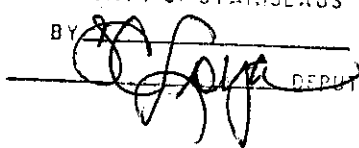


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GERAGOS & GERAGOS

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MARK J. GERAGOS SBN 108325
Attorney for Defendant **SCOTT LEE PETERSON**

FILED
03 DEC 15 AM 9:12
CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS
BY  DEPUTY

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

| | | |
|--|---|---------------------------|
| THE PEOPLE OF THE STATE OF CALIFORNIA, |) | Case No. 1056770 |
| Plaintiff, |) | NOTICE OF MOTION AND |
| vs. |) | MOTION FOR CHANGE OF |
| SCOTT LEE PETERSON, et al., |) | VENUE; MEMORANDUM OF |
| Defendant. |) | POINTS AND AUTHORITIES IN |
| |) | SUPPORT THEREOF; |
| |) | DECLARATION OF MARK J. |
| |) | GERAGOS |
| |) | DATE: January 8, 2004 |
| |) | TIME: 9:30 a.m. |
| |) | PLACE: Dept. 2 |

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

PLEASE TAKE NOTICE that on January 8, 2004 at the hour of 9:30 a.m., or as soon thereafter as counsel can be heard, Defendant Scott Lee Peterson ("Mr. Peterson"), through counsel Mark J. Geragos, will move this Court to transfer venue of the pending matter to another County on the grounds that a fair and impartial trial cannot be had in Stanislaus County.

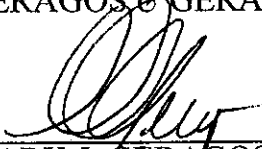
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This Motion will be based on this Notice, the attached memorandum of points and authorities, the declaration of Mark J. Geragos, the surveys conducted by Paul J. Strand and Stephen Schoenthaler, the pleadings and records on file herein, and upon such other and further argument as may be presented to the Court at the hearing of this matter.

Dated: December 14, 2003

Respectfully submitted,
GERAGOS & GERAGOS

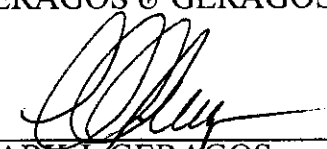
By: 
MARK J. GERAGOS
Attorney for Defendant
SCOTT LEE PETERSON

MOTION

Defendant Scott Lee Peterson, by and through counsel, hereby moves the Court for an order transferring venue of the pending matter to another County on the grounds that a fair and impartial trial cannot be had in Stanislaus County.

Dated: December 14, 2003

Respectfully submitted,
GERAGOS & GERAGOS

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

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 The widespread, pervasive and negative nature of the media reports surrounding
5 this case have made it impossible to seat a fair and unbiased jury in Stanislaus County.
6 As such, this Court must transfer venue of the pending matter to another county. The
7 extent and intensity of the publicity in this case is of unprecedented proportions in
8 Northern California. From the date of the underlying incident, this case has been the
9 subject of intense local media interest. More importantly, the community's interest in the
10 story has not diminished. Each and every court appearance in this case has been covered
11 in depth by the local media. The coverage of the Modesto Bee has been almost daily,
12 usually on the front page and often derisive of Mr. Peterson. In fact, the inflammatory
13 and editorial nature of these media reports has steadily increased since Laci Peterson's
14 disappearance, subsequent search and later recovery of her body to the point where public
15 opinion in Stanislaus County has become downright hostile and threatening to Mr.
16 Peterson.^{1/}

17 In applying the appropriate five-factor venue test to the case at hand, it is beyond
18 cavil that a fair trial cannot be had in Stanislaus County. First, Mr. Peterson is facing the
19 gravest of all punishments – the death penalty. Second, the small size of Stanislaus
20 County, coupled with the daily, unremitting, and inflammatory media coverage of this
21 case, militates strongly in favor of a venue change. Further, the victim, Laci Peterson, has
22 become a posthumous celebrity, loved and cherished by the community, whereas Mr.
23 Peterson has been demonized as an evil outsider to the community. Additionally, the fact
24 that political overtones have encompassed this case since the day of Laci Peterson's
25 disappearance constitutes an independent reason for a change of venue.

26 _____
27 ¹ One recent example of the public's continuing anger towards Mr. Peterson, is that on
28 December 12, 2003, after the Court appearance, counsel for Mr. Peterson observed a vehicle parked
outside Mr. Peterson's business warehouse which had the words "HANG THE BASTARD" painted
across the front windshield.

1 Finally, studies conducted by two experts in the field of survey research indicate
2 that a significant percentage of Stanislaus County residents (ranging from 39% to 59.3%)
3 have already in their minds convicted Mr. Peterson of these crimes. These figures,
4 reflecting preconceived attitudes, are significantly higher than surveys conducted in other
5 cases in which change of venue are ordered. Accordingly, it is clear that the persistent
6 and negative publicity of this case prevents Mr. Peterson from having a fair trial in
7 Stanislaus County.

8 **II.**
9 **STATEMENT OF FACTS**

10 On April 21, 2003 Scott Lee Peterson was charged by criminal complaint with two
11 counts of premeditated murder in connection with the deaths of his wife Laci Peterson
12 and the couple's son, Conner Peterson. Laci Peterson was thirty two weeks pregnant
13 when she was reported missing on Christmas Eve. On or about April 13, 2003, both her
14 body and that of the baby washed up on the shore of San Francisco Bay. On or about
15 April 16, 2003, Stanislaus County District Attorney James Brazelton stated: "I feel pretty
16 strongly it is Peterson." Thereafter, on April 18, 2003 Modesto police arrested Mr.
17 Peterson in San Diego, California on two counts of murder. On April 18, 2003,
18 California State Attorney General Bill Lockyer stated "this is a compellingly strong case.
19 I would call the odds slam-dunk that he is going to be convicted." Mr. Peterson pleaded
20 not guilty to two capital murder charges during his arraignment on April 21, 2003.

21 On or about April 26, 2003, District Attorney James Brazelton announced that he
22 would seek the death penalty for Mr. Peterson. Additionally, in or about May of 2003,
23 the family of the deceased launched a campaign to recognize and support legislation that
24 would make killing a fetus a distinct federal crime. In fact, the proposed legislation was
25 titled Laci and Conner's Law. At about the same time, there were several concerts and
26 memorial events held in Modesto in honor of Laci and Connor Peterson. Furthermore,
27 state senators pushed for the state to cover Stanislaus County's costs in this case.

28 Thereafter, on October 29, 2003, the preliminary hearing in the instant case began

1 outside influences, such as prejudicial pretrial publicity. *Sheppard v. Maxwell* (1966) 384
2 U.S. 333, 362-363. If an impartial jury cannot be impaneled, the defendant is entitled to a
3 change of venue. *See Groppi v. Wisconsin* (1971) 400 U.S. 505, 509-511 (the failure to
4 afford an accused a fair hearing violates even the minimal standards of due process).

5 The Due Process Clause of Article I, Section 16 of the California Constitution also
6 guarantees a criminal defendant the right to a trial by an impartial and unprejudiced jury.
7 *People v. Wheeler* (1978) 22 Cal.3d 258, 265. If no such jury can be impaneled, a change
8 of venue must be granted to ensure the accused a fair trial. *People v. Welch* (1972) 8
9 Cal.3d 106, 113. Thus, under the California Constitution, a defendant will be denied due
10 process if a change of venue is not granted when an impartial jury, free from outside
11 influences, cannot be obtained.

12 The California Supreme court has adopted the standard set forth in *Sheppard*, to
13 determine whether a change of venue should be granted in a criminal action. *Maine v.*
14 *Superior Court* (1968) 68 Cal.2d 375, 383. A criminal action must be transferred if there
15 is a "reasonable likelihood" that, in the absence of a change of venue, the accused will not
16 receive a fair trial. *Ibid.*

17 Similarly, California Penal Code Section 1033 provides that the court must grant a
18 motion for change of venue if "there is a reasonable likelihood that a fair and impartial
19 trial cannot be had in the county." The phrase "reasonable likelihood" has been
20 interpreted as requiring something less than "more probable than not," and something
21 more than merely "possible." *Powell v. Superior Court* (1991) 232 Cal.App.3d 785. This
22 determination may be based on qualified public opinion surveys or opinion testimony
23 offered by individuals, or on the court's own evaluation of the nature, frequency and
24 timing of the material involved. *Williams v. Superior Court* (1983) 34 Cal.3d 584.

25 When pre-trial publicity is the grounds upon which prejudice is based, a motion for
26 change of venue must be granted whenever it is determined that because of the
27 dissemination of potentially prejudicial news, there is a reasonable likelihood that in the
28 absence of such relief, a fair trial cannot be had. *Smith v. Superior Court* (1969) 276

1 CA.2d 145. The test as to the right to a change of venue because of adverse publicity is
2 not actual prejudice, but a reasonable likelihood that a fair trial cannot be had. *Clifton v.*
3 *Superior Court* (1970) 7 CA.3d 245. In fact, in a pretrial motion for change of venue,
4 because the prejudicial effect of publicity before jury selection is necessarily speculative,
5 it is settled that “any doubt as to the necessity of removal . . . should be resolved in favor
6 of a venue change.” *Williams v. Superior Court* (1983) 34 Cal.3d 584, 588.

7 As demonstrated by the professionally conducted public opinion polls, the
8 prejudicial media coverage that has saturated the potential jury pool in this County
9 established more than a “reasonable likelihood” that Mr. Peterson cannot receive a fair
10 trial in the venue of Stanislaus County.

11 **B. The California Supreme Court’s Five Part Test for Change of Venue**
12 **Requires Venue To Be Moved From Stanislaus County.**

13 Courts have traditionally examined five factors to determine whether to grant a
14 motion for change of venue due to dissemination of potentially prejudicial material. The
15 five factors to be considered are as follows: [1] the nature and gravity of the offense; [2]
16 the size of the community; [3] the status of the victim and accused; [4] the nature and
17 extent of the publicity; and [5] the existence of political overtones in the case. *Martinez*
18 *v. Superior Court* (1981) 29 Cal.3d 574; *Williams v. Superior Court* (1983) 34 Cal.3d
19 584. An analysis of the facts of this case, and the publicity it has generated, demonstrates
20 that Mr. Peterson cannot receive a fair and impartial trial in Stanislaus County.

21 **1. The Nature and Gravity of the Offense.**

22 It is well settled that in capital cases “the factor of gravity must weigh heavily in a
23 determination regarding the change of venue.” *Martinez v. Superior Court* (1981) 29
24 Cal.3d 574, 583; *see also Clifton v. Superior Court* (1970) 7 CA.3d 245 (in determining
25 whether the risk of prejudice from publicity warrants a change of venue, the gravity of the
26 charge against defendant is a consideration). The term “gravity” of a crime refers to its
27 seriousness in the law and to the possible consequences to an accused in the event of a
28 guilty verdict. *Martinez v. Superior Court of Placer County* (1981) 29 Cal.3d 574, 582.

1 In the instant case, Mr. Peterson is charged with two counts of premeditated
2 murder. If convicted, Mr. Peterson faces the gravest of punishments – the death penalty.
3 *See Martinez*, 29 Cal.3d at 583 (murder is a crime of utmost gravity; inasmuch as the state
4 is seeking the death penalty, it is a crime of the gravest consequences to petitioner.
5 Because it carries such grave consequences, a death penalty case inherently attracts press
6 coverage; in such a case the factor of gravity must weigh heavily in a determination
7 regarding the change of venue). Hence, it is manifest that this factor weighs heavily in
8 favor of a change of venue.

9 **2. The Size of the Community.**

10 In determining whether the risk of prejudice from publicity warrants a change of
11 venue, the size of the community is also a consideration. Stanislaus County is a relatively
12 small county by California standards. At the present time, the population is
13 approximately 468,566. In fact, Stanislaus County has been judicially recognized as not
14 being of such size as to disregard or be indifferent to a barrage of publicity detailing a
15 serious crime. *See Fain v. Superior Court* (1970) 2 Cal.3d 46 (Stanislaus County
16 determined too small to dissipate the effects of extensive pretrial publicity); *Griffin v.*
17 *Superior Court* (1972) 26 Cal.App.3d 672 (size of Stanislaus County inadequate to
18 sufficiently dissipate the impact of adverse publicity surrounding a criminal trial); *People*
19 *v. Miller* (1973) 33 Cal.App.3d 1005, 1012 (Stanislaus County is a relatively small
20 community); *Frazier v. Superior Court* (1971) 5 Cal.3d 287 (Santa Cruz which had a
21 population of 123,700 too small to dissipate the effects of extensive pretrial publicity);
22 *Steffen v. Municipal Court* (1978) 80 Cal.App.3d 623 (court ordered change of venue
23 from San Mateo County, 11th most populous county in the state with almost 600,000
24 residents). Yet despite its small population, it is important to note that Stanislaus County
25 is well served by local press. As discussed below, there are several major newspaper and
26 radio companies in Stanislaus County, and each had constant newspaper and radio stories
27 that appeared that were extensive, sensational and inflammatory pretrial publicity. The
28 small size of the community, particularly when viewed in light of the extensive local

1 media attention paid to this case, therefore militates strongly in favor of a change of
2 venue.

3 **3. The Status of The Victim and the Accused.**

4 Another significant factor courts have looked to in determining the appropriateness
5 of transferring venue is the relative status of the victim and the accused. This factor also
6 clearly weighs in favor of transferring venue in the instant case. The victim in this case,
7 Laci Peterson, was the daughter of a local family and was born and raised in Modesto,
8 whereas Mr. Peterson is from San Diego, CA. Furthermore, although almost all media
9 reports about this case emphasized Laci Peterson's good looks, infectious smile and other
10 worthy attributes, Mr. Peterson has consistently been portrayed as an adulterous fertilizer
11 salesman in dire financial difficulty who is an outsider to Modesto.

12 In *People v. Williams*, the California Supreme Court addressed this issue as
13 follows, "Equally or perhaps even more compelling, however, was the relative status of
14 the victim and the defendant in the community. Aside from the stark brutality of the
15 offenses, the pretrial publicity focused heavily on the fact that the victim was a Placer
16 County resident and the defendant was an outsider. Most articles described the victim as
17 a young 'Roseville woman' and defendant as a "Sacramento man." Moreover, though the
18 victim, Heather Mead, was herself not especially prominent, she came from an extended
19 family with long and extensive ties to the community." *Williams*, 48 Cal.3d at 1129.
20 Moreover, as stated in *Odle v. Superior Court, supra*, the victim's status frequently
21 emerges as a product of the publicity itself. In *Odle*, the Supreme Court noted that "...by
22 virtue of the events and media coverage after the crimes, [the victim] became a
23 posthumous celebrity." *Id.* at 940.

24 Based on the media's constant depiction of Laci Peterson as a "beautiful daughter"
25 of Modesto, who has even taken on a status of a "celebrity" and Mr. Peterson as being an
26 outsider to their community, coupled with the media's constant barrage of predetermined
27 allegations of guilt towards Mr. Peterson, a grave concern should arise regarding the jury
28 pool in Stanislaus County. See *Illumen Compact Disc, Modesto Bee, Article # 99, Jury's*

1 Out Whether a Fair Trial Can Be Held Here, April 24, 2003, attached hereto as Exhibit A;
2 see also Declaration of Adam Talaat, attached hereto as Exhibit B. As stated in *Williams*,

3 “the risk is enormously high that the verdict may be based on
4 a desire for revenge, or the fear of social ostracism as the cost
5 of a mitigated verdict. In such circumstances, as we observed
6 in *Tidwell*, ‘the juror may consider himself honored and
7 fortunate to be selected to culminate a community’s anger
8 against a stranger accused of killing [a] respected member []
9 of the community, [and] returning anything less than a death
10 verdict for first degree murder might be viewed as a betrayal
11 of both his trust as a juror and his friendship with witnesses
12 [or the prosecution]. When a juror might reasonably fear that
13 the cost of a mitigated verdict might be . . . the alienation of
14 an entire community, there is a danger that such fears will
15 play a part in his deliberations.’”

16 *Id.* at 1131.

17 **4. The Media Coverage Associated with this Case Has Been**
18 **Extensive and Inflammatory.**

19 In describing the ramifications of extensive and biased media coverage, the
20 Supreme Court in *Williams* stated as follows:

21 “When a spectacular crime has aroused community attention
22 and a suspect has been arrested, the possibility of an unfair
23 trial may originate in widespread publicity describing facts,
24 statements and circumstances which tend to create a belief in
25 his guilt.” (*Martinez v. Superior Court, supra*, 29 Cal.3d at
26 p.580, quoting *Corona v. Superior Court* (1972) 24
27 Cal.App.3d 872, 877).

28 *Williams*, 48 Cal.3d at 1128.

In granting the defendant’s motion to change venue, the court in *Williams* was
faced with media coverage that was significantly less inflammatory, sensational, and
widespread than the media coverage in the instant case. In *Williams*, the Court was
careful to note that more than 50 newspaper and radio reports appeared during the 9-
month period between defendant’s arrest and motion to change venue. Later news reports
in that case also focused on preliminary hearing evidence and sheriff’s statements
indicating that the defendant was the actual “triggerman” and rapist. *Id.* at 1127; see also
People v. Cummings (1993) 4 Cal.4th 1233, 1275 (extensive coverage found where 51
articles made print; *People v. Jennings* (1991) 53 Cal.3d 334, 361 (six newspaper
articles); *People v. Bonin* (1988) 46 Cal.3d 659, 672-679 (extensive coverage noted

1 without mention of exhibits); *Smith v. Superior Court* (1969) 276 Cal.App.2d 145 (290
2 articles); *F. Williams v. Superior Court* (1983) 34 Cal.3d 584 (157 articles).

3 In contrast, over eight thousand (8,000) newspaper and radio reports appeared
4 during the 8-month period between Mr. Peterson's arrest and the filing of this motion.
5 Additionally, several hundred media reports focused exclusively on the evidence and
6 testimony introduced at Mr. Peterson's preliminary hearing. This evidence included
7 statements by witnesses who claimed that Mr. Peterson's alleged suspicious actions made
8 him the primary suspect in this case.

9 Attached hereto is a representative collection of some of the countless newspaper
10 articles that have appeared in the Modesto Bee and other newspapers in Stanislaus County
11 beginning in 2002 on the guilt of Mr. Peterson. As indicated, there are over eight
12 thousand (8,000) articles published in the various newspapers relating to the facts or
13 circumstances of this case. *See* Exhibit A. This coverage includes approximately 500
14 articles published in the Modesto Bee, approximately 425 articles on the website for
15 KTVU, approximately 99 articles in the Contra Costa Times, approximately 42 articles in
16 the Fresno Bee, approximately 228 in the Sacramento Bee, approximately 155 articles on
17 the website for KCRA Channel 3 [Sacramento/Modesto], approximately 98 articles on the
18 website for KFSN Channel 30 (ABC) [Fresno], over 100 articles on the website for
19 KGPE Channel 47 (CBS) [Fresno], over 50 articles on the website for KRON Channel 4
20 [San Francisco], approximately 381 articles on the website for KPIX Channel 5 (CBS)
21 [San Francisco], approximately 118 articles on the website for KGO Channel 7 (ABC)
22 [San Francisco/Oakland/San Jose], approximately 620 articles on the website for KNTV
23 Channel 11 (NBC) [San Jose/San Francisco], approximately 200 articles published in the
24 Tri-Valley Herald [Tracey, CA], and approximately 150 articles on the website for KNTV
25 Channel 11 (NBC) [San Jose/San Francisco]. Attached hereto as Exhibit C is a true and
26 correct copy of the search results obtained from the various websites mentioned above;
27 *see also* Declaration of Nareg Gourjian, attached hereto as Exhibit D. This coverage
28 included front page pictures, feature stories, special sections, in depth analyses, editorials,

1 results of numerous polls conducted, timelines, and pictures of key individuals.

2 In addition to the countless print articles, there has also been extensive television
3 coverage that has also improperly and prematurely convicted Mr. Peterson of the alleged
4 crimes. FOX, CNN, NBC and Court TV, to name a few, have covered this case on a
5 regular basis and have all had television trucks parked outside the court house providing
6 constant reports of the developments of the day. In fact, FOX New's Friday coverage
7 relating to this case was the single most-watched program on cable, with more than 5
8 million viewers. Thus, day after day, potential jurors in this case have been bombarded
9 with news accounts relating directly to the issue of Mr. Peterson's guilt.

10 As demonstrated by the surveys conducted by Dr. Paul Strand and Stephen J.
11 Schoenthaler, the effect of this incessant news coverage has been felt most acutely in
12 Stanislaus County, a small rural community, due to the Modesto Bee newspaper articles,^{3/}
13 all of which are available both in print and on-line to potential jurors. The tone of these
14 articles has been to prejudice and bias readers against Mr. Peterson, which has destroyed
15 the fairness of the potential jury pool in Stanislaus County.

16 As is evident from the titles of the articles, these articles have presented a very
17 one-sided, pro-prosecution version of the case. The articles have had only one purpose –
18 to inflame and bias the public against Mr. Peterson. As demonstrated by the following
19 list of titles from amongst the 500 Modesto Bee ("ModBee") articles, the local media has
20 already served as judge, jury and executioner in this case, having already convicted Mr.
21 Peterson.

- 22 • "Relative Voices Suspicion: Modesto police told Laci Peterson's family that
23 her husband was having an affair and recently took out a \$250,000 life

24
25 ³The Modesto Bee ("ModBee") is the major print source in Stanislaus County. The ModBee
26 began over 100 years ago and is delivered to homes from Ripon to Merced, Patterson to Sonora.
27 There are over 800 locations throughout the Valley where the ModBee can be purchased. The
28 ModBee has a daily circulation of 84,000 and an additional 12,000 on Sundays. Furthermore,
ModBee is available on-line at ModBee.com. In fact, the website features a special section devoted
exclusively to news about the Peterson case, and includes photo galleries available upon payment
of a small premium.

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insurance policy on her” ModBee, January 17, 2003.

- “Peterson Eyed for Link for Missing Student: San Luis Obispo detectives are looking at Scott Peterson in connection with the disappearance of a college student nearly seven years ago” ModBee, January 18, 2003.
- “Homicide Victims Usually Know Killer: If Laci Peterson has been killed, statistics say she was slain by someone close to her” ModBee, January 28, 2003.
- “Fertilizer Sales Field Tough” ModBee, January 30, 2003.
- “Peterson Suspicious in Eyes of Experts” ModBee, January 31, 2003.
- “Police Search Peterson Home, Confiscate New Truck” ModBee, February 18, 2003.
- “Driver Says that She Saw Something in Back of Scott Peterson’s Truck” ModBee, March 20, 2003.
- “Scott Peterson’s Life Presents Picture with Conflicts” ModBee, April 19, 2003.
- “Peterson Conferring as Wife, Unborn Son Mourned Nearby: As thousands of people grieved for Laci Peterson and her unborn son Sunday, the man accused of their murders spent the afternoon conferring with his attorney several blocks away” ModBee, May 5, 2003.
- “Skeptics Question Peterson Claims: The image of Scott Peterson fishing alone in San Francisco Bay on Christmas Eve does not sit well with some longtime sturgeon fishermen” ModBee, May 23, 2003.
- “In Memo, Mayor says Peterson Lacked Grief at January 3, Meeting: Modesto Mayor Carmen Sabatino said this week that he did not detect “much grief” from Scott Peterson when the two met 10 days after Peterson’s pregnant wife, Laci, was reported missing” ModBee, June 20, 2003.
- “Inmate: Peterson Pursued Kidnap: A jail inmate here says Scott Peterson,

1 during a November meeting with two members of a neo-Nazi gang,
2 broached the idea of kidnapping his wife” ModBee, September 20, 2003.
3 • “Few Bites from Fishermen on Peterson Sturgeon Alibi: Details from Scott
4 Peterson’s preliminary hearing about his Christmas Eve fishing trip left
5 some already skeptical fishermen with more doubt” ModBee, November 30,
6 2003.

7 There can be no question that the media coverage associated with this case has
8 been undeniably biased against Mr. Peterson. The nature and extent of the publicity,
9 including the massive print media coverage, extensive radio coverage, and graphic
10 television coverage has been inflammatory, sensational and highly prejudicial to Mr.
11 Peterson. The dissemination of the prejudicial and biased materials in this case has
12 undoubtedly resulted in a reasonable likelihood that a fair and impartial trial cannot be
13 had in Stanislaus County.

14 **5. The Presence of Political Overtones.**

15 One cannot dispute the existence of vast political overtones in this case. In fact,
16 political overtones encompassed this case even before Mr. Peterson’s arrest. As
17 discussed above, even before Mr. Peterson was arraigned, Attorney General Bill Lockyer
18 labeled the odds a “slam-dunk” that Mr. Peterson would be convicted of these crimes.
19 Also, the County Board of Supervisors had a meeting in which they discussed this case at
20 length. Moreover, the family of the deceased entered the political arena to support
21 legislation that would allow the federal government to charge people with killing a fetus.
22 Finally, various state senators pushed for the state to cover Stanislaus County’s costs in
23 this case. As stated in *Powell v. Superior Court*, “Political factors have no place in a
24 criminal proceeding, and when they are likely to appear, as here, they constitute an
25 independent reason for a venue change.” *Powell v. Superior Court* (1991) 232
26 Cal.App.3d 785, citing *Maine v. Superior Court* (1968) 68 Cal.2d 375.

27 ///

28 ///

1 **C. Stanislaus County Residents Have Prejudgments About Mr. Peterson**
2 **According to Expert Surveys.**

3 The results of two surveys demonstrate that a change of venue is necessary to
4 preserve Mr. Peterson's right to an impartial jury and fair trial. A survey conducted by
5 Paul J. Strand, Ph.D. clearly establishes that potential jurors from Stanislaus County
6 cannot view this case with the requisite impartiality. In a random sample of 300
7 Stanislaus County residents, ninety-eight percent (98%) said they were aware of a
8 criminal case involving Scott Peterson. Additionally, thirty nine percent (39%) had
9 admitted predisposition towards Mr. Peterson's guilt. *See* Declaration of Paul J. Strand,
10 attached hereto as Exhibit E, *see also* Peterson Case Venue Study, attached hereto as
11 Exhibit F. .

12 Also, a survey conducted by Stephen J. Schoenthaler, Ph.D. demonstrates the
13 impact of the negative publicity on the venire in Stanislaus County. In a random sample
14 of 150 Stanislaus County residents, seventy five percent (75%) said they had decided
15 whether Mr. Peterson was guilty, what his sentence should be or both. Additionally, 59.3
16 percent (59.3%) thought Mr. Peterson was either "probably guilty" or "guilty beyond a
17 reasonable doubt." Only 2.7 percent (2.7%) believed Mr. Peterson was innocent. The
18 survey also showed that fifty-one percent (51%) favored the death penalty if Mr. Peterson
19 were found guilty. Accordingly, Dr. Schoenthaler believes these results suggest that
20 "there is clear evidence that a fair and impartial trial cannot be had in Stanislaus County."

21 These figures, reflecting preconceived attitudes, are also significantly higher than
22 those in similar surveys made in *Williams v. Superior Court* (1983) 34 Cal.3d 584, 590, in
23 which a writ of mandate was granted directing the trial court to grant a change of venue.
24 In *Williams*, of the 117 individuals surveyed, 22.4 percent (22.4%) claimed they had
25 formed opinions on the guilt or innocence of the defendant. *Id.*; *see also* *Martinez v.*
26 *Superior Court* (1981) 29 Cal.3d 574, 589 (change of venue ordered where less than five
27 percent had formed any opinion of the guilt or innocence of defendant, and fifteen percent
28 believed they could not decide the case solely on the evidence that would be presented in

1 court). Moreover, the United States Supreme Court has held in *Irvin v. Dowd* (1961) 366
2 U.S. 717 that there is “clear and convincing” evidence that a trial needed to be moved
3 when sixty-two percent (62%) of the jury pool admitted to having prejudgments about a
4 defendant. *Irvin*, 366 U.S. at 728.

5 In the case at bar, the survey suggests that 98% of the jury pool had some
6 awareness of this case, 75% of the jury pool admitted to having prejudgments about Mr.
7 Peterson, well over the 62% “clear and convincing” standard set forth by the United
8 States Supreme Court. These levels of prejudgment could only suggest that the residents
9 of Stanislaus County have already made up their minds and convicted Mr. Peterson of
10 these crimes. Therefore, it is clear from the above that a fair trial cannot be had in
11 Stanislaus County. Only a change of venue can ensure that Mr. Peterson obtains the fair
12 and impartial trial to which he is constitutionally entitled.

13 **D. Admonitions During the Jury Voir Dire Will Not Cure The Prejudicial**
14 **Pretrial Publicity In The Present Case.**

15 It is abundantly clear that a change of venue motion is properly made prior to the
16 commencement of jury trial. In fact, given the unnecessary burden on the potential jurors,
17 litigants, and the Court, not to mention, the unnecessary and wasteful use of judicial
18 resources, it is preferable to litigate a motion to change venue prior to trial rather than to
19 risk the possibility of transferring the case after the commencement of *voir dire*.

20 The preference for litigating issues of venue during pretrial proceedings was first
21 enunciated by the California Supreme Court in *Maine v. Superior Court*, *supra*, 68 Cal.2d
22 375. The court held the burden and expense of conducting an entire capital trial only to
23 have it reversed on appeal because of an erroneous denial of a change of venue motion
24 “... often falls short of sufficient protection, since ‘the burden, expense and delay involved
25 in a trial render an appeal from an eventual judgment an inadequate remedy.’ [Citation
26 omitted.]” (*Id.*, at 378.) This was readily demonstrated by the reversal of the second
27 *Williams* decision (*People v. Williams [Kenneth]* (1989) 48 Cal.3d 1112) where the
28 California Supreme Court remanded the capital case for retrial in a new venue, over nine

1 years after the date of the original offense. Virtually every case in recent history has
2 upheld the propriety of litigating a venue motion prior to the commencement of a jury
3 trial and, if necessary, seeking of review of any ruling through a pretrial writ of mandate.

4 The California Supreme Court's decision in *Odle v. Superior Court* (1982) 32
5 Cal.3d 932, discusses a corollary to this issue. *Odle* has often been cited for the
6 proposition that a trial court may defer ruling on a venue motion until the time of *voir*
7 *dire*, to better judge from juror responses the likelihood of a fair trial for the accused.
8 What *Odle* actually says is that when a defendant fails to make an adequate showing at
9 the pretrial motion for change of venue, the defendant may renew the motion during *voir*
10 *dire*; and the trial court should grant the motion if juror responses indicate the publicity
11 has in fact infected the *venire*:

12 "We conclude, therefore, that the extensive publicity of the two-week period that
13 followed the crimes, either alone or in combination with other criteria, does not
14 establish a reasonable likelihood that a fair trial cannot be had in that county[.]
15 Our conclusion is necessarily based on the evidence before us at this time. ... If
16 our perception and conclusions are faulty and the *voir dire* reveals that, in fact, the
17 dissemination of potentially prejudicial material was more widespread than was or
18 could be anticipated, the trial court will have not only the opportunity, but the duty
19 to order a change of venue upon renewed motion of the defendant."
(*Id.*, at p. 943.)

20 The opinion in *Irvin v. Dowd* (1961) 366 U.S. 717, 727-728, is also instructive. In
21 *Irvin*, the United States Supreme Court held that a verdict of guilty by a jury which was
22 not impartial violated the defendant's constitutional rights. The Supreme Court held that
23 the nature and extent of the media coverage associated with this case, along with the
24 strength of the opinions formed, prevented jurors from setting aside their opinion and
25 rendering a verdict based on the evidence presented in court. The Court stated:

26 "Here the build-up of prejudice is clear and convincing. .
27 .With such an opinion permeating their minds, it would be
28 difficult to say that each could exclude this preconception of
guilt from his deliberations. The influence that lurks in an
opinion once formed is so persistent that it unconsciously
fights detachment from the mental processes of the average
man. Where one's life is at stake – and accounting for the
frailties of human nature – we can only say that in the light of
the circumstances here the finding of impartiality does not
meet constitutional standards. . .No doubt each juror was
sincere when he said that he would be fair and impartial to
petitioner, but psychological impact requiring such a

1 declaration before one's fellows is often its father. Where so
2 many, so many times, admitted prejudice, such a statement of
3 impartiality can be given little weight. . . With his life at stake,
4 it is not requiring too much that petitioner be tried in an
5 atmosphere undisturbed by so huge a wave of public passion."

6 *Id.* at 727-728.

7 Thus, in an age of extremely powerful pervasive mass communications, trial courts
8 can no longer look to judicial admonitions during *voir dire* as the remedy for continuing
9 and prejudicial pretrial publicity. The conclusion is clear that, despite the sincere
10 expressions by prospective jurors that they can "put aside" prejudgments and hold on to
11 the presumption of a defendant's innocence, it is unrealistic to expect that any individual
12 bombarded by the frenzy of media reports in Stanislaus County would be able to do so.
13 The remedy of a change of venue is available to trial courts precisely to avoid such
14 dilemmas. In the appropriate instances, such as that presented in this case, the remedy
15 must be utilized.

16 IV.

17 CONCLUSION

18 The lynch mob atmosphere that has been created in this case has become so
19 poisonous that the nature of the news coverage has in many instances been reduced to
20 nothing more than vilification. In fact, even former Modesto Mayor Carmen Sabatino
21 stated on numerous occasions that Mr. Peterson cannot get a fair trial in Stanislaus
22 County. One does not have to look further than the public's reaction to Mr. Peterson's
23 arrest. Over 300 people, not including the media, showed up to witness the arrival of Mr.
24 Peterson at the Stanislaus County Jail. Even the spokesman for the Stanislaus County
25 Sheriff's Department, Kelly Huston, was surprised by the intensity of the crowd and was
26 quoted as saying, "We were considering doing a last-minute booking change . . . Our
27 No.1 goal was to make sure he was booked safely, and that included that **he didn't get**
28 **lynched when he came in the driveway.** There were people out there screaming,
'Murderer.'" "We're here tonight in support of Laci and her baby and her family," one
woman said. "We've been waiting a long time for the cops to arrest Scott, and we just


1 wanted to be here when they brought him in. Tonight is a piece of history.” (Emphasis
2 supplied) *See* Exhibit A, Modesto Bee, Article # 108, Crowd On Hand to See Scott’s
3 Arrival at Jail, April 20, 2003.

4 For the foregoing reasons, Mr. Peterson respectfully requests that this Court
5 transfer venue of the pending matter to another County.

6
7 Dated: December 14, 2003

Respectfully submitted,
GERAGOS & GERAGOS

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10 By:



11 MARK J. GERAGOS
12 Attorney for Defendant
13 SCOTT LEE PETERSON
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1 "guilty beyond a reasonable doubt." This survey clearly establishes that potential jurors
2 from Stanislaus County cannot view this case with the requisite impartiality.

3 5. Finally, the Peterson family and defense counsel have been exposed to
4 harassment in the community. This harassment ranges from name calling, slashing of
5 tires to home invasions and burglaries. Both Mr. Peterson and his family have been
6 treated as pariahs in the community. The only possible explanation for this treatment is
7 that there is a group consensus in the community that Mr. Peterson is presumed guilty of
8 the charge of murdering his pregnant wife.

9
10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct.

12 Dated this 14th day of December 2003, Los Angeles, California.

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16 _____
17 MARK J. GERAGOS
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