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FILED
LOS ANGELES SUPERIOR COURT

APR 29, 2010

JOHN A. CLARKE, CLERK

BY B. Long

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES

13 PEOPLE OF THE STATE OF CALIFORNIA,

14 Plaintiff,

15 vs.

16 ROMAN RAYMOND POLANSKI,

17 Defendant.

Case No. A 334 139

**NOTICE OF MOTION AND MOTION
BY DEFENDANT ROMAN POLANSKI
FOR EXAMINATION AND COPYING
OF TRANSCRIPTS OF CONDITIONAL
EXAMINATION OF ROGER GUNSON**

Hearing Date: May 10, 2010
Time: 8:30 a.m.
Ct rm: Division 100
Judge: Hon. Peter Espinoza

20 TO THE PEOPLE OF THE STATE OF CALIFORNIA:

21 PLEASE TAKE NOTICE THAT Defendant Roman Polanski will and hereby does move
22 the Court for an Order permitting the examination and copying of the transcripts of the
23 conditional examination of Roger Gunson conducted on February 26, March 9, and March 12,
24 2010 pursuant to this Court's orders. This Motion is made pursuant to California Penal Code
25 § 870, and in the interests of justice, on the grounds that a defendant and his counsel are expressly
26 permitted by statute to examine and copy the written record of the conditional examination of a
27 witness conducted pursuant to Penal Code §§ 1335, *et seq.* In this case, for the reasons set forth
28 in the attached Memorandum of Points and Authorities, the interests of justice should compel this


1 Court to expedite the requested inspection and copying. **The transcripts will prove conclusively**
2 **that the extradition request made by the United States to the Swiss government is premised**
3 **upon false and materially incomplete statements.** There is no just reason why the full and
4 completely accurate factual record should not be presented to the Swiss authorities for them to
5 consider in determining the legal propriety of the extradition request. Defendant is prepared to
6 abide by *any* Order of this Court restricting any use or dissemination of these transcripts to
7 official proceedings pending either in the United States or Switzerland.

8 This Motion is based upon this Notice, the attached Memorandum of Points and
9 Authorities, the files and records in this case, and any other evidence or argument as might be
10 presented at or before the hearing on this Motion.

11 Notice of this Motion is properly given under L.A. County Superior Court, Local Criminal
12 Rule 6.5.

13 Dated: April 29, 2010

Respectfully submitted,
MANATT, PHELPS & PHILLIPS, LLP

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16 By: 
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Attorneys for Defendant
ROMAN RAYMOND POLANSKI

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**MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION FOR INSPECTION AND COPYING
OF TRANSCRIPT OF CONDITIONAL EXAMINATION**

On February 26, March 9, and March 12, 2010, pursuant to this Court's orders, counsel for the parties in this case conducted a conditional examination under oath of former Deputy District Attorney Roger Gunson, the prosecutor assigned to the case of *People v. Polanski* from 1977 to 2002. Both parties fully examined Mr. Gunson, subject to evidentiary rulings by the presiding Magistrate Judge. The transcripts of each session were ordered sealed. After each session, Mr. Polanski's counsel specifically requested that the transcripts be available to the defense, for several reasons. Deputy District Attorney David Walgren -- who conducted the examination on behalf of the District Attorney -- objected to any release of the transcripts, including to the parties. Each of Polanski's counsel's oral requests for release of the transcripts was denied based on a legal finding by the Magistrate that Penal Code § 1344 required such sealing and that Penal Code § 870 applies only to preliminary hearings.

This decision should not be the final order of this Court. These transcripts are urgently needed to demonstrate that the formal extradition request submitted by the Los Angeles District Attorney, through the United States Department of Justice, is fundamentally premised upon the statements which the District Attorney knows to be false and which Mr. Gunson testified were false in his conditional examination. Specifically, in support of the extradition request, Deputy District Attorney David Walgren submitted the following statement under oath:

On 19 September 1977, . . . instead of imposing a sentence, Judge Rittenband ordered Mr. Polanski to undergo the 90 day diagnostic evaluation that is set forth in California Penal Code § 1203.03. . . . [T]he purpose of § 1203.03 is to give the judge more information about a person before imposing sentence. At the 19 September 1977, hearing, the judge told the parties, including Mr. Polanski, that the judge decided to order the diagnostic study of Mr. Polanski so that the judge would be in a better position to reach a fair and just decision as to the sentence that he would finally and eventually impose on Mr. Polanski.

(See Exhibit A hereto, paragraph 31.)

This paragraph falsely asserts that Judge Rittenband ordered the diagnostic study for a proper purpose, an assertion contradicted by Mr. Gunson in his conditional examination. In fact,

1 Judge Rittenband used the ruse of a "diagnostic study" as a fabricated means to send Mr. Polanski
2 to state prison with an untranscribed but clearly articulated judicial commitment that Polanski's
3 time in prison at Chino would constitute the entirety of his punishment.

4 The District Attorney's express reliance on Judge Rittenband's false public proclamation
5 of his intent in using the diagnostic study is, **at best**, utterly unjustified and entirely misleading
6 absent significant explanation, and is, **at worst**, an "an unqualified statement of that not known to
7 be true," in violation of Penal Code Section 125. This Court should not further countenance the
8 promulgation of a materially incomplete and false record and can remedy this by granting this
9 Motion as fully authorized by the Penal Code.

10 If this Motion were to be granted, the Swiss and United States federal authorities could
11 judge for themselves, based on the sworn testimony of the former prosecutor in this case, that Mr.
12 Walgren's Affidavit omits that following facts, which the District Attorney cannot dispute:

13 1. On September 16, 1977, Judge Rittenband decided and stated to the parties in his
14 chambers that Polanski's entire custodial term of punishment in the case would be his time served
15 at Chino State Prison under the guise of a Penal Code § 1203.03 diagnostic study (so long as
16 Polanski received a favorable report from Chino (which was expected and which he did receive)
17 and that counsel did not reveal this promise to the press or public (which they did not);

18 2. On that date, Gunson objected to this use of a diagnostic study under the Penal
19 Code but Judge Rittenband told him that he would use it to "sentence" Polanski anyway to a term
20 in prison that would not exceed 90 days;

21 3. Polanski served the prescribed term in Chino and was released after 42 days, a
22 release date determined solely by the authorities at Chino;

23 4. On January 30, 1978, after Polanski's release from Chino, Judge Rittenband
24 expressed to counsel in chambers that he would renege on his prior commitment, stating as his
25 reason only that he had been "criticized," and, instead, would remand Polanski to an additional
26 indeterminate term in state prison under Penal Code § 1168;

27 5. Rittenband "promised" off the record on January 30 at that chambers conference
28 that he would recall Polanski from custody after an additional term of 48 days on the conditions

1 (a) that Polanski would voluntarily agree to deport himself, (b) that Polanski's counsel did not
2 insist on a public hearing, and (c) that this new promise not be revealed publicly;

3 6. Judge Rittenband said that, if Polanski's counsel insisted on a public hearing
4 regarding the planned commitment, he would hold a hearing on a motion for new trial only after
5 Polanski was committed to state prison and would withdraw his promise that the time to be
6 served would be only an additional 48 days;

7 7. Mr. Gunson fully understood why Mr. Polanski left the country under the
8 circumstances of the case -- in which the trial judge had reneged on judicial promises that he
9 insisted be kept entirely off the record;

10 8. The true purpose of Judge Rittenband's use of Penal Code § 1203.03 was not "to
11 give the judge more information about a person before imposing sentence" -- as asserted under
12 oath in the affidavit in support of extradition provided to the Swiss; and

13 9. Judge Rittenband did not order the diagnostic evaluation of Polanski "so that the
14 judge would be in a better position to reach a fair and just decision as to the sentence that he
15 would finally and eventually impose on Polanski" -- again, as asserted under oath in the affidavit
16 in support of extradition provided to the Swiss).

17 Mr. Walgren and the District Attorney's Office are aware of these facts, confirmed by
18 Mr. Gunson's testimony under oath, but nonetheless chose to put contrary and misleading facts in
19 the sworn affidavit supporting the extradition request. Regardless of the legal arguments about
20 whether Judge Rittenband's commitment is legally binding on this Court now, or whether the
21 district attorney's legal argument, which Mr. Polanski disputes, that he might be subject to an
22 additional term of incarceration satisfying the Treaty, **the true facts (in addition to legal**
23 **arguments) should be presented to the Swiss by our government.** Critical in this analysis is
24 Mr. Gunson's sworn testimony about the facts. If the District Attorney's Office does not want the
25 true facts revealed to the Swiss, for their own inexplicable reasons, then this Court should, at a
26 minimum, facilitate the production of the actual evidence of the true procedural history of this
27 case.

28 As this Court is aware, by Order filed April 22, 2010, the Court of Appeal denied

1 Mr. Polanski's Petition for Writ of Mandate, finding that Mr. Polanski had "failed to demonstrate
2 that [this Court] lacked discretion under Penal Code § 1193 to refuse to approve Petitioner's
3 absence at sentencing." The Court of Appeal also denied Mr. Polanski's request to overturn the
4 Magistrate's order sealing the conditional examination transcripts on the sole basis that
5 "Petitioner has failed to present this evidence to and request his desired relief from the trial
6 court." This Motion satisfies that predicate.

7 As a legal matter, in addition to the equitable basis for release of the transcripts for limited
8 use in the context of the extradition proceedings, the parties have a statutory right to the
9 transcripts. Penal Code § 870 provides that:

10 The Magistrate or his clerk shall keep **the depositions** taken on the
11 information or the examination, until they are returned to the proper
12 Court; and shall not permit them to be examined or copied by any
13 person except a judge of a court having jurisdiction of the offense
14 or . . . the Attorney General, district attorney, or other prosecuting
15 attorney, **and the defendant and his or her counsel**; provided,
16 however, upon demand by the defendant or his or her attorney the
17 Magistrate shall order the transcript of **the depositions** taken on the
18 information, or on the examination, to be immediately furnished the
19 defendant or his or her attorney, after the commitment of the
20 defendant as provided by §§ 876 and 877.

21 (Emphasis added.) The Magistrate's orders sealing the transcripts and denying defendant's
22 request for inspection and copying on the grounds that Penal Code § 870 applies only to
23 preliminary hearings is wrong. The Section itself refers expressly to "depositions," which are not
24 relevant in the context of a preliminary hearing under the Penal Code. Moreover, in cross-
25 referencing what "depositions" are being referred to in Section 870, the Penal Code itself cites
26 Penal Code § 1335. Thus, Section 870 is intended to apply to sealed transcripts even if those do
27 not arise out of preliminary hearings.¹ Obviously, Polanski has been "committed;" he pleaded
28 guilty.

29 Finally, given the state of the evidence provided to the Swiss, as recited above, it is critical
30 that the transcripts of Mr. Gunson's testimony be available for Swiss authorities in their

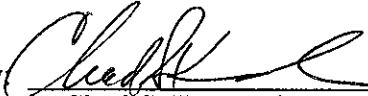
31 _____
32 ¹ In its opposition to the Petition for Writ of Mandate, the District Attorney cited *People v.*
33 *Anderson*, 55 Cal.2d 655, 657-658 (1961) for the proposition that Penal Code § 870 applies only
34 to preliminary hearing transcripts. The case says no such thing; however, it did hold that a
35 defendant is entitled to a transcript in those circumstances.

1 determination of the propriety of the extradition request under the Treaty. While it is not this
2 Court's role to make the extradition determination, it should be this Court's role to assure that the
3 complete and true facts of the events *for which this Court is responsible* are presented to the
4 Swiss. The District Attorney also should agree that the transcripts be delivered to Swiss
5 authorities. The District Attorney's Office itself has written to this Court in this case demanding
6 that "any hearings or conferences be conducted in full view of the public so as to appropriately
7 respect the public's right to know," and that "it is important that these proceedings occur in open
8 court, so as to protect all parties from any unfounded claims of impropriety." The demand for
9 openness and transparency and truthfulness should not be a one-way street. The District Attorney
10 should agree to the release of these transcripts for appropriate evaluation by authorities charged
11 with making legal determinations in this case. If they do not so agree, this Court should Order it.

12 Dated: April 29, 2010

Respectfully submitted,

13 MANATT, PHELPS & PHILLIPS, LLP

14 By 

15 Chad S. Hummel
16 *Attorneys for Defendant*
ROMAN RAYMOND POLANSKI

17 Bart Dalton
18 *Attorneys for Defendant*
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,)	
)	Case No: A 334139
Plaintiff,)	
)	
vs.)	
)	
Roman Raymond Polanski,)	
)	
Defendant.)	
_____)	

AFFIDAVIT IN SUPPORT OF REQUEST FOR EXTRADITION

I, David Walgren, being duly sworn, depose and state:

1. I am a citizen of the United States of America, residing in Los Angeles, California.
2. In 1995, I was admitted to practice law in all courts of the State of California. From 1996 until the present, I have been employed as a Deputy District Attorney in the Los Angeles County District Attorney's Office in Los Angeles, California. I am currently assigned to the Major Crimes Division. As a Deputy District Attorney, my duties include prosecuting persons charged with criminal violations of the laws of the State of California. I have personally represented the State of California in hundreds of criminal cases charging violations of California criminal laws, and have been the lead trial attorney in over a hundred criminal prosecutions. Based on my training and experience, I am an expert in the criminal laws and procedures of the State of California.
3. In the course of my duties as a Deputy District Attorney, I have become familiar

with the charges and the evidence in the case of People of the State of California v. Roman Raymond Polanski, criminal case number A334139, filed in the Superior Court of the State of California for the County of Los Angeles.

SUMMARY OF THE FACTS

4. An investigation by the Los Angeles Police Department revealed that the subject of this extradition request, Roman Raymond Polanski, engaged in unlawful sexual conduct with a 13-year-old girl. Specifically, on 10 March 1977, in the State of California, Mr. Polanski drove the child to the home of a friend, provided the child with champagne and a portion of a Quaalude pill, and then proceeded to orally copulate the child, have sexual intercourse with the child, and sodomize the child. A summary of the events is detailed below.

5. The investigation was initiated by the Los Angeles Police Department based on a complaint, filed on 10 March 1977, by a 13-year-old female victim and her mother. The victim's mother told the police that on or about 13 February 1977, Mr. Polanski came to her house to ask her if he could take pictures of the victim. During that discussion, Mr. Polanski learned that the victim was only 13 years old. The victim and her mother agreed that Mr. Polanski could photograph the victim. On 20 February 1977, Mr. Polanski returned to the house, drove the victim to a nearby hillside, told the victim to remove her shirt, and took partially-nude photographs of the victim.

6. On 10 March 1977, Mr. Polanski returned to the victim's residence to take more pictures of her. The victim stated that Mr. Polanski drove her to his friend's house, where he took multiple photographs of the victim. About one hour later, Mr. Polanski drove the victim to a second friend's house, where a woman at the house allowed Mr. Polanski and the victim into

the home.

7. According to the victim, at the second house, Mr. Polanski offered her champagne. Thereafter, Mr. Polanski took various pictures of the victim, some while she was topless, and others while she was wearing a blue dress. The victim stated that Mr. Polanski then went to the bathroom and returned with a Quaalude pill, a controlled substance, that had been broken into three pieces. The victim saw Mr. Polanski swallow a piece of the Quaalude. Mr. Polanski also offered a piece of the Quaalude pill to her. The victim, who had been drinking champagne throughout the photo shoot and described herself as "pretty drunk," swallowed the piece of Quaalude that Mr. Polanski gave her.

8. The victim stated that Mr. Polanski then asked her to go outside the house to an outdoor heated pool, or "Jacuzzi," and told the victim to remove her underwear. The victim complied and entered the Jacuzzi without any clothes. After taking a few photographs of the victim, Mr. Polanski then took off all of his clothes and entered the Jacuzzi. The victim described that Mr. Polanski then told her to come closer to him; when she did so, Mr. Polanski put both of his hands around her waist and began to move them around. The victim, uncomfortable and wanting to remove herself from the situation, said that she told Mr. Polanski that she had asthma and that she had to get out of the Jacuzzi. She then left the Jacuzzi and wrapped a towel around her body.

9. The victim said that Mr. Polanski then told her to join him in a nearby outdoor cold-water swimming pool. The victim stated that she complied with his request and entered the pool. However, upon entering the pool, she simply swam to the other end, exited the pool, and then re-entered the house. Once inside the house, the victim went into the bathroom to dry

herself. Mr. Polanski followed the victim to the bathroom, at which point the victim told Mr. Polanski that she wanted to go home. Mr. Polanski told the victim that he would take her home soon.

10. The victim stated that Mr. Polanski then told her to go into another room and lie down. The victim, who expressed that she was afraid of Mr. Polanski, went into the other room and sat down on a couch. Mr. Polanski then entered that room and sat down beside her, at which point the victim again said that she insisted to Mr. Polanski that she be taken home. Instead, according to the victim, Mr. Polanski reached over and began kissing her. The victim told him to stop and again asked to go home. Mr. Polanski then proceeded to perform oral sex upon the victim.

11. The victim described that, although she continued to protest Mr. Polanski's sexual advances, Mr. Polanski then penetrated the victim vaginally with his penis. While Mr. Polanski was having intercourse with the victim, he asked her if she took oral contraceptives. When the victim said no, Mr. Polanski then asked her, "Would you like me to go through your back?" The victim stated, "No." Mr. Polanski replied, "I won't come inside of you then." The victim stated that Mr. Polanski then lifted up the victim's legs and began having anal intercourse with the victim.

12. During the time in which Mr. Polanski was having anal intercourse with the victim, the victim heard a knock at the door to the room. The victim recalled that Mr. Polanski walked to the door and spoke to the woman who had knocked. The victim said that she then put on her underwear and began to walk toward the door; however, Mr. Polanski sat her back down, removed her underwear, and resumed having anal intercourse with the victim. The victim stated

that Mr. Polanski continued the anal intercourse until he ejaculated.

13. Shortly thereafter, the victim said that she walked to the bathroom, got dressed, left the house and walked to Mr. Polanski's car. The victim recalled that when she got into the car, she began to cry. After about 10 minutes, Mr. Polanski entered the car and drove the victim home. At some point during the car ride, Mr. Polanski warned the victim not to tell her mother about what had happened, adding "this is our secret." The victim said that Mr. Polanski also told her, "You know, when I first met you I promised myself I wouldn't do anything like this with you."

14. The same evening, 10 March 2007, the victim and her mother telephoned the Los Angeles Police Department and told the police what Mr. Polanski had done to the victim. The police then went to the victim's house and took a report. The next day, 11 March 1977, the police searched Mr. Polanski's hotel room at the Beverly Wilshire Hotel – where Mr. Polanski was staying while in Los Angeles – and also searched the home where the crime had occurred. The police recovered unprocessed film and photographic slides during a search of Mr. Polanski's hotel room. The film and slides were later booked into custody and processed by a police laboratory. The film and slides were photographs that Mr. Polanski had taken of the victim. Some of the photographs depict the victim posing topless, while others show her in a Jacuzzi. During the hotel search, the police also found Quaaludes, including a bottle of Quaaludes in the hotel room and a single Quaalude pill in the personal possession of Mr. Polanski. On that same day, the police placed Mr. Polanski under arrest. Mr. Polanski posted bail and was released from custody.

THE CHARGES AND APPLICABLE STATUTES

15. On 24 March 1977, a California grand jury, sitting in Los Angeles County, California, heard the sworn testimony of several witnesses, including the testimony of the young victim. At the conclusion of the presentation of the evidence, the grand jury returned an indictment against Mr. Polanski, charging Mr. Polanski with the following six felony offenses:

COUNT I: Furnishing a Controlled Substance to a Minor, in violation of Section 11380(a) of the California Health and Safety Code;

COUNT II: Lewd or Lascivious Act Upon a Child Under Fourteen, in violation of Section 288 of the California Penal Code;

COUNT III: Unlawful Sexual Intercourse with a Minor, in violation of Section 261.5 of the California Penal Code;

COUNT IV: Rape by Use of Drugs, in violation of Section 261(3) of the California Penal Code;

COUNT V: Perversion, in violation of Section 288a, subsections (a) and (c) of the California Penal Code; and

COUNT VI: Sodomy on a Person, in violation of Section 286, subsections (a) and (c) of the California Penal Code.

The text of the statutes applicable to these offenses on 10 March 1977, and their penalties, are attached as Exhibit A. A violation of each of the statutes referenced above remains to this day a felony under California State law.

16. An indictment is a formal accusation or charging document issued by a grand jury, which is a part of the judicial branch of the government of the State of California. A grand jury

consists of up to 23 citizens impaneled to review evidence of crimes presented to it by California State police and prosecutors. Each member of the grand jury must review the evidence presented and determine whether there is sufficient evidence to believe that a crime has been committed, and also that it is likely that the accused person committed the crime. The grand jury may return an indictment when it determines that it is more likely than not that the accused person committed the crime. The Clerk of Court of the Superior Court of the State of California for the county of Los Angeles retains the originals of all indictments and warrants of arrest. Therefore, I have obtained a certified true and accurate copy of the indictment from the Clerk of Court, and have attached it to this affidavit as Exhibit B.

17. The statute of limitations on prosecuting the offenses set forth in Mr. Polanski's indictment is found in California Penal Code Section 800, which states:

An indictment for any felony... shall be found... within three years after its commission.

California Penal Code Section 803 states that an indictment is "found" when it is presented by the grand jury in open court, received by the court, and then filed by the court. California Penal Code Section 804 also states that "[a] felony prosecution commences for statute of limitations purposes when an indictment... is filed."

18. The indictment, dated 24 March 1977, charged Mr. Polanski with crimes based on conduct by Mr. Polanski on 10 March 1977. Because the indictment of Mr. Polanski was presented to, received by, and filed by the court within three years of Mr. Polanski's criminal conduct, the California statute of limitations has been satisfied for all counts in the indictment, including the charge to which Mr. Polanski pled guilty -- Unlawful Sexual Intercourse with a Minor. Under California law the only limitation is the amount of time within which the

indictment is filed. No further statute of limitations period must be satisfied.

THE PROCEDURAL HISTORY AND MR. POLANSKI'S GUILTY PLEA

19. After an indictment is returned, the court will typically issue a warrant for the arrest of the accused person. Accordingly, on 27 March 1977, based on the filing of the indictment, a Judge of the State of California, Superior Court for Los Angeles, issued a warrant for Mr. Polanski's arrest. The warrant was held until 29 March 1977, to allow Mr. Polanski to appear before the court instead of being arrested by police. On 29 March 1977, Mr. Polanski and his attorneys appeared in court. The court allowed Mr. Polanski to remain out of custody on \$2,500 bail, and the court set a hearing for 15 April 1977.

20. On 15 April 1977, Mr. Polanski was arraigned in court. Under California law, an "arraignment" is a court hearing in which the judge reads the indictment to the accused, tells the accused what the charges are, and asks the accused whether she or he wishes to plead "guilty" or "not guilty" to them. At his arraignment, Mr. Polanski entered a plea of "not guilty" to all the charges in the indictment. The matter then proceeded to the trial calendar. Mr. Polanski remained out of custody on bail. In the following weeks, the victim, through her lawyer, informed the prosecutor that she wanted to remain anonymous and avoid further trauma. Evidently with those concerns in mind, the victim informed the prosecution that it was her desire that the criminal case be resolved in a manner that did not require her to receive public exposure by testifying at trial. Because of the express desires of the victim at that time, the Office of the Los Angeles County District Attorney agreed to allow Mr. Polanski to plead guilty to one felony count in the indictment.

21. On 8 August 1977, at a court hearing before Judge Laurence Rittenband, a judge

for the Superior Court of the State of California, County of Los Angeles, Mr. Polanski pled guilty to Count III in the indictment, Unlawful Sexual Intercourse with a Minor, in violation of Penal Code Section 261.5. Under this procedure of U.S. law, an accused, in court and in front of a judge, admits guilt to one or more of the charges in the indictment. In order to plead guilty, an accused must knowingly and voluntarily waive certain rights provided to the accused under U.S. law, including: the right to a trial; the right to confront and cross-examine witnesses; the right against self-incrimination; the right to present evidence; and the right to testify on his own behalf. Once the court is satisfied that the accused has made a knowing, voluntary and intelligent waiver of his rights and that the accused understands the consequences of admitting his or her guilt, the court accepts the guilty plea, which constitutes a finding of guilt as to that charge. Under U.S. law, a finding of guilt based on a guilty plea is the same as a finding of guilt based on a guilty verdict by a trial jury.

22. On 8 August 1977, Mr. Polanski was placed under oath by Judge Rittenband and, in open court, was thoroughly examined by the prosecutor, to the court's satisfaction. Mr. Polanski's plea hearing was transcribed by a court reporter. A certified copy of that transcript is attached as Exhibit C.

23. As set forth in the plea transcript attached as Exhibit C, after being placed under oath and advised of his Constitutional rights, Mr. Polanski clearly and explicitly gave up each of his rights and his attorney "join[ed] in those waivers." Mr. Polanski, while under oath, then admitted that he was guilty of all of the elements of the offense of Unlawful Intercourse with a Minor, to wit:

- a. Mr. Polanski had sexual intercourse with the victim;

- b. Mr. Polanski and the victim were not married; and
- c. At the time of intercourse, the victim was under 18 years of age.

Specifically, Mr. Polanski told the judge that he was "in fact guilty" of having sexual intercourse with a minor, the victim in this case. Mr. Polanski admitted that he and the victim were not married, and that at the time of intercourse, Mr. Polanski knew the victim was only 13 years old. Mr. Polanski also admitted that he knew he was pleading guilty to a felony. Mr. Polanski told the judge that he understood that his sentence had not yet been determined, and that the appropriate sentence would be decided by the judge after having read and considered the probation report and after having heard argument of both counsel. With regard to the potential sentence, Mr. Polanski said that he understood that his sentence could include time in custody.

24. During his plea hearing, Mr. Polanski acknowledged having had enough time to confer with his lawyers regarding the facts of the case, his rights and possible defenses, and the consequences of his guilty plea. Mr. Polanski denied being threatened in any way and admitted that there had been no promises made with regard to either a lesser sentence or a grant of probation. When given an opportunity by the judge to ask any questions, Mr. Polanski said that he had none. When asked by the judge if he was making a free and voluntary decision to plead guilty, Mr. Polanski said yes. Additionally, Mr. Polanski's attorney told the judge that he had spoken with Mr. Polanski about Mr. Polanski's rights, Mr. Polanski's possible defenses, and the possible consequences of Mr. Polanski's plea of guilty. Mr. Polanski's attorney also denied being aware of any promises made to Mr. Polanski other than what had been stated on the record in open court. At that point, after the court made a finding that Mr. Polanski's plea was freely and voluntarily made and that there was a factual basis for the plea, the court found Mr. Polanski

guilty of Unlawful Sexual Intercourse with a Minor, a violation of California Penal Code Section 261.5, a felony, based on Mr. Polanski's admission of being guilty of that crime.

25. Finally, Mr. Polanski's 8 August 1977 guilty plea was an open plea to the court, meaning that at the time of the plea, there was no agreement between Mr. Polanski or the prosecution as to what sentence would be imposed. Instead, the sentence was to be determined by the court based on a report prepared by the probation department, as well as the arguments of counsel at the time of sentencing. The remaining counts in the indictment would be dismissed at the time of sentencing. Mr. Polanski was made aware of this by the court.

26. At the conclusion of the 8 August 1977 hearing, the judge ordered Mr. Polanski to undergo an outpatient evaluation by two court-appointed psychiatrists. Mr. Polanski was also ordered to reappear before the judge on 19 September 1977 for further proceedings regarding his sentencing.

27. Extradition of Mr. Polanski is sought for the charge to which he pled guilty and for which he has not yet been sentenced. The other charges in the indictment would be dismissed following sentencing. If, however, Mr. Polanski were extradited and he sought to withdraw his guilty plea, although it is rare that a court would grant such a request, the consequence under California law would be that he would face trial on all charges in the indictment. Therefore, we request that, in the unlikely event of such a withdrawal, the finding of extraditability allow prosecution of Mr. Polanski on all charges.

**SUBSEQUENT COURT HEARINGS AND MR. POLANSKI'S
FLIGHT FROM THE UNITED STATES**

28. Once a person is found guilty of an offense, the court imposes a sentence. However, imposition of the sentence is typically postponed to another date so as to allow court

officials time to gather information about that person's background, the victim's circumstances, and other information relevant to the imposition of a just and appropriate sentence. At the time of sentencing, the court will then conduct a hearing – with the person present – where the court states its considerations and imposes a sentence.

29. On the date that Mr. Polanski committed the offenses, 10 March 1977, the maximum sentence for a violation of Penal Code Section 261.5 was imprisonment for not more than 50 years. Effective 1 July 1977, however, California adopted a new set of sentencing laws that imposed determinate sentencing terms for particular crimes. Although the new laws applied only to crimes committed *after* 1 July 1977, the new laws also made some changes to sentences for crimes committed *before* 1 July 1977, but for which the accused had not yet been sentenced. Based on this change in the law and because Mr. Polanski committed a crime before 1 July 1977 but had not been sentenced by 1 July 1977, the maximum time that Mr. Polanski could be sentenced to prison upon his extradition to the United States for that crime is two years.

30. In addition to those general principles concerning sentencing, the State of California has certain specific laws that are designed to provide a court with more information about a person facing sentencing. One of these laws is California Penal Code Section 1203.03. That law states: "In any case in which a defendant is convicted of an offense punishable by imprisonment in the state prison, the court, if it concludes that a just disposition of the case requires such diagnosis and treatment services as can be provided at a diagnostic facility of the Department of Corrections, may order that defendant be placed temporarily in such facility for a period not to exceed 90 days, with the further provision in such order that the Director of the Department of Corrections report to the court his diagnosis and recommendations concerning the

defendant within the 90-day period." The purpose of that law is to allow the court to review a report, prepared by an expert employed by the State of California, that contains an analysis of any special medical, physical, mental or emotional issues that may have affected the person. Because these reports are used by the court to arrive at a just sentence, these reports are prepared and submitted to the court prior to sentencing.

31. On 19 September 1977, the parties returned to court regarding Mr. Polanski's sentence. Mr. Polanski was in the courtroom as lawyers for both parties presented arguments to the judge concerning Mr. Polanski's sentence. Mr. Polanski's attorneys argued for a grant of probation, while the prosecution argued that Mr. Polanski's sentence should include time in custody. Judge Rittenband acknowledged that he had read and considered the probation report. However, instead of imposing a sentence, Judge Rittenband ordered Mr. Polanski to undergo the 90-day diagnostic evaluation that is set forth in California Penal Code Section 1203.03. As described above, the purpose of Section 1203.03 is to give the judge more information about a person before imposing a sentence. At the 19 September 1977, hearing, the judge told the parties, including Mr. Polanski, that the judge decided to order the diagnostic evaluation of Mr. Polanski so that the judge would be in a better position to reach a fair and just decision as to the sentence that he would finally and eventually impose on Mr. Polanski. The judge then said that after the 90-day diagnostic evaluation, Mr. Polanski would be returned to the court for further proceedings.

32. After the judge ordered Mr. Polanski to undergo the 90-day diagnostic evaluation, Mr. Polanski asked the court to delay the evaluation for three months to allow Mr. Polanski time to finish a movie. The court granted Mr. Polanski's request, and Mr. Polanski's evaluation was

delayed until 19 December 1977. Upon a later request by Mr. Polanski, the date was changed to 16 December 1977. In a 15 December 1977, order from Judge Rittenband, Polanski was ordered to appear before the court within three days after being released from the diagnostic examination.

33. Mr. Polanski's court-ordered 90-day diagnostic examination began on 16 December 1977. He was released 42 days later, and the court was sent a copy of Mr. Polanski's diagnostic evaluation. On 30 January 1978, Judge Rittenband met with the prosecutor and Mr. Polanski's attorney. In that meeting, the judge expressed dissatisfaction with the diagnostic report, which recommended probation, and told the attorneys that he thought Mr. Polanski's sentence should include time in custody. Polanski's attorney then moved to continue the matter until 1 February 1978 for sentencing. By order of 30 January 1978, the court granted the request by Polanski's attorney, and ordered Polanski to appear before the judge on 1 February 1978. On 1 February 1978, Mr. Polanski failed to appear in court. Because Mr. Polanski failed to appear, the court issued a "bench warrant," which is an arrest warrant issued by a judge. The warrant remains in full force and effect to this day. A true and correct copy of the warrant dated 1 February 1978 is attached as Exhibit D.

**THE DISTRICT ATTORNEY'S EFFORTS TO OBTAIN CUSTODY
OF MR. POLANSKI AND MR. POLANSKI'S CONTINUED
USE OF THE CALIFORNIA COURTS**

34. Over the past 32 years, the Office of the District Attorney has repeatedly tried to obtain Mr. Polanski's extradition to the United States. Initially, we became aware that he had settled in France, where he was a naturalized citizen, and which does not extradite its citizens. Accordingly, a U.S. request to seek Mr. Polanski's extradition from France would not have yielded a positive result. Ultimately, in order to definitively confirm this, we submitted a

provisional request to France in 1994. French authorities subsequently refused to grant this request.

35. Aware of the obstacles to extradition from France, we have taken regular actions to maximize our ability to apprehend Mr. Polanski. We confirmed on a regular basis that U.S. lookout systems were up to date, so that law enforcement authorities would be aware that an arrest warrant was pending should Mr. Polanski attempt to surreptitiously enter the United States. In addition, when we have learned of anticipated travel plans of Mr. Polanski (normally through the press or other publicly-available reports), we generally made inquiries to the United States Department of Justice, Office of International Affairs, regarding the utility of seeking extradition from the country in question. In a number of instances, where it appeared that there was a realistic possibility of success, we sought his extradition from other foreign countries. Unfortunately, in those instances, Mr. Polanski either did not travel to the country in question or our arrest request did not arrive in time. Finally, in 2005 we filed a Red Notice with Interpol. In summary, from the time Mr. Polanski departed the United States until the present we have been seeking his apprehension. Any claims to the contrary are inaccurate.

36. Although Mr. Polanski has not returned to the United States since 1978, he has continued to file motions in California courts concerning his case. In December 2008, his attorneys filed a request with the Superior Court of the State of California for dismissal of the case against him, based on allegations of misconduct by the original prosecutors and by the original trial judge. The request to dismiss the charges relied in part on a 2008 documentary film containing an interview with a Los Angeles prosecutor who claimed that, after the guilty plea but before sentencing, he met with the presiding judge and held inappropriate *ex parte* discussions

regarding the sentence to be imposed. Mr. Polanski's attorneys asserted that this alleged misconduct was so severe as to require dismissal of the case. On 17 February 2009, a California Superior Court judge held a hearing on the motion to dismiss and tentatively denied said motion. The judge then allowed Mr. Polanski until 7 May 2009 to come to the United States and submit to the court's jurisdiction. Mr. Polanski did not return to the United States even though the judge requested him to do so. As a result, on 7 May 2009, the judge denied the motion to dismiss. Mr. Polanski's attorneys appealed the denial to the California Court of Appeals, where the matter is currently pending. It has been, and continues to be, the position of the Office of the District Attorney that there is no basis for dismissal of the charges.

IDENTIFICATION

37. Mr. Polanski is a citizen of France and Poland, born on 18 August 1933, in Paris, France. Mr. Polanski is described as a Caucasian male, approximately 140 centimeters (5 feet, 5 inches) tall, weighing approximately 68 kilograms (150 pounds), with brown eyes and graying brown hair.

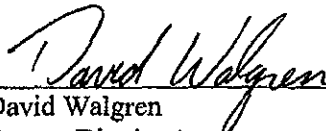
38. Attached as Exhibit E is a photograph of Mr. Polanski taken on 12 March 1977 at the time of his arrest in this matter. Additionally, attached as Exhibit F is a copy of Mr. Polanski's fingerprints taken by California Institution for Men, in Chino, California, on 19 December 1977, at the time he surrendered himself for a diagnostic study.

CONCLUSION

39. This affidavit was sworn to before the Honorable Patricia Schnegg, who is legally authorized to administer an oath for this purpose and is submitted in accordance with Article 9(4)

of the Extradition Treaty between the Government of the United States and the Government of the Swiss Confederation, which entered into force on 10 September 1997. I have thoroughly reviewed this affidavit and the attachments to it, and attest that this evidence is sufficient for extradition.

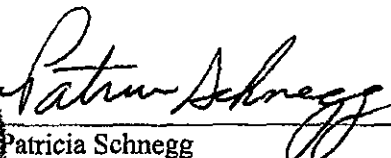
40. It is my understanding that the evidence provided in this affidavit and its attachments is that which is required pursuant to the terms of the Extradition Treaty. However, should Swiss authorities conclude that further information is required to adjudicate this matter, I stand ready to provide supplementary information in aid of the United States' request for the extradition of Roman Raymond Polanski.



David Waigren
Deputy District Attorney

Signed and sworn to before me this 9th day of October, 2009, at Los Angeles, California.





Patricia Schnegg
Judge, Los Angeles Superior Court

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PROOF OF SERVICE VIA PERSONAL DELIVERY

I, Mary Ann Eisert, declare as follows:

I am employed in Los Angeles County, Los Angeles, California. I am over the age of eighteen years and not a party to this action. My business address is MANATT, PHELPS & PHILLIPS, LLP, 11355 West Olympic Boulevard, Los Angeles, California 90064-1614. On April 28, 2010, I served the within:

NOTICE OF MOTION AND MOTION BY DEFENDANT ROMAN POLANSKI FOR EXAMINATION AND COPYING OF TRANSCRIPTS OF CONDITIONAL EXAMINATION OF ROGER GUNSON

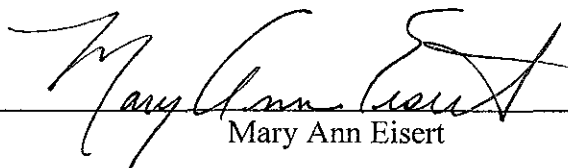
on the interested parties in this action addressed as follows:

David Walgren
Deputy District Attorney
Los Angeles County District Attorney's Office
17-1140 Clara Shortridge Foltz Criminal Justice Center
210 West Temple Street
Los Angeles, CA 90012

(BY PERSONAL SERVICE) By causing such document(s) to be delivered by hand, as addressed by delivering same to E & L Management Services with instructions that it be personally served.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made and that the foregoing is true and correct.

Executed on April 28, 2010, at Los Angeles, California.



Mary Ann Eisert

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PROOF OF SERVICE BY PERSONAL DELIVERY

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 11355 West Olympic Boulevard, Los Angeles, California 90064-1614. On April 29, 2010, I personally served:

Notice of Motion and Motion by Defendant Roman Polanski for Examination and Copying of Transcripts of Conditional Examination of Roger Gunson

by delivering copies thereof to:

David Walgren
Deputy District Attorney
Los Angeles County District Attorney's Office
17-1140 Clara Shortridge Foltz Criminal Justice Center
210 West Temple Street
Los Angeles, CA 90012

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

Executed on April 29, 2010, at Los Angeles, California.

