



Warning: this document contains sexually explicit material.

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

7 PEOPLE OF THE STATE OF CALIFORNIA,  
8 Plaintiff,  
9 vs.  
10 Roman Polanski,  
11 Defendant.

Case No: A334139

PEOPLE'S OPPOSITION TO DEFENDANT  
ROMAN POLANSKI'S MOTION TO DISMISS

12  
13  
14 The People hereby request that this Court dismiss defendant Roman Polanski's motion  
15 to dismiss. Since 1978, Roman Polanski has voluntarily remained a fugitive from justice and, as  
16 such, is not entitled to have this Court entertain his motion until such time that Mr. Polanski  
17 decides to submit to the Court's jurisdiction.

18 This motion is based upon this Memorandum of Points and Authorities, the Grand Jury  
19 proceedings, the Indictment, the entire pleadings, records and files in this case, the evidence  
20 attached hereto, and upon further argument and evidence as this Court accepts at the hearing  
21 on the motion.

22  
23 January 6, 2009

Respectfully submitted,

24 By: \_\_\_\_\_  
David Walgren  
25 Deputy District Attorney

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On March 10, 1977, Roman Polanski, the defendant, was a 43-year-old man and his  
4 victim was a 13-year-old child. On that day, the defendant drove this child to the home of a  
5 friend, plied her with multiple glasses of champagne and a portion of a Quaalude pill, and then  
6 proceeded to orally copulate this child, have sexual intercourse with this child, and sodomize  
7 this child.

8 On August 8, 1977, the defendant freely and voluntarily pleaded guilty to Penal Code  
9 section 261.5, a felony, for having unlawful sexual intercourse with a minor, the victim in this  
10 case. The defendant pleaded open to the court, meaning that there existed no agreement as to  
11 the sentence to impose. Instead, the parties agreed that the judge would determine the  
12 appropriate sentence based upon the probation report and argument of counsel.

13 On February 1, 1977, prior to being sentenced, the defendant failed to appear in court  
14 and a bench warrant was issued for his arrest. The defendant has never returned to the United  
15 States and the bench warrant remains active. The defendant, still refusing to submit to the  
16 jurisdiction of this court, now moves to have his entire case dismissed.

17 The People oppose such a motion. The defendant voluntarily fled the jurisdiction of the  
18 court. He has remained a fugitive for the past 30 years. Based on the fugitive disentitlement  
19 doctrine, Penal Code Section 977, and common sense, the defense motion should, if heard, be  
20 denied outright. Further, any alleged claims of error should be deemed not ripe for judicial  
21 intervention since the defendant steadfastly refuses to submit himself to the court's jurisdiction.

22  
23 **II. FACTUAL BACKGROUND**

24 In 1977, Roman Polanski made arrangements with the victim's mother to photograph her  
25 13-year-old daughter for a French magazine. (Grand Jury Transcript (hereinafter "GJ") at pp. 5-

1 7, Exh. A.)<sup>1</sup> At that time, the victim resided with her family in Woodland Hills. On February 13,  
2 1977, Roman Polanski came to the victim's residence to discuss the possible photographs. (GJ  
3 at p. 65.) During the ensuing discussion, Mr. Polanski learned the victim was 13-years-old. (GJ  
4 at p. 7.) The victim subsequently agreed to be photographed and, on February 20, 1977, Mr.  
5 Polanski returned to her residence for that purpose. (GJ at pp. 7, 66.) Upon his arrival on  
6 February 20, Mr. Polanski began to select clothing to be worn by the victim during the  
7 photography session. (GJ at p. 66.) The victim's mother requested that she accompany her  
8 daughter but Mr. Polanski responded negatively, stating "he would rather be alone with her [the  
9 victim] because she [the victim] will respond more naturally." (GJ at pp. 8-9.) The mother  
10 acquiesced. The victim and Mr. Polanski then went to a nearby hillside to take pictures. The  
11 victim began to pose pursuant to the directions given by Mr. Polanski. (GJ at p. 67.) Soon  
12 thereafter, Mr. Polanski instructed the victim to take off her shirt and pose naked from the waist  
13 up. (GJ at p. 68.) The victim complied and the photographs were taken. (GJ at p. 68.)

14 On March 10, 1977, Mr. Polanski returned to the victim's residence to take additional  
15 photographs. (GJ at pp. 68-69.) Upon Mr. Polanski's arrival, the victim's mother asked to see  
16 the photographs taken at the previous, February 20, photo shoot. (GJ at p. 10.) In response,  
17 Mr. Polanski stated "he was in a hurry because the sun was going down and that he would  
18 show them to us when he got back." (GJ at p. 10.) Mr. Polanski then "rushed out" of the house  
19 with the victim and drove her to what he referred to as "his friend's house." (GJ at pp. 10, 70.)  
20 While at this house, Mr. Polanski took additional photographs of the victim. After about an hour,  
21 he stated, "I'm going to call up Jack Nicholson and see if we can go down to his house." (GJ at  
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23  
24 <sup>1</sup> In 2002, upon motion of Conde Nast Publications, and pursuant to a court order, the grand jury  
25 transcripts were unsealed and have since been widely disseminated. Pertinent portions of said  
transcripts were additionally included in Defense Exh. A: "Documentary."

1 p. 72.) After making a phone call, the defendant drove the victim to the home of Jack  
2 Nicholson.<sup>2</sup> (GJ at pp. 73-74.) Although Mr. Nicholson was not home, a woman allowed Mr.  
3 Polanski and the victim entry into the home. (GJ at p. 74.)

4 The defendant then went to the refrigerator, opened a bottle of champagne and poured a  
5 glass for each of them. (GJ at p. 75.) Some time thereafter, the defendant took the victim  
6 outside near the pool. (GJ at p. 76.) After photographing the victim outside, the defendant took  
7 additional pictures “right inside the patio door.” (GJ at p. 77.) At this time, pursuant to the  
8 instructions of Mr. Polanski, the victim had removed her shirt and was posing with her glass of  
9 champagne. (GJ at p. 78.) Following the taking of these pictures, the victim put on her blue  
10 dress. (GJ at p. 79.) The defendant took some additional photographs of the victim in the  
11 kitchen area and then took the victim outside and told her he wanted to take pictures of her  
12 inside the Jacuzzi. (GJ at p. 79.) However, prior to taking the Jacuzzi pictures, the two re-  
13 entered the house. (GJ at p. 80.) The defendant then went to the bathroom and returned with a  
14 Quaalude pill that had been broken into three pieces. (GJ at pp. 80-81.) The defendant  
15 swallowed a piece of the Quaalude and then offered a piece to the victim. (GJ at pp. 81, 83-84.)  
16 The victim, who had been drinking champagne throughout the photo shoot, accepted the piece  
17 of Quaalude because, in her words, “I must have been pretty drunk or else I wouldn’t have.” (GJ  
18 at pp. 81-82.)

19 The defendant then called the victim out to the Jacuzzi. (GJ at p. 84.) The victim  
20 intended to enter the Jacuzzi wearing her underwear, but the defendant told her to “take them  
21 off.” (GJ at pp. 84-85.) The victim complied and entered the Jacuzzi without any clothes. (GJ  
22 at p. 85.) The defendant proceeded to take pictures of the victim. (GJ at p. 85.) After taking  
23 only a few photographs, the defendant then took off all of his clothes and entered the Jacuzzi.

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24  
25 <sup>2</sup> Jack Nicholson was not home at the time of the events and had no knowledge of the activities of Roman  
Polanski.

1 (GJ at p. 86.) The defendant then told the victim, who had been at the other end of the very  
2 large Jacuzzi, to come closer to him. (GJ at p. 87.) When she did so, the defendant put both of  
3 his hands around her waist and began to “move them around.” (GJ at pp. 87-88.) The victim,  
4 evidently uncomfortable and wanting to extricate herself from the situation, told the defendant  
5 that she had asthma and that she had to get out of the Jacuzzi.<sup>3</sup> (GJ at pp. 87-88.) She then  
6 exited the Jacuzzi and wrapped a towel around her body. (GJ at p. 88.) The defendant,  
7 however, was not satisfied. The defendant entered the adjacent swimming pool and told the  
8 victim to “get in here.” (GJ at p. 88.) When the victim protested that the water was too cold, the  
9 defendant repeated his request that she enter the pool. (GJ at p. 88-89.) The victim complied  
10 by diving into the pool, swimming to the other end, and exiting the pool. (GJ at p. 89.)

11           Upon exiting the pool, the victim entered the house and went into the bathroom to dry  
12 herself. (GJ at p. 89.) The defendant followed the victim to the bathroom, at which point the  
13 victim said she “wanted to go home.” (GJ at p. 89.) Mr. Polanski responded by saying, “Yeah,  
14 I’ll take you home soon” to which the victim replied “No, I have to go home now.” (GJ at p. 89.)  
15 In response to the victim’s demand to go home, Mr. Polanski told her “to go in the other room  
16 and lie down.” (GJ at p. 89.) The victim, in fear, went in the other room and sat on the couch.  
17 (GJ at p. 90.) Mr. Polanski came and sat down beside her, at which point she again insisted  
18 that she be taken home. (GJ at p. 90.)

19           The defendant then reached over and began kissing the victim. (GJ at p. 90.) The  
20 victim told him, “No . . . keep away” but she remained fearful because “there was no one else  
21 there.” (GJ at p. 90-91.) The defendant then proceeded to perform cunnilingus, described by  
22 this 13-year-old child at the grand jury proceeding as “cuddliness,” upon the victim. (GJ at p.  
23 91.) As the defendant continued with his “mouth on [her] vagina,” the victim was “ready to cry”  
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25 <sup>3</sup> The victim did not, in fact, have asthma but had used this as an excuse to exit the Jacuzzi.

1 and was saying, “No. Come on. Stop it.” (GJ at p. 91.) The defendant ignored her protests  
2 and then removed her panties and “placed his penis in [her] vagina.” (GJ at p. 93.) The victim,  
3 who continued to say “No, stop,” could not physically fight off the defendant because “there was  
4 no one else there and . . . [the victim] had no place to go.” (GJ at p. 93.)

5 While the defendant was having intercourse with the victim, he asked her if she “was on  
6 the pill,” to which she replied she was not. (GJ at p. 94.) The defendant then replied, “I won’t  
7 come inside of you then.” (GJ at p. 95.) The defendant then lifted up the victim’s legs and  
8 “went in through [her] anus” by putting “his penis in [her] butt.” (GJ at p. 95.) Again, the victim  
9 could do little to resist because she was alone and because she was “afraid of him.” (GJ at p.  
10 95.)

11 The victim then heard a knock at the door. (GJ at p. 96.) Mr. Polanski walked to the  
12 door and spoke to the woman who had knocked. (GJ at p. 96.) The victim then put on her  
13 underwear and began to walk toward the door, however, Mr. Polanski sat her back down and  
14 continued to “have intercourse” with her until he ejaculated. (GJ at p. 96.)

15 The victim then walked to the bathroom, got dressed and began to walk out of the room.  
16 (GJ at p. 98.) The defendant requested that she wait for him. (GJ at p. 98.) Ignoring this  
17 request, the victim continued to walk out of the room. (GJ at p. 98.) She exited the house and  
18 walked to Mr. Polanski’s car. She entered the car, and began to cry. (GJ at p. 99.) After about  
19 10 minutes, the defendant entered the car and drove the victim home. (GJ at p. 99.) At some  
20 point, the defendant warned the victim not to tell her mother about what had happened, adding  
21 that “This is our secret.” (GJ at p. 100.) The defendant also stated, “You know, when I first met  
22 you I promised myself I wouldn’t do anything like this with you.” (GJ at p. 100.)

23 Contrary to the defendant’s request, the victim did not keep this incident a secret. After  
24 returning to her mother’s residence, the victim revealed what had occurred. The police were  
25 contacted and the victim told the police what had transpired. (GJ at p. 102.) The next day,

1 March 11, 1977, a search warrant was served at the Beverly Wilshire Hotel, where Mr. Polanski  
2 was staying, and at the home of Jack Nicholson, where the crime had occurred. (GJ at pp. 37,  
3 50.) The police recovered the photographs that the defendant had taken of the victim. The  
4 police also recovered a Quaalude pill from the person of Roman Polanski. (GJ at pp. 39-40.)  
5 On that same day, the police placed Mr. Polanski under arrest. (GJ at p. 50.)  
6

### 7 **III. PROCEDURAL BACKGROUND**

8 Based on the crimes committed on March 10, 1977, a grand jury issued an indictment  
9 against the defendant on March 24, 1977, alleging six felony counts. Count 1 alleged a violation  
10 of Health and Safety Code section 11380(a), Furnishing a Controlled Substance to a Minor, a  
11 felony; Count 2 alleged a violation of Penal Code section 288, Lewd or Lascivious Acts Upon a  
12 Child Under Fourteen, a felony; Count 3 alleged a violation of Penal Code section 261.5,  
13 Unlawful Sexual Intercourse, a felony; Count 4 alleged a violation of Penal Code section 261(3),  
14 Rape By Use of Drugs, a felony; Count 5 alleged a violation of Penal Code section 288a(a) and  
15 (c), Perversion, a felony; and Count 6 alleged a violation of Penal Code section 286(a) and (c),  
16 Sodomy on a Person, a felony.

17 In subsequent weeks, the victim, through her lawyer, expressed in no uncertain terms  
18 that she wished to maintain her anonymity and avoid the further trauma that would accompany  
19 a full-blown jury trial. (Lawrence Silver letter dated July 26, 1977, Exh. B; Plea Transcript at pp.  
20 3-6, Exh. C.) Based on these expressed concerns, on August 8, 1977, the defendant was  
21 permitted to plead guilty to one felony count, Penal Code section 261.5, for having unlawful  
22 sexual intercourse with a minor. (Plea Transcript at p. 16.) This was an open plea to the court,  
23 meaning that at the time of the plea, there did not exist any agreement as to what sentence may  
24 or may not be imposed. Instead, the sentence was to be determined by the court based on the  
25 probation report and argument of counsel. (Plea Transcript at pp. 11-13.) The sentencing

1 hearing was then continued to the date of September 19, 1977. (Plea Transcript at p. 20.)

2           On September 19, 1977, the court acknowledged having read and considered the  
3 probation report. (Sentencing Transcript at p. 5, Exh. D.) The court then allowed counsel for  
4 the defendant, as well as the People, to argue their respective positions. Defense counsel  
5 argued for a grant of probation without any additional time in custody, while the prosecutor  
6 argued for a period of confinement. (Sentencing Transcript at pp. 9, 13.) Following argument,  
7 the judge indicated he was impressed by the arguments of counsel and then made multiple  
8 specific references which further evidenced his having read and considered the probation  
9 report.<sup>4</sup> (Sentencing Transcript at pp. 14-16.) The judge then ordered the defendant committed  
10 to the custody of the Department of Corrections, and confined for a period of 90 days for  
11 purposes of a diagnostic evaluation, pursuant to Penal Code section 1203.03. (Sentencing  
12 Transcript at pp. 16-17.)

13           At the request of the defendant, this sentence was stayed to accommodate his schedule.  
14 (Sentencing Transcript at pp. 17-18.) Eventually, on December 16, 1977, the defendant  
15 surrendered to the Department of Corrections. He was released 42 days later. At the time of  
16 his release, the Department of Corrections provided the court with a copy of its diagnostic  
17 evaluation. The court and counsel met in chambers on January 30, 1978. During that meeting,  
18 according to Judge Rittenband, the court expressed its disappointment with the documentation  
19 provided by the Department of Corrections and characterized the report as “superficial, replete  
20 with many inaccuracies and factually unsupported conclusions, and was conspicuous more for  
21 what it failed to report than what it did report.” (Answer of Judge Rittenband to Statement of  
22 Disqualification, and Consent to Transfer at p. 3, Exh. E.) The judge further indicated that “an

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24 <sup>4</sup> Thus, contrary to the current defense allegations, the record makes it abundantly clear that, prior to  
25 sentencing the defendant, the judge (1) read and considered the probation report and (2) listened to the  
arguments of counsel.

1 appropriate sentence would be for Mr. Polanski to serve out the remainder of the 90-day  
2 period..., provided Mr. Polanski were to be deported by the Immigration and Naturalization  
3 Bureau, by stipulation or otherwise, at the end of the 90 days.” (Answer of Judge Rittenband to  
4 Statement of Disqualification, and Consent to Transfer at p. 4.) The matter was then set for  
5 February 1, 1978, for sentencing. (Answer of Judge Rittenband to Statement of Disqualification,  
6 and Consent to Transfer at p. 4.)

7 Prior to the February 1, 1978, sentencing hearing, the defendant’s attorney, Douglas  
8 Dalton, informed the defendant of the judge’s inclination regarding the sentence. (Dalton  
9 Declaration at p. 6.) In response, the defendant left the United States and has never returned.  
10 (Dalton Declaration at p. 6.) On February 1, 1978, the court issued a bench warrant for the  
11 defendant’s arrest. That warrant remains in full force and effect and the defendant remains a  
12 fugitive from justice to this day.

13 On December 2, 2008, defendant filed his motion to dismiss.  
14

15 **IV. THE GUILTY PLEA WAS AN OPEN PLEA TO A FELONY AND WAS MADE FREELY**  
16 **AND VOLUNTARILY WITH THE ADVICE OF COUNSEL.**

17 After being advised of his Constitutional rights, the defendant clearly and explicitly gave  
18 up each of those rights and his attorney “join[ed] in those waivers.” (Plea Transcript at pp. 7-  
19 10.) The defendant, while under oath, then admitted that he was “in fact guilty” of having sexual  
20 intercourse with a minor, the victim in this case. (Plea Transcript at p. 10.) Additionally, the  
21 defendant specifically admitted he knew the victim was only 13-years-old. (Plea Transcript at p.  
22 14.) The defendant further affirmed he knew he was pleading guilty to a felony. (Plea  
23 Transcript at p. 11.) The defendant also acknowledged that his sentence had not yet been  
24 determined and that the appropriate sentence would be decided by the judge after having read  
25 and considered the probation report and after having heard argument of both counsel. (Plea

1 Transcript at pp. 11-12.) In regard to the potential sentence, the defendant acknowledged that  
2 the sentence could include time in state prison, time in county jail, or a grant of straight  
3 probation. (Plea Transcript at p. 11.)

4 Lastly, the defendant acknowledged having had enough time to confer with his lawyers  
5 regarding the facts and circumstances of the case, his rights and possible defenses, and the  
6 consequences of his plea. (Plea Transcript at pp. 13-14.) The defendant denied being  
7 threatened in any way and admitted that there had been no promises made in regard to a lesser  
8 sentence or a grant of probation. (Plea Transcript at p. 14 -15.) When given an opportunity to  
9 ask any questions, the defendant declined. When asked if he was pleading freely and  
10 voluntarily, the defendant answered affirmatively. (Plea Transcript at p. 15.) The defendant's  
11 attorney, Mr. Dalton, additionally affirmed having discussed with Mr. Polanski his rights, his  
12 possible defenses, and the possible consequences of his plea of guilty. (Plea Transcript at p.  
13 15.) Mr. Dalton also explicitly denied being aware of any promises made to his client other than  
14 what had been stated on the record in open court. (Plea Transcript at p. 15.)

15 At that point, after the court made a finding that the plea was made freely and voluntarily  
16 and that there was a factual basis for the plea, the defendant pleaded guilty to a violation of  
17 Penal Code Section 261.5, a felony, for the crime of unlawful sexual intercourse with a minor.  
18 (Plea Transcript at p. 16.)

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20 **V. THE FUGITIVE DISENTITLEMENT DOCTRINE BARS THE DEFENDANT, A**  
21 **FUGITIVE FROM JUSTICE, FROM SEEKING RELIEF FROM THIS COURT.**

22 The defendant, as a fugitive from justice, must be denied the opportunity to seek relief  
23 from the very court whose jurisdiction the defendant refuses to recognize. This principle, long  
24 recognized as the fugitive disentitlement doctrine, has been repeatedly, consistently and  
25 appropriately applied in these situations and should be applied in the present case to bar any

1 hearing on the defendant's motion to dismiss.

2 In *MacPherson v. MacPherson* (1939) 13 Cal. 2d 271, 277 [89 P.2d 382], the California  
3 Supreme Court expressed the rule that “[a] party to an action cannot, with right or reason, ask  
4 the aid or assistance of a court in hearing his demands while he stands in an attitude of  
5 contempt to legal orders and processes of the courts of this state. [Citations.]” This general  
6 rule has been applied to cases involving defendants who are fugitives from justice. In denying  
7 the fugitives the relief they seek, the courts have premised their decisions on the fugitive  
8 disentitlement doctrine—the proposition that “a fugitive has no right to ask the courts to review  
9 the very judgment that the fugitive flouts.” (*People v. Kubby* (2002) 97 Cal. App. 4th 619, 623  
10 [118 Cal. Rptr. 2d 588], *citing, inter alia, Molinaro v. New Jersey* (1970) 396 U.S. 365, 366 [90  
11 S.Ct. 498, 498-499, 24 L.Ed. 2d 586, 588]; *People v. Redinger* (1880) 55 Cal. 290, 298; *People*  
12 *v. Buffalo* (1975) 49 Cal. App. 3d 838, 839 [123 Cal. Rptr. 308].) Accordingly, the courts have  
13 “long found it proper to dismiss the criminal appeals of those who are fugitives from justice,  
14 often granting the defendants 30 days to return to the custody of the authorities before the  
15 dismissal becomes effective.” (*People v. Kubby, supra*, 97 Cal. App. at 623, *citing, inter alia,*  
16 *People v. Redinger, supra*, 55 Cal. at pp. 298-299; *People v. Clark* (1927) 201 Cal. 474, 477  
17 [259 P. 47]; *People v. Fuhr* (1926) 198 Cal. 593, 594 [246 P. 1116]; *People v. Buffalo, supra*, 49  
18 Cal. App. 3d at p. 839; *People v. Sitz* (1913) 21 Cal. App. 54, 55 [130 P. 858].)

19 One of the principal considerations driving the fugitive disentitlement doctrine is the  
20 general principal that a fugitive should not be able to call upon the resources of the courts he  
21 avoids. In *Molinaro v. New Jersey, supra*, 396 U.S. 365, for example, the Court dismissed the  
22 defendant's appeal after defendant failed to surrender himself to state authorities. In dismissing  
23 defendant's motion, the court reasoned that “[n]o persuasive reason exists why this Court  
24 should proceed to adjudicate the merits of a criminal case after the convicted defendant who  
25 has sought review escapes from the restraints placed on him pursuant to the conviction.”

1 (*Molinaro v. New Jersey, supra*, 396 U.S. at p. 366.) The Court noted that “[w]hile such an  
2 escape does not strip the case of its character as an adjudicable case or controversy, we  
3 believe it disentitles the defendant to call upon the resources of the Court for determination of  
4 his claims.” (*Ibid.*)

5 Likewise, in *People v. Kubby, supra*, 97 Cal. App. 4th at page 629, the court ordered  
6 defendant’s cross-appeal dismissed unless defendant, a fugitive, surrendered himself to the  
7 appropriate authorities within 30 days thereafter. The court saw “no reason why a fugitive from  
8 justice who seeks to prosecute a cross-appeal should be held to any different standard than a  
9 fugitive from justice who seeks to prosecute an appeal.” (*People v. Kubby, supra*, 97 Cal. App.  
10 4th at pp. 627-628.) The court noted that “[b]oth invoke the court’s jurisdiction to seek  
11 affirmative relief while simultaneously absconding from the court’s jurisdiction to avoid  
12 compliance with the judgment they attack.” (*Id.* at p. 628.) Thus, the decision by both courts  
13 reflects the view that it “is contrary to the principles of justice to permit one who has flaunted the  
14 orders of the courts to seek judicial assistance.” (*Estate of Scott* (1957) 150 Cal. App. 2d 590,  
15 594 [310 P.2d 46].)

16 The other consideration driving the fugitive disentitlement doctrine is the enforceability of  
17 the court’s determination. In the seminal case of *People v. Redinger*, where defendant  
18 appealed his conviction and subsequently fled to Canada, the court addressed the issue of  
19 enforceability. (*People v. Redinger, supra*, 55 Cal. at pp. 294-296.) The court noted that since  
20 “courts have no jurisdiction over persons charged with crime, unless in custody actual or  
21 constructive . . . . [i]t would be a farce to proceed in a criminal cause, unless the Court had  
22 control over the person charged, so that its judgment might be made effective.” (*Id.* at p. 298.)  
23 In that case, the fact that defendant was represented by counsel was of no consequence since  
24 “defendant has no longer a right to appear by counsel, when he has escaped from custody, until  
25 he has returned into custody.” (*Ibid.*) Similarly, in *Smith v. United States* (1876) 94 U.S. 97 [24

1 L. Ed. 32], the Court held that it was proper to refuse to hear a criminal case when the fugitive  
2 defendant cannot be made to respond to the judgment it may render. (See *Ortega-Rodriguez v.*  
3 *United States* (1993) 507 U.S. 234, 239-240 [122 L. Ed. 2d 581, 113 S. Ct. 1199] [noting that it  
4 is within a court’s discretion to refuse to hear a criminal case when the defendant fugitive cannot  
5 be made to respond to any ruling].) The Court reasoned that “[i]f we affirm the judgment, [the  
6 fugitive defendant] is not likely to appear to submit to his sentence. If we reverse it, and order a  
7 new trial, he will appear or not, as he may consider most for his interest. (*Id.* at p. 97; see  
8 *United States v. Freelove* (9th Cir. 1987) 816 F.2d 479, 480 [“One may not invoke the power of  
9 judicial review only thereafter to obey or disobey the [district] court’s mandate as he sees fit.”].)  
10 Under such circumstances, [the *Smith* Court was] not inclined to hear and decide what may be  
11 a moot case.” (*Ibid.*) Thus, in dismissing a fugitive’s appeal, both the *Smith* and *Redinger*  
12 courts recognized that it would be senseless to review a case when its determination cannot be  
13 enforced.

14 Although the courts have generally applied the fugitive disentitlement doctrine to criminal  
15 appeals, the courts have extended this doctrine when appropriate. (See e.g., *Conforte v. C.I.R.*  
16 (9th Cir. 1982) 692 F.2d 587, 589, *affd.* 459 U.S. 1309, 1310 [103 S.Ct. 663, 74 L.Ed. 2d 588]  
17 [applying the fugitive disentitlement to civil cases].) In the present case, justice demands that  
18 this court deny defendant’s motion unless defendant, in accordance with *Redinger* and its  
19 progeny, submits to the court’s jurisdiction within the next 30 days.<sup>5</sup> Here, even though  
20 defendant technically is not appealing his case, he is calling upon the court to, on its motion,  
21 dismiss his case and sanction the District Attorney’s Office. Such a request runs contrary to the  
22 considerations of the fugitive disentitlement doctrine.

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25 <sup>5</sup> Of course, to allow even 30 days is an exercise in futility considering the defendant has had 30 years to  
submit to the court’s jurisdiction.

1 First, defendant is a fugitive from justice because he fled the court's jurisdiction and has  
2 continued to flout it for the past 30 years. (See *Estate of Scott* (1957) 150 Cal. App. 2d 590,  
3 592 [310 P.2d 46] ["One who, with knowledge that he is being sought pursuant to court process  
4 in a criminal action, absents himself or flees is a fugitive from justice."].) Moreover, defendant  
5 seeks affirmative relief from the court—the dismissal of his case—while simultaneously  
6 absconding from its jurisdiction. As the courts have clearly held, "a fugitive from justice has *no*  
7 *right* to ask the courts to review the very judgment that the fugitive flouts." (*People v. Kubby*,  
8 *supra*, 97 Cal. App. 4th at 623 [emphasis added].)

9 Second, contrary to the defendant's motion, defendant *is* "flouting the processes of the  
10 law" and "attempting to bargain with or to obtain a tactical advantage over the court." In *Katz v.*  
11 *United States*, the court recognized that "[i]t is usually appropriate to refuse to exercise  
12 jurisdiction over the appeal of a person who is in fugitive status because that person is  
13 attempting to bargain with or to obtain a tactical advantage over the court: *that is, to wait the*  
14 *judicial result and return if it is favorable or to remain a fugitive if it is not.*" (*Katz v. United States*  
15 (9<sup>th</sup> Cir. 1990) 920 F.2d 610, 612 [emphasis added]; see *People v. Kubby, supra*, 97 Cal. App.  
16 at p. 619 [noting that "[d]efendant's flight from the court's jurisdiction makes a mockery of the  
17 justice system because it places the [defendant], rather than the courts, in the position of  
18 determining whether to submit to the court's judgment"].) Here, defendant flouts the law by  
19 remaining a fugitive despite the outstanding bench warrant for his arrest. Further, defendant  
20 attempts to bargain with or to obtain a tactical advantage over the court by refusing to submit to  
21 its jurisdiction while at the same time requesting affirmative relief from the court. As the court  
22 held in *Katz v. United States, supra*, 920 F.2d at page 612, "[o]ne may not invoke the power of  
23 judicial review only thereafter to obey or disobey the court's mandate as one sees fit. [citations.]"  
24 Therefore, since defendant flouts the law and seeks a tactical advantage over the court, this  
25 court should deny defendant's motion.

1           Lastly, even though the court in *Doe v. Superior Court* (1990) 222 Cal. App. 3d 1406,  
2 1409-1410 [272 Cal. Rptr. 474] (hereinafter referred to as *Polanski*, the real party in interest)  
3 held that defendant’s fugitive status was not an impediment to *defending a civil action*,  
4 defendant’s reliance on that case for his present criminal case is misplaced. In *Polanski*, the  
5 court “did not disagree with the cases that authorize dismissal of a fugitive’s criminal appeal, but  
6 merely distinguished such cases from the right to *defend* against a lawsuit brought by another  
7 party.” (*Kubby, supra*, 97 Cal. App. 4th at 627 [emphasis added].) The *Polanski* court held that  
8 the application of the fugitive disentitlement doctrine was improper in the civil case because “it  
9 was [the plaintiff] who initiated the lawsuit, bringing Polanski into the civil arena of the California  
10 court system. Having appeared to defend himself, Polanski d[id] not seek relief in his own right;  
11 rather, he merely s[ought] the opportunity to be heard and present any defenses he may have to  
12 [the plaintiff’s] causes of action.” (*Ibid., quoting Polanski, supra*, 222 Cal. App. 3d at p. 1409.)

13           In the present case, however, defendant is not defending himself against a civil cause of  
14 action brought by a plaintiff. Rather, defendant is seeking affirmative relief from the  
15 court—namely, he requests that the court dismiss his case and sanction the District Attorney’s  
16 Office for engaging in “prosecutorial misconduct.” As the court held in *People v. Kubby*,  
17 however, when defendant is not merely defending himself in an action brought by a plaintiff, but  
18 rather seeking affirmative relief, the doctrine of fugitive disentitlement still applies. (*Id.* at pp.  
19 627-628.) In *Kubby*, defendant argued that since he only filed a cross-appeal, and thus did not  
20 initiate the appellate process, the fugitive disentitlement doctrine did not apply. (*Id.* at p. 627.)  
21 The court noted, however, that because defendant sought affirmative relief—the reversal of his  
22 conviction and a vacatur of various terms of probation, defendant was not merely defending  
23 himself against a cause of action brought by plaintiff. (*Id.* at pp. 627-628.) Accordingly, the  
24 court held that the principles of the fugitive disentitlement doctrine still applied to defendant’s  
25 cross-appeal. (*Ibid.*) Like the defendant in *Kubby*, the defendant in this case seeks affirmative  
relief from the

1  
2 court while simultaneously remaining a fugitive from justice. In accordance with *Kubby*,  
3 therefore, this court should apply the fugitive disentitlement doctrine to this case and dismiss  
4 defendant's motion.<sup>6</sup>

5  
6 **VI. PENAL CODE SECTION 977 FURTHER REQUIRES THE PERSONAL APPEARANCE**  
7 **OF THE DEFENDANT**

8 Defendant's attempt to seek relief from this court while remaining a fugitive from justice  
9 also violates Penal Code section 977(b)(1), which mandates:

10 In all cases in which a felony is charged, the accused shall be present  
11 at the arraignment, at the time of plea, during the preliminary hearing,  
12 during those portions of the trial when evidence is taken before the trier  
13 of fact, and at the time of the imposition of sentence. **The accused shall be  
personally present at all other proceedings unless he or she shall, with  
leave of court, execute in open court, a written waiver of his or her right  
to be personally present.** [emphasis added.]

14 There exists no exception to the requirements of Penal Code section 977(b)(1) as it  
15 applies to the defendant. He must be personally present at any proceedings in this matter.

16  
17 <sup>6</sup> Defendant also cites the British civil case of *Polanski v. Conde Nast Publications Ltd.*, [2005] UKHL 10,  
18 in support of his argument that the fugitive disentitlement doctrine should not apply to his present criminal  
19 case. In that case, defendant claimed he had been libeled by a *Vanity Fair* article which had included an  
20 accusation that, while en route to his wife Sharon Tate's funeral, Mr. Polanski had visited a restaurant and  
21 proceeded to "charm" a "gorgeous Swedish girl" by sliding "his hand inside her thigh" while promising to  
22 "make another Sharon Tate out of" her. Although defendant brought that suit in London against Conde  
23 Nast publications, defendant was again merely *defending* his rights. Moreover, the British court  
24 specifically ruled that in the United Kingdom, unlike the United States, the "law knows no principle of  
25 fugitive disentitlement." Of course, this British ruling is not binding on this court.

1  
2 **VII. THE DEFENSE ALLEGATIONS OF JUDICIAL AND DISTRICT ATTORNEY**  
3 **MISCONDUCT ARE NOT RIPE FOR LITIGATION UNTIL SUCH TIME THAT**  
4 **DEFENDANT SURRENDERS TO THE JURISDICTION OF THIS COURT**

5 The defense makes multiple allegations of misconduct directed at members of the Los  
6 Angeles Superior Court judicial bench and members of the District Attorney's Office. While not  
7 conceding any of these various allegations, the People simply note that the alleged misconduct  
8 occurred *after* the defendant pleaded freely and voluntarily to a felony, with the understanding  
9 that the judge would determine the appropriate sentence. Beyond that, this is not the time to  
10 litigate such allegations. Should Mr. Polanski feel that he was treated unfairly after he pleaded  
11 guilty to the statutory rape of a child, he should surrender to the court's jurisdiction so that the  
12 allegations may be properly litigated. Until such time, the matter is not ripe for litigation.

13  
14 **VIII. CONCLUSION**

15 On March 10, 1977, Mr. Polanski provided a 13-year-old girl alcohol and drugs, and then  
16 proceeded to have oral, vaginal, and anal sex with this child. The defendant pleaded guilty to  
17 this unlawful sexual intercourse but, prior to being sentenced, fled the jurisdiction of the United  
18 States. He has remained outside this court's jurisdiction for the past 30 years and has remained  
19 a fugitive from justice. Until such time that Mr. Polanski surrenders to the jurisdiction of this  
20 court, the defense motion should be dismissed and the matter should be taken off calendar.

21  
22 Dated: January 6, 2009

Respectfully submitted,

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David Walgren  
Deputy District Attorney

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DECLARATION OF SERVICE

The undersigned declares under the penalty of perjury that the following is true and correct:

I am over eighteen (18) years of age, not a party to the above cause and employed in the Office of the District Attorney of Los Angeles County with offices at 210 W. Temple Street, Los Angeles, California 90012. On the date of execution hereof, I served the attached documents by sending a true copy by mail and by facsimile to the following address:

Chad S. Hummel  
Manatt, Phelps & Phillips, LLP  
11355 West Olympic Boulevard  
Los Angeles, California 90064-1614  
Fax: (310) 312-4224

Executed on January 6, 2009, at Los Angeles, California.

\_\_\_\_\_  
Adam Wong