the media.

3 D. Defense Counsel's Argument, Anticipated:

4 Defense counsel opposed the imposition of a protective order on him in the  
5 *Peterson* matter "on practical grounds." He argued:

6 As will be discussed below, this Court's authority to fashion a  
7 protective order is inherently limited to the participants and people in  
8 their immediate sphere of control. As this Court is undoubtedly  
9 aware, this matter has received unprecedented media attention. As  
10 such, even if the participants are gagged it will do little to stop the  
11 tsunami of coverage in this matter. In fact, it is the position of the  
12 defense that a so-called "gag" order would result in the law of  
13 unintended consequences. Namely, all that a "gag" order would do  
14 is increase the brea[d]th and depth of misinformation and scurrilous  
15 accusations that swirl around this case, with no ability to mitigate the  
16 damage.

15 (See "Defendant's Memorandum In Response to Court's Inquiry Re "Gag" Or Protective  
16 Order," filed June 3, 2004 in the Stanislaus Superior Court, p. 3. A copy of that memorandum  
17 is attached as Exhibit "D.")

18 It is certainly true that there will be ongoing coverage of the instant case, just as  
19 there is of the *Peterson* matter. But experience has shown that when the "talking heads" on  
20 what could be called "tabloid television" do not have Mr. Geragos or other lawyers and  
21 principals to interview, they interview one another and indulge in speculation. That gets old in  
22 a hurry. The purveyors of recycled speculation lose their audience without fresh "information"  
23 to fuel the commentary. The enthusiastic participation of a well-known defendant's well-  
24 known lawyer in interviews on television is calculated to do just that.

25 Defendant's counsel is well aware of the fact that public opinion is molded by what  
26 the public sees and hears on television.<sup>6</sup>

27 <sup>6</sup> "KING: How much support are you getting? GERAGOS: The support is unbelievable. I have had  
28 probably on a daily basis 500 to a thousand e-mails and letters come into the office. KING: From

1 To that end, defense counsel obviously believes it furthers his client's interests to  
2 share with a wide television audience (from which some if not many of the jurors in this case  
3 likely will be selected) his own opinion of the merits of the prosecution's evidence, his view  
4 that the victim's family was pursuing a "scam" to "shake down" Mr. Jackson,<sup>7</sup> the motives  
5 both of the complaining parties and the prosecutor who filed the case (including his belief that  
6 the prosecution is "playing the race card" in this case<sup>8</sup>), and his own assurance that his client is  
7 "unequivocally not guilty" and "factually innocent."

8 Comments like that implicate the limits of rule 5-120 of the Rules of Professional  
9 Responsibility,<sup>9</sup> if counsel "knows or reasonably should know that [they] will have a

10 everywhere? GERAGOS: I've had to assign – from everywhere, all over the world. From every  
11 color, race, creed. The support is unbelievable. People have almost intuitively understood what this  
12 case is about. People understand – I think, the get it. **The polls as you have seen, I think you have**  
13 **mentioned before are swinging dramatically in Michael's favor as people learn more about this**  
**case. They can see what's going on."** (CNN.com – Transcripts, p. 7; emphasis added.)

14 <sup>7</sup> See *Rothman v. Jackson* (1996) 49 Cal.App.4th 1134, 1149, n. 5: "[W]e find unpersuasive a  
15 contention made by Fields that rule 5-120(C) of the Rules of Professional Conduct of the State Bar  
16 supports the existence of a privilege for an attorney to make the public statements that were made in  
17 this case. That rule permits a State Bar member to 'make a statement that a reasonable member would  
18 believe is required to protect a client from the substantial undue prejudicial effect of recent publicity  
19 not initiated by the member or the member's client.' The effect of this rule is to ensure that statements  
20 made within its confines will not subject an attorney to charges of professional misconduct. However,  
21 the rule does not provide, or even imply, that defamatory statements made by attorneys in extrajudicial  
22 statements in defense of their clients should be privileged and thus not subject to redress in a court of  
23 law."

24 <sup>8</sup> CNN.com – Transcript, p. 13.

25 <sup>9</sup> Rule 5-120 provides:

26 "(A) A member who is participating or has participated in the investigation or litigation of a matter  
27 shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by  
28 means of public communication if the member knows or reasonably should know that it will have a  
substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

"(B) Notwithstanding paragraph (A), a member may state:

"(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the  
persons involved;

"(2) the information contained in a public record;

"(3) that an investigation of the matter is in progress;



1 substantial likelihood of materially prejudicing an adjudicative proceeding in the matter” (*id.*,  
2 subd. (A)) and if they are not found to constitute merely “such information as is necessary to  
3 mitigate . . . recent adverse publicity” (*id.*, subd. (C)).

4 In that connection, it is important to keep in mind that by its terms rule 5-120(C)  
5 allows only a “statement that a reasonable member would believe is required to protect a client  
6 from the substantial undue prejudicial effect of recent publicity **not initiated by the member**  
7 **or the member’s client.**” Public statements calculated to offset the negative effect of  
8 defendant’s own ill-advised comments, by, e.g., reminding the public of the earlier slanders  
9 offered by the defense concerning the opposition, would not seem to be authorized by rule 5-  
10 120(C).

11 In the Discussion that follows rule 5-120, the framers of the rule note that whether  
12 an extrajudicial statement will be found to violate the rule will depend on many factors, among  
13 them, “whether the extrajudicial statement presents information clearly inadmissible as  
14 evidence in the matter for the purpose of proving or disproving a material fact in issue” and  
15 “whether the extrajudicial statement violates a lawful ‘gag’ order, or protective order . . . .”

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18 “(4) the scheduling or result of any step in litigation;

19 “(5) a request for assistance in obtaining evidence and information necessary thereto;

20 “(6) a warning of danger concerning the behavior of a person involved, when there is reason to  
21 believe that there exists the likelihood of substantial harm to an individual or the public interest; and

22 “(7) in a criminal case, in addition to subparagraphs (1) through (6):

23 “(a) the identity, residence, occupation, and family status of the accused;

24 “(b) if the accused has not been apprehended, information necessary to aid in apprehension of  
25 that person;

26 “(c) the fact, time, and place of arrest; and

27 “(d) the identity of investigating and arresting officers or agencies and the length of the  
28 investigation.

“(C) Notwithstanding paragraph (A), a member may make a statement that a reasonable member  
would believe is required to protect a client from the substantial undue prejudicial effect of recent  
publicity not initiated by the member or the member’s client. A statement made pursuant to this  
paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.”

1 Much more to the point here, historically the threat of disciplinary proceedings  
2 down the road for an alleged violation of rule 5-120 has not been shown to deter potentially  
3 prejudicial comments by counsel to the press in the fervor of pretrial maneuverings. As  
4 evidenced by Attorney Geragos's wry comment to Larry King, nothing is quite as effective as a  
5 protective order.

6 E. Protective Orders Are Constitutional:

7 In *Gentile v. State Bar of Nevada* (1991) 501 U.S. 1030, 111 S.Ct. 2170, 115  
8 L.Ed.2d 888, the United States Supreme Court, in a 5-to-4 decision upheld a rule of the Nevada  
9 Supreme Court restricting a lawyer's out-of-court statements to the press which pose a  
10 "substantial likelihood of materially prejudicing" a judicial proceeding.<sup>10</sup>

11 In upholding the right of a state to regulate a defense lawyer's or prosecutor's  
12 comments to the press on behalf of his client in a criminal cause, Chief Justice Rehnquist,  
13 speaking for the majority, observed:

14 "We think that the quoted statements from our opinions in *In re*  
15 *Sawyer*, 360 U.S. 622, 79 S.Ct. 1376, 3 L.Ed.2d 1473 (1959), and  
16 *Sheppard v. Maxwell*, *supra*, rather plainly indicate that the speech  
17 of lawyers representing clients in pending cases may be regulated  
18 under a less demanding standard than that established for regulation  
19 of the press in *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 96 S.Ct.  
20 2791, 49 L.Ed.2d 683 (1976), and the cases which preceded it.  
21 Lawyers representing clients in pending cases are key participants in  
22 the criminal justice system, and the State may demand some  
23 adherence to the precepts of that system in regulating their speed as  
24 well as their conduct. As noted by Justice Brennan in his concurring  
25 opinion in *Nebraska Press*, which was joined by Justices Stewart and  
26 Marshall, "[a]s officers of the court, court personnel and attorneys  
27 have a fiduciary responsibility not to engage in public debate that  
28 will redound to the detriment of the accused or that will obstruct the  
fair administration of justice." *Id.*, at 601, n. 27, 96 S.Ct., at 2823, n.

<sup>10</sup> The majority reversed the imposition of discipline on Lawyer Gentile because, it found, an exception to its application contained in the same rule denied a lawyer fair notice of what he could and could not say and rendered the rule as a whole imprecise and misleading. (501 U.S., at 1048-1049.)



1 27. Because lawyers have special access to information through  
2 discovery and client communications, their extrajudicial statements  
3 pose a threat to the fairness of a pending proceeding since lawyers'  
4 statements are likely to be received as especially authoritative.  
5 [Citations.] We agree with the majority of the States that the  
6 "substantial likelihood of material prejudice" standard constitutes a  
7 constitutionally permissible balance between the First Amendment  
8 rights of attorneys in pending cases and the State's interest in fair  
9 trials."

10 (*Gentile v. State Bar of Nevada*, *supra*, 501 U.S. at pp. 1074-1075.)

11 An order based on a "reasonable likelihood" of prejudicial news which would make  
12 difficult the empaneling of an impartial jury and tend to prevent a fair trial suffices for the  
13 imposition of a gag order. Statements to the press may be barred if the making of such  
14 statements presents "a 'reasonable likelihood' of prejudicial news which would make difficult  
15 the empaneling of an impartial jury and tend to prevent a fair trial." (*Younger v. Smith* (1973)  
16 30 Cal.App.3d 138, 163, approvingly quoting language of the test endorsed by the Tenth  
17 Circuit in *United States v. Tijerina* (10th Cir. 1969) 412 F.2d 661, 666.)

18 F. Proposed Order:

19 The People respectfully submit, for the court's consideration, a proposed protective  
20 order modeled closely on the order issued by the Stanislaus County Superior Court in the  
21 *Peterson* matter pending in that court.

22 DATED: January 6, 2004

23 Respectfully submitted,

24 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY  
25 County of Santa Barbara

26 By:   
27 Gerald McC. Franklin, Senior Deputy

28 Attorneys for Plaintiff

## PROPOSED ORDER

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 or with the offices of either of them, nor their agents, staff, or experts, nor any judicial officer or court employee, nor any law enforcement employee of any agency involved in this case, nor any persons subpoenaed or expected to testify in this matter, shall do any of the following:

1. Release or authorize the release for public dissemination of any purported extrajudicial statement of either the defendant or witnesses relating to this case;
2. Release or authorize the release of any documents, exhibits, photographs, or any evidence, not otherwise under seal, the admissibility of which may have to be determined by the Court;
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;
5. Make any statement outside of court as to the content, nature, substance, or effect of any statements or testimony that have been given or is expected to be given in any proceeding in or relating to this matter;
6. Issue any statement as to the identity of any prospective witness, or the witness's probable testimony, or the effect thereof;
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.

Any violation of this order will result in a contempt action for any offender within the jurisdiction of this Court.

1 This order does not include any of the following:

2 1. Factual statements of the accused person's name, age, residence, occupation and  
3 family status.

4 2. The circumstances of the arrest, namely, the time and place of the arrest, the  
5 identity of the arresting and investigating officers and agencies, and the length of the  
6 investigation.

7 3. The nature, substance, and text of the charge, including a brief description of the  
8 offenses charged.

9 4. Quotations from, or any reference without comment to, public records of the  
10 Court in the case, or to other public records or communications heretofore disseminated to the  
11 public.

12 5. The scheduling and result of any stage of the judicial proceedings held in open  
13 court in an open or public session.

14 6. Any information as to any person not in custody who is sought as a possible  
15 suspect or witness, nor any statement aimed at warning the public of any possible danger as to  
16 such person not in custody.

17 7. A request for assistance in obtaining of evidence or the names of possible  
18 witnesses.

19 8. Any witness may discuss any matter with any Prosecution or Defense Attorney  
20 in this action, or any agent thereof; and if represented may discuss any matter with his/her own  
21 attorney.

22 A copy of this order shall be provided to any prospective witness that a party  
23 intends to call for any proceeding in this action. If held to answer at a preliminary hearing or if  
24 indicted, the Court will consider at the arraignment whether this order should be modified or  
25 terminated pending jury selection. Any objections or suggested modifications to the  
26 continuation of this order should be filed in writing five days prior to the arraignment.

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1 Dated: January \_\_\_\_\_, 2004

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4 Rodney S. Melville

5 Judge of the Santa Barbara Superior Court  
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EXHIBIT "A"

**SUPERIOR COURT, STATE OF CALIFORNIA, COUNTY OF STANISLAUS**

**THE PEOPLE OF THE STATE OF CALIFORNIA VS. SCOTT LEE PETERSON**

**NATURE OF HEARING: PROTECTIVE ORDER/DECISION**

**NO: 1056770**

**JUDGE: A. GIROLAMI**

**Bailiff: Larry Sweatman**

**Date: June 12, 2003**

**Clerk: J. Carvalho**

**Reporter: none**

**Modesto, California**

**Appearances: none**

On May 27, 2003 the Court informed the parties that it was concerned about the tremendous amount of pre-trial publicity in this case and the fact that there had been dissemination of information currently under seal. The Court noted that the Rules of Professional Conduct 5-120 were not specific enough and that they only applied to the attorneys and not to other individuals. The Court indicated it would have a hearing on the subject of a Protective Order on June 6, 2003 and suggested written comments from the parties.

For the hearing of June 6, the Court had received the following filings: Opposition to a Protective "Gag" Order from the Media represented by Charity Kenyon, Esq.; Opposition of Potential Witness [REDACTED] to Proposed Gag Order filed by Gloria Allred, Esq.; Points and Authorities In Support of Limited Protective Order from the Prosecution; and Memorandum in Response to Courts Inquiry regarding "Gag" or Protective Order from the Defense. All were filed on June 4, 2003.

On June 6, 2003 the Court heard arguments of counsel and also received a proposed order from the Prosecution. Having considered the oral comments of counsel and the Points and Authorities submitted, the Court hereby finds as follows:

That the amount and nature of the pre-trial publicity has been massive. The local print media rarely does not have a daily front page article on this matter. Besides extensive local television and radio coverage, the national television media has embraced this case with a passion providing frequent commentaries from notables like Larry King, Geraldo Rivera, and Katie Couric. In addition, there have been a number of national programs where professionals involved in the criminal justice system have opined their views on the evidence and possible trial strategy. Even Defense Counsel was a regular commentator prior to the Defendant's arrest and his being retained on the case. Also, Second Counsel gave a lengthy televised interview prior to the arrest. During the investigation, the Modesto Police Department made a number of press releases covering various aspects of the investigation. Not only the families of both the Defendant and the Decedent but even the Defendant, prior to his arrest, was involved in a lengthy nationally televised interview with Diane Sawyer. The families also recently gained national attention over a dispute regarding the possession of personal belongings of the Decedent.



Following the filing of the Complaint, the Clerk's office of the Superior Court was inundated with calls and visits from the Media requesting copies of the complaint and all other documents in the file. This problem, which impacted staff resources, was significantly reduced with a creation of a website specifically for the Media where representatives can easily obtain copies of any unsealed paper filed in this action. From April 30, 2003 to the present date, there have been over 12,000 hits. In order to foster accuracy in reporting, the Court allowed cameras in the courtroom pursuant to Rules of Court 980.

The nature of the publicity is especially troubling as it often involves leaks of information that could be considered favorable for one side or the other. For example, even though the autopsy report had been sealed along with a specific protective order, information was publicized regarding facts contained only in that document. Periodically, there have been reports of defense theories of a possible serial killer or a satanic cult being responsible in this case. On the prosecution side, there have been comments by the Attorney General regarding the weight of the evidence and by the District Attorney comparing his capital case record against that of the original defense attorney. When the Defense fielded a comment regarding a brown van being possibly involved in the killing, the Prosecution subsequently made a public announcement that the investigation had cleared that van of any involvement in the killings.

Pre-complaint, there were a number of comments in the media that certain specific items had been found in searches of Defendant's property even though the search warrants had been sealed by Court order. Also, pre-complaint, there were reports regarding the amount of cooperation or lack of cooperation on the part of the Defendant during the investigation. Post filing, there have been reports of information gleaned from an examination of the Defendant's computer.

Even though the main purpose of a Protective Order is to allow the Defendant to have a fair trial, and at this time the Defense is opposing such an order, the Court is mindful of the directions from Sheppard v. Maxwell (1966) 384 US 333, 359:

"[t]he Court should have made some effort to control the release of leads, information, and gossip to the press by the police officers, witnesses, and counsel for both sides. Much of the information thus disclosed was inaccurate, leading to groundless rumors and confusion."

The Court has reviewed the sealed documents and the wiretap evidence and much contained therein would likely be determined to be irrelevant and/or inadmissible. The Sheppard case gave further direction at page 360:

"[i]t is obvious that the judge should have further sought to alleviate this problem by imposing control over the statements made to the news media by counsel, witnesses and especially the Coroner and police officers. The prosecution repeatedly made evidence available to the news media, which was never offered in the trial. Much of the "evidence" disseminated in this fashion was clearly inadmissible. The exclusion of such evidence in court is rendered meaningless when news media make it available to the public."

The Court has considered two different standards applicable to imposing a Protective Order. Specifically, there is the "clear and present danger of serious imminent threat to a protected competing interest", Hurvitz v. Hoefflin (2000) 84 Cal App. 4th 1232, or the "reasonable likelihood of prejudicial news which would make difficult the impaneling of an impartial jury and tend to prevent a fair trial" standard, Younger v. Smith (1973) 30 Cal App. 3rd 138. Even though Hurvitz is more recent and mentions the federal cases, it ignores the Younger case which the Court finds is more applicable in a criminal case.

If this case were to proceed to trial without a Protective Order in place until shortly before jury selection, all the statements by the witnesses, all of the rumors and gossip would be rehashed shortly before trial thereby making it extremely difficult to select a fair and impartial jury. Even though the Court is applying the Younger standard, in the unique facts of this case, there is a clear and present danger because of the modern media's capability easily to store and recall bits of information in order to relate them at any time including during jury selection. Further compounded in this case is the fact that the publicity is nationwide and cannot be automatically cured by a change of venue or extensive voir dire. If witnesses are allowed to discuss publicly their expected testimony or if trial counsel or their staff are allowed to comment on strategy or on the weight of the evidence, even if jurors can be found that are willing to be fair and impartial, it may never be known if a juror were to rely consciously or subconsciously on the out-of-court information.

Although the Court is extremely concerned with the due process and fair trial rights in this case, it is also keenly aware of the public's right of access to the proceedings herein and the right of free speech of the participants. However, after balancing these rights, and in order to protect against the disruption of the proper administration of justice, the Court finds that good cause exists for the issuance of a pre-trial Protective Order.

The Court has considered less restrictive alternatives. First, a change of venue and extensive voir dire are not especially helpful in this case because of the exceptional amount of publicity which has been broadcast throughout this state and country. Secondly, the Court has previously reminded the parties of the Rules of Professional Conduct, but the problem has persisted.

Being mindful of the necessity of narrowly tailoring such an order, the Court hereby orders:

ORDER

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, nor their agent's, staff, or experts, nor any judicial officer or court employee, nor any law enforcement employee of any agency involved in this case, nor any persons subpoenaed or expected to testify in this matter, shall do any of the following:

1. Release or authorize the release for public dissemination of any purported extrajudicial statement of either the defendant or witnesses relating to this case;

2. Release or authorize the release of any documents, exhibits, photographs, or any evidence, the admissibility of which may have to be determined by the Court;

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;

5. Make any statement outside of court as to the nature, substance, or effect of any statements or testimony that have been given;

6. Issue any statement as to the identity of any prospective witness, or the witness's probable testimony, or the effect thereof;

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.

8. Make any statement as to the content, nature, substance, or effect of any testimony which may be given in any proceeding related to this matter.




Any violation of this order will result in a contempt action for any offender within the jurisdiction of this Court.

This order does not include any of the following:

1. Factual statements of the accused persons name, age, residence, occupation and family status.
2. The circumstances of the arrest, namely, the time and place of the arrest, the identity of the arresting and investigating officers and agencies, and the length of the investigation.
3. The nature, substance, and text of the charge, including a brief description of the offenses charged.
4. Quotations from, or any reference without comment to, public records of the Court in the case, or to other public records or communications heretofore disseminated to the public.
5. The scheduling and result of any stage of the prejudicial proceedings held in open court in an open or public session.
6. A request for assistance in obtaining evidence.
7. Any information as to any person not in custody who is sought as a possible suspect or witness, nor any statement aimed at warning the public of any possible danger as to such person not in custody.
8. A request for assistance in obtaining of evidence or the names of possible witnesses.
9. Any witness may discuss any matter with any Prosecution or Defense Attorney in this action, or any agent thereof; and if represented may discuss any matter with his/her own attorney.

A copy of this order shall be provided to any prospective witness which a party intends to call for any proceeding in this action. If held to answer at the preliminary hearing, the Court will consider at the arraignment whether this order should be modified or terminated pending jury selection. Any objections or suggested modifications to the continuation of this order should be filed in writing five days prior to the arraignment.

Dated: 6/12/03

  
A. Girolami  
Judge of Stanislaus Superior Court



SUPERIOR COURT, STATE OF CALIFORNIA, COUNTY OF STANISLAUS

THE PEOPLE OF THE STATE OF CALIFORNIA VS. SCOTT LEE PETERSON

NATURE OF HEARING: AMENDED PROTECTIVE ORDER/DECISION

NO: 1056770

JUDGE: A. GIROLAMI  
Clerk: J. Carvalho

Bailiff: Larry Sweatman  
Reporter: none

Date: June 13, 2003  
Modesto, California

Appearances: none

Page 4, line 3 of the Order, "agents" is to be substituted for "agent's".

Page 5, item 5, "judicial" is to be substituted for "prejudicial".

Dated: 6/13/03

  
A. Girolami  
Judge of Stanislaus Superior Court

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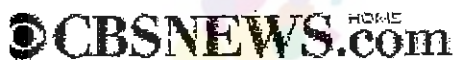
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**EXHIBIT "B"**





## Jackson Interview Transcript

IEW YORK, Dec. 28, 2003

*For most of his life, Michael Jackson has been in the spotlight, most recently because of what has been described as bizarre behavior — bizarre behavior that has now led him to be charged with sexually molesting a 13-year-old boy. If convicted, he could spend 20 years in prison.*

*Now out on bail and awaiting trial, tonight Michael Jackson speaks out for the first time about his arrest, his accuser and the charges that have, for the moment, made his life a shambles.*

*We sat down with Michael Jackson on Christmas Day at a hotel in Los Angeles — one of several cities where he has been in seclusion since authorities in Santa Barbara officially charged him with seven counts of sexual molestation and two counts of using an "intoxicating agent" — reported to be alcohol — to seduce the boy.*

**ED BRADLEY:** What is your response to the allegations that were brought by the district attorney in Santa Barbara, that you molested this boy?

**MICHAEL JACKSON:** Totally false. Before I would hurt a child, I would slit my wrists. I would never hurt a child. It's totally false. I was outraged. I could never do something like that.

**ED BRADLEY:** This is a kid you knew?

**MICHAEL JACKSON:** Yes.

**ED BRADLEY:** How would you characterize your relationship with this boy?

**MICHAEL JACKSON:** I've helped many, many, many children, thousands of children, cancer kids, leukemia kids. This is one of many.

*Michael Jackson says his accuser is among thousands of children he's invited to his 2,600-acre Neverland Ranch in California to play in his amusement park, visit his zoo, watch movies, play video games, and feast on their favorite foods.*

**ED BRADLEY:** But tell me why you developed Neverland.

**MICHAEL JACKSON:** Because I wanted to have a place that I could create everything that I that I never had as a child. So, you see rides. You see animals. There's a movie theater. I was always on tour, traveling. You know? And — I never got a chance to do those things. So, I compensated for the loss by — I have a good — I mean, I can't go into a park. I can't go to Disneyland, as myself. I can't go out and walk down the street. There's crowds, and bumper to bumper cars. And so, I create my world behind my gates. Everything that I love is behind those gates. We have elephants, and giraffes, and crocodiles, and every kind of tigers and lions. And — and we have bus loads of kids, who don't get to see those things. They come up sick children, and enjoy it. They enjoy it in a pure, loving, fun way. It's people with the dirty mind that think like that. I don't think that way. That's not me.

**ED BRADLEY:** And — and do you think people look at you and think that way today?

**MICHAEL JACKSON:** If they have a sick mind, yeah. And if they believe the trash they read in newspapers, yeah. And — and it's not — what — just cause — remember something. Just because it's in print doesn't mean it's the gospel. People write negatives things, cause they feel that's what sells. Good news to them, doesn't sell.

*And Jackson says his relationship with this boy he first met a year ago was positive. He says he was determined to help him with his battle against cancer.*

**ED BRADLEY:** So when he would come over what would he do? What would you do?

**MICHAEL JACKSON:** I'll tell you exactly. When I first saw him, he was total bald-headed, white as snow from the chemotherapy, very bony, looked anorexic, no eyebrows, no eyelashes. And he was so weak, I would have to carry him from the

house to the game room, or push him in a wheelchair, to try to give him a childhood, a life. Cause I felt bad. Because I never had that chance, too, as a child. You know? That the— and so, I know what it— it felt like in that way. Not being sick, but not having had a childhood. So, my heart go out to those children I feel their pain.

*Jackson says he tried to help in the healing process by taking the boy around the grounds of Neverland to Jackson's favorite places.*

**MICHAEL JACKSON:** He had never really climbed a tree. So, I had this tree that I have at Neverland. I call it, "My Giving Tree." Cause I like to write songs up there. I've written many songs up there. So, I said, "You have to climb a tree. That's part of boyhood. You just gotta do it." And — I helped him up. And once he went up — up the tree, we looked down on the branches. And it was so beautiful. It was magical. And he loved it. To give him a chance to have a life, you know? Because he was told he was going to die. They told him. They told his — his parents prepare for his funeral, that's how bad it was. And I put him on a program. I've helped many children doing this. I put him on a mental program.

*The boy — whose name and face we're not revealing — has credited Michael Jackson's friendship and support with helping him to battle his cancer. And last February in a British documentary that was filmed before the boy alleged he was sexually molested — he said that he had stayed overnight at Jackson's home many times, and had slept in his bedroom.*

**JACKSON ACCUSER:** There was one night, I asked him if I could stay in the bedroom. And he let me stay in the bedroom. And I was like, Michael, you can sleep on the bed. And he was like, no, no you sleep in the bed. And then he finally said, 'Okay, if you love me, you'll sleep on the bed.' I was like, 'Oh, man.' And so I finally slept on the bed.

*That comment — along with Michael Jackson's startling confession that he had shared his bed many times with children — spurred an investigation last February by the Los Angeles county department of children and family services, which interviewed the boy and his mother to determine whether he had been sexually molested by Michael Jackson.*

*According an agency's memo, "the child denied any form of sexual abuse," and "the investigation by the sensitive case unit concluded the allegations of neglect and sexual abuse to be unfounded." Over the next several months, relations between the boy's family and Michael Jackson deteriorated. According to sources close to the family, the boy's mother had suspicions that Jackson was serving alcohol to her 13-year-old son, who was still suffering from cancer. Eventually she took her suspicions to the district attorney and that led to a full scale investigation by his office and the Santa Barbara County Sheriff.*

**SHERRIFF JIM ANDERSON:** An arrest warrant for Mr. Jackson has been issued on multiple counts of child molestation. The bail amount of the award has been set at 3 million dollars.

**REPORTER:** If Michael Jackson's watching this right now, what's your message to him?

**DISTRICT ATTORNEY THOMAS SNEDDON:** Get over here and get checked in.

*With that announcement two weeks ago, Michael Jackson's future and his career were in serious jeopardy. He surrendered to authorities and was booked on child molestation charges of lewd and lascivious conduct with a child.*

**ED BRADLEY:** What was going through your mind when you're taken into a police station, in handcuffs, to have a mug shot taken, that you know is gonna be shown around the world?

**MICHAEL JACKSON:** They did it to try and belittle me, to try and to take away my pride. But I went through the whole system with them. And at the end, I — I wanted the public to know that I was okay, even though I was hurting.

**ED BRADLEY:** What happened when they arrested you? What did they do to you?

**MICHAEL JACKSON:** They were supposed to go in, and just check fingerprints, and do the whole thing that they do when they take somebody in. They manhandled me very roughly. My shoulder is dislocated, literally. It's hurting me very badly. I'm in pain all the time. This is, see this arm? This is as far as I can reach it. Same with this side over here.

**ED BRADLEY:** Because of what happened at the police station?

**MICHAEL JACKSON:** Yeah. Yeah. At the police station. And what they did to me — if you — if you saw what they did to my arms — it was very bad what they did. It's very swollen. I don't wanna say. You'll see. You'll see.

*We were given a photograph said to be taken after Michael Jackson was released on bail. Jackson says the swelling above his wrist is where the police handcuffed him.*

**ED BRADLEY:** How did they do it? I mean, what, physically, what did they do?

**MICHAEL JACKSON:** With the handcuffs, the way they tied 'em too tight behind my back —

**ED BRADLEY:** Behind your back?

**MICHAEL JACKSON:** Yeah. And putting it, they put it in a certain position, knowing that it's going to hurt, and affect my back. Now I can't move. I — I — it keeps me from sleeping at night. I can't sleep at night.

*And Jackson says there was more ...*

**MICHAEL JACKSON:** Then one time, I asked to use the restroom. And they said, "Sure, it's right around the corner there." Once I went in the restroom, they locked me in there for like 45 minutes. There was doo doo, feces thrown all over the walls, the floor, the ceiling. And it stunk so bad. Then one of the policemen came by the window. And he made a sarcastic remark. He said, "Smell — does it smell good enough for you in there? How do you like the smell? Is it good?" And I just simply said, "It's alright. It's okay." So, I just sat there, and waited.

**ED BRADLEY:** For 45 minutes?

**MICHAEL JACKSON:** Yeah, for 45 minutes. About 45 minutes. And then — then one cop would — come by, and say, "Oh, you'll be out in — in a second. You'll be out in a second." Then there would be another ten minutes added on, then another 15 minutes added on. They did this on purpose.

*What about Jackson's allegations? Was he mistreated? Did the police injure his arm and shoulder? Did they lock him in a bathroom for 45 minutes? To get answers to those questions, we made repeated calls to both the sheriff's office and the office of the district attorney. They declined our request for an interview and referred us to the statement on their Web site, which says about allegations of mistreatment: "That is not true." It was the sheriff's deputies who executed the search warrant of the Neverland ranch.*

**ED BRADLEY:** How did you feel when they went into Neverland, I mean, with a search warrant? I mean, what were they looking for? What did they take?

**MICHAEL JACKSON:** My room is a complete wreck. My workers told me. They said, "Michael, don't go in your room." They were crying on the phone, my employees. They said, "If you saw your room, you would cry." I have stairs that go up to my bed. And they said, "You can't even get up the stairs. The room is totally trashed." And they had 80 policemen in this room, 80 policemen in one bedroom. That's really overdoing it. They took knives, and cut open my mattresses with knives. C — just cut everything open.

**ED BRADLEY:** Did — did they take anything from Neverland?

**MICHAEL JACKSON:** A — I'm not sure what they took. They never gave me a list.

**ED BRADLEY:** But you're saying that they destroyed your property?

**MICHAEL JACKSON:** Yes, they did. And then they, what they did was they made everybody that work at the property, they locked everybody out of the house. They had the whole house to themselves to do whatever they wanted. And — they totally took advantage. They went into areas they weren't supposed to go into — like my office. They didn't have search warrants for those places. And they totally took advantage. And the room is a total, total wreck, they told me. I don't think I wanna see it. I'm not ready to see it yet.

**ED BRADLEY:** So, you haven't been back there?

**MICHAEL JACKSON:** I've been back there. But not in my bedroom. I won't live there ever again. I'll visit Neverland. It's a house now. It's not a home anymore. I'll only visit there. What time is it? Cause I'm hurting. You know what? I'm — I'm hurting. I have to go pretty soon anyway. Yeah. Okay. I don't feel good.

*This is not the first time Michael Jackson has been accused of child molestation. Ten years ago, he was accused of sexually abusing another young boy. However, after the boy refused to testify, and after Jackson paid the boy's family millions of dollars to settle a civil lawsuit, Jackson was never charged. Although the family in the current case against him has filed no lawsuit and says it does not intend to, Michael Jackson is still suspicious of their motives.*



**MICHAEL JACKSON:** Somewhere greed got in there, and somebody — I — I can't quite say. But it has to do with money. It's Michael Jackson. Look what we have here. We can get money out of this. That's exactly what happened.

**JD BRADLEY:** You had helped him with his cancer. What I don't understand is why today and I know you say it's money, but why would he turn around and say, "Michael Jackson sexually molested me," if it weren't true?

**MICHAEL JACKSON:** Because parents have power over children. They feel they have to do what their parents say. But the love of money is the root of all evil. And this is a sweet child. And to see him turn like this, this isn't him. This is not him.

**JD BRADLEY:** So, you don't think this comes from him? This —

**MICHAEL JACKSON:** No.

**JD BRADLEY:** — Comes from his parents?

**MICHAEL JACKSON:** No. This is not him. No. I know his heart.

*Michael Jackson said that even if he could, he would never settle this case as he did when similar charges were made in 1993.*

**JD BRADLEY:** So — if you were innocent, why would you pay, I mean, to keep you quiet? I mean, why not go into court, and fight for your good name? I mean —

**MICHAEL JACKSON:** I'm not allowed to talk on that —

**MARK GERAGOS:** I'm gonna stop you for a second.

**JD BRADLEY:** Sure.

*Michael Jackson's high powered attorney Mark Geragos told me that if I wanted an answer to that question I'd have to ask him.*

**MARK GERAGOS:** I mean remember what happened to him ten years ago. He was humiliated. He was — he went through where somebody — was examining him. Was photographing him. Was having him — humiliating him in the worst way in terms of poking at his private parts and photographing his private parts. And — and he was subjected to some of the most, just intrusive kinds of things that you could ever imagine. I can only try to put myself into that situation and — and say look, if money could make that situation go away, maybe that — that was the calculus then. I don't know and I don't wanna second guess it.

**JD BRADLEY:** But — but what you end up with is the public perception that this has happened not once, this has happened twice. That young boys have — have come forward to accuse him of — of sexual molestation over the last ten years. And he has made public comments about how he enjoys sharing his bed with children. Can you understand how the public might feel that, hey, maybe there's something here. There's a lot of smoke.

**MARK GERAGOS:** Well, look. There's a lot of smoke. But a lot of the people who blow the smoke are — are twisting what's happened. I understand when people say, now, there's somebody else who came forward. But I — I think, in all fairness, most people get it. Most people understand that this case is not about anything but money.

*We asked the mother of the accuser who made these latest allegations to tell us her side of the story, but she declined and would not authorize anyone else to speak on her behalf.*

**JD BRADLEY:** That British documentary last February — which you didn't like —

**MICHAEL JACKSON:** Yeah, I didn't like it.

**JD BRADLEY:** You — you said in that documentary that — that many children have slept in your bedroom.

**MICHAEL JACKSON:** Yeah.

**JD BRADLEY:** You said, and — and I'm gonna quote here, "Why can't you share your bed? A most loving thing to do is to share your bed with — with someone."

**MICHAEL JACKSON:** Yes.

**ED BRADLEY:** As — as we sit here today, do you still think that it's acceptable to share your bed with children?

**MICHAEL JACKSON:** Of course. Of course. Why not? If you're gonna be a pedophile, if you're gonna be Jack the Ripper, if you're gonna be a murderer, it's not a good idea. That I'm not. That's how we were raised. And I met — I didn't sleep in the bed with the child. Even if I did, it's okay. I slept on the floor. I give the bed to the child.

**ED BRADLEY:** But given all that you've been through —

**MICHAEL JACKSON:** Yeah?

**ED BRADLEY:** Given the allegations, given the innuendo — why would you put yourself in a position where something like this could happen again?

**MICHAEL JACKSON:** Well, I'm always more cautious. But I will never stop helping and loving people the way Jesus said to. He said, "Continue to love. Always love. Remember children. Imitate the children." Not childish, but childlike.

*That may sound naïve, but Jackson attorney Mark Geragos says they did take precautions.*

**MARK GERAGOS:** They were, at all times during that February 7 to March 10 period of time, whenever Michael was there, there was always a third party around. Always.

**ED BRADLEY:** What about the allegation that some kind of intoxicating agent, said to be wine, was given to this child to make him more pliable?

**MARK GERAGOS:** Ludicrous. I mean it's ludicrous on its face. There are in excess of 100 employees at any one time at that ranch. There is full-time security at that ranch. There are people who are there at all times, day and night, 24—7, who are specifically instructed to make sure that people don't do that. The kids are nowhere near alcohol and liquor.

**ED BRADLEY:** You're a parent. You've got three children.

**MICHAEL JACKSON:** Yes.

**ED BRADLEY:** Would you allow your children to sleep in the bed with a grown man, who was not a relative, or to sleep in the bedroom?

**MICHAEL JACKSON:** Sure, if I know that person, trust them, and love them. That's happened many times with me when I was little.

**ED BRADLEY:** Would you, as a parent, allow your children to sleep in the same bedroom with someone, who has the suspicions and allegations that have been made against you, and about you today? Would you allow that?

**MICHAEL JACKSON:** Someone —

**ED BRADLEY:** If you knew someone, who had the same —

**MICHAEL JACKSON:** I'm not —

**ED BRADLEY:** —kind of allegations —

**MICHAEL JACKSON:** Ed, I — I know exactly what you're saying.

**ED BRADLEY:** — that were made against you — would you let your children —

**MICHAEL JACKSON:** My children?

**ED BRADLEY:** — sleep in that man's bedroom?

**MICHAEL JACKSON:** Mmm, if I — if I knew the person personally. Cause I know how the press is, and how people can twist the truth, if I knew the person personally, absolutely yes. Absolutely. I wouldn't have a problem with it.

**ED BRADLEY:** Do you know how this looks to a lot of people? I mean, do you understand that?

**MICHAEL JACKSON:** How does what look?

**ED BRADLEY:** How the fact that you —

**MICHAEL JACKSON:** Know why? People think sex. They're thinking sex. My mind doesn't run that way. When I see children, I see the face of God. That's why I love them so much. That's what I see.

**ED BRADLEY:** Do you know any other man your age, a 45-year-old man, who shares his bedroom with children?

**MICHAEL JACKSON:** Of course. Not for sex. No. That's wrong.

**ED BRADLEY:** Well, let me — let me say, from my perspective, my experience, I don't know any 45-year-old men, who are not relatives of the children, who share their bedroom with other children.

**MICHAEL JACKSON:** Well, what's wrong with sharing your bed? I didn't say I slept in the bed. Even if I did sleep in the bed, it's okay. I am not going to do anything sexual to a child. It's not where my heart is. I would never do anything like that. That's not Michael Jackson. I'm sorry. That's someone else.

*And the Michael Jackson of today is not the Michael Jackson who at one time was the No. 1 pop star in the world. His "Thriller" CD topped the charts, while his latest didn't crack the top 10.*

**ED BRADLEY:** What — what has this done to your career?

**MICHAEL JACKSON:** What — what has it done to my career?

**ED BRADLEY:** What has it done to your career?

**MICHAEL JACKSON:** In what way?

**ED BRADLEY:** How has it impacted — you know —

**MICHAEL JACKSON:** I'm — my album —

**ED BRADLEY:** — touring, record sales —

**MICHAEL JACKSON:** — album is number one all over the world. All over the world. America is the only one, because I — I don't wanna say too much.

**ED BRADLEY:** But it's not number one in the United States?

**MICHAEL JACKSON:** It's a conspiracy. Yeah. I'm getting tired.

*Before Michael Jackson's attorneys stopped the interview, we were able to ask him one last question.*

**ED BRADLEY:** Michael, what would you say to you — your fans, who have supported you through all of this, and — and who today, some of them might have questions? What would you say to them?

**MICHAEL JACKSON:** Well, I would tell them I love them very much. And I — I — they've learned about me, and know about me from a distance. But if you really want to know about me, there's a song I wrote, which is the most honest song I've ever written. It's the most autobiographical song I've ever written. It's called, "Childhood." They should listen to it. That's the one they really should listen to. And thank you for your support, the fans around the world. I love you with all my heart. I don't take any of it for granted. Any of it. And I love them dearly, all over the world.

*Michael Jackson will make his first appearance in court on Jan. 16 when is arraigned. He is expected to plead not guilty.*



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## CNN LARRY KING LIVE

Encore Presentation: Interviews With Mark Geragos, Jermaine Jackson

Aired December 27, 2003 - 21:00 ET

THIS IS A RUSH TRANSCRIPT. THIS COPY MAY NOT BE IN ITS FINAL FORM AND MAY BE UPDATED.

(BEGIN VIDEOTAPE)

GERAGOS: Michael Jackson is unequivocally and absolutely innocent of these charges.

KING: What's their reaction to today's filing of several charges of child molestation against Michael. And what's Michael's reaction?

We'll hear from Geragos and then Jermaine next on LARRY KING LIVE.

(END VIDEOTAPE)

KING: It's good to have him back. Nice to see you, Mark.

GERAGOS: Been quite a while, hasn't it?

KING: Anyone that knows, knows who Mark Geragos – first, let me say that we did invite Santa Barbara District Attorney, Tom Snedden to be a guest on this show. And we have an open invitation to him, of course. We are always fair.

Mr. Geragos, a frequent guest on this program, had to stop being a guest when a gag order was issued in the Scott Peterson case. And so you can not discuss that case at all, right?

GERAGOS: Right, isn't that the greatest? There's nothing you can ask me that I can answer.

KING: Give me a timeline here. Were you first hired in February?

GERAGOS: Yes.

KING: You never mentioned that you were...

GERAGOS: Absolutely not. There was no reason to mention it because there was nothing to it. I mentioned today for the first time, and I said I kind of worked-desiduously to not, under any circumstances, comment on any of these allegations until and unless charges were filed.

KING: So you were brought in February, what, when initial investigation was taking place? GERAGOS: I was brought in this February when somebody wisely, in retrospect, felt that there was something wrong here with this particular family. And they knew there was something wrong.

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KING: Something wrong?

GERAGOS: Yes.

KING: Did you handle it through the L.A. investigation where they decline to, right?

GERAGOS: Absolutely, absolutely.

KING: Did you speak to L.A. authorities?

GERAGOS: The representatives from my office and in my investigator have at all times. We monitored the whole investigation. We know everything about this case from day one, if you will.

KING: You said today you know more than the prosecutor knows. Can you elaborate? I never heard that.

GERAGOS: The prosecutor – well, because – and I was responding, you know, I have not gone out and done press interviews on this case. I came out one time and I did a – I did a press conference after the – another incident that we'll talk about.

But I was involved from the inception when we knew that there was something wrong with this family and I was called in. We put a plan into action in terms of investigating and documenting things because people wisely around Michael suspected that something was going to happen.

KING: Are you therefore shocked that Santa Barbara authorities brought charges that L.A. authorities didn't bring?

GERAGOS: Shocked, shocked in this sense, I never, I don't know about you, but I have never seen a situation in 20 years of criminal law where somebody goes shopping around to various agencies to find somebody to file criminal charges in a case such as this. It is just unheard of.

KING: And that somebody is who? The mother?

GERAGOS: Well, I'm – I won't get into all the specifics players. All I'll tell you is that this case was shopped around. This case was only shopped around when there was a financial motive. This case originally – and today stunning as I thought it was, you saw Mr. Sneddon, who I have a cordial relationship with up until this press conference today said something to the effect of, well, that's L.A. What do you expect out of L.A.? Which I didn't understand.

You're talking about a situation where the sensitive case unit of the L.A. bureau went out, investigated this case. They did an investigation with their most qualified people. They're most qualified people interviewed all of the participants. And they came back – they had three ways to substantiated, they can say unsubstantiated or they could say unfounded. They came back with unfounded. There was nothing to it.

KING: Did you think it was over then?

GERAGOS: Yes. I mean, clearly, it was over then, Larry. There wasn't anything more that could have been done at the point.

KING: Is it possible, since the timeline here is February to March, that something happened with the boy and Michael after the L.A. investigation?

GERAGOS: Well, this is the most – one of the most interesting things. Take a look at the criminal complaint. The criminal complaint alleges from February 7 to March 10. Guess what happened on February 7, that's the day after the Bashir documentary aired. February 6...

KING: The Bashir documentary is the one from...

GERAGOS: From the U.K. that airs in America on February 6, February 7 the D.A. is now alleging that the molestation occurred. It's a joke. It's nothing but – this case revolves around nothing but a financial motive, a shake down, if you will, and it's a perfect, as I said earlier today, it's the perfect intersection between a financial motive, greed and revenge

KING: Are you saying now that that's still their motive?

GERAGOS: Oh, there's no doubt about it.

KING: Are you saying if they call them today, they'll settle this case and drop criminal charges?

GERAGOS: I would never in a million years call these people and give these people money.



KING: No way?

GERAGOS: No way. No way. There is not -- one of the things -- if there is a silver lining to this, for Michael, is I will tell you this right now. This is going to stick a fork in people who want to do this to Michael Jackson. Once and for all, we are no longer going to allow people to abuse this man.

This is a gentleman who I think has been totally mischaracterized, whether it's in the media or anything else. This is a gentleman who in my experience with him, is idealistic, he's innocent, he is absolutely giving to the point where he doesn't really care about what people think. The problem is, is that there's a lot of people out there that have taken advantage of his goodness.

KING: What relationships does he have with these boys? Obviously he has a contact with these boys.

GERAGOS: Michael had contact with conservatively in about 11 months that I have been involved with this, conservatively, he's had contact with over a thousand people. Over a thousand. In just...

KING: Boys who have spent nights?

GERAGOS: Boys who have just been to the ranch. Family that is come to the ranch.

You know, today, another thing that was just mindboggling to me, the press conference by the D.A., they went out of their way in that press conference to say, you know, there's been a lot of talk in the media that this case was weak, That one of the reasons we delayed filing is because it was weak. And I'm here to tell you it wasn't weak, it wasn't weak.

Well then, my question in response is, why did you have an open casting call for other people to come forward? Why did you get up there and do that -- that audition for the guest host on the "Letterman Show" with the sheriff up there and invite people to come forward, invite other witnesses to come forward? There's only one reason for that.

KING: Did you fear that would happen?

GERAGOS: No. No. In fact, I have the opposite reaction to that. I -- I'll do it tonight on your show. I'm asking, because I've been inundated at my office, everything who had nothing but positive experiences, come forward and go tell the Santa Barbara D.A.'s Office. Because I'll tell you what, they're going to need to hire a lot bigger P.R. firm than they've got right now to handle all those responses.

KING: Original question, he has all, thousand boys as you said since you've known them.

GERAGOS: He's got a thousand kids.

KING: What does he do?

GERAGOS: He doesn't -- you know, this is the other misnomer, you have to see and I didn't know until I went up there. You have to see this Neverland facility. This place. It is wonderful. It's idealic. It is 2,700 acres, it is nestled in the mountains up there, it's got an amusement park, it's got a miniature Disneyland train station there with the train that goes around. It's got a lake with swans in it. People come up -- he opens his doors, bus loads of disadvantaged people and it's the most exciting thing in the world to them.

KING: He sleeps with some? He like to...

GERAGOS: He doesn't sleep with some. That's kind of the other thing...

KING: That's wrong.

GERAGOS: That's wrong. This idea that somehow he's luring them up with this kind of lurid tale, this is a seduction. I've heard every amateur psychologist talking about this. KING: 2 of these charges say liquor. And NBC reports says that the alleged victim's mother went to an attorney to complain her son told her he had been given wine.

GERAGOS: No, she went to an attorney because she wanted money. Mrs. Jackson, Catherine, had a wonderful statement the other night when she was interviewed. She said, you know, if my son is molested, where do I go? You go to the police, don't you? Where did this these people go? They went shopping for civil lawyers.

It reminds me of that old joke with the guy who gets injured in the car accident and the paramedics come and the paramedics say, what hospital do you want to go to. And he says, forget the hospital. I want to get to my lawyers office.

I mean, that's the irony of the situation. Who believes for a second -- listen to me for a second -- who believes for a



second that out of a 175,000 lawyers, I think, that are actively practicing in California, that this mother goes to the one lawyer who reached a multimillion dollar settlement, apparently, 10 years ago, with Michael Jackson. She didn't know any other lawyers? She just happened to wander into that office, because she was worried that Michael Jackson was giving this kid wine?

The idea that you are going to believe that...

KING: You're saying this is a rip off? Is that what you are saying?

GERAGOS: It's a shake down. It's a shake down.

KING: Let me get a break. We'll be right back with Mark Geragos. Later, Jermaine Jackson, Michael's older brother will be joining us. Don't go away.

(BEGIN VIDEO CLIP)

TOM SNEDDON, SANTA BARBARA COUNTY D.A.: The felony complaint involves 9 counts. Seven counts of 288a, in violation of the California Penal Code, commonly known as child molestation. And 2 counts in violation of the Penal Code section 222 that involves administering an intoxicating liquor to a child for the purpose of committing a felony. Those are the 9 counts.

(END VIDEO CLIP)

(COMMERCIAL BREAK)

SNEDDON: 222 that involves administering an intoxicating liquor to a child for the purpose of committing a felony. Those are the nine counts.

(END VIDEO CLIP)

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

SNEDDON: There has been some speculation among some that the reason that the charges were not filed until this week was because somehow we issued an arrest warrant for Mr. Jackson and were hoping to gather information in the meantime in order to but dress what some people called a weak case. I want to categorically say that is false.

(END VIDEO CLIP)

KING: We're back with Mark Geragos.

Off to the side, is it hard to handle two high profile cases at the same time?

GERAGOS: No. In fact, it's -- I've actually had the opposite experience. Normally, any busy lawyer, let alone any busy criminal defense lawyer, handles at least 15 to 20 serious cases at any one time. Because of these two cases, I have been able to delegate most of my other cases to other lawyers in the office. Plus I have a team of lawyers to do what I ask them to do, usually. And it's been a god send. I can concentrate in a way and focus in a way I normally can't.

KING: So the Peterson's and Jackson's totally understand?

GERAGOS: Jackie Peterson who I adore -- I really am blessed, yes. And I'm blessed in this sense, that both Katherine Jackson and Jackie Peterson are two of the strongest, most beautiful women that you will ever meet. And to my poor mother, I apologize. I talk to both of them more than I talk to my own mother. Jackie's response immediately and I adore it for her this. She said, Michael was blessed to be able to have me there. And I consider that a compliment.

KING: Do you get wrapped up with your clients?

GERAGOS: I absolutely.

KING: You take it home?

GERAGOS: I take it home. I live -- I've been living both of these cases. I've been -- Michael's case is particularly irksome to me because I have seen this entire scenario, if you will, unfold. I've seen this whole scam in action. And it's beyond me that when you've got an agency that is charged with investigating these very allegations, when you have people who are trained to look for this, and to detect whether or not somebody's telling the truth or hiding and they come to a conclusion it's unfounded that you then when a lawyer gets into the mix, a money lawyer gets into the mix

and that's what I call civil lawyers. My brother is one as you know. All apologizes to them. But when money lawyers get into the mix and all of a sudden that money lawyer is shopping that case around, that should give any prosecutor pause.

KING: Did they scam the prosecutor?

GERAGOS: Well, I said earlier — I said earlier that this was an intersection of greed and revenge. I'll leave it at that.

KING: Do you think the prosecutor is out for revenge?

GERAGOS: I think that there's been a number of statements that have been made and I will — I don't want to — I mean, this is as I indicated before, there have been a number of statements that have been made that just plain aren't true.

KING: By the prosecutor?

GERAGOS: Well, by the prosecution.

KING: How about two of the nine charges, right, all deal with the same boy?

GERAGOS: Right.

KING: Two of them reported by the media that are very serious involve alcohol. Because that, I understand, if convicted there's no probation with that if you use alcohol to entice. And also the sexual allegations could be oral sex, masturbation, et cetera. This is not mild stuff here.

GERAGOS: There — any time you're charged in California and in other jurisdictions with any case involving minors, it is a serious offense. Period, end of story. I mean, these are registerable sex offenses. That's what's so insidious about this. Michael has spent his entire adult life helping children. I mean, his whole life has been devoted to taking — in his largess, I think I read the other day, I didn't know this until I took the case.

I think the year 2001, he was one of the largest charitable givers that there was in the Guinness Book of World Records or in the country. I forget what the exact arena was. But the fact of the matter is this is somebody you could not — if you wanted to design a charge to try to hurt him, if you wanted to go out and try to hurt him in the worst way possible this would be the charge. And, obviously, as I said before and I said it the first time when we went to confront the charges head on at the time that he was booked, if these were true, Michael would be the first person to tell you this is outrageous because he would never, ever want to see anybody hurt a child and he never has.

KING: What about the liquor charge?

Where did that stem from?

GERAGOS: Who knows where that stems from?

(CROSSTALK)

GERAGOS: The fertile imagination of somebody who's dialing for dollars.

KING: How about the story somebody reported that a brother to the young man was a witness? GERAGOS: Yes, well, the brother was a witness to the Department of Children Services here in Los Angeles and the brother said, nothing ever happened. The brother said, I never slept with my brother and that was before they had gone to a money lawyer looking for money. That was before they — before they had a motive to seek out money. Period, end of story. I mean, what are you going to say?

Today, they were denigrated. The Los Angeles department was denigrated today as being somehow kind of beneath contempt or something.

KING: In a case like this you're a veteran of the courts. When one person says one thing and the other person says I didn't do it, it's one word, right — basically, no one else was in the room.

GERAGOS: Assuming that.

KING: Assuming that. How do you prosecute it. Does the jury believe him and not him?

GERAGOS: No. In this case — in this case, you have another added fact. In California, there is a statement that's read to the jury and it basically says, if somebody lied to you, prior, or if somebody made a material misstatement prior, you can disregard all of their testimony. Well, somebody was lying at some point. We have got February 7, to March 10. We know that on February 20, far and away put aside the fact I and my investigator already have statements, put aside the

fact that we know that after March 10, we've got statements, put aside the fact that we've got videotape of – audiotape and everything else of the people locked into statements. Gave them the every opportunity in the world to make a complaint and they didn't.

Put all of that aside, what are they going to say, we were lying then, were not lying now?

That the brother was lying then and he's not lying now?

That's the problem with this case. The problem with this case is you can't sit up here and say, and prop these people up, once they've been through the kind of laundromat of a money lawyer's office.

KING: Is this a tough case to defend?

GERAGOS: No.

KING: No?

GERAGOS: You want to know something, this is not a tough case to defend in this sense. One of the reasons that I do and that most criminal defense lawyers do criminal defense work as opposed to civil work is because you fight over people's liberty, your not fighting over people's money.

KING: Somebody's life in your hands.

GERAGOS: Somebody's life in your hands. If you a criminal defense lawyer, the ultimate challenge is this case. Where you've got somebody who is falsely accused who there are all kinds of parasites running around trying to make a buck based upon that false accusation. And you've got to – you're there, you're standing between that client and the ultimate penalty.

KING: Did he invite it in a sense with a large settlement ten years ago?

GERAGOS: Oh, I don't know. I suppose you could make –

KING: It has to gives you pause, right?

GERAGOS: Does it give me pause? I don't know. All I know and I can't – the last thing as you know that you ever do is go back and try to resurrect something from ten years ago and say, should I have done this or that? That makes no sense. He was ably represented then. I believe that these charges are going to prove to be the ultimate big lie. And when that's proved, this won't happen again.

Interestingly enough, this morning, when we were in court this morning, in a different courthouse, we were over in the civil courthouse making sure that that Extrajet company – and I want that name out there, because those people decided to try to get – insinuate themselves in the ultimate violation of the attorney-client privilege and tape it and then go out and sell out. We got a judge to order a permanent injunction against them this morning finding that the probable maritors were going to prevail.

KING: Permanent injunction, meaning they can't what?

GERAGOS: They can't do anything with that tape. They can't touch that tape. They can't sell that tape. That can't disseminate that tape.

KING: I'm going to ask you about that when we come back. Jermaine Jackson will join us at the bottom of the hour. Don't go away.

(BEGIN VIDEO CLIP)

SNEDDON: There are several special allegations that have been alleged. Some of which the jury – all of which the jury will have before them. And the findings could make Mr. Jackson ineligible for probation and could substantially affect the amount of time he could be incarcerated if the findings are found true.

(END VIDEO CLIP)

(COMMERCIAL BREAK)

KING: We're back with Mark Geragos. Is one of the essential differences, though, ten years ago, the boy didn't testify. Now you have a boy willing to testify and that changes the picture.

GERAGOS: I don't know if it changes the picture. I mean, you – in a lot of ways, it really doesn't matter. They've filed



the charges. You can't settle around the charges.

KING: But the jury – settlement – the jury knows that.

GERAGOS: The jury can – the jury will be instructed on certain things. I don't need to jump that far ahead. Who knows if there will be a trial in this case?

KING: Might not be a trial?

GERAGOS: When they go to a preliminary hearing in this case, I would invite them to go by way of a preliminary hearing so that I can have a chat with the witnesses. Because I believe once we have a chat, it will become readily apparent as to what this case is about.

KING: So, you're asking for that over a say, a grand jury...

GERAGOS: I don't believe they can go to a grand jury. There's a lot of technical legal reasons. But no. I don't think they can go to a grand jury. I don't see how it gets past the preliminary hearing.

KING: The Extrajet thing, shocked?

GERAGOS: I tell you, Michael was at least initially less shocked than I was, because he has been the subject of this for so many years.

KING: So he's been secretly taped?

GERAGOS: Well, secretly taped. Having people trying to invade his privacy in ways that are outrageous. But imagine this, here he is, on a plane, and this is a company that he's used repeatedly over the years, where they secretly install cameras in that plane to record conversations between his lawyer and himself as he's going into a police department. I can't think of anything more outrageous and frankly either could the judge. When we went in there.

And that's not been the least of it. Then you hear about these microphones left around the police department. I'll tell you another thing. I've had recently, within the last ten days, a bomb placed – a pipe bomb placed at my house.

KING: What?

GERAGOS: Yes. I've had a pipe bomb actually placed in the – we had some construction work and had a port-a-potty, if you will, in the front, for some of the workers. One of the workers discovered a pipe bomb. And the police actually come, close the street off and detonate the bomb. So, there are some people...

KING: There are threats on your life?

GERAGOS: The threats are so greatly outnumbered by the overwhelming support. But there are crazies out there and people as you well know who will do anything. Whether they're rational business men or irrational.

KING: How much support are you getting? GERAGOS: The support is unbelievable. I have had probably on a daily basis 500 to a thousand e-mails and letters come into the office.

KING: From everywhere?

GERAGOS: I've had to assign – from everywhere, all over the world. From every color, race, creed. The support is unbelievable. People have almost intuitively understood what this case is about. People understand – I think, they get it. The polls as you have seen, I think you have mentioned before are swinging dramatically in Michael's favor as people learn more about this case. They can see what's going on.

KING: How did you get – he has to surrender his passport. How are they letting he go to London to entertain?

GERAGOS: Well, what we did is, he has previous contracts that I informed them about. I negotiated with the D.A. and we went to see the judge and the judge signed off on it. There's a discrete period of time. I mean, the idea that Michael Jackson is going to flee these charges is almost as comical as the charges themselves.

KING: Was therefore the bail ridiculous?

GERAGOS: Let me tell you something about the bail. The bail schedule in Santa Barbara County, I believe, is \$65,000. So, this is somewhere in the neighborhood of 50 times what the bail schedule is. I don't have to repeat, but, you know, there's guys that are walking around out of custody on murder cases that are out on \$1 million, \$1.5 million. I have a client out on a million dollars bail for a murder case right now in L.A. County.



So, the idea that Michael Jackson who owns 2,700 acres in the very county where he's prosecuted needs to post additional \$3 million bail is nothing more than the bail bondsman's full employment act.

KING: Our guest is Mark Geragos. The attorney for Michael Jackson. Jermaine Jackson, Michael's older brother will join us. We'll be right back.

(COMMERCIAL BREAK)

KING: Mark Geragos remains with us. We're now joined by Jermaine Jackson, Michael Jackson's brother. How do you feel today?

JERMAINE JACKSON, MICHAEL JACKSON'S BROTHER: I feel OK. I feel OK. I'm disappointed but OK.

KING: Were you bothered a lot by what charges were read today?

JACKSON: Very much so, yes.

KING: Because?

JACKSON: Because I know they're lies and my brother's innocent. KING: Did you talk to Michael today?

JACKSON: No, I have not. No.

KING: How do you think he's handling this?

JACKSON: He's -- he's dealing with it. He's strong, and he's ready to fight.

KING: You would back that up?

GERAGOS: Let me tell you, this family is truly incredible. I mean, I was teasing him before. It is one large family. And just when you think you've met the strongest Jackson, then you meet another Jackson who's even stronger. And they -- somebody in that family -- and I suspect it was Katherine, although Joe will hit me upside the head afterwards. Somebody has done their job in raising these people because they are incredibly strong.

KING: You have called this a lynching.

JACKSON: Yes.

KING: A modern-day lynchings. Want to expound on that?

JACKSON: Well, it's how the media handled this. And it was just pick on Michael.

KING: What should they have done?

JACKSON: Well, as a journalist in the media, you're not supposed to interject your opinion. And I lost it when I turned on television, seeing my brother handcuffed, and they have people on there, not only the journalist and the reporter, but interjecting their opinion. And what's awful about that is you influence the public. And I heard earlier about the polls were favorable in my brother's...

KING: So far, yes. Today they are.

JACKSON: ... favor. And just think if they didn't do what they did from the very beginning. Every journalist has subjected their opinion. They're just supposed to report the news and...

(CROSSTALK)

KING: This is a story, Mark.

(CROSSTALK)

KING: A famous person arrested is a story.

GERAGOS: I don't have any problem with a famous person arrested. You know what I have a problem with? We have got to a point -- gotten to a point where it jumps from tabloid onto cable without any sourcing, and then it gets reported as fact. You want to see the list, the litany of lies that have been reported, starting with that Michael was trying to divert the plane to South America on the way to Santa Barbara, that Michael was up screaming somehow in the cabin as we were headed over to Santa Barbara.

KING: These were reports on the air?

GERAGOS: These were reports that were accepted as fact. And where did they start? They started over in the U.K. in some sleazy tabloid. They jumped the Atlantic. They made it to "The New York Post." Then from "The New York Post," they were on Fox, and before you know it, it was reported as fact. That's not the only thing. There has been nothing but a succession of lies, and there's a couple of reporters out there who have made their career based upon that.

KING: Now, you know Michael all your life.

JACKSON: Yes.

KING: Mark Geragos knows him – you know him how long, Mark?

GERAGOS: Going on a year.

KING: What do you make of the charges about him giving liquor to young boys?

JACKSON: They're crazy. It's crazy. Michael wouldn't do that. Michael...

KING: Does Michael drink?

JACKSON: No, Michael does not drink. Michael didn't even drink Pepsi when he did the Pepsi commercial. I mean, this is crazy. But the problem I have is, like, with all that's going on in the world and the capture of Saddam and that ran in the front papers for one day, and they're then back on Michael, the front page. I mean, it's crazy. And that's the biggest capture ever. I mean, it's like you say to yourself, What are they trying to say? And so when I'm watching my brother handcuffed, and I'm saying to myself, They're handcuffing him, they're handcuffing the whole family. And I – I had to say something and...

KING: What are your feelings toward this boy and his mother?

JACKSON: Well, you can't really blame the boy, but the parents, of course – and I feel bad because the kid is caught into a situation that's not fair to him. But at the same time, my brother is a loving person. He loves people. He loves children. I mean, when you look at what brother's all about, with his music, does anybody ever talk about that? They talk about all these things. He's not eccentric. He's not crazy. He's a human being. He's done unbelievable things...

KING: Not eccentric?

JACKSON: ... through his music – oh...

KING: Last time, you...

JACKSON: Small things, small things. But look, we could say the way I'm dressed or the way you're dressed could be different, but...

KING: Correct.

JACKSON: ... what I'm saying is this. Look at his music. Look at what his message is through his message. Look at what he's done. It's not trying to turn the young people against parents and against the family. It's all about bringing family together. And that's what we're about. That's what his music is all about.

KING: The L.A. people questioned this young boy, right?

GERAGOS: Absolutely.

KING: Extensively.

GERAGOS: Absolutely.

KING: And they said they didn't believe him, right?

GERAGOS: Well, no. They said – the L.A. people did an investigation, and contrary to what was represented today – we went back and forth. We heard first it was an investigation, then it was an interview, then it was an investigation. When they don't like the results, it was an interview. When they like the results, it's an investigation. I thought that – that was something new I've never seen before. We just – we change the words around when it doesn't fit our little theory of the facts.

You're not supposed to do that. A prosecutor is supposed to seek the truth. A prosecutor's not supposed to seek a conviction. Did anybody ask or wonder why are they hiring a P.R. firm? Why do they need a crisis management firm? Is it because the crisis is the case is falling apart?

KING: Apparently — were they hired or volunteered, the firm that...

GERAGOS: Well, who knows? Either way. If it's volunteered, it may even be worse. I mean, you're either paying with public moneys, the — this firm, which I think is problematic, and if they're volunteering, then you're receiving a gift, which is also a violation of the Fair Political Practices Act. So it doesn't get any better if it's volunteered versus hired. A prosecutor's not supposed to be out there spinning. A prosecutor's supposed to be out there seeking the truth.

KING: To your — to your knowledge, Jermaine, did Michael do anything that left him open to this? In other words, is there anything in his lifestyle that left him...

JACKSON: No.

KING: ... prey for the wolves?

JACKSON: No, the problem is that Michael is a wonderful person who loves children, and they found the very thing to bring him down, with the very thing that he loves is children and family. And I don't know any other person who — all my life, who is just so genuine and so nice and so caring. And sometimes he's naive, but he's totally innocent.

KING: He is naive.

JACKSON: Yes, but he's — but he's not like me or some of my other brothers. He's — he thinks — he trusts everybody. And he's so trusting, and this is what it is.

KING: Well, that sounds child-like. Children are trusting.

JACKSON: Yes.

KING: Is he child-like, in a sense?

JACKSON: He is. He is. But he's a wonderful person. I mean, you look at the moral fiber of a person. His intentions are wonderful. I mean, the whole thing with the baby — I mean, you think he would harm his child? And then they never show how there were people down there. He was just showing the baby. It wasn't the wisest thing to do, but he got caught up in the moment. At the same time — Michael loves his children.

KING: Now, let's look at...

GERAGOS: And his children — and his children — that's the thing that's most impressive to me. I have spent time with him and his children. Jermaine can tell you, obviously, more than I can. You have never seen a more loving, healthy relationship with those kids...

KING: How about the movement to temporarily take them away?

JACKSON: Oh, that's crazy.

GERAGOS: It's not only crazy, it's sick. And you know, I have to say, for Gloria Allred, of all people, to come out there and hold a press conference, when she's got nothing to do with this case. You know, Gloria's husband, I think, years ago, was indicted for some kind of crime. Nobody ever said, Let's take Lisa Bloom out of the house, when she was — when the husband was indicted. So this idea that she's out there, based on an accusation, calling for kids to be taken out of the house is beneath contempt. She knows better than that. It's nothing but a publicity seeker, just like a couple of the others who are out there on the backs, like parasites, of Michael.

KING: Why would a mother, though — let's say, as Jermaine says, this boy is kind of innocent and he's being tossed back and forth. Why would a mother subject her child to this? Why would a mother have a — but look what you do to the child's head, though. In other words, for money, you would destroy your own child?

GERAGOS: I was not commenting. I didn't go anywhere near this. The responsible mainstream media went and they investigated this case and they found the exact same stuff that I found, which is part of the public record. This is a dysfunctional family, obviously. This is a woman who is dysfunctional. This is a woman who you — who has got a documented history of manipulating her kids. Documented. I didn't say it. She has — the father's lawyer is out there talking about scripts that she's handing to the kids to read in depositions. And that's only the tip of the iceberg.

KING: Let me find out in a minute what happens on January 16. We'll take Some calls for Jermaine, if you want to call in. Jermaine and Michael (sic) Geragos are with us. You're watching LARRY KING LIVE.



Betty Ford tomorrow night. Don't go away.

(COMMERCIAL BREAK)

KING: Before we take some calls, we have the official statement by Katherine Jackson, Michael's mother, on behalf of the Jackson family.

I said Michael Geragos. This is Mark Geragos.

GERAGOS: That's OK. It's my younger brother.

KING: You have a younger brother?

GERAGOS: I have a younger brother.

KING: It's all in the family. "Michael is innocent. On behalf of the Jackson family, we know these vicious lies are totally untrue, malicious and motivated by pure greed and revenge. Our family totally supports Michael. We proudly stand next to Michael, who we know could never commit any of the acts he's accused of. We will fight with every ounce of our energy to reveal the truth behind these false allegations and the motivations behind those who have falsely accused Michael. We pray for a swift resolution, real justice. And we especially want to thank the millions of fans and supporters who have solidly stood by Michael and the family during this ordeal."

Before we take a call, what's been the reaction of the employees at Neverland?

GERAGOS: Oh, almost universally supportive. In fact, one of the things that I found during the information of this, and even in the last couple of weeks since the arrest -- I've talked to two women in particular. And I won't mention their names because they probably would also slap me, but two who are long-time employees there, both of whom have daughters. Both of whom -- and one who has a son. Both have said -- one who's worked for him for I think 13 years, the other for almost 23. Both said they have complete access to him 24/7. They basically have been employed for him years for, and both said, If you think for a minute -- this is what they told me. If you think, Mr. Geragos, for one minute that if there was something going on here that we wouldn't report him, you're crazy. One of them says that she's got a daughter herself who was molested and whose -- the perpetrator was the prosecuted by Santa Barbara county's D.A.'s office. She says, I would be the first one yelling from the top of Neverland if there was anything going on here. KING: Let's take a call. Oklahoma City for Jermaine Jackson and Mark Geragos. Hello.

CALLER: Hello. Jermaine?

JACKSON: Yes?

CALLER: I wanted to know how your family was holding up.

JACKSON: Well, my family is holding up pretty strongly. When something like this happens, family is the most important. And there's strength in numbers, so we've been supporting each other, and we're going to fight.

KING: Who's having the roughest time? Everyone can't be the same.

JACKSON: Probably -- I wouldn't want to say, but there is one, yes.

KING: Who's having trouble with it emotionally, I mean?

JACKSON: Yes, yes.

KING: Houston, Texas. Hello.

CALLER: Hello. Thank you for taking my call.

KING: Sure.

CALLER: Mr. Geragos, my question is for you. How difficult is it -- and I've been following both of your recent cases. How difficult is it to defend clients, when the media, in particular, and the public have already found these clients guilty, ridiculously?

KING: Good question.

GERAGOS: Well, it is -- you know, and it's a wonderful question because this idea -- and Larry and I have talked this before on the show, when I was doing commentary. This idea that somehow you can just have a prosecutor go out and



do a press conference and slam the heck out of the client and repeatedly do these kind of perp walks, like they did with Michael here, the perp walk up with the handcuffs, so that you can see him and – in fact, it's endlessly played, endlessly played, so that all you ever see – the picture you've got in your mind is of this person getting walked into the police station as a common criminal. And then when they go to court, the first thing the prosecutors want is to slap a protective order on you, so that you can't say anything in response. You're supposed to just sit there and say, OK, I've taken a couple of body shots, and now I'm going to shut up and not do anything.

It's, I think, horrific. I think that the only way you can do it is to respond and respond appropriately, and that's what I plan on doing in this case.

KING: There are reports, Jermaine, that Michael's going to have a party at Neverland this weekend?

JACKSON: Well, it's not a party. It's just all the love and the support from all the family and friends and...

KING: So people are coming up.

JACKSON: Yes. They're coming. They want to be there...

(CROSSTALK)

KING: It's a "Support Michael" weekend, like?

JACKSON: It's a support...

GERAGOS: Well, you know it really – and Jermaine will, I think, back me up on this. They – I've had to hire a couple of extra people to just man the phones. The number of people that are calling him, calling me, calling Michael, saying, We need to see him, we want to tell him how much we love him, and we want to – we want to show him that this is unfounded – and finally, we decided, look, the only way to handle this – there's no other place that's big enough – than go up to Neverland. We're not dragging media through there, we're just allowing all of these people, his friends, his fans, his supporters to get up there and – and his family. His family wants to get together and support him.

KING: Is he joining the Nation of Islam?

JACKSON: No. No.

KING: That has been reported, too. Why...

GERAGOS: Right. Because that's another one of these litany – what I call the litany of lies. You know, there was...

(CROSSTALK)

KING: I never heard of it. I'm just reading the cards!

GERAGOS: I know. I know. Somebody writes it because that was the story this morning. And you know, interestingly enough, this joining the Nation of Islam...

KING: Nothing wrong with that, by the way...

(CROSSTALK)

GERAGOS: ... and Mark's going to be replaced – no! But that Mark's going to be replaced by Johnny Cochran...

KING: That was...

GERAGOS: ... and all this...

KING: Wait a minute. Johnnie Cochran replaced you on this show.

GERAGOS: Yes. Exactly.

KING: Johnnie Cochran...

GERAGOS: Johnnie...

(CROSSTALK)

GERAGOS: He sits in my chair, and I think he'll tell you...

KING: He's the analyst.

GERAGOS: ... it's an easier job. But the fact of the...

KING: What about that report, by the way?

GERAGOS: The fact of the matter is -- you want to know where this originates from, this -- it's the P.R. firm that the prosecution hired. And what they did is, they played the race card. They're trying to inject Johnnie Cochran into this. They're trying to inject the Nation of Islam as some kind of a buzz word into this.

KING: Really?

GERAGOS: And I tracked it. I got a couple of -- on background from various reporters who admitted that the P.R. flack firm that they just hired, their crisis management...

KING: You're kidding!

GERAGOS: ... was the one who's out there fanning the flames of this.

KING: Because Johnnie told me that he was not going to get involved.

KING: He told he wouldn't get involved.

GERAGOS: Of course. Look, I've known Johnnie him since I was a kid. My father and Johnnie were DAs together here in L.A. County. Johnnie and my father go back probably 35 years, and I've known him -- I don't want to tell how old I am, but I've known him since I was a munchkin. He is a supporter of Michael's, as he obviously is, because he's had the same experience I have had over the last year. Once you know this man, once you know Michael and have been around him, you can't fail but want to support him. That's why people are inundating us.

JACKSON: Absolutely.

KING: Jermaine, The tough part, though as a family, is you have to live with it. I mean, it lives with you. Mark is a lawyer. That's one thing. You're blood.

JACKSON: Yes, well, this is what this is designed to do, is to label him a child molester or label my family. And we know why. And we're not (UNINTELLIGIBLE) KING: Do you think it's to get one of you to say to Michael, Let's settle? Let's get this away. Do you think that's their goal?

JACKSON: No, we ain't settling nothing.

GERAGOS: Well, we -- nothing's going to be settled, as long as I...

(CROSSTALK)

GERAGOS: Yes. Over my -- they can...

KING: You're saying that to...

GERAGOS: They can fire me and hire, you know, Larry Parker.

JACKSON: We're not firing (UNINTELLIGIBLE)

GERAGOS: But there's no way in the world this case is ever going to be settled. And I'll tell you right now, there's no way in the world Michael is every going to settle this. There's absolutely no way. He's unequivocally -- not guilty. He didn't do this. He's factually innocent.

KING: We'll take a break and be back with our remaining moments with Mark Geragos and Jermaine Jackson on this edition of LARRY KING LIVE. Don't go away.

(BEGIN VIDEO CLIP)

SNEDDON: And they're asking me about the L.A. -- what you called an investigation, and my remarks about that. What I said was that our department and the sheriff's department was fully aware of the report and its contents. We are also fully aware of the conditions under which the statements were given. And we are aware that to call that an investigation is a misnomer. It was an interview, plain and simple, and that's all it was. And we're not concerned about it in terms of any impact on our case.

(END VIDEO CLIP)

(COMMERCIAL BREAK)

KING: That's the CD, "One More Chance," which was released the day that search warrant was issued, right?

GERAGOS: Yes. Exactly.

KING: Was that timing, do you think?

JACKSON: It's perfect timing.

KING: Did the handcuffs bother you?

JACKSON: Yes, the handcuffs bothered me because my brother willingly turned himself in. And he's 120 pounds, and they didn't have to handcuff him, plus handcuff him behind his back. Now I understand that his shoulder was dislocated and...

KING: Really?

JACKSON: ... and he's bruised on his arms. And then he -- once he got into the station, he asked to use the restroom, and they locked him in there for 30 minutes and said, How do you like the way it smells in there? The smell -- and that's ridiculous. I mean, this is how they conducted themselves.

KING: Did they rough him at all, or just treated him roughly?

JACKSON: Well, they put out a statement out saying that they treated him fairly and he was not being cooperative with them. It was the complete opposite. Complete opposite.

KING: Locked him in the bathroom. Were you there, Mark?

GERAGOS: No. I was kept away where the -- with the bondsman, posting the bond upstairs.

KING: Did you hear about this?

GERAGOS: Oh, yes.

KING: Did you ask about it?

GERAGOS: Oh, yes.

KING: And?

GERAGOS: Well, there'll be -- there'll be repercussions.

KING: There will be?

GERAGOS: Absolutely.

KING: Have you ever heard of locking someone in the bathroom?

GERAGOS: I have, on occasion. I have, on occasion.

KING: What would be the purpose?

GERAGOS: Well, there's an intimidation factor. There's a -- you know, We're going to show you who's boss. It's not uncommon, Larry.

KING: Is there a law about handcuffs when you arrest in California?

GERAGOS: Well, you've got a -- it depends. I mean, this is a...

KING: Some say you have to have that.

GERAGOS: Yes. This is a surrender. I've had countless surrenders where the person just walks up and you just do a booking. I mean, I had the bondsman there. The bondsman had the bond. The person was waiting there. We arrived.



We did the — I thought, as cooperative as we could be. I tried to be as cooperative as we could be. And I just thought it was a perp shot.

KING: Only have a minute left. You would not be surprised if there were no trial? Just want to reiterate what you said.

GERAGOS: Look I — look, I...

KING: You want a hearing.

GERAGOS: All I need in this case is a chance to have a talk with the witnesses and a — and let us into a courtroom. That's all I want. Let us into a courtroom. We're very happy — I'm very happy — I don't think any client is very happy when you say, I'm going to drag you into a courtroom. But I'm very happy to try this case on the facts in a courtroom.

KING: And does Michael have any doubts about this case, any fears?

JACKSON: I don't think so. He's — he's ready to fight. He's ready to fight. He has his team. He has his family. He has a great guy here with Mark. And we're ready.

KING: Thank you, Jermaine.

JACKSON: Thank you.

KING: Thank you, Mark.

GERAGOS: Larry.

KING: Good to see you back in that chair.

GERAGOS: Thank you. Good to be back, although temporarily. I'll let Johnnie come back and take it over.

KING: Mark Geragos, the attorney for Michael Jackson. He's also the attorney for Scott Peterson. There is a gag order in that case. And Jermaine Jackson.

I'll come back in a couple of minutes and tell you about tomorrow night. Another great show coming up. Don't go away.


END

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Jermaine Jackson>

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CLERK OF THE SUPERIOR COURT  
COUNTY OF STANISLAUSBY Emily P. [Signature] DEPUTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF STANISLAUSTHE PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff,

vs.

SCOTT LEE PETERSON, et al.,  
Defendant.

Case No. 1056770

DEFENDANT'S MEMORANDUM  
IN RESPONSE TO COURT'S  
INQUIRY RE "GAG" OR  
PROTECTIVE ORDER

DATE: June 6, 2003

TIME: 8:30 a.m.

PLACE: Dept 2 /8

Courtroom of Judge Al Girolami

TO: STANISLAUS COUNTY DISTRICT ATTORNEY; and

TO: CLERK OF THE ABOVE-ENTITLED COURT:

Defendant Scott Lee Peterson ("Mr. Peterson") respectfully submits the following  
Memorandum in response to the Court's inquiry regarding the issuance of a gag order.

///

///



## MEMORANDUM OF POINTS AND AUTHORITIES

## PROLOGUE

Orders which restrict or preclude a citizen from speaking in advance are known as "prior restraints," and are disfavored and presumptively invalid. Gag orders on trial participants are unconstitutional unless (1) the speech sought to be restrained poses a clear and present danger or serious and imminent threat to a protected competing interest; (2) the order is narrowly tailored to protect that interest; and (3) no less restrictive alternatives are available.

(footnotes omitted) (*Hurvitz v. Hoefflin et al.* (2<sup>nd</sup> Dist. 2000) 84 Cal.App.4th 1232, 1241, review denied March 21, 2001.)

\* \* \*

It is clear that even a short-lived "gag" order in a case of widespread concern to the community constitutes a substantial prior restraint and causes irreparable injury to First Amendment interests as long as it remains in effect.

(*Capital Cities Media, Inc. et al. v. Toole* (1983) 463 U.S. 1303, 1304, 103 S.Ct. 3524, 3526.)

\* \* \*

The judicial system, and in particular our criminal justice courts, play a vital part in a democratic state, and the public has a legitimate interest in their operations.

(*Gentile v. State Bar of Nevada* (1991) 501 U.S. 1030, 1035, 111 S.Ct. 2720, 2724.)

\* \* \*

Public awareness and criticism have even greater importance where, as here, they concern allegations of police corruption

(Gentile at 1035.)

\* \* \*

The press. . . guards against the miscarriage of justice by  
subjecting the police, prosecutors, and judicial processes to  
extensive public scrutiny and criticism.

(Gentile at 1035.)

\* \* \*

Public awareness and criticism have even greater importance  
where, as here, they concern allegations of police corruption,  
or where. . . the criticism questions the judgment of an elected  
public prosecutor.

(internal quotation marks and citations omitted) (Gentile at  
1035.)

## I.

### INTRODUCTION

During the May 27, 2003 hearing, the Court asked counsel for their arguments as  
to the issue of a protective order. Mr. Peterson objects to such an order on practical  
grounds. As will be discussed below, this Court's authority to fashion a protective order  
is inherently limited to the participants and people in their immediate sphere of control.  
As this Court is undoubtably aware, this matter has received unprecedented media  
attention. As such, even if the participants are gagged it will do little to stop the tsunami  
of coverage of this matter. In fact, it is the position of the defense that a so-called "gag"  
order would result in the law of unintended consequences. Namely, all that a "gag" order  
would do is increase the breath and depth of misinformation and scurrilous accusations  
that swirl around this case, with no ability to mitigate the damage. Unless the media is  
permitted to properly and accurately report on developments as they occur, Mr. Peterson  
will have no opportunity to remedy the prior avalanche of disinformation disseminated in

1 the four months prior to his arrest. Moreover, the more appropriate remedy to protect Mr.  
2 Peterson's right to fair trial is found in both the Superior Court and Fifth District's orders  
3 sealing certain records in this matter.

4  
5 II.

6 **THERE IS NO BASIS ON WHICH TO ISSUE A GAG ORDER**

7 Gag orders on trial participants are unconstitutional unless (1) the speech sought to  
8 be restrained poses a clear and present danger or serious and imminent threat to a  
9 protected competing interest; (2) the order is narrowly tailored to protect that interest; and  
10 (3) no less restrictive alternatives are available.<sup>17</sup> (*Hurvitz v. Hoefflin et al.*, *supra*, 84  
11 Cal.App.4th at 1241.) Additionally, upon making such an order, the trial court must make  
12 express findings showing it applied this standard and considered and weighed the  
13 competing interests. (*Id.*) In the instant matter, as a practical and legal matter, none of  
14 the three prongs set forth in *Hurvitz* are met.

15 A. There is no clear and present danger or serious and imminent threat to  
16 a protected competing interest.

17 The paramount considerations of the Court must be (1) Peterson's right to a fair  
18 trial, and (2) the First Amendment right upon which a gag order would infringe.

19 No right ranks higher than the right of the accused to a fair  
20 trial.

21 (*In re Willon* (6<sup>th</sup> Dist. 1996) 47 Cal.App.4th 1080, 1092,  
22 rehearing denied, review denied, citing *Press-Enterprise Co.*  
23 *v. Superior Court* (1984) 464 U.S. 501, 508, and referring to  
24 *Gentile v. State Bar of Nevada* (1991) 501 U.S. 1030, 1075.

25 Here, Mr. Peterson stands wrongly and falsely accused of the capital murder of his  
26

27  
28 <sup>17</sup>The Court also requested the parties' opinion as to the appropriate standard for issuance of  
a gag order. Peterson submits the three-prong *Hurvitz* approach sets forth the applicable California  
law.



1 wife, Laci and their son. As such, Mr. Peterson has no trepidation about the fair and  
2 accurate reporting of his case as it unfolds. However, as this Court is indeed aware, Mr.  
3 Peterson has been relentlessly excoriated and vilified in the media. Just today, the  
4 Modesto Bee published a study that chronicles just how pervasive and insidious this  
5 campaign has been. Fully, 59.3 percent of the persons polled in Stanislaus County  
6 believe Mr. Peterson "probably guilty" or "guilty beyond a reasonable doubt".<sup>2/</sup>

7 Furthermore, because of the avalanche of disinformation that has already occurred  
8 in this case, any danger of prejudice to Mr. Peterson is not just "clear and present", but  
9 past and manifest. If the Court were to impose a prior restraint on the participants it  
10 would do no more than result in the unfair and inaccurate reporting of this case.<sup>3/</sup>

11  
12 **B. There is no way to narrowly tailor a gag order on this case.**

13 During the May 27, 2003 hearing the Court alluded to the fact that this case is in  
14 the newspapers and televised media on a daily basis. The media reports range from  
15 accurate reporting of factual or procedural matters to the patently absurd and often  
16 completely unfounded speculation. Although some, if not much, of what has been  
17 reported about this case has been pure sensationalism designed to appeal to the public's  
18 perceived more vile interests, a significant amount of the reporting has been fair and  
19 accurate. In short, the sheer volume of attention this case has garnered prevents any type  
20 of narrowly tailored gag order - - it would have to be a total gag to have any effect not  
21 unlike the *sub judice* laws which are not found in American jurisprudence. Consequently,  
22 there simply is no way to narrowly tailor a gag order that would render it constitutionally  
23 permissible while at the same time protecting a defendant's right to fair trial.

24  
25  
26 <sup>2/</sup>"Study says Peterson can't get fair trial here", Modestobee.com, June 4, 2003. (Attached as Exhibit A).

27  
28 <sup>3/</sup>Certainly, false reports can and should be dealt with appropriately. However, the imposition of a prior restraint in the form of a gag order is unlikely to deter those who traffic in the titillating and uniformly wrong disinformation that has plagued this case.

1 C. Less restrictive alternatives exist in the event certain information  
2 should not be disclosed.

3 The parties to this case have the option of filing documents under seal or  
4 requesting *in camera* hearings if necessary. Moreover, the Court has the inherent  
5 authority (within certain Constitutional strictures) to seal matters, order documents or  
6 filings to be sealed, or hold proceedings *in camera*. All of these procedures are much  
7 more likely to protect the various competing interests and clearly represent a less  
8 restrictive alternative to a gag order. The Court also has the power to (again, within certain  
9 Constitutional guidelines) close certain proceedings or exclude cameras from hearings or  
10 trial.<sup>4</sup> The Court's exercise of these powers is also a much less restrictive alternative to a  
11 gag order.

### 12 13 III.

#### 14 POTENTIAL PREJUDICE TO POTENTIAL JURORS 15 DOES NOT JUSTIFY A GAG ORDER

16 California law requires an actual showing of prejudice in order to justify a gag  
17 order. As noted by the Court of Appeal in *Hurvitz*,

18 Where a party contends his or her right to a fair trial has been  
19 or will be compromised by pretrial publicity, the law has long  
20 imposed on that party the burden of producing evidence to  
21 establish the prejudice. It is not enough for a court to decide  
22 that the fair trial right *may* be affected by the exercise of free  
23 speech.

24 (internal quotation marks and footnotes omitted) (*Hurvitz* at  
25 1242.)

26 In the instant matter, no party has alleged *as to the gag order*, that potential jurors

27  
28 <sup>4</sup>Further briefing on closure matters, cameras in the courtroom and related sealing orders will  
be addressed separately in accordance with the Court's briefing/hearing schedule.

1 have been prejudiced or will be prejudiced if the gag order does not issue.<sup>5/</sup>

2  
3 IV.

4 STATE BAR RULE 5-120 GOVERNS THE ATTORNEYS' CONDUCT

5 As the Court noted, Rule 5-120 governs the conduct of attorneys as to trial  
6 publicity. Consequently, there is no need for the Court to impose further restrictions than  
7 those to which all attorneys involved in this matter have acquiesced by being sworn in as  
8 members of the State Bar of California. In the event attorney misconduct does occur,  
9 such misconduct can be directly addressed by the Court or by an appropriate motion by  
10 the aggrieved party. A wholesale gag order on this matter provides no greater guard  
11 against attorney misconduct than that which is already binding and in place.

12  
13 V.

14 CONCLUSION

15 WHEREFORE, in light of the foregoing, Peterson respectfully requests that the  
16 Court refrain from issuing a gag order at this time without prejudice. If there is a change  
17 in circumstances that warrants a reconsideration of this issue we would respectfully ask  
18 the Court to address the issue at that time.

19 Dated: June 4, 2003

Respectfully submitted,  
GERAGOS & GERAGOS

20  
21  
22 By:

23 MARK F. GERAGOS  
Attorney for Defendant  
24 SCOTT LEE PETERSON  
25

26 <sup>5</sup>As this Court knows, counsel for Mr. Peterson has already indicated on the record that a  
27 request for a change of venue is forthcoming at the appropriate time. Nothing argued in this  
28 Memorandum is to be construed as a waiver of the arguments that will be raised in Mr. Peterson's  
motion for a change of venue. In any event, the standards and interests that must be balanced are  
different as to a change of venue *vis a vis* a gag order.





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**EXHIBIT "A"**



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By JOHN COTÉ  
and GARTH STAPLEY

Published: June 4, 2003, 08:00:58 AM PDT

Scott Peterson cannot get a "fair and impartial trial" from Stanislaus County jurors, according to a survey conducted by a criminal justice professor at California State University, Stanislaus.

Seventy-five percent of the people surveyed in the county said they had decided whether double-murder suspect Peterson was guilty, what his sentence should be or both.

The survey of 150 people conducted in late May showed that 59.3 percent of the respondents thought Peterson was either "probably guilty" or "guilty beyond a reasonable doubt." Only 2.7 percent believed Peterson was innocent.

It also showed that 51 percent of the respondents favored the death penalty if Peterson were found guilty.

"There is clear evidence that a fair and impartial trial cannot be had in Stanislaus County," Stephen Schoenthaler, the professor who oversaw the survey, wrote in a summary of the results.

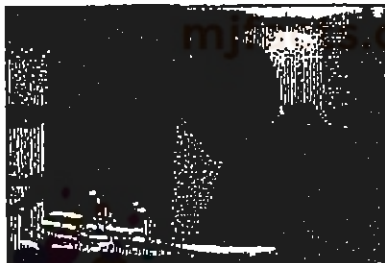
Schoenthaler, who did the poll on his own, has conducted similar surveys in 24 felony cases. He was the court-appointed expert in the request to move the 1995 trial of Richard Allen Davis, who was convicted of murdering 12-year-old Polly Klaas from Petaluma, in Sonoma County. That trial was held in Santa Clara County.

The survey of 150 Stanislaus County residents, picked at random from telephone directories and contacted by Stanislaus State graduate students, has a margin of error of plus or minus 8 percentage points.

'Clear and convincing'

A 1961 U.S. Supreme Court ruling said there was "clear and convincing" evidence that a trial needed to be moved when 62 percent of the jury pool admitted to having prejudgments about a defendant.

"Unless between now and the time of the trial there is substantial releases of



Whether or not the trial will be moved will be up to Judge Al Girolami.  
BEE FILE

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information to the media that says Scott Peterson is not guilty, these levels of prejudgment aren't going to go down," Schoenthaler said. "The trial would have to be moved."

Peterson defense attorney Mark Geragos has said in court that he would ask for the trial to be moved. "Obviously this survey is something I'm extremely interested in looking at," he said Tuesday.

Chief Deputy District Attorney John Gould said it was premature to talk about moving the trial until the defense requested it.

"I haven't seen the study. We haven't commissioned our own expert, and no motion has been brought," he said.

Gould said prosecutors would oppose a motion to move the trial, but he indicated that could change if a prosecution expert produced the same results as Schoenthaler.

"Nobody is interested in having a trial anywhere it shouldn't be held," Gould said. "But we won't know until we're closer to an actual setting of a trial date whether those numbers mean anything or whether they are going to change."

Scott Peterson, 30, has been charged with murdering his wife, Laci, and their unborn son, Connor. The district attorney has announced that he will seek the death penalty.

Laci Peterson, 27 and eight months pregnant, was reported missing from her Modesto home Dec. 24. Scott Peterson said he went fishing in San Francisco Bay on Christmas Eve.

The bodies of mother and child were found in April along the eastern shoreline of the bay.

Geragos, whose clients have included actress Winona Ryder and Clinton Whitewater figure Susan McDougal, has called the media attention surrounding the case "unprecedented."

If the defense asks for a trial in another county, under what is called a change of venue, California law mandates approval when it appears that there is a "reasonable likelihood" that a fair and impartial trial cannot be obtained in the county of origin. Or jurors from another area can be brought in.

For comparison, Schoenthaler conducted the same survey among Los Angeles residents. In that survey, 54 percent said they had made a judgment about either Peterson's guilt or what sentence he deserved.

But Schoenthaler said the "depth of conviction is quite a bit different."

Only 10 percent of Los Angeles County respondents said they thought Peterson was guilty "beyond a reasonable doubt" -- the legal standard required for a conviction.

In Stanislaus County, that number was 24 percent.



Three legal experts had not reviewed the survey report but said the results suggest a saturation of news about the murders in Stanislaus County.

William Cahill, a retired San Francisco Superior Court judge, called the numbers "remarkable" and said he "absolutely would take them into account" if he were presiding and the defense asked to move the trial.

"You need people who haven't prejudged the case," he said. "I've never seen those kinds of numbers before. If people have already got their minds made up, well, that's not really the kind of trial we have in this country. It's important that the government prove its case -- it's vital."

Mariano Florentino-Cuellar, who teaches law at Stanford University, said the survey suggests that it "would be very difficult to argue that a cross-section of the community would be open-minded enough to give (Peterson) a fair trial."

Professor David W. Miller of the McGeorge School of Law in Sacramento said: "Seventy-five percent is a pretty high number. It's sort of paradoxical. The more newspapers publish (articles) about the case, the more they create the very possibility of prejudgment."

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#### THE PETERSON FILE

##### Tuesday's developments

VAN FOUND -- The Stanislaus County district attorney's office reported that law enforcement agents had found a brown van that defense attorneys claim might have been involved in Laci Peterson's disappearance. Prosecutors said investigators examined the van, questioned "several people associated with the van" and found it had no connection with the case.

##### Upcoming

FRIDAY -- Hearings are scheduled on information gathered from a wiretap on Scott Peterson's phones and to consider issuing a gag order.

JULY 9 -- Hearing is set on media coverage of the preliminary hearing and any potential defense request to close that hearing.

JULY 16 -- Preliminary hearing is scheduled.

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PROOF OF SERVICE BY FAXSTATE 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 N. Grand Avenue, 39th Floor, Los Angeles, California 90071.

On execution date set forth below, I served the following

DOCUMENTS OR DOCUMENTS DESCRIBED AS:

**DEFENDANT'S MEMORANDUM IN RESPONSE TO COURT'S  
INQUIRY RE "GAG" OR PROTECTIVE ORDER**

\_\_\_\_\_ 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.

X 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.

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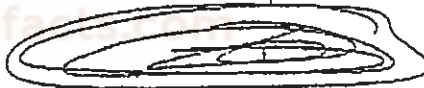
PARTIES SERVED BY FAX:

Hon. Al Girolami  
Fax. No.: 209-525-6385

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

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

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



RAFFI NALJIAN

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Client/Matter: People vs. Peterson  
Date: June 4, 2003  
Pages: 12 (INCLUDING COVER)

## RECIPIENT

Deputy District Attorneys Rick Distaso or  
David P. Harris

## FACSIMILE NUMBER

(209) 525-5545



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Date: June 4, 2003  
Pages: 12 (INCLUDING COVER)

RECIPIENT	FACSIMILE NUMBER
Hon. Al Girolami	209-525-6385

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3 **PROOF OF SERVICE**

4 STATE OF CALIFORNIA

5 COUNTY OF SANTA BARBARA

6 } SS

7 I am a citizen of the United States and a resident of the County aforesaid; I am over  
8 the age of eighteen years and I am not a party to the within-entitled action. My business  
9 address is: District Attorney's Office; Courthouse; 1105 Santa Barbara Street, Santa Barbara,  
10 California 93101.

11 On January 6, 2004, I served the within PLAINTIFF'S REQUEST FOR  
12 PROTECTIVE ORDER BINDING BOTH PARTIES REGARDING PUBLIC STATEMENTS  
13 CONCERNING THIS CASE on Defendant, by MARK JOHN GERAGOS, his counsel in this  
14 action, by faxing a true copy to him at the facsimile number shown below, and then by causing  
15 to be mailed two true copies thereof to counsel at the address shown below:

16 MARK JOHN GERAGOS, ESQ.  
17 Geragos & Geragos, Lawyers  
18 350 S. Grand Avenue, Suite 3900  
19 Los Angeles, CA 90071-3480  
20 FAX: (213) 625-1600

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

22 Executed at Santa Barbara, California on this 6th day of January, 2004.

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