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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

APR 05 2005

GARY M. BLAIR, Executive Officer
BY Carrie L. Wagner
CARRIE L. WAGNER, Deputy Clerk

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

12		No. 1133603
13	THE PEOPLE OF THE STATE OF CALIFORNIA,	} PEOPLE'S REQUEST FOR MANDATORY JUDICIAL NOTICE PURSUANT TO EVIDENCE CODE §451(a)
14	Plaintiff,	
15	v.	
16	MICHAEL JOE JACKSON,	} DATE: TBD TIME: 8:30 AM DEPT.: SM2 (Melville)
17	Defendant.	

19 _____
20 Counsel for the defense has repeatedly asked witnesses questions regarding
21 the surreptitious recording of police interviews. The purpose of these questions
22 has been plain – to imply improper police conduct. In addition, defense counsel
23 specifically asked witness Conn Abel about the legality of owning devices
24 designed to surreptitiously record phone conversations. (RT 2851 19-21.) It is
25 now appropriate that the jury be advised of the law on this matter.

26 In addition, virtually every witness who has introduced adult erotic material
27 has been questioned by the defense about the legality of possessing such items.
28 Defense counsel has specifically questioned whether such material can be

1 considered "contraband." (RT 2177: 19-26.) Pursuant to Penal Code Section
2 313.1(a) these legal questions depend upon the intent and conduct of the person
3 possessing such materials. It is also now appropriate that the jury be informed of
4 the law on this subject.

5 Penal Code Section 451(a) provides for mandatory judicial notice of "(t)he
6 decisional, constitutional, and public statutory law of this state." The People
7 respectfully request the court to take judicial notice of the following two sections
8 of the California Penal Code(see attached) and provide this information to the
9 jury:

- 10 1) Penal Code Section 632 (Eavesdropping on or recording confidential
11 communications.)
12 2) Penal Code Section 313.1(a) (Exhibition of "Harmful Matter" to
13 minors.)

14
15 DATED: April 5, 2005

16 THOMAS W. SNEDDON, JR.
17 District Attorney

18 By: 

19 _____
20 Gordon Auchincloss,
21 Senior Deputy District Attorney

Penal Code § 632. Eavesdropping on confidential communication; Punishment

(a) Every person who, intentionally and without the consent of all parties to a confidential communication, by means of any electronic amplifying or recording device, eavesdrops upon or records the confidential communication, whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, or other device, except a radio, shall be punished by a fine not exceeding two thousand five hundred dollars (\$ 2,500), or imprisonment in the county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. If the person has previously been convicted of a violation of this section or Section 631, 632.5, 632.6, 632.7, or 636, the person shall be punished by a fine not exceeding ten thousand dollars (\$ 10,000), by imprisonment in the county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment.

(b) The term "person" includes an individual, business association, partnership, corporation, limited liability company, or other legal entity, and an individual acting or purporting to act for or on behalf of any government or subdivision thereof, whether federal, state, or local, but excludes an individual known by all parties to a confidential communication to be overhearing or recording the communication.

(c) The term "confidential communication" includes any communication carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto, but excludes a communication made in a public gathering or in any legislative, judicial, executive or administrative proceeding open to the public, or in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded.

(d) Except as proof in an action or prosecution for violation of this section, no evidence obtained as a result of eavesdropping upon or recording a confidential communication in violation of this section shall be admissible in any judicial, administrative, legislative, or other proceeding.

(e) This section does not apply (1) to any public utility engaged in the business of providing communications services and facilities, or to the officers, employees or agents thereof, where the acts otherwise prohibited by this section are for the purpose of construction, maintenance, conduct or operation of the services and facilities of the public utility, or (2) to the use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of a public utility, or (3) to any telephonic communication system used for communication exclusively within a state, county, city and county, or city correctional facility.

(f) This section does not apply to the use of hearing aids and similar devices, by persons afflicted with impaired hearing, for the purpose of overcoming the impairment to permit the hearing of sounds ordinarily audible to the human ear.

**Penal Code § 313.1. Distribution or exhibition of harmful matter to minor;
Addition of harmful matter to rented video; Defenses**

(a) Every person who, with knowledge that a person is a minor, or who fails to exercise reasonable care in ascertaining the true age of a minor, knowingly sells, rents, distributes, sends, causes to be sent, exhibits, or offers to distribute or exhibit by any means, including, but not limited to, live or recorded telephone messages, any harmful matter to the minor shall be punished as specified in Section 313.4.

Penal Code § 313. Definitions

.. As used in this chapter:

(a) "Harmful matter" means matter, taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest, and is matter which, taken as a whole, depicts or describes in a patently offensive way sexual conduct and which, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

1 **PROOF OF SERVICE**

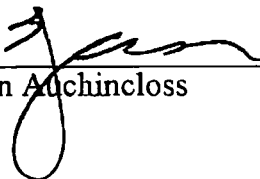
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3 STATE OF CALIFORNIA)
4 COUNTY OF SANTA BARBARA) SS

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

10 On March 18, 2005, I served the within PEOPLE'S REQUEST FOR
11 MANDATORY JUDICIAL NOTICE PURSUANT TO EVIDENCE CODE §451(a); on
12 Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER, and BRIAN OXMAN, by
13 personally providing a copy of this document to SUSAN YU.

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

15 Executed at Santa Barbara, California on this 5th day of April, 2005.

16
17 
18 _____
19 Gordon Auchincloss
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