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LOS ANGELES SUPERIOR COURT

MAY 06, 2010

JOHN A. CLARKE, CLERK

BY



1 STEVE COOLEY
DISTRICT ATTORNEY
2 DAVID WALGREN
DEPUTY DISTRICT ATTORNEY
3 MAJOR CRIMES DIVISION
210 W. TEMPLE STREET, 17th FLOOR
4 LOS ANGELES, CA 90012
(213) 974-3992

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6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

7
8 PEOPLE OF THE STATE OF CALIFORNIA,

9 Plaintiff,

10 vs.

11 Roman Polanski,

12 Defendant.

Case No: A334139


PEOPLE'S OPPOSITION TO DEFENDANT
ROMAN POLANSKI'S REQUEST FOR RELIEF
AND RELEASE OF THE CONDITIONAL
EXAMINATION TRANSCRIPTS

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16 The People hereby request that this court deny defendant Roman Polanski's latest
17 request for relief. This opposition is based on the doctrine of fugitive disentitlement, the
18 applicable law as it relates to conditional examinations, and the fact that the People's affidavit in
19 support of extradition is absolutely truthful and accurate in every regard. For these reasons, the
20 reckless and desperate defense allegations must be viewed as such and the requests of the
21 defendant should be summarily denied.
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1 Dated: May 6, 2010

Respectfully submitted,

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4 STEVE COOLEY
District Attorney
By:

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7 David Walgren
Deputy District Attorney
8 Major Crimes Division
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I. **INTRODUCTION**

3 Roman Polanski fled this court's jurisdiction, in violation of a direct and explicit court
4 order, on February 1, 1978. Since that time, he has remained a fugitive. Despite his fugitive
5 status, since 2008 he has proceeded to file multiple motions demanding relief from this court.
6 Each request for relief has been properly denied and each denial has been affirmed by the
7 Appellate Court.

8 On January 6, 2010, this court instructed the parties to confer regarding conducting a
9 conditional examination of Roger Gunson. Following that date, the defense, in clear
10 contradiction of the law of conditional examinations, requested that the conditional examination
11 take place at the law offices of the defense and explicitly stated, again in clear contradiction of
12 the law, that a magistrate is not required. In response, the People made no objection to
13 conducting a conditional examination, but did insist that it be conducted pursuant to the law,
14 rather than the demands of the fugitive defendant. Accordingly, the People insisted on the
15 hearing being conducted before a magistrate. The defense responded by asking the court to
16 hold the hearing in a "closed courtroom or off-site" location. The court appropriately ordered the
17 hearing to take place in a courtroom before a magistrate.

18 On February 26, March 9, and March 12, 2010, the conditional examination was held in
19 order to preserve the testimony of Roger Gunson should Mr. Gunson, at a future date, be
20 unavailable when the defendant is finally in the custody of Los Angeles law enforcement. The
21 People never opposed holding these hearings and, in fact, felt it appropriate to preserve Mr.
22 Gunson's testimony since the defendant had made it so abundantly clear that he would never
23 willingly appear before this court. At each of these hearings, the defense moved, contrary to
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1 law, to have Judge Mary Lou Villar release copies of the transcripts.¹ The magistrate, on three
2 separate occasions, appropriately denied these requests.

3 On March 18, 2010, the defendant filed another Petition for Writ of Mandate, again
4 requesting, among other things, the release of the conditional examination transcripts. During
5 the pendency of that defense request, the defense also wrote a letter to the Appellate Court
6 asking for the release of the transcripts. The Appellate Court declined to release the transcripts
7 and subsequently denied the Writ of Mandate.

8 The defendant now brings this motion before this court, requesting the same relief that
9 was previously denied by Judge Villar on three separate occasions. Moreover, the defendant,
10 lacking both case law and facts in support of his position, and obviously running out of options
11 to avoid extradition, makes completely baseless and reckless allegations apparently
12 orchestrated as part of a public relations campaign, rather than being premised on any legal or
13 factual foundation. This motion, like the others before it, must be denied as it is entirely
14 meritless.

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16 **II. FUGITIVE DISENTITLEMENT**

17 Despite repeated instructions for the defendant to surrender to the court's jurisdiction, he
18 remains a fugitive fighting extradition from Switzerland. Moreover, while a fugitive, he continues
19 to instruct his team of lawyers to file repeated requests for relief from this court, all the while
20 stating unequivocally that he has no intention of following any court orders that he finds
21 inconvenient or in any way contrary to his explicit demands. As this court has previously held,

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¹ Notably, the defense initially requested the release of the transcripts to better prepare for the continuing
25 conditional examination. When that argument failed, the defense argued the release was needed to
assist the Swiss authorities.

1 this is "a situation in which the fugitive disentitlement doctrine is especially applicable" and "the
2 Defendant's requests for relief cannot be granted while he remains a fugitive." (Order of Judge
3 Espinoza, dated January 22, 2010, p. 6 , lines 4-5; p. 7, lines 24-25.)

4 The People ask the court to continue to deny such requests for relief until the defendant
5 surrenders to this court's jurisdiction. Then, with the defendant in custody, a fair and full
6 sentencing hearing can be held. At said hearing, the parties will have the opportunity to litigate
7 the allegations of misconduct. Additionally, the parties will have the opportunity to address the
8 criminal actions of the defendant – criminal actions committed against a 13-year-old child.

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10 **III. JUDGE VILLAR CORRECTLY ORDERED THE TRANSCRIPTS SEALED AND THIS**
11 **DECISION SHOULD STAND**

12 On February 26, 2010, the conditional examination of Roger Gunson commenced in
13 front of the Honorable Judge Mary Lou Villar. At the termination of that day's proceedings, the
14 defense requested the release of the transcripts so that the defense could better prepare for the
15 hearing scheduled to recommence on March 9, 2010. The judge, relying on the applicable law,
16 denied that request and ordered the transcript sealed. On March 9, 2010, the defense renewed
17 the request, which Judge Villar again appropriately denied based on the law. On March 12,
18 2010, the defense made the request a third time, even though the hearing had concluded and
19 the defense had no need to "prepare" for any future conditional examination dates. Judge Villar,
20 again relying on the law of conditional examinations, appropriately denied this third request.

21 As described above, the defendant has previously requested rulings on this same issue
22 on three prior occasions. In each instance, the defense provided the same erroneous legal
23 arguments and in each instance the court correctly denied the request. These prior rulings
24 should stand.

1 **IV. THE CONDITIONAL EXAMINATION WAS CONDUCTED TO PRESERVE THE**
2 **TESTIMONY OF THE WITNESS SHOULD HE BE UNAVAILABLE AT THE TIME OF**
3 **SENTENCING**

4 As this court is no doubt aware, the conditional examination was conducted, in an
5 abundance of caution and without objection by the People, to preserve the testimony of the
6 witness should he be unavailable at any future sentencing hearing. The conditional examination
7 was not conducted to allow the defendant to circumvent the previous court order requiring his
8 surrender prior to the court conducting a sentencing hearing. Moreover, until the prerequisite
9 circumstances arise, the transcripts, by law, are to remain sealed and custody is to be
10 maintained by the court. The defense, which previously incorrectly argued that a magistrate
11 was not required for a conditional examination, now incorrectly argues that the transcripts
12 should be released. Once again, the People insist on application of the law, not the demands of
13 the fugitive defendant.

14 The statutory authority for conditional examinations is provided in Penal Code sections
15 1335 – 1345. The sealing of the conditional examination transcript is specifically required by
16 Penal Code section 1344, which mandates that the **“deposition taken must, by the**
17 **magistrate, be sealed up and transmitted to the Clerk of the Court in which the action is**
18 **pending or may come for trial.”** (Penal Code § 1344.)

19 Additionally, Penal Code section 1345 dictates the conditions – the only conditions –
20 which allow for the unsealing of these transcripts. Specifically, Penal Code section 1345
21 provides:

22 The deposition, or a certified copy of it, may be read in evidence, or if the
23 examination was video-recorded, that video-recording may be shown by
24 either party at the trial **if the court finds that the witness is unavailable as a**
25 **witness within the meaning of Section 240 of the Evidence Code.** The same
objections may be taken to a question or answer contained in the deposition
or video-recording as if the witness had been examined orally in court.
(Penal Code § 1345, emphasis added.)

1 Thus, the relevant law dictates that the transcripts remain sealed until the following legal
2 prerequisites are met: (1) a hearing must be held, which in this case would require the presence
3 of the fugitive defendant, and (2) at the time of the hearing, the witness that was subject to the
4 conditional examination must be found by the court to be legally unavailable. Absent this
5 specific scenario, the conditional examination serves the important, but limited, purpose of
6 *preserving* the testimony of the witness for some possible future court hearing.

7 While ignoring these indisputable statutory requirements, the defense incorrectly cites
8 Penal Code section 870, which is limited to a much different scenario, namely the receipt of
9 preliminary hearing transcripts. Penal Code section 870 is entirely inapplicable to conditional
10 examinations. Whereas the preliminary hearing transcript documents the testimony in support
11 of an order holding a defendant to answer criminal charges in the Superior Court, the
12 conditional examination serves no other purpose than to *preserve* testimony in the event the
13 witness is unavailable at a future court hearing.

14 Although the defendant might find this result contrary to his demands, he has an
15 immediate solution available to him – he can surrender to the court’s jurisdiction so that the
16 witness, and others, can testify at the sentencing hearing and all matters can be aired in a full
17 and complete proceeding.

1 **V. CONTRARY TO THE DEFENSE ALLEGATIONS, THE AFFIDAVIT IN SUPPORT OF**
2 **EXTRADITION IS COMPLETELY ACCURATE AND IS UNEQUIVOCALLY**
3 **SUPPORTED BY THE FACTUAL RECORD IN THE CASE**

4 The defense has repeatedly and inaccurately stated that paragraph 31 of the People's
5 affidavit contains false statements.² Apparently believing that if this is repeated often enough, it
6 will make it true, the defense renews the allegation yet again. The People again respond that
7 the affidavit is truthful and accurate and that the only untruths are the defense allegations to the
8 contrary. However, one need only look to paragraph 31 and compare it to the law, and more
9 importantly, compare it to the court certified transcript for September 19, 1977, to discover that
10 paragraph 31 is absolutely truthful and accurate.

11 In relevant part, paragraph 31 states:

12 On 19 September 1977, ... instead of imposing a sentence, Judge Rittenband
13 ordered Mr. Polanski to undergo the 90-day diagnostic evaluation that is set forth
14 in California Penal Code Section 1203.03. As described above, the purpose of
15 Section 1203.03 is to give the judge more information about a person before
16 imposing a sentence. At the 19 September 1977, hearing, the judge told the parties,
17 including Mr. Polanski, that the judge decided to order the diagnostic evaluation of Mr.
18 Polanski so that the judge would be in a better position to reach a fair and just
19 decision as to the sentence that he would finally and eventually impose on Mr. Polansk.
(Exhibit A, paragraph 31.)

20 By analyzing this three sentence paragraph line by line, one must conclude that it is an
21 entirely accurate, truthful statement supported by the record in this case.

22 ² If instead, the defense is conceding the affidavit is accurate and truthful but disputes Judge Rittenband's
23 true intent when he made the statement contained in paragraph 31, then the defense is confusing a
24 recitation of facts with an assertion of a statement's veracity one way or another. Additionally, Judge
25 Rittenband could easily have had multiple purposes, both the desire to punish and the desire to gain
more information, for ordering a 1203.03 diagnostic. In any event, that is a subject to be litigated at a
future sentencing hearing.

1 **1. Sentence 1: "On 19 September 1977, ... instead of imposing a sentence, Judge**
2 **Rittenband ordered Mr. Polanski to undergo the 90-day diagnostic evaluation**
3 **that is set forth in California Penal Code Section 1203.03"**

4 If one reads the certified transcript from the proceedings of September 19, 1977, one will
5 see that instead of imposing a sentence, Judge Rittenband ordered that:

6 ...the defendant be committed to the custody of the Department of Corrections
7 at its prison facility in Chino, California, where he will be confined for a period of
8 90 days and undergo a diagnostic evaluation, pursuant to the provisions of 1203.03
9 of the Penal Code. (Exhibit B, p. 16, line 27 – p. 17, line 4.)

10 Clearly, this first sentence contains a completely truthful and accurate account of what
11 transpired on September 19, 1977.

12 **2. Sentence 2: "As described above, the purpose of Section 1203.03 is to give the**
13 **judge more information about a person before imposing a sentence"**

14 This again is an entirely accurate statement of the law. The purpose of Penal Code
15 section 1203.03 is to give the judge more information about a person before imposing a
16 sentence. Penal Code section 1203.03 allows for the temporary commitment of a defendant to
17 a diagnostic facility if the court "concludes that a just disposition of the case requires such
18 diagnosis and treatment services as can be provided at a diagnostic facility of the Department of
19 Corrections..." (Penal Code § 1203.03(a).)

20 Penal Code section 1203.03(b) further requires the Department of Corrections to provide
21 the court a written report containing its diagnosis and recommendation concerning an
22 appropriate sentence. Specifically, the section requires the Director of the Department of
23 Corrections, within 90 days, to "cause defendant to be observed and examined and shall
24 forward to the court his diagnosis and recommendation concerning the disposition of
25 defendant's case. Such diagnosis and recommendation shall be embodied in a written
 report..." (Penal Code § 1203.03(b).)

1 Thus, it is absolutely true that, as stated in paragraph 31, the purpose of Section
2 1203.03 is to give the judge more information about a person before imposing a sentence
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4 **3. Sentence 3: "At the 19 September 1977, hearing, the judge told the parties,**
5 **including Mr. Polanski, that the judge decided to order the diagnostic**
6 **evaluation of Mr. Polanski so that the judge would be in a better position to**
7 **reach a fair and just decision as to the sentence that he would finally and**
8 **eventually impose on Mr. Polanski."**

9 This statement, which seems to be at the heart of the defendant's false and desperate
10 accusation, is also easily confirmed as accurate by simply taking the time to read the certified
11 transcript from the hearing on September 19, 1977.

12 Page one of the hearing transcript specifically documents that the parties, including Mr.
13 Polanski, were present for the hearing. (Exhibit B, p. 1, lines 19-20.) Page seventeen of said
14 transcript specifically quotes Judge Rittenband telling the parties that the "**purpose of the**
15 **Court ordering the in-depth diagnostic study is better to enable the Court to reach a fair**
16 **and just decision as to the sentence to be finally or eventually imposed."** (Exhibit B, p. 17,
17 lines 5-8.)

18 Thus, the transcript itself reveals that this paragraph is completely and entirely truthful
19 and accurate. Moreover, despite the defense claim that this paragraph falsely "asserts" that
20 Judge Rittenband ordered the diagnostic study for a proper purpose, a plain reading of the
21 paragraph reveals the People made no assertion one way or another. The People simply
22 relayed a fact as fact, namely what was said by Judge Rittenband on September 19, 1977.
23 Thus, the defense allegations are entirely baseless and are being recklessly disseminated by
24 the defense with no legal or factual support.
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1 **VI. THE APPELLATE COURT HAS PREVIOUSLY RECOGNIZED THAT THE FACT**
2 **JUDGE RITTENBAND MADE THE STATEMENT, CONTAINED IN PARAGRAPH 31,**
3 **IS PART OF THE “INDISPUTABLE FACTS” OF THIS CASE**

4 In the Appellate Court's previous opinion in which the Court affirmed this court's
5 refusal to entertain the defendant's motion to dismiss, the Court specifically referenced the
6 exact same transcript from September 19, 1977. Moreover, the Appellate Court cited the same
7 exact language contained in paragraph 31 of the extradition affidavit, and accurately
8 characterized the facts, including that Judge Rittenband made that statement on September 19,
9 1977, as part of the “indisputable facts of what has gone before.” (*Polanski v. Superior Court*
10 (2009) 180 Cal.App.4th 507, 513-514.) Moreover, the Appellate Court distinguished these
11 “indisputable facts” from the defense misconduct allegations that “must be termed ‘allegations’
12 because no court has ever held an evidentiary hearing and made factual findings concerning
13 their veracity.” (*Id.* at p. 514.) This remains the situation today.

14 Thus, the Appellate Court has cited the same exact quotation of Judge Rittenband
15 from September 19, 1977, and characterized the fact that Judge Rittenband made that
16 statement as an “indisputable fact.”

17
18 **VII. ALTHOUGH THERE EXISTS NO LEGAL BASIS FOR RELEASING THE**
19 **CONDITIONAL EXAMINATION TRANSCRIPTS, IT IS WORTH NOTING THE SWISS**
20 **HAVE NOT REQUESTED THE TRANSCRIPTS**

21 Although a Swiss request for the conditional examination transcripts would not override
22 the clear mandates of California law, it is worth noting, in contrast to the representations made
23 by the defense, that the Swiss have deemed the transcripts irrelevant to the extradition
24 proceedings. Specifically, in multiple media accounts, Swiss Justice Ministry spokesperson,
25 Folco Galli, has stated that the Swiss officials assume the extradition request is represented

1 correctly, which it indisputably is, and that there is no need for Swiss authorities to request any
2 kind of proof for the content of the extradition request. (Exhibit C.)

3 Moreover, in the original extradition affidavit, the People specifically referenced the
4 defense allegations of misconduct and informed the Swiss that the defense maintained that the
5 "alleged misconduct was so severe as to require dismissal of the case." (Exhibit A, paragraph
6 36.) Additionally, the People specifically informed the Swiss that "should Swiss authorities
7 conclude that further information is required to adjudicate this matter," the People "stand ready
8 to provide supplementary information in aid of the United States' request for the extradition of
9 Roman Raymond Polanski." (Exhibit A, paragraph 40.)

10
11 **VIII. THE DEPARTMENT OF JUSTICE IS AWARE OF THE DEFENSE ALLEGATIONS**
12 **AND HAS INFORMED THE DEFENSE THAT THE EXTRADITION REQUEST IS**
13 **ACCURATE AND COMPLETE**

14 The People have fully informed the Department of Justice of the defense
15 allegations, including the allegation that the defendant is entitled to a "time-served" sentence.
16 Moreover, through at least one meeting and multiple written communications, the defense has
17 also directly informed the Department of Justice of their allegations. In response, the United
18 States' officials informed the defense that attorneys from the Department of Justice had
19 independently reviewed the affidavit and the court transcript from September 19, 1977, and,
20 after finding the extradition materials to be accurate and complete, found no reason to modify
21 the materials.³

22 Additionally, the published Court of Appeal opinion, which has been provided to the
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25 ³ This information is contained in a letter from the Department of Justice to Chad Hummel. This letter, in
the possession of the defense, was recently provided to the People.

1 Department of Justice, also includes the defense claim that the diagnostic custodial time was
2 intended to be the entirety of the defendant's sentence. *Polanski v. Superior Court*
3 (2009) 180 Cal.App.4th 507, 515.) Thus, unequivocally, both the Swiss government
4 and the United States Department of Justice have been informed of the defense allegations.
5

6 **IX. CONCLUSION**

7 As a fugitive from justice who has informed this court he will never willingly surrender to
8 the court's jurisdiction, the defendant has no right to request relief. Even assuming he could
9 seek such relief, there exists no legal or factual basis for the relief demanded. Additionally, the
10 extradition affidavit, which the defense inaccurately and irresponsibly attacks, is absolutely
11 accurate and truthful. In fact, the Appellate Court itself has quoted from the same relevant
12 section of the transcript.

13 The defense, evidently having concluded no other viable recourse exists, has opted to
14 make false and reckless allegations against anyone in disagreement with the demands of the
15 fugitive defendant. However, the public relations campaign being waged by the defense does
16 not change the facts, nor does it change the law. As such, this latest defense request for relief
17 must be denied.

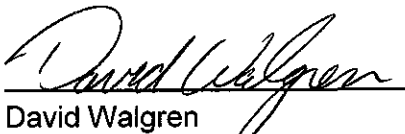
18 The People believe the defendant will be extradited to the United States. Once the
19 defendant is securely before this court, a full and fair hearing can be scheduled at which both
20 parties will be allowed to call witnesses and delve into the allegations of misconduct. At this
21 same sentencing hearing, the People will have an equal opportunity to delve into the March 10,
22 1977, criminal actions of Roman Polanski.
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1 With all of this evidence in mind – the alleged misconduct, as well as the facts
2 surrounding the underlying sexual offense committed by a 43-year-old man against a drugged,
3 scared and vulnerable 13-year-old child – this court will be able to make an informed and
4 appropriate determination regarding the defendant's sentence. The People eagerly await such
5 a hearing so that this case, after a delay of over 32 years, may be fairly, decisively, and
6 conclusively resolved.

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10 Dated: May 6, 2010

Respectfully submitted,

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13 STEVE COOLEY
District Attorney
By:

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16 David Walgren
17 Deputy District Attorney
Major Crimes Division
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