

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

APR 09 2004

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA BARBARA

THE PEOPLE OF THE STATE OF  
CALIFORNIA,  
Plaintiff,  
vs.  
MICHAEL JACKSON,  
Defendant.

Case No.: 1133603

ORDER ON RECONSIDERATION OF  
WORK PRODUCT ISSUES

(VIA FACSIMILE)

TO: Thomas W. Sneddon, District Attorney for the County of Santa Barbara;  
Mark J. Geragos, attorney of record for Defendant Michael Jackson; and to all interested  
parties:

The Court has granted reconsideration of its order, dated March 11, 2004,  
concerning its finding that Inventory Item No. 818, an audiotape, is subject to qualified  
work product protection. The parties have supplied additional points and authorities on  
the issue. The Court had the further benefit of an in camera session with defense counsel  
for the purpose of hearing any additional or more focused basis that might exist for  
regarding the contents of the tape as "core" work product material. Following the  
hearing, the Court again reviewed the contents of the tape. The Court now reaffirms its  
original finding that Inventory Item No. 818 does not describe legal theories or reveal the

1 notes or impressions of any attorney, or the agent of any attorney. While there is no  
2 bright line to be drawn between core and non-core work product materials, the tape at  
3 issue contains very open-ended questions and seems much more a primary resource than  
4 any sort of record of any attorney's or agent's theories or impressions. The Court was  
5 unable to discern any attention given on the part of the interviewer to any particular areas  
6 of concern beyond the obvious need to ascertain basic facts, in large part background  
7 information. The Court would also reaffirm that the tape would be entitled to qualified  
8 work product protection to the extent such protection is applicable to the execution of  
9 search warrants.

10 The District Attorney argues that the work product protection in criminal cases  
11 extends only to "core" materials and that qualified work product protection is only  
12 available in civil cases. This is the apparent sense of Penal Code § 1054.6, which  
13 prescribes the rule applicable in criminal discovery. It is a reading that has been the  
14 specific subject of comment by the California Supreme Court in *Izazaga v. Superior*  
*Court* (1991) 54 Cal.3d 356 and in *People v. Superior Court (Laff)* (2001) 25 Cal.4<sup>th</sup> 703.

15 There is some doubt whether qualified work product protection is entirely  
16 unavailable in criminal matters that have not yet advanced to the stage where reciprocal  
17 discovery is occurring. The *Laff* court was specifically concerned to find that work  
18 product protection applied in search warrant proceedings and was not confronted with  
19 deciding the full scope of that protection. Nevertheless, nothing in case law at this point  
20 stands contrary to the apparent understanding of the Supreme Court that there is no  
21 greater work product protection available in pretrial proceedings than in discovery.

22 Oddly, prior to adoption of the reciprocal discovery provisions of Proposition  
23 115, including Penal Code § 1054.6, it seems to have been understood that work product  
24 protection was generally applicable in criminal cases. See *People v. Collie* (1981) 30  
25 Cal.3d 43, 59. The reciprocal discovery provisions would not require the tape here to be  
26 turned over by the defense to the prosecution to the extent it represented only  
27 impeachment material for prosecution witnesses. It is somewhat ironic that a discovery  
28 system that would not itself require disclosure becomes the basis for defeating non-  
discovery protections. Nevertheless under *People v. Superior Court (Laff)* this court

1 concludes that qualified work product protection is not applicable to materials seized  
2 pursuant to search warrant.

3 Inventory Item No. 818 shall accordingly be made available to the prosecution.  
4 However, pursuant to the understanding reached at the March 30, 2004 hearing the effect  
5 of this order is stayed for 15 days.

6 DATED: APR 15 2004



7 RODNEY S. MELVILLE  
8 Judge of the Superior Court

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA:

I am a citizen of the United States of America and a resident of the county aforesaid. I am employed by the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action. My business address is 312-H East Cook Street, Santa Maria, California.

On APRIL 9, I served a copy of the attached ORDER ON RECONSIDERATION OF WORK PRODUCT ISSUES (VIA FACSIMILE) addressed as follows:

THOMAS W. SNEDDON, DISTRICT ATTORNEY  
DISTRICT ATTORNEY'S OFFICE  
1105 SANTA BARBARA STREET  
SANTA BARBARA, CA 93101

MARK GERAGOS, ESQ.  
350 S. GRAND AVENUE, 39<sup>TH</sup> FLOOR  
LOS ANGELES, CA 90071-3480

GIBSON, DUNN & CRUTCHER  
c/o THEODORE J. BOUTROUS, ESQ.  
333 SOUTH GRAND AVENUE  
LOS ANGELES, CA 90071

FAX

By faxing true copies thereof to the receiving fax numbers of: 805-568-2398 (DISTRICT ATTORNEY); 213-625-1600 (MARK GERAGOS, ESQ.); 213-229-7520 (GIBSON, DUNN & CRUTCHER). Said transmission was reported complete and without error. Pursuant to California Rules of Court 2005(l), a transmission report was properly issued by the transmitting facsimile machine and is attached hereto.

MAIL

By placing true copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States Postal Service mail box in the City of Santa Maria, County of Santa Barbara, addressed as above. That there is delivery service by the United States Postal Service at the place so addressed or that there is a regular communication by mail between the place of mailing and the place so addressed.

PERSONAL SERVICE

By leaving a true copy thereof at their office with their clerk therein or the person having charge thereof.

EXPRESS MAIL

By depositing such envelope in a post office, mailbox, subpost office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with express mail postage paid.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 9<sup>TH</sup> day of APRIL, 2004, at Santa Maria, California.

  
CARRIE L. WAGNER