

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

DEC 21 2011

ALAN CARLSON, Clerk of the Court

N. Dorfman
BY N DORFMAN

1 Law Office of Todd Spitzer
2 Todd Spitzer, Esq. (SBN # 143166)
3 7420 E. Morninglory Way
4 Orange, CA 92869
5 (714) 744-6979 (FAX)
6 (714) 552-0877 (Cell)
7 SpitzerLawOffice@aol.com

8 Attorney for Victim Christine Richters

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **CENTRAL JUSTICE CENTER, IN AND FOR THE COUNTY OF ORANGE**

11 **30-2011**

12 **CHRISTINE RICHTERS**)
13 Petitioner)

CASE NO 00531722

14 vs.)

15 **Verified Petition for Writ**
16 **of Mandate**

17 **ANTHONY RACKAUCKAS, Jr., in his**)
18 Capacity as Orange County)
19 District Attorney)

Code of Civ. Proc., §§ 1085-1086;
Govt. Code, § 6258

20 Respondent.)

21 **JUDGE JAMOA A. MOBERLY**
22 **DEPT. C12**

23 **Request for Consolidation with Criminal Matter**

24 This writ proceeding arises out of a pending criminal court case, *People v. Scott Peterson*, Orange
25 County Superior Court Case No. 10CF3288. The Peterson case is presently assigned to Judge Gerald
26 Johnston in Department C-57. It is this Petitioner's request that this Writ Petition also be assigned to Judge
27 Johnston given that other legal theories for document production by Petitioner are pending before Judge
28 Johnston in the Peterson matter, specifically whether Proposition 9 (2008), commonly referred to as
"Marsy's Law", also requires that Petitioner be provided with discovery. That matter is set for argument

1 on January 20th, 2012.¹ This request does not appear to be unprecedented. In *People v. Cicilnelli, et.al.*
2 (Orange Co. Sup. Ct. No. 11CF2575) Petitioner understands that Judge Rick Larsh indicated on December
3 16th, 2011, at a pre-preliminary hearing setting, that he would inquire whether he could also be assigned
4 case number 30-2011 00529489, *Cathy Thomas v. Anthony Rackauckus*, a Writ of Mandate also
5 challenging the District Attorney's refusal to provide Victim discovery under the California Public Records
6 Act (CPRA). Judge Larsh's inquiry to consolidate the CPRA matter by Cathy Thomas and the criminal
7 matter pending in *Cicilnelli, et.al.* makes perfect from a judicial economy and legal perspective and
8 Petitioner here is presenting the same logic, especially since Petitioner in *People v. Peterson* is presently
9 multiple theories of document production requests in front of Judge Johnston.²

12 Introduction

14 Petitioner Christine Richters is the mother³ of Jane Doe in the *Peterson* matter who was a high
15 school senior at the time she engaged in a "consensual" sexual relationship with the Defendant while he
16 was her Spanish teacher at Orange High School in Orange, California.⁴ In the *Peterson* matter, Jane Doe

18 ¹ Petitioner's Counsel is out of state on law related business January 4, 2012 to January 10th, 2012 and
19 requests that the matter be set for a hearing either before or after those dates. Or, in the alternative, if the
20 Civil Court agrees to transfer to Judge Johnston, set the matter concurrent with the other discovery matters
21 set for January 20, 2012 in C-57 and notify Petitioner via email or telephone.

22 ² Judge Johnston, on December 16th, 2011 presented the question to Petitioner for what authority
23 Petitioner could provide that would presently allow Judge Johnston jurisdiction to consider the denial of
24 discovery to Petitioner by the Respondent. The appropriate authority would appear to respectfully request
25 an assignment of this matter to Judge Johnston by the Civil Court.

26 ³ On August 15, 2011 at her first appearance, Christine Richters asserted her Marsy's Law rights as a victim
27 under California Constitution Article I, § 28(e): the victim in a criminal case "also includes the person's
28 spouse, **parents**, children, siblings..." (Emphasis added). The Court accepted her assertion and gave her
standing in the case as a crime victim. She remains a recognized crime victim in the *Peterson* case ever
since. She also asserted all of her Marsy's Rights including the right to be heard at all proceedings, the
right to be notified of all proceedings, and the right to be heard before any pre-trial disposition in the case
and the right to confer with the prosecutor in the case.

⁴ Petitioner is doing her best to recite the facts of the case presented *herein*. But it must be understood that
Petitioner has been provided no discovery so if the facts later turn out to be different than articulated here,
Petitioner does not in any way intend to mislead the Court. This is the very reason Petitioner is seeking
discovery; in order to understand the order of events in order for Petitioner and her Counsel to assert her
Constitutional and statutory legal rights. The District Attorney does not represent the victim and the victim
has asserted her Marsy's Law rights and retained private counsel who is attempting to assist the Petitioner

1 has also retained Marsy's Law Counsel, Mr. Ron Brower. Jane Doe is vigorously opposed to prosecution
2 of Peterson and is an uncooperative and hostile witness. Petitioner, mother, is supportive of prosecution
3 and will be an important witness during the trial. During the investigative stages of the alleged crime by
4 the Orange Police Department (OPD), Jane Doe became a run-away from her mother. When Jane Doe
5 returned home on one occasion, Petitioner called the OPD, who subsequently detained Jane Doe and
6 transported her to the police station. When the OPD requested consent to search Jane Doe's personal
7 effects such as her purse and cell phone, Jane Doe refused to give OPD permission. Petitioner was then
8 requested by OPD to give her consent to search her daughter's property and signed consent to search form.
9 During that search, photographs of Jane Doe and Peterson engaged in various sex acts was apparently
10 discovered.

11 During various pre-preliminary hearings in C-57, it came to Petitioner's attention that Peterson's
12 Counsel, Mr. Andrew Lloyd, in conjunction with Mr. Brower, are planning to assert Jane Doe's right to
13 privacy and Fourth Amendment violations by the OPD in order to suppress the evidence secured from Jane
14 Doe's person/property. Petitioner has a direct interest in knowing how the OPD articulated her summons
15 of the OPD to her residence to detain Jane Doe. Petitioner also has a right to know how the OPD described
16 her consent to search and to review the consent to search OPD form in order for Petitioner and her Counsel
17 to prepare for Jane Doe and Peterson's suppression motion. Petitioner is statutorily-entitled, through the
18 CPRA, to obtain specified records from the District Attorney in relation to the case, even though criminal
19 charges are pending. (See Gov. Code, § 6254, subdivision (f).)

20 Petitioner has never asked for "all evidence" in the *Peterson* matter, but only "relevant evidence"
21 (Exhibit A). What could be more relevant than Petitioner's right to know and prepare for how her conduct
22 is being portrayed by OPD and the District Attorney? Certainly Petitioner has a right to know if the OPD
23 properly documented her actions and whether those actions were conducted in a lawful manner by OPD. In
24 the event that OPD violated Jane Doe's Constitutional right to be free from unreasonable search and seizure
25 by the Government, (and it is later determined that such a violation has any legal implication in the
26 *Peterson* matter in a post-Proposition 8 analysis) Petitioner has a right to understand how that might impact
27 the District Attorney's valuation of the case and any particular disposition that the District Attorney might
28

in actually attaining and enforcing those rights.

1 consider if there is a potential weakness in the case or a potential threat to important and credible evidence
2 being suppressed. Therefore, what privacy is the District Attorney trying to protect on behalf of Jane Doe
3 relating to a search and seizure issue? How does such a request impact any of the concerns expressed by
4 the District Attorney? Petitioner is not requesting to see the fruits of the search such as the photos, only the
5 OPD reports relating to the facts that led up to the search and the search itself. There is no privacy interest
6 to protect.

7 The denial letter shows a startling lack of respect for the District Attorney's CPRA duties, in that
8 the District Attorney seeks to exempt *every single document in his possession*. It is inconceivable that the
9 exemptions cited by the District Attorney apply to the limited need by Petitioner regards the search and
10 seizure issues and that other remedies (for example, redaction and a continuing protective order as to
11 Petitioner's use of such information) would not advance the interests put forth by the District Attorney.

12 This writ petition is therefore necessary to compel the District Attorney to fulfill the duties imposed
13 upon him by law.

14 **Allegations**

15 By way of this verified petition, petitioner affirmatively alleges the following:
16

- 17 1. Petitioner Christine Richters is a resident of the County of Orange, State of California.
- 18 2. Respondent Anthony Rackauckas, Jr., is the Orange County District Attorney.
- 19 3. Petitioner is the mother of Jane Doe, a minor at the time she was molested by Scott Peterson.
- 20 4. Respondent is prosecuting Scott Peterson in *People v. Peterson* (Orange County Superior
21 Court Case No. 10CF3288).
- 22 5. In a motion filed in the *Peterson* matter and served on the District Attorney, dated November
23 30, 2011 (and attached hereto as Exhibit A), Petitioner made a California Public Records Act
24 (CPRA) request of Respondent on November 21, 2011 and filed in the case of *People v.*
25 *Peterson* (Orange County Superior Court Case No. 10CF3288), seeking "the date, time, and
26 location of the incident, all diagrams, statements of parties involved in the incident, the
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1 statement of all witnesses..." to the extent the materials are subject to disclosure under
2 Government Code section 6254, subdivision (f).

- 3 6. Section 6254, subdivision (f), generally provides crime victims with access to specified
4 records in a criminal prosecution, even though the case is still pending.
- 5 7. Respondent wrongfully denied Christine Richters' request in a letter dated November
6 30th, 2011. (See Exhibit B, attached)
- 7 8. In that letter, Respondent challenges Christine Richters' victim status under the California
8 Constitution despite the fact that the People were represented by a Deputy District
9 Attorney, in open court, when Petitioner asserted her Marsy's Rights on August 15th,
10 2011 and have never subsequently objected to Victim Richters being recognized as a
11 Victim under the Constitution in the *Peterson* matter. In fact, when the Court asked for
12 the People's responses to the Petitioner's Marsy's status, the People stated that they had
13 no objection. The only statement was from Defense Attorney Andrew Lloyd who
14 reserved the right to raise an objection at a future time.
- 15 9. Respondent nonetheless denied access to, and copies of, the records at issue, based on
16 conclusory grounds that that their release could result in witness intimidation, jeopardize the
17 investigation and prosecution of Peterson, prevent the impaneling of a jury, and deny Peterson
18 a fair trial.
- 19 10. The District Attorney made no good faith effort to comply with the CPRA. The Deputy
20 District Attorney assigned the *Peterson* case is very aware of the "relevant evidence" argument
21 and what issue Jane Doe and the defense are focusing on in order to suppress and exclude
22 critical and relevant evidence against Peterson that was apparently seized from a cell phone
23 based on Petitioner's consent for OPD to conduct its search.
- 24 11. Denying Petitioner's access to relevant evidence and Petitioner's review of such evidence is a
25 matter not for blanket denial by the District Attorney, but a matter which can be covered during
26 cross-examination of Petitioner by the defense during a preliminary hearing or a trial. In
27 another words, Petitioner's *Constitutional Rights* cannot be abridged just because the
28 Respondent would *prefer* that no disclosure would occur.

1 12. The justifications advanced by Respondent are meritless in the context of the pending search
2 and seizure issue for a number of reasons. These reasons will be addressed in detail depending
3 on the contents of his answers—if any—to this petition. Suffice it to say, the records requested
4 are not confidential materials that remain exclusively within the possession of law
5 enforcement. To the contrary, this is discovery that has been released already to Peterson and
6 his Counsel in the underlying criminal case. In fact, absent the protective order given Jane
7 Doe’s status as a minor in a sex crimes case, Peterson could just hand Jane Doe and her
8 Counsel the reports which would seriously disadvantage Petitioner in her assertion of her
9 Marsy’s Rights. Mr. Andrew Lloyd has indeed already informed Judge Johnston that he would
10 prefer to have the protective order lifted so that he can, indeed, give Jane Doe the discovery.
11 That argument and option has been deferred to January 20, 2012.

12 13. Nothing in the Constitution’s definition of a crime victim limits one victim’s right to assert his
13 or her *individual* rights just because that assertion may contradict or undermine the rights of
14 another victim in the case. Neither Jane Doe nor the District Attorney has the luxury of
15 prioritizing or ordering crime victims and their interests. The District Attorney does not
16 represent the victim(s). The District Attorney’s duty is to represent the People of the State of
17 California. It is not uncommon for the interests of the People and the interests of the victim(s)
18 to be consistent in some matters and inconsistent in others. No matter how those interests are
19 contradicted or juxtaposed, the victim is the one who chooses how his/her rights are to be
20 recognized in a criminal matter.

21 14. This writ proceeding is authorized by Government Code § 6258 as the remedy to enforce
22 Petitioner’s right to review the records at issue here.
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Request for Relief

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Petitioner respectfully seeks the following:

1. That the Court issue an alternative writ of mandate ordering Respondent to release the relevant records sought by Petitioner, or show cause why such an order should not issue.
2. That attorney fees and costs be paid by the Orange County District Attorney, as required by Government Code § 6259, subdivision (d).

Dated: December 21, 2011.

Respectfully Submitted,



Todd Spitzer, Attorney at Law
Attorney for Victim Christine Richters

EXHIBIT

A

Exhibit

A

RECEIVED

1 Law Office of Todd Spitzer
2 Todd Spitzer, Esq. (SBN # 143166);
3 7420 E. Morninglory Way
4 Orange, CA 92869
5 (714) 552-0877
6 (714) 744-6979 (FAX)
7 SpitzerLawOffice@aol.com

DISTRICT ATTORNEY'S OFFICE
SANTA ANA, CALIFORNIA

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

NOV 21 2011

ALAN CARLSON, Clerk of the Court

BY: _____, DEPUTY

8 Attorney for Victim, Christine Richters
9 Mother of "Jane Doe"

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **CENTRAL JUSTICE CENTER, IN AND FOR THE COUNTY OF ORANGE**

12 **PEOPLE OF THE STATE OF CALIFORNIA**)
13 **Plaintiff**)
14)
15 **vs.**)
16)
17 **SCOTT ADRIAN PETERSON**)
18 **Defendant**)
19)
20)
21)
22)

CASE NO.: 10CF3288
DEPARTMENT C-57
HONORABLE GERALD G. JOHNSTON
VICTIM RICHTER'S REQUEST FOR
DISCOVERY RELEVANT TO RIGHTS PURSUANT TO
ARTICLE I, SECTION 28 OF THE CALIFORNIA
CONSTITUTION (VICTIMS' BILL OF RIGHTS
ACT OF 2008: MARSY'S LAW) AND
GOVERNMENT CODE Section 6254(f)

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24 **I.**

25 **INTRODUCTION**

26 On November 4, 2008, the voters of the State of California passed Proposition 9, (hereinafter
27 referred to as "Marsy's Law"). In doing so, the voters strengthened a limited set of victims' rights that had
28 been in the California Constitution for several decades by granting crime victims their own right to

1 counsel and to the enforcement of these rights through the appellate process. These Marsy's Law rights
2 are considered by most legal scholars to be the strongest in the nation to date. This below Counsel was
3 the state-wide Campaign Manager for Marsy's Law while an elected member of the California State
4 Legislature and was directly involved in the crafting and drafting of Marsy's Law.

5
6 **II.**

7 **MARSY'S LAW—THE VICTIMS' BILL OF RIGHTS UNDER ARTICLE I, SECTION 28 OF THE CALIFORNIA**
8 **CONSTITUTION**

9
10 These rights, now codified in California Constitution Article I, Section 28(b) and California Penal
11 Code § 679.026, "preserve and protect a victim's right to justice and due process." Indeed, the "Findings
12 and Declarations" to Marsy's Law, as set forth in Section 2 (1), explicitly state that "Crime Victims are
13 entitled to justice and due process. Their rights include, but are not limited to the right to...be heard
14 during critical stages of the justice system...."

15
16 In light of the declaration of a right to due process, Section 3 of Marsy's Law, titled "Statement of
17 Purposes and Intent," unequivocally states that one of the purposes in enacting Marsy's Law is to
18 "[p]rovide victims with rights to justice and due process." (See Section 3 (1)). Under Marsy's Law, victims
19 are also afforded the following rights:

20 To be treated with fairness and respect for their privacy and dignity;

21 To be reasonably protected from the defendant and persons acting on behalf of the defendant;

22 To prevent the disclosure of confidential information or records to the defendant, the defendant's
23 attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass
24 the victim or the victim's family or which disclose confidential communications made in the course of
25 medical or counseling treatment, or which are otherwise privileged or confidential by law;

26 To refuse an interview requested by the defense attorney or anyone acting on behalf of the
27 Defendant;

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To reasonable notice prior to disposition of the case;

To reasonable notice of all proceedings at which the defendant and prosecutor are entitled to be present and to be present at all such proceedings;

To be heard, upon request, at any proceeding in which a right of the victim is at issue;

To a speedy trial and a prompt and final conclusion of the case and any related post-judgment proceedings;

To receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law;

To restitution.

These rights are not mere platitudes. Marsy's Law could just have easily been a set of statutes passed by the Legislature with simple majority votes of the Senate and the Assembly, signed by the Governor. Instead, the crafters of Marsy's Law and its chief architect, Dr. Henry T. Nicholas, III, whose sister Marsy was murdered in 1983 while still a college student, took the tougher, more arduous route. Quite frankly, the framers placed these rights into the California **Constitution** to be able to argue, as in the present instance, that the intent of the voters is unequivocal in protecting crime victims and so the voters supported amending the California **Constitution**. Amending the California Constitution required a vote of the People of the State of California after spending \$4.8 million¹ to gather signatures to qualify the Initiative and to ensure its successful passage. Achieving these Victims' Rights was important to the Nicholas Family because the system failed them during the prosecution of Marsy's killer before conviction (Marsy's killer made bail and was released without notifying the family who subsequently crossed paths with him at a local convenience store) and then post-conviction during all too frequent parole hearings (Marcella Leach suffered a heart attack during a parole hearing because of the stress²). In Orange County,

¹ California Secretary of State Website,

<http://cal-ccess.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1303492&session=2007>

² The Los Angeles Times, October 23, 2008; <http://articles.latimes.com/2008/oct/23/local/me-victims23>

1 Proposition 9 won with 57.9% of the vote (versus 53.9% state-wide).³ Such a political feat on behalf of
2 crime victims is not to be taken lightly. Every benefit should be given to crime victims who have achieved
3 these notable gains. The right to discovery relevant to rights is necessary to fulfill the wishes of the
4 voters who want crime victims to be "equal partners" in the criminal justice system; at the very least, the
5 voters do not want crime victims to be at a disadvantage.
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8 **III.**

9 **MARSY'S LAW RIGHTS CREATE A RIGHT TO DISCOVERY RELEVANT TO RIGHTS**

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11 Pursuant to Section 28(c)(1) of Marsy's Law, a request by a victim (or on behalf of a victim) to
12 enforce any of the rights enumerated in Marsy's Law may be carried out in any trial court with jurisdiction
13 over the case as a matter of right. Further, the "court shall act promptly on such a request." In order to
14 give full meaning and power to these rights as envisioned by the People of the State of California, it is
15 necessary that victims and victim's counsel have full access to relevant discovery in the case that is
16 relevant to:
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- 19
20 1. Effectively assist the victim to know and be prepared as to all facts in the case;
21 2. Allow the victim, while not a party to the litigation, but who does have standing to assert and
22 enforce their Marsy's Rights, to be on the same playing field as the People and the Defendants
23 who do have full access to discovery and therefore can use that information to jeopardize (or
24 assist) the victim's position in the case without the victim's full knowledge and participation;
25 3. Allow the victim to enjoy the full benefit of Marsy's Law, including the right to confer with the
26 prosecution, which is jeopardized if the victim does not know the facts or circumstances in the
27 case, i.e. possible false allegations against the victim which could impact the Prosecution's
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³ California Secretary of State Website,
http://www.sos.ca.gov/elections/sov/2008_general/maps/returns/props/prop-9.htm

1 assessment of the victim's credibility which will impact an eventual disposition in the case
2 because the prosecution questions the victim's veracity and therefore diminishes what the case is
3 worth;

- 4 4. Adequately assist the Court during the various stages of the proceedings, including, but not
5 limited to: bail hearings where the facts of the case are relevant; at restitution hearings, where
6 the extent of the injuries—physical and psychological—is critical; and at a sentencing hearing,
7 where factors in aggravation and in mitigation must be articulated in order to achieve an
8 appropriate and just sentence.

9 With respect to restitution, the victim has the first right to restitution under Marsy's Law
10 and must be compensated first before any fines or fees against the defendant are collected for the Courts
11 or the Victim Restitution Fund (Article I, § 28 (b)(13) (C)). In *People v. Smith* (2011) 2011 Cal. App. LEXIS
12 1065, the court held that Marsy's Law not only gives the victim the right to restitution, but also to be
13 heard through victim's own counsel at the restitution hearing. Under Penal Code Section 1202.4, all crime
14 victims are entitled to recover attorney's fees where assistance is necessary to recover economic
15 damages (Penal Code § 1202.4 (f) (3) (H)) and economic **and** non-economic damages (i.e. psychological
16 harm) for cases of Penal Code Section 288 (Penal Code Section 1202.4 (f) (3) (F)). Victims today are hiring
17 their own counsel at their own expense to enforce their Marsy's Rights. Victims are entitled to recover
18 attorney's fees in some cases where restitution is adjudicated as a matter of law. To deny a crime victim
19 relevant discovery that is necessary to mount a legal claim as provided by statute and case law would
20 therefore be inconsistent and a violation of due process.

21 The Judicial Council also provides Form CR-115 entitled "Defendant's Statement of Assets" and
22 makes it a misdemeanor for the Defendant to make any willful misstatement of material fact in
23 completing the form. (Penal Code § 1202.4(f)(4)). The California Department of Corrections and
24 Rehabilitation uses Form 1707 to allow the victim to enforce a court order for restitution through
25 Corrections' Victim Services Office while the inmate is incarcerated in State Prison (and county jail now
26 under Realignment). This is consistent with the victim needing every piece of information available in the
27 case to seek justice, determine an appropriate restitution amount based on injuries and losses and then
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1 enforce that judgment through appropriate Court orders either themselves, through their own counsel, or
2 utilizing the public services of the District or City Attorney.

3 To deny a victim's request for discovery would be to essentially vitiate any and all rights granted to
4 crime victims under California law, including the right to due process. "The fundamental requisite of due
5 process of law is the opportunity to be heard, a right that 'has little reality of worth unless one is informed
6 that the matter is pending and chooses for himself whether...to contest.'" *Goss v. Lopez* (1975) 419 US
7 565, 579. This basic requirement of an "opportunity to be heard" also means "[to be heard at] a
8 meaningful time and in a *meaningful manner*." [Emphasis added] *Armstrong v. Manzo* (1965) 380 US
9 545, 552.

10 If the victim (and his/her attorney) is precluded from relevant discovery, the victim would be deprived
11 of the ability to meaningfully participate in the action. To be sure, a victim who has been entitled and
12 empowered under Marsy's Law to participate during all critical stages of the justice system, would be
13 rendered a mere observer in the process and relegated, effectively, to stand on the sidelines while the
14 criminal case proceeds (as was the case before Marsy's Law was enacted). This would require the victim
15 to blindly rely on the actions of the prosecuting attorney to enforce the victim's rights. And when we
16 remind ourselves that the Prosecutor represents the People and not the victim by law it is perfectly
17 understandable why victims oftentimes need independent counsel. Victims have fallen through the
18 cracks because they do not have representation. Curing this void is the key intent of Marsy's Law (See
19 Section 28 (c)(1)) and consistent in the practice of law in our local criminal courts—that any party or
20 person with an interest in an action is, and should be, entitled to independent counsel.⁴ While the
21 relationship between the People and the victim is assumed to be amicable and mutually supportive, that
22 is not always the case. This court need only be reminded that during the campaign in favor of Proposition
23 9, the elected District Attorneys voted to support the measure but were overruled by the rank and file
24 prosecutors who were voting members of the California District Attorney's Association Board of Directors.

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28 ⁴ My law practice involves strictly Marsy Law cases in the criminal arena. Even today, after every prosecutor in the state received Marsy's Law training, the California District Attorney's Association (CDAA) published *Prosecutor's Briefs*, Summer 2009, Vol. 31, No. 1, Implementing Proposition 9: The Impact on Prosecutors; Winter 2009, Vol. 32, No. 2, Implementing Proposition 9: The Impact of Post-Conviction Proceedings; Spring 2009, Vol. 31, No. 3, The Effects of Proposition 9 on Prosecutors, An Overview of Victims' Constitutional Rights, prosecutors are still failing to secure protective orders, notify the victim of the defendant's release from custody, notify the victim of plea

1 The basic sentiment among the rank and file trial lawyers: they did not want victim's meddling in their
2 prosecutorial discretionary powers and when they make errors, they certainly did not want a third party
3 victim bringing that matter to the Court or public's attention.⁵

4 Additionally, a victim in a criminal case has the right to be treated with fairness, dignity and respect.
5 These concepts are central themes throughout Marsy's Law. Other state and federal courts have
6 discussed the meaning of victims' rights within their jurisdictions:⁶ The right to fairness, dignity, and
7 respect includes the right to crucial information that the State will rely on to prosecute a defendant.
8 Otherwise, a victim would be left in the dark and incapable of truly comprehending the process that
9 impacts his or her rights, including the ability to be free from intimidation and protection from a
10 defendant depending on decisions unilaterally made by a prosecutor.

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14 negotiations and securing input from the victim regarding those discussions, in addition to inappropriately charging
cases based on a lack of understanding of the facts of the case because the victim was not interviewed.
15 ⁵ I was the State-Wide Campaign Manager for Proposition 9 and participated in the CDAA conference call discussing
16 whether to endorse the measure. Ironically, CDAA refused to support Proposition 9 (2008) and then we question
17 whether prosecutors actually have the best interests of the victim at heart. This is, of course, not a blanket
18 indictment of all prosecutors; but many prosecutors find victims a nuisance (or just "evidence") and that continues
19 in a post-Marsy's Law environment. Noting that modern victims' rights operate to change the modern criminal
justice system's assumption "that crime victims should behave like good Victorian children—seen but not heard," by
making "crime victims full participants in the criminal justice system." (See *Kenna v. United States Dist. Court*, 435
F.3d 1011 (9th Cir. 2006).

20 ⁶ See, e.g., *United States v. Agriprocessors, Inc.*, No. 08-CR-1324-LRR, 2009 WL 721715 (N.D. Iowa Mar. 18, 2009)
(slip op.) (rejecting defendants' pretrial motion for a change of venue in part because the Crime Victims' Rights Act,
21 18 U.S.C. § 3771(a)(8), requires courts to treat victims "with fairness" and "a change of venue might also adversely
22 affect the rights of victims to appear at court proceedings"); *United States v. Endsley*, No. 08-40050-01-SAC, 2009 WL
23 385864 (D. Kan. Feb. 17, 2009) (slip op.) (explaining that although defendant has the right to refute any matter
offered to the court for consideration at sentencing, any such presentation regarding the victim is subject to the
24 requirement of the Crime Victims' Rights Act, 18 U.S.C. § 3771, that the victim be treated fairly and with respect for
the victim's dignity and privacy); *Romley v. Schneider*, 45 P.3d 685, 688 (Ariz. Ct. App. 2002) (holding that
25 fingerprinting victim violates victim's rights under the Arizona Constitution, statutory law and Rule 39(b)(1),
including the rights to fairness, dignity, and respect and to be free from intimidation, harassment and abuse); *State*
26 *v. O'Neil*, 836 P.2d 393, 394 (Ariz. Ct. App. 1991) (holding that requiring the state to record witness interviews
violates the right to fairness, dignity and respect and the right to be free from intimidation, harassment and abuse,
27 as well as other constitutional rights of the victim); *State v. Timmendequas*, 737 A.2d 55, 75-82 (N.J. 1999) (holding
that constitutional requirements of fairness and respect for victims dictate that the needs of the victim and
28 defendant should be balanced in determining venue); *In Re. K.P.*, 709 A.2d 315, 321 (N.J. Sup. Ct. 1997) (holding that
the state victims' rights amendment providing that "a victim of a crime shall be treated with fairness, compassion
and respect by the criminal justice system" creates mandatory and self-executing rights for victims).

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IV.

STATE LAW REQUIRES VICTIM RECEIVES RELEVANT DISCOVERY

A. Sought Information is a Public Record for Crime Victims, yet Prosecutors are Still Failing to Turn Over Relevant Discovery

Government Code Section 6254(f) states:

Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, the California Emergency Management Agency, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. However, state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951⁷, unless the disclosure would endanger the safety of a witness or other person involved in

⁷ 13951. As used in this chapter, the following definitions shall apply:

(a) "Board" means the California Victim Compensation and Government Claims Board.

(b) (1) "Crime" means a crime or public offense, wherever it may take place, that would constitute a misdemeanor or a felony if the crime had been committed in California by a competent adult.

(2) "Crime" includes an act of terrorism, as defined in Section 2331 of Title 18 of the United States Code, committed against a resident of the state, whether or not the act occurs within the state.

(c) "Derivative victim" means an individual who sustains pecuniary loss as a result of injury or death to a victim.

(d) "Law enforcement" means every district attorney, municipal police department, sheriff's department, district attorney's office, county probation department, and social services agency, the Department of Justice, the Department of Corrections, the Department of the Youth Authority, the Department of the California Highway Patrol, the police department of any campus of the University of California, California State University, or community college, and every agency of the State of California expressly authorized by statute to investigate or prosecute law violators.

(e) "Pecuniary loss" means an economic loss or expense resulting from an injury or death to a victim of crime that has not been and will not be reimbursed from any other source.

(f) "Peer counseling" means counseling offered by a provider of mental health counseling services who has completed a specialized course in rape crisis counseling skills development, participates in continuing education in rape crisis counseling skills development, and provides rape crisis counseling within the State of California.

(g) "Victim" means an individual who sustains injury or death as a direct result of a crime as specified in subdivision (e) of Section 13955. (See Footnote #2)

1 the investigation, or unless disclosure would endanger the successful completion of the
2 investigation or a related investigation. However, nothing in this division shall require the
3 disclosure of that portion of those investigative files that reflects the analysis or
4 conclusions of the investigating officer. **(Emphasis Added)**.⁸

5 Therefore, the plain meaning of the statute is clear. A victim of any misdemeanor or felony
6 committed in the State of California has the unfettered right to relevant discovery unless disclosure would
7 endanger the completion of the investigation of the matter. That exception does not apply here; the
8 investigation of the case is complete, the case is filed, and a date for a preliminary hearing is close to
9 being set in the matter.

10 11 12 **B. District Attorney is a Local Law Enforcement Agency Subject to Public Records Act**

13
14 The District Attorney is in possession of discovery related to all matters in this case and is a public
15 law enforcement entity subject to this cited section. The case has now moved to a point in the criminal
16 procedure process where in order to continue to effectively assert her rights, Victim Richters must receive
17 relevant discovery from the People. Up until now, Victim Richters and her Counsel have been struggling
18 to understand the facts of the case and to prepare for various court proceedings. To deny Victim Richter
19 her right to relevant discovery pursuant to Government Code Section 6254 (f) would be to deprive her of
20 her fundamental right to be fully and adequately represented and prepared. What could be more
21 forceful and to the point: the Orange County District Attorney's Office is **opposed** to the Victim obtaining
22 discovery? This is exactly the reason behind Marsy's Law—the prosecutor does not always represent the
23 interests of the Victim; the Victim is **not** the client of the People. In fact, Marsy's Law allows the Victim to
24 decide whether to have the prosecutor, their own counsel, or a lawfully designated representative
25
26

27 (h) "Victim center" means a victim and witness assistance center that receives funds pursuant to Section 13835.2
of the Penal Code.

28 ⁸ 13955 (e) (1) Except as provided in paragraph (2), the injury or death was a direct result of a crime.

1 represent them. It is the Victim's choice. And in this case, the Prosecutor is actually opposing the Victim's
2 rights under Marsy's Law to be informed.⁹ In this case, both Jane Doe, as a direct physical victim and Ms.
3 Richters, as mother and a defined victim by law, are both seeking relevant discovery in order to protect
4 their crime victim rights. In this case, each victim is seeking a completely different outcome for Mr.
5 Peterson. But that is precisely the point: each victim has the individual right to assert her rights and, as
6 here, they are both inconsistent with the Prosecutor's position on providing relevant discovery. This is
7 why the Victim is seeking relief from this Court to secure relevant discovery in order to ensure that all of
8 the Victims' rights guaranteed under Article I, Section 28 of the California Constitution are available in
9 each and every case where a Victim has asserted her rights under Marsy's Law.
10
11

12 On November 3, 2011 in the Los Angeles Superior Court case of *People of the State of California*
13 *versus Robin Robles and Kenneth Bolen* (Case No. SA078893), crime victim Daniel Misceovich filed a similar
14 motion for discovery as crime victim Richters has pending before this honorable Court. That motion is
15 scheduled to be heard on December 15, 2011, the day before our hearing in this matter. However, under
16 the provisions involving victim discovery that fall under the Government Code (section 6254(f)), the
17 People have ten days to respond to the request¹⁰. On November 15, 2011 the Los Angeles District
18 Attorney denied Misceovich's discovery request. On November 16, 2011, Misceovich, through the
19 undersigned Counsel, explained to the deputy district attorney that she needed to read Misceovich's
20 moving papers and then consult with her Writs and Appeals section and the District Attorney, Mr. Steve
21
22
23
24

25 ⁹ We are not unobservant that elected District Attorney's regularly hold Victims' Rights events to celebrate the rights
26 victims' have achieved while the cameras are rolling and the reporters are provided copies of speeches that express
27 how important these rights are for crime victims. But in the courtrooms, where the real work is accomplished, line
28 prosecutors oppose the rights of victims to be informed, as is the case here. This is, again, not inconsistent with
CDAA's failure to support Proposition 9 in 2008. The only way this turf battle will be won is by Courts interpreting
Marsy's Law to grant victims access to the discovery they need to enforce their rights.

¹⁰ Victim Richters will serve the Orange County District Attorney on Monday, November 21, 2011 via email as per
agreement of all Counsel in this matter. The OCDA will have ten days to comply or deny this discovery request which
will be by December 7, 2011.

1 Cooley, if necessary. ¹¹ On November 17, 2011 the Los Angeles County District Attorney's Office notified
2 Misceovich's Counsel that it would be complying with Misceovich's discovery request per the Public Records
3 Act exception for crime victims.¹² We would expect the same outcome of the Orange County District
4 Attorney's Office, but it will have until December 7, 2011 to comply or deny this Public Records Act
5 request.
6

7 Although the Los Angeles County District Attorney will comply in this instance, Victim Richter is
8 seeking a decision by this Honorable Court, that crime victims are entitled to discovery as a matter of right
9 under general due process provisions and statutory provisions in order to enforce their Marsy's Rights.
10 Counsel in this matter will update this Honorable Court of the Los Angeles Superior Court case during oral
11 argument on December 16, 2011 since the undersigned needed to file and serve all parties in this matter
12 before appearing in the Los Angeles Superior Court case.
13
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16

17 ¹¹ Dear DDA Miller,

18 I appreciate your quick response and apologize that the burden to respond to Victim Misceovich's motion for
19 discovery fell upon you. I appreciate you complying with the 10 day rule and for taking my telephone call. Since
20 November 2008 with the passage of Marsy's Law, the rights of crime victims have greatly expanded. I believe, quite
21 frankly, that you sent me what has long been the boiler-plate response from the LADA's Office. However, I wrote an
22 expansive brief in order for you, and ultimately Mr. Cooley, to seriously consider the Victim's rights in these matters.
23 The statute is very clear, Victims are entitled to discovery—not officer's opinions, but the information listed in the
24 statute below.

25 I am asking for you to re-consider your position and to run this issue up the flag pole to the powers that be in the
26 downtown office. Your position has great implications for all victims in the system. I will be litigating this matter, as
27 you know, on December 15th in front of the Superior Court. I urge you to take a more methodical and researched
28 approach to this matter before completely disregarding this request. I have cited the statute below and in my brief.
Please tell me how the language of the statute could be more clear. Indeed, certain portions of the police report
may need to be redacted, but again, I urge you to seriously consider this request and do so with the downtown
office (i.e. Devallis Rutledge and Mr. Cooley) before dismissing this request. In reading the statute below, no
exemptions apply. (Statute citation omitted).

I look forward to hearing from you. Sincerely, Todd Spitzer

26 ¹² Mr. Spitzer, I would like to thank you for your patience in this matter. I have discussed the case with those "higher
27 up the flag pole," and we are going to produce the required information. Pursuant to our telephone conversation, I
28 am requesting some additional time to gather the information for you.
Sincerely, Marna Miller, Deputy District Attorney

1 In the event the Orange County District Attorney complies consistent with Los Angeles County
2 District Attorney, Victim Richters would appreciate an email notification of such compliance to all parties
3 by December 7, 2011. Relevant discovery must be delivered to this Honorable Court on December 16,
4 2011 since we still have the issue of the pending protective order to lift in order for the People to comply
5 with this discovery request.
6

7
8 **V.**

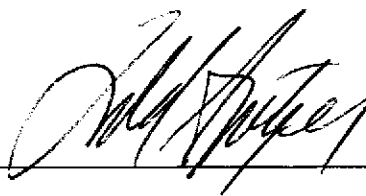
9 **CONCLUSION**

10
11 Victim Richters is seeking to fully enforce her rights in the above entitled action and needs any
12 and all relevant discovery in order to do so. Victim Richters is respectfully requesting that the People
13 provide any and all relevant discovery in the matter and that the Court order the same pursuant to the
14 Victim's right to due process and the express statutory authorization under Government Code Section
15 6254 (f) and Article I, Section 28 of the California Constitution.
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17
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19

20 Dated: November 21, 2011

LAW OFFICE OF TODD SPITZER,

21
22
23
24 By: _____



25 Todd Spitzer
26 Attorney for Victim, Christine Richters
27 Mother of "Jane Doe"
28

EXHIBIT
B

Exhibit

B



OFFICE OF THE

DISTRICT ATTORNEY

ORANGE COUNTY, CALIFORNIA

TONY RACKAUCKAS, DISTRICT ATTORNEY

JIM TANIZAKI
SENIOR ASSISTANT D.A.
VERTICAL PROSECUTIONS/
VIOLENT CRIMES

WILLIAM FECCIA
SENIOR ASSISTANT D.A.
SPECIAL PROJECTS

MARY ANNE MCCAULEY
SENIOR ASSISTANT D.A.
BRANCH COURT OPERATIONS

JOSEPH D'AGOSTINO
SENIOR ASSISTANT D.A.
GENERAL FELONIES/
ECONOMIC CRIMES

JEFF MCLAUGHLIN
CHIEF
BUREAU OF INVESTIGATION

LISA BOHAN - JOHNSTON
DIRECTOR
ADMINISTRATIVE SERVICES

SUSAN KANG SCHROEDER
CHIEF OF STAFF

November 30, 2011

Mr. Todd Spitzer
7420 E. Morninglory Way
Orange, CA 92869

Re: Public Records Act Request concerning *People v. Peterson*,
Orange County Superior Court Case No. 10CF3288

Dear Mr. Spitzer:

In compliance with Government Code Section 6253, this letter addresses your Public Records Act request dated Nov. 21, 2011, which this Office received the same day. This letter constitutes our formal response, which is made within that statutorily required time, to your public record demand.²

Your request, as it pertained to the Public Records Act, sought "relevant discovery pursuant to Government Code Section 6254(f)."

Section 6254, subdivision (f), provides under certain circumstances for the disclosure of records, but only to specified individuals. The records which may be disclosed to qualifying individuals, absent the listed caveat, include the following: "[T]he names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflects the analysis or conclusions of the investigating officer." (Gov. Code §6254, subd. (f).)

The requesting party in this case is the mother of Jane Doe, who is listed as the victim in the complaint in the above captioned case.³ We are not revealing her name, which you have included in your public document, to protect the identity of sexual assault victim Jane Doe. While the victim was a minor at

¹ All further references are to the Government Code unless otherwise stated.

² While counsel's brief indicates the People have until December 7, 2011 to respond to his motion, the ten day time period set forth in Government Code §6253(c) is ten calendar days, not court days, and thus a response is due by December 1, 2011.

³ A copy of the complaint has been attached for reference, as well as being released in response to this request.

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

WEB PAGE: www.OrangeCountyDA.com

MAIN OFFICE
401 CIVIC CENTER DR W
P.O. BOX 808
SANTA ANA, CA 92701
(714) 834-3600

NORTH OFFICE
1275 N. BERKELEY AVE.
FULLERTON, CA 92631
(714) 773-4460

WEST OFFICE
8141 13TH STREET
WESTMINSTER, CA 92663
(714) 896-7261

HARBOR OFFICE
4601 JAMBOREE RD.
NEWPORT BEACH, CA 92660
(949) 476-4660

JUVENILE OFFICE
341 CITY DRIVE SOUTH
ORANGE, CA 92668
(714) 935-7624

CENTRAL OFFICE
401 CIVIC CENTER DR. W
P.O. BOX 808
SANTA ANA, CA 92701
(714) 834-3952

the time of the crime, Jane Doe is now an adult. It is further my understanding, based on discussions with the deputy district attorney assigned to the above listed case, that Jane Doe was estranged from her mother at the time of the crime and that situation continues to the present date and remains unchanged. Jane Doe has indicated through her attorney Ron Brower that she does not waive her privacy rights.

The only individuals to whom any of the materials listed in the exception contained in Section 6254, subdivision (f), can be released to include: (1) the victims of an incident or an authorized representative thereof; (2) an insurance carrier against which a claim has been or might be made; and (3) any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951. (Gov. Code §6254, subd. (f).)

No specific definition for the term "victim" is set forth within the division of the Government Code dealing with the inspection of public records. While Section 6254, subdivision (f), specifically refers to Section 13951 for a definition of the term "crime," it does not similarly do so for a definition of "victim."

"The word 'victim' is not a word of fixed meaning; it may be used in many ways to refer to many different persons or entities. Often, but not invariably, the Legislature has provided a definition of the word when it is used in a statutory scheme. (See, e.g., Pen. Code, §§ 136, subd. (3), 679.01, subd. (b), 1191.10, 11158, Gov. Code, §13951, subd.(g).) The basic notion of a victim of a crime is the person who was the object of the crime – the person against whom the crime was omitted. [Citation.] However, the meaning can be limited or expansive depending upon the purpose of the statutory scheme in which it is used. [Citations.]" (*People v. Tackett* (2006) 144 Cal.App.4th 445, 455.)

Though other code sections have expanded the definition of "victim" to include derivative victims, such as in Section 13951, subdivision (c), as it applies to indemnification of victims of crimes by the California Victim Compensation and Government Claims Board, or in Penal Code Section 1202.4, subdivision (k), as it applies to restitution, the Public Records Act remains silent on the topic. Even the Victims' Bill of Rights, set forth in Article I, Section 28 of the California Constitution, does not make reference to expanding the definition of "victim" as it applies to the Public Records Act and in fact, limits its definition of "victim" to that section alone. (Ca. Const., art. I, §28, subd. (e).)

Considering the Legislature defines the term "victim" in some sections, but not in others, and specifically not in the sections dealing with the Public Records Act, the omission would appear to be intentional. As such, the failure on the part of the Legislature to specifically define the term "victim" would suggest it is meant to limit the term to the common usage, meaning the person who is the object of the crime. In that case, your client would not qualify as the "victim" of the crime.

The term "authorized representative" has, likewise, not been defined. Black's Law Dictionary defines "representative" as "one who represents or stands in the place of another" and the term "authorize" as "to empower; to give a right or authority to act." (See Black's Law Dict. (5th ed. 1979 p. 1170, col. 2 and p. 122, col. 2.)) A common sense approach to the term would seem to suggest it includes a person who has been authorized on the part of someone else to represent that person.

In this case, Jane Doe, through her attorney, has invoked her privacy rights. There is no evidence that Jane Doe has appointed her mother as her "authorized representative."

The request for information is not being made on behalf of an insurance carrier against which a claim has been or might be made.

Lastly, a person suffering bodily injury, property damage or loss, as a result of the crime may be

entitled to the information. Since the term "person" was used, it would appear to incorporate others besides just the "victim." Nevertheless, at this time, we have no information to suggest your client has, as a result of the crime inflicted on Jane Doe, suffered either "bodily injury" or "property damage or loss." As such, your client would not qualify under this definition.

Therefore, given the information we possess at this time, Jane Doe's mother is not one of the listed individuals set forth in Section 6254, subdivision (f), who would be entitled to the information set forth in that subdivision. As such, your request for records is denied on that basis.

Setting aside your client's failure to qualify under the limited exception set forth in Section 6254, subdivision (f), even if she were to produce information and/or authority to demonstrate her qualifications under one of the listed categories of entitled individuals, the request for the information would, nevertheless, be denied at this point as to release the materials at this juncture. This includes the names and addresses of all persons involved in or witnesses to the incident, along with statements of all of the witnesses, as it would clearly endanger the successful completion of the investigation and the case against the defendant.

As you are aware, our office is currently prosecuting Scott Adrian Peterson for the crimes committed against Jane Doe, as reflected in Orange County Superior Court Case number 10CF3288. This is a serious case of a high school teacher who is charged with having an unlawful sexual relationship with a 17-year-old student. Peterson is charged with two felony counts of unlawful sexual intercourse, four felony counts of oral copulation of a minor, and two felony counts of sexual penetration by foreign object of a minor. If convicted, he faces maximum sentence of seven years and eight months in state prison.

Your client, in fact, is a witness in the case. The premature release of any information could potentially harm the successful prosecution of a teacher who is charged with unlawful sex with a student, make it difficult to impanel an impartial jury, and also prevent a fair trial. Moreover, permitting the review of the materials in the investigative file at this point could result in potential interference with witnesses due to influence, or even intimidation, including impacting your client's testimony. If your client became privy to all of the witnesses' statements in advance of her testimony, the defense could use her knowledge of the case to impeach her testimony.

Our Office has great compelling interest in the criminal prosecution and bringing this perpetrator to justice, especially as he violated a position of trust and sexually assaulted a minor. We also have a compelling interest and duty to protect the privacy interest of the minor. A premature disclosure of the investigative materials in this case would endanger public safety.

Therefore, notwithstanding the potential rights of your client to the specific information listed in Government Code Section 6254, subdivision (f), assuming at some point in time she can prove she is qualified to obtain the materials, we are asserting the exception to Government Code Section 6254, subdivision (f), and will not be releasing that information at this time. We will consider this request pending and will release the information set forth in Government Code Section 6254, subdivision (f), as soon as there is a change of circumstance, in addition to proof that your client qualifies under that subdivision.

Furthermore, to the extent that your request seeks the disclosure of records which are not part of the materials covered under the exception carved out in Government Code Section 6254, subdivision (f), but which are contained within investigatory files, those records are completely exempt from disclosure under Government Code Section 6254(f) which applies to law enforcement investigatory files and

records, including district attorney case files and coroners' reports, and continues to apply even if the investigation is closed. [See *Rackauckas v. Superior Court* (2002) 104 Cal.App.4th 169; *Haynie v. Superior Court* (2001) 26 Cal.4th 1061; *Rivero v Superior Court* (1997) 54 Cal.App.4th 1048; *Williams v. Superior Court* (1993) 5 Cal.4th 337]. In the current case, the case is open, criminal prosecution is pending, and investigation continues to this day, contrary to your assertion in your request.

In addition, the exemption in Government Code Section 6254(k) applies since it grants exemptions for "records the disclosure of which is exempted or prohibited pursuant to federal or state law." Some of the case law and statutory prohibitions and exemptions which apply include the following:

- 1) State summary criminal history information, Penal Code Sections 11140 *et seq.*
- 2) Local summary criminal history information, Penal Code Sections 13100 *et seq.*
- 3) Criminal offender record information, Penal Code Sections 11075 *et seq.* and Title 11 CCR Section 703. (The information will be released on a need-to-know basis and only to a person or agency authorized by court order, statute or decisional law to receive the information.)
- 4) Confidential information concerning victims and witnesses. Penal Code Sections 841.5 and 964 demonstrate a legislative policy to protect this information from general disclosure.
- 5) Official information, Evidence Code Section 1040 *et seq.*
- 6) Attorney work product, Code of Civil Procedure Section 2018.030, Penal Code Section 1054.6, Government Code Sections 6254, subdivisions (a) and (k), and 6255.
- 7) Records of a party to pending litigation, Government Code Section 6254, subdivision (b).
- 8) Records obtained by search warrant, Penal Code Section 1536.
- 9) Other exemptions and privileges listed in Article 2 of the Government Code, Title 1, Division 7, Chapter 3.5.
- 10) Governmental privileges set forth in the Federal Rules of Evidence, Chapter 5.
- 11) Preliminary drafts, notes, interagency or intra-agency memoranda as defined in Government Code Section 6254, subdivision (a).
- 12) Documents provided to our office by a governmental agency which we agreed to treat as confidential, Government Code Section 6254.5, subdivision (e).
- 13) Personnel, medical or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy, Government Code Section 6254, subdivision (c).

In addition, the exemption in Government Code Section 6255, subdivision (a), applies as the public interest in non-disclosure clearly outweighs the public interest served by disclosure due to the fact

disclosure at this juncture would endanger the successful completion of the criminal prosecution and violate the privacy interest of the crime victim, Jane Doe.

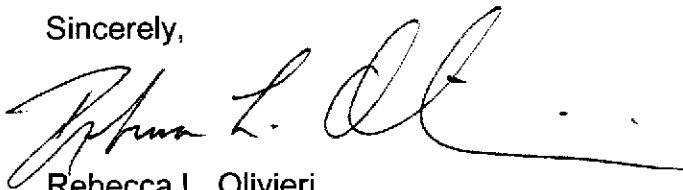
Lastly, it is important to note that records in this case have not been released to any unauthorized persons at this juncture. Jane Doe has also made it clear she wants the records to remain confidential in order to protect and preserve her privacy. (Gov. Code §6254, subd. (c).)

We will release a copy of the complaint which is attached hereto.

For the foregoing reasons, certain requests for the release of information have been denied. We reserve the right to present additional theories and authority for non-disclosure in the future.

If you disagree with the positions I have taken in this letter, I am willing to reconsider my views based on any reasons you wish to present or any legal authorities you wish to cite.

Sincerely,

A handwritten signature in black ink, appearing to read "Rebecca L. Olivieri". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Rebecca L. Olivieri
Senior Deputy District Attorney
Special Prosecutions Unit

1 SUPERIOR COURT OF CALIFORNIA
2 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
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5

6 THE PEOPLE OF THE STATE OF CALIFORNIA,) FELONY COMPLAINT
7)
8 Plaintiff,)
9)
10 vs.) No. 10CF3288
11) OPD 10-07-0762
12 SCOTT ADRIAN PETERSON 02/18/62)
13 A7052281)
Defendant(s))

14 The Orange County District Attorney charges that in Orange
15 County, California, the law was violated as follows:

16 COUNT 1: On or about April 17, 2010, in violation of Section
17 261.5(c) of the Penal Code (UNLAWFUL SEXUAL INTERCOURSE), a
18 FELONY, SCOTT ADRIAN PETERSON did unlawfully engage in an act
19 of sexual intercourse with JANE DOE, who was not the spouse of
20 the defendant, and who was a minor more than three years younger
21 than the defendant.

22 COUNT 2: On or about April 17, 2010, in violation of Section
23 288a(b)(1) of the Penal Code (ORAL COPULATION OF MINOR), a
24 FELONY, SCOTT ADRIAN PETERSON did unlawfully participate in an
25 act of oral copulation with JANE DOE, who was under the age of
26 eighteen (18) years.

27 COUNT 3: On or about April 17, 2010, in violation of Section
28 288a(b)(1) of the Penal Code (ORAL COPULATION OF MINOR), a
FELONY, SCOTT ADRIAN PETERSON did unlawfully participate in an
act of oral copulation with JANE DOE, who was under the age of
eighteen (18) years.

/

1 COUNT 4: On or about April 17, 2010, in violation of Section 289
2 (h) of the Penal Code (SEXUAL PENETRATION BY FOREIGN OBJECT OF
3 MINOR), a FELONY, SCOTT ADRIAN PETERSON did unlawfully
4 participate in an act of sexual penetration with JANE DOE, who
5 was a minor under eighteen (18) years of age and older than
6 thirteen (13) years of age.

7 COUNT 5: On or about May 15, 2010, in violation of Section 261.5
8 (c) of the Penal Code (UNLAWFUL SEXUAL INTERCOURSE), a FELONY,
9 SCOTT ADRIAN PETERSON did unlawfully engage in an act of sexual
10 intercourse with JANE DOE, who was not the spouse of the
11 defendant, and who was a minor more than three years younger
12 than the defendant.

13 COUNT 6: On or about May 15, 2010, in violation of Section 288a
14 (b)(1) of the Penal Code (ORAL COPULATION OF MINOR), a FELONY,
15 SCOTT ADRIAN PETERSON did unlawfully participate in an act of
16 oral copulation with JANE DOE, who was under the age of eighteen
17 (18) years.

18 COUNT 7: On or about May 15, 2010, in violation of Section 288a
19 (b)(1) of the Penal Code (ORAL COPULATION OF MINOR), a FELONY,
20 SCOTT ADRIAN PETERSON did unlawfully participate in an act of
21 oral copulation with JANE DOE, who was under the age of eighteen
22 (18) years.

23 COUNT 8: On or about May 15, 2010, in violation of Section 289
24 (h) of the Penal Code (SEXUAL PENETRATION BY FOREIGN OBJECT OF
25 MINOR), a FELONY, SCOTT ADRIAN PETERSON did unlawfully
26 participate in an act of sexual penetration with JANE DOE, who
27 was a minor under eighteen (18) years of age and older than
28 thirteen (13) years of age.

I declare under penalty of perjury, on information and belief,
that the foregoing is true and correct.

Dated 11-30-2011 at Orange County, California.
KD/JC 10F14798

TONY RACKAUCKAS, DISTRICT ATTORNEY

by: _____
Deputy District Attorney

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RESTITUTION CLAIMED

- None
- \$ _____
- To be determined

NOTICES:

The People request that defendant and counsel disclose, within 15 days, all of the materials and information described in Penal Code section 1054.3, and continue to provide any later-acquired materials and information subject to disclosure, and without further request or order.

Pursuant to Penal Code Section 296.1, defendant, SCOTT ADRIAN PETERSON, is required to provide DNA samples and thumb and palm prints.

The People, on behalf of the victim(s) in the above-referenced case, request a hearing pursuant to Penal Code section 1524.1.