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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

SANTA MARIA DIVISION *unsealed, plus 6/16/05 Order

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. MICHAEL JOE JACKSON, Defendant.	No. 1133603 PLAINTIFF'S OPPOSITION TO DEFENDANT'S "MOTION TO SUPPRESS" ON STATUTORY AND NON-STATUTORY GROUNDS; MEMORANDUM OF POINTS AND AUTHORITIES ~~UNDER SEAL~~ DATE: August 16, 2004 TIME: 9:30 a.m. DEPT: SM 2 (Melville)

Introduction

This is the People's opposition to defendant's "Motion to Suppress Pursuant to Penal Code Section 1538.5 and Non-Statutory Grounds (Part 1)," filed June 21, 2004.

Defendant's Arguments, Summarized

Under the caption, "The Government's Search of Bradley Miller's Office Constituted an Invasion Of The Defense Camp and Violated Mr. Jackson's Rights to Counsel, Due Process, a Fair Trial, and Right Against Self-Incrimination," defendant asserts "The conduct of the District Attorney and other agents of law enforcement in the investigation of this case amounts to outrageous government conduct. . . . The prosecution has invaded the

attorney-client relationship, undermined the work product doctrine and has so contaminated the prosecution of this case that, at the very least, the materials seized must be suppressed and returned." (Motion 10:14-24.)

Defendant asserts he "has a legitimate expectation of privacy in the office of his lawyer's investigator, to the extent that the materials it contained related to Mr. Jackson's defense." (Motion 14:4-6.) He then argues that the evidence must also be suppressed pursuant to Penal Code section 1538.5, subdivision (a)(1)(B)(v) ("There was [a] violation of federal or state constitutional standards") because, as he had argued in support of his non-statutory motion to suppress based on "outrageous government conduct," the search "was conducted in violation of Mr. Jackson's rights to counsel, due process, a fair trial and right against self-incrimination, as well as his right against unlawful search and seizure . . . ." (*Id.*, 14:6-21.)

Defendant also argues that the "Search Was An Overbroad, General Search" for three reasons: "A. The Warrant Was Overbroad On Its Face Because It Exceeded The Probable Cause Showing" (Motion 14:22-25), "B. The Warrant Was Overbroad On Its Face Because It Lacked Particularity" (*id.*, 16:17), and "C. The Sheriff's [sic] Flagrantly Disregarded The Limitations Of The Search Warrant" (*id.*, 17:1).

Plaintiff's Opposition, Summarized

Not every "invasion" of the office of a lawyer or his agent is "outrageous." In this case, it was not known that Mr. Miller was employed by a lawyer retained by defendant when the search was initiated. The search of Bradley Miller's office was justified by the belief, spelled out with some particularity in the affidavit supporting the search warrant, that it would reveal evidence of Miller's unlawful acts in acquiring property of the Arvizo family and in falsely imprisoning the Arvizos. Defendant's standing to litigate the constitutionality of the search of premises of a third party is limited. In any event, the warrant itself was not overbroad in its scope, and the search undertaken pursuant to that warrant did not go beyond the limits set by the warrant.

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I

PROBABLE CAUSE FOR THE SEARCH OF PRIVATE INVESTIGATOR MILLER'S OFFICE WAS SET OUT IN ITS SUPPORTING AFFIDAVIT. THAT AFFIDAVIT DISCLOSED INVESTIGATOR MILLER HAD COMMITTED CRIMES ON BEHALF OF THE DEFENDANT. WHOEVER MAY HAVE EMPLOYED HIM TO COMMIT THOSE CRIMES. THE WARRANTED SEARCH OF MILLER'S OFFICE DID NOT CONSTITUTE "OUTRAGEOUS GOVERNMENT CONDUCT"

In his "invasion-of-the-defense-camp"[1] argument, defendant appears to reason that any search of the office of an attorney or his agent, absent evidence "that the services of the lawyer were obtained to commit crime or fraud," or that the search was undertaken "to prevent a criminal act by the client" (Motion 12:7-14) is, ipso facto, "outrageous" misconduct that must result, "at a minimum," in suppression of the evidence seized in the "invasion" (*id.*, 13:17-22).

Firstly, it was not apparent at the time the warrant was obtained that Investigator Miller was in the employ of Attorney Geragos, or that he may have been working at the direction of the latter rather than upon the orders of defendant himself. (For that matter, no documentary evidence of that relationship has been given us to this day.) Private investigators work for a wide variety of clients.[2]

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[1] References to the government's "invasion of the defense camp" would be appropriate in the context of a case like, e.g., *People v. Zapien* (1993) 4 Cal.4th 929 (the decision from which the phrase was borrowed) or *Barber v. Municipal Court* (1979) 24 Cal.3d 742. They seem odd in a case like this, where the "invasion" took place before criminal charges were filed against defendant and apparently before Mr. Jackson suspected he was under investigation. Mr. Geragos told Larry King's audience he was retained at or about the time "Living with Michael Jackson" was telecast to a critical audience. He said he sought to protect his client from a family who were seeking to capitalize on the renewed public suspicion that defendant behaves inappropriately with young boys by "shaking him down." If attorney Geragos' and his employees undertook their excessively proactive efforts on behalf of his client with knowledge that a criminal investigation was afoot, those efforts would constitute witness intimidation. (Pen. Code, § 136.1, subd. (b).) Be that as it may, Investigator Miller's own interference with the Arvizo family's lives and property earned him the attention he received.

[2] Among them, attorneys. That is why the affiant, Detective Zelis, described the procedure the searching officers would follow "to ensure that no . . . computerized information will be accessed" from computers seized in the contemplated searches without an opportunity for the computer's owner or designees to assert that some of it is "privileged," and, in such an event, to seek a special master before the information is inspected. (Affidavit 77:21 – 78:3.)

Defendant claims "the prosecution knew, or should have known, that Bradley Miller was a private investigator, employed by then-defense counsel, Mark Geragos." (Motion 4:14-15.) He offers no facts to support that assertion.

Later events -- Attorney Geragos' revealing disclosures to Larry King, among them -- suggest that Mr. Miller may have been working at the direction of Mr. Geragos rather than for defendant himself. Be that as it may, the identity of Investigator Miller's employer does not make his own actions less criminal, nor the evidence in his possession less relevant.

Secondly, neither a lawyer's office nor that of his hired investigator is immune from search if it is reasonably believed that the office of either contains unprivileged evidence that will disclose a suspect's commission of crime. To be sure, the search of a lawyer's office ought not to be undertaken lightly. The Legislature has wisely mandated that a special master accompany investigating officers before any such search is undertaken, even when the lawyer himself is suspected of crime. (See Pen. Code, § 1524, subds. (c)-(j).) But those provisions of Penal Code section 1524 do not apply to the offices of *other* than the professionals specifically listed in subdivision (c). (*PSC Geothermal Services Co. v. Superior Court* (1994) 25 Cal.App.4th 1697, 1703-1705 [search of office of expert hired by lawyer need not have been undertaken by a special master].) A private investigator is not one of the listed professionals

If hindsight suggests that Bradley Miller was Attorney Geragos' employee, it also suggests that the suspicions of the searching officers concerning Miller's involvement in criminal activities on behalf of defendant[3] were well-founded. Subsequent events sharpening that hindsight flatter neither Attorney Geragos nor his client, but that is not a reason to suppress the evidence against defendant.

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[3] Defendant complains, "If the District Attorney believed that crimes or fraud had occurred, this should have been spelled out in the affidavit. The failure to do so renders the search invalid." (Motion 12:21-23.) But the affidavit did just that: It noted that the "Jackson people" had retained the Arvizo family's passports and visas (Aff. 36:1-3) and had stolen certain letters from defendant to Gavin (Aff. 32:22-28), and it related the facts concerning the false imprisonment of the children (Aff: 36:17-20) On page 72 of the affidavit, Detective Zelis declared: "Your affiant believes this affidavit also establishes probable cause to believe that private investigator Bradley G. Miller was employed by or acting as an agent for Michael Jackson or representatives or employees of Michael Jackson in the prolonged false imprisonment of Mrs. Arvizo's family and the unlawful taking of Mrs. Arvizo's hidden Michael Jackson-Gavin correspondence from her stored contents." (Emphasis added.)

Defense counsel observes:

> The courts have repeatedly warned prosecutors in California, and specifically the Santa Barbara District Attorney's Office, about intruding into the constitutional rights of the accused. (*Barber v. Municipal Court* (1979) 24 Cal.3d 742; *Boulas v. Superior Court* (1986) 188 Cal.App.3d 422; *People v. Zapien* (1993) 4 Cal.4th 929; *Morrow v. Superior Court* (1994) 30 Cal.App.4th 1252.) Both *Boulas* and *Zapien* involved misconduct of the Santa Barbara County District Attorney's Office. The District Attorney knew, or should have known, that it was misconduct to invade the defense camp. (Motion 13:11-17.)

Barber involved the intrusion, through trickery, of undercover law enforcement officers in confidential attorney-client conferences arising out of the arrest of "sit-in" protesters at the Diablo Canyon nuclear facility in San Luis Obispo County. In *Boulas*, a sales-of-cocaine case, the prosecutor intentionally interfered with a charged defendant's relationship with his retained counsel by stating that a proposed plea-bargain could only be made if the defendant replaced his retained counsel with another that would be agreeable to his client working as an informant. *Zapien* involved the intentional, improper but non-prejudicial destruction by a district attorney's investigator of a tape recording, prepared by defense counsel, inadvertently left behind by him in a county vehicle used by employees of both the public defender's office and the district attorney's office and fortuitously discovered by the prosecutor's investigator. *Morrow* involved the eavesdropping by a district attorney's investigator on a courtroom conference between defendant and his counsel.

Those decisions offer no support to defendant in the circumstances of his case. His characterization of the search as "blatantly illegal," and undertaken with a "blatant disregard" for his rights and by "blatantly disregard[ing] the attorney-client and work product privilege" (Motion 10:6, 10:20, 11:25) does not make it so.

Defendant notes, "Dismissal has been held to be the only adequate remedy to address such misconduct of the district attorney and law enforcement. However, at the very least, the materials should be suppressed and returned to Mr. Miller, Mr. Jackson, or such other rightful

owner as may be determined." (Motion 13:18-22.)

When "government conduct" is made out by an accused, it may implicate his right to due process under the Fifth and Fourteenth Amendments if it is sufficiently "outrageous" as to "violat[e] that 'fundamental fairness, shocking to the universal sense of justice,' mandated by the Due Process Clause of the Fifth Amendment." (*United States v. Russell* (1973) 411 U.S. 423, 432 [36 L.Ed.2d 366, 93 S.Ct. 1637].) If the complained-of conduct meets that criteria, "it bars prosecution" and dismissal of the case is the only sanction. (*People v. Wesley* (1990) 224 Cal.App.3d 1130, 1138.)

The suggested "lesser" sanction of suppression of the evidence against him is not available for that reason, and because relevant evidence seized in the course of a search may not be "suppressed" unless that evidence was seized in violation of the accused's rights under the Fourth Amendment. "Challenges to the reasonableness of a search by government agents clearly fall under the Fourth Amendment, and not the Fourteenth." (*Conn v. Gabbert* (1999) 526 U.S. 286, 293 [119 S.Ct. 1292, 1296.)

Penal Code section 1538.5 is the only statute invoked by defendant in the pending motion. But "Section 1538.5 is properly used only to exclude evidence obtained in violation of a defendant's state and/or federal (Fourth Amendment) right to be free of unreasonable search and seizure." (*People v. Mattson* (1990) 50 Cal.3d 826, 850-851. Accord, *People v. Stansbury* (1993) 4 Cal.4th 1017, 1049.) And Penal Code section 1538.5, subdivision (m) declares, in pertinent part:

> (m) The proceedings provided for in this section, and Section 871.5, 995, 1238, and 1466 shall constitute the sole and exclusive remedies prior to conviction to test the unreasonableness of a search or seizure where the person making the motion for return of property or the suppression of evidence is a defendant in a criminal case and the property or thing has been offered or will be offered as evidence against him or her.

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II

DEFENDANT'S STANDING TO LITIGATE THE CONSTITUTIONALITY OF A SEARCH OF PREMISES BELONGING TO A THIRD PARTY, AND THE SEIZURE OF PROPERTY NOT HIS OWN, IS LIMITED

"The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure." (*Rakas v. Illinois* (1978) 439 U.S. 128, 131, fn. 1 [58 L.Ed.2d 387, 393, 99 S.Ct. 1035]; see *People v. Ooley* (1985) 169 Cal.App.3d 197, 202.)

Defense counsel asserts, without citation of authority, that "Mr. Jackson has a legitimate expectation of privacy in the office of his lawyer's investigator, to the extent that the materials it contained related to Mr. Jackson's defense." (Motion 15:4-6.)

That may be true, so far as it goes. See *DeMassa v. Nunez* (9th Cir. 1985) 770 F.2d 1505, 1508: "We . . . hold that an attorney's clients have a legitimate expectation of privacy in their client files." See also *United States v. Knoll* (2d Cir. 1994) 16 F.3d 1313, 1321: "In general, we believe the protection of the Fourth Amendment extends to those papers that a person leaves with his or her lawyer. . . . This is because the client has a subjective expectation that such papers will be kept private and such expectation is one society recognizes as reasonable."

But the argument assumes as its premise a fact than has not yet been established by competent evidence, i.e., that Mr. Miller was Attorney Geregos' employee at all times relevant, not defendant's. The People respectfully request that defendant make the requisite showing of Mr. Miller's employment status.

Assume, for the sake of this discussion, that at all relevant times defendant was Attorney Geragos' client and Mr. Miller was Attorney Geragos' agent. Neither Mr. Jackson's "client file" -- under California law, his own property (*Kallen v. Delug* (1984) 157 Cal.App.3d 940, 951) -- nor papers he may have left with his lawyer appear to have been seized from Investigator Miller's custody. So far as can be determined from their labels and our inspection

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of Item 818, the audio and video tapes are, at best, the qualified work product of Attorney Geragos.

Defendant's assumed standing to protest the *seizure* of his property may not equip him with standing to protest the scope of the *search* that brought it to light. It was Mr. Miller's office and Mr. Miller's computer that was searched, not Mr. Jackson's. Defendant has no possessory interest in either. In less heralded cases, if an accused elected to leave his property in the care of an acquaintance in whose residence he himself had no reasonable expectation of privacy, that accused may not seek to suppress such property as evidence against him on the ground that the search which disclosed it was unlawful. See, e.g., *People v. McPeters* (1992) 2 Cal.4th 1148 [murder weapon belonging to defendant, located under his cousin's pillow in her own room]:

> "An illegal search or seizure violates the federal constitutional rights only of those who have a legitimate expectation of privacy in the invaded place or seized thing. (*United States v. Salvucci* (1980) 448 U.S. 83, 91-92 [65 L.Ed.2d 619, 628, 100 S.Ct. 2547].) The legitimate expectation of privacy must exist in the *particular area searched or thing seized* in order to bring a Fourth Amendment challenge." (*People v. Hernandez* (1998) 199 Cal.App.3d 1182, 1189, italics in original.)

(*McPeters*, *supra*, 2 Cal.4th at p. 1171.)

Assume, again, that Investigator Miller was Attorney Geragos's employee and agent, not defendant's, and that what was seized from Miller's custody was either defendant's own property that had been delivered to his counsel (or his counsel's agent) or constituted a "client file" in which, for that reason, defendant had a legitimate expectation of privacy. Even so, his "standing" to contest the search of Mr. Miller's office is limited. As *DeMassa v. Nunez*, *supra*, 770 F.2d 1505 phrased it, the two factual inquiries by this court must be: "(1) in what items does he . . . assert a legitimate expectation of privacy; and (2) as to each such item, did a Fourth Amendment violation occur (i.e., does the item fall within the scope of the warrant)." (*Id.*, at p. 1508.)

"When a defendant only has standing to object to the seizure, then 'the case is the same as though the [goods] had been found in plain view in a public place and then seized,' that is, the defendant may only contend that the police lacked grounds to believe that the items were connected with criminal activity or some other lawful basis for seizure." (5 LaFave, Search and Seizure (3d ed. 1996), Standing, § 11.3(d), p. 161 (fns. omitted), citing and quoting *United States v. Lisk* (7th Cir. 1975) 522 F.2d 228, 230.)

III

THE SEARCH WARRANT, CONSIDERED IN LIGHT OF ITS SUPPORTING AFFIDAVIT, ADEQUATELY IDENTIFIED PROPERTY OF EVIDENTIARY VALUE TO THE ONGOING INVESTIGATION. ONLY THAT PROPERTY, OR OTHER PROPERTY THE EVIDENTIARY VALUE OF WHICH WAS IMMEDIATELY APPARENT, WAS SEIZED

A. Introduction

Defendant claims that the search of Bradley Miller's office "was conducted in violation of Mr. Jackson's rights to counsel, due process, a fair trial and right against self-incrimination, as well as his right against unlawful search and seizure" (Motion 14:6-21), and under Penal Code section 1538.5, subdivision (a)(1)(B)(v) ["There was [a] violation of federal or state constitutional standards"], he may seek to suppress evidence for violation of any of those constitutional rights.

Defendant is mistaken. As noted above, Penal Code section 1538.5 is properly used only to exclude evidence obtained in violation of a defendant's Fourth Amendment right to be free of unreasonable search and seizure. (*People v. Stansbury*, *supra*, 4 Cal.4th 1017, 1049.)

B. Claimed "Overbreadth" Of The Warrant

Defendant argues that "The Warrant Was Overbroad On Its Face Because It Exceeded The Probable Cause Showing." (Motion 14:25-26.) That argument boils down to his assertion that

> Despite the fact that the Affiant never mentions anything specifically related to computers or computer files with regard to Mr. Miller, the search warrant includes language that allows for the seizure of any and all computers, as well as any and all items related to computers. The Affiant's general statements, not specifically related to Mr. Miller, that "many people use computers to conduct their business" and that "some of the information sought to searched/seized may be contained on computers" . . . is blatantly overbroad and without any support from the statement of probable cause. (Motion 16:9-16.)

That argument is reprised under the heading, "The Warrant Was Overbroad On Its Face Because It Lacked Particularity," where defendant asserts "The affidavit did not provide any factual support, let alone enough to justify a finding of probable cause, to suggest that Mr. Miller was in possession of any computer systems, or related items, that in any way relate to this case." (Motion 16:17-23.)

Keep in mind that the investigators apparently had not observed the interior of Mr. Miller's office so as to be able to state with absolute certainty that he had computers in the premises. In the circumstances, the affiant was obliged to make an educated guess that in this twenty-first century, some 25 years after the founding of Microsoft, a modern-minded investigator officing in Beverly Hills would have equipped himself with at least one computer.

In our respectful submission, that assumption was firmly rooted in the realities of today's business world.

C. Claim That The Search Went Beyond The Limits Of The Warrant

Defendant argues that the scope of the search itself exceeded the limits imposed by the warrant and so "amounted to an impermissible general search." (Motion 17:1-3.)

Defendant acknowledges that "the probable cause statement focused on Mr. Miller's alleged role in renting a storage unit, his alleged employment by Mr. Jackson, and his alleged presence at the taping of an interview. It was permissible for the sheriffs to search for documents relating to those activities." (Motion 17:19-20.) He might have added, in the interest of entire accuracy, that the warrant also authorized a search for "letters, passports, visas and other documents relating to one or more members of the Arvizo family, and or reflecting

his receipt and later disposition of property that had been stored in [Dino's Storage] facility."

The affidavit in support of the warrant recited that Investigator Miller was present during the filming of the "rebuttal video" at Hamid Moslehi's residence (Aff. 27:1-5). It conveyed Mrs. Arvizo's information that she had hidden letters from defendant to Gavin in a clay pot that was stored at Dino's by Mr. Miller – documents that were missing when her property was returned to her. (Aff. 31:1-7; 32:25-29). The affiant declared his belief that his showing "establishes probable cause to believe that private investigator Bradley G. Miller was employed by or acting as an agent for Michael Jackson or representatives or employees of Michael Jackson in the . . . unlawful taking of Mrs. Arvizo's hidden Michael Jackson-Gavin correspondence from her stored contents." (Aff. 74:21-25.) The affidavit reflects that the storage unit was rented in Brad Miller's name and billed to his business address. Affiant expressed his belief that

> Based on Jay Jackson's conversation with George, the owner of Dino's, regarding customer access to the storage unit, it is reasonable to conclude that any entry into the storage unit, any search thereof, or the taking of the notes stored there was done by Brad Miller or with his permission.
>
> Therefore, your Affiant also believes there is reasonable and probable cause to believe that Brad Miller, as a licensed, professional investigator, may still have the notes or some documentation in the form of notes, or correspondence, memoranda or other such writings reflecting their transfer to someone else." (Aff. 74:28 – 75:7.)

The warrant's specification of "letters, passports, visas and other documents relating to one or more members of the Arvizo family, and /or reflecting his [i.e., Miller's] receipt and later disposition of property that had been stored at that facility" was sufficient.

(1) "Other Documents" In "Plain View"

In the course of the search, six video tapes, all with labels indicating their relevance to "Arvizo," and two audio tapes were observed and seized. One of the tapes, Item No. 817 and labeled "MJ Tel. Janet 2-13-03," likely is evidence of an illegally-recorded telephone

conversation. The other tape is labeled "Michael Jackson Arvizo."

Those items certainly "relate to one or more members of the Arvizo family." They are "writings" within the meaning of Evidence Code sections 250 and 1521 and the latter's predecessor, section 1500 (See *Jones v. City of Los Angeles* (1993) 20 Cal.App.4th 436, 440 [videotape]; *People v. Kirk* (1974) 43 Cal.App.3d 921, 928 [tape recording], *People v. Enskat* (1971) 20 Cal.App.3d Supp. 1, 3 [motion picture film]), and, by extension, are "documents" within the meaning of that word in the search warrant, considered in context.

Those tapes came to light in the course of a search for more particularly-described "documents." They were therefore in the "plain view" of the searching officers, and their observations did not constitute a "search." (See *Arizona v. Hicks* (1987) 480 U.S. 321, 328 [94 L.Ed.2d 347, 107 S.Ct. 1149] ["merely looking at what is already exposed to view, without disturbing it . . . is not a 'search' for Fourth Amendment purposes . . . ."].) The relevance and evidentiary value of those items was apparent, and would have been apparent to any reasonable investigator.

In *Horton* v. *California* (1990) 496 U.S. 128 the Supreme Court reaffirmed the right of officers to seize items of incriminating evidence that come into their plain view while conducting a search authorized by warrant even though the items are not named within the warrant. Such a seizure does not additionally intrude on the occupant's privacy. (*Id.* at pp. 141-142.) The high court held it makes no difference whether the officers suspected or knew about the unlisted items, so long as that property was found during a lawful search for items listed in the warrant. (*Id.*, at pp. 138-139.)

Similarly, in *Skelton* v. *Superior Court* (1969)1 Cal.3d 144, a warrant issued for the search of defendant's residence and seizure of stolen property, including particularly-described rings, dominoes, and engraved silverware. The officers executing the search warrant brought with them unrelated burglary reports in the hope of "discovering property listed as stolen" in them. In the course of the search, dangerous drugs and stolen property not particularly described in the warrant were found and seized. Our Supreme Court held that the additional property was properly seized in the course of that thorough search, formulating "what seems to

us the rule that has been applied without express articulation, in many similar cases, thus: When officers, in the course of a bona fide effort to execute a valid search warrant, discover articles which, though not included in the warrant, are reasonably identifiable as contraband, they may seize them whether they are initially in plain sight or come into plain sight subsequently, as a result of the officers' efforts." (*Id.*, 1 Cal.3d at p. 157.)

The *Skelton* court reasoned:

> Since the warrant mandated a search for and the seizure of several small and easily secreted items, the officers had the authority to conduct an intensive search of the entire house, looking into any places where they might reasonably expect such items to be hidden. With the issuance of this warrant, the judgment had already been made by a judicial officer to permit a serious invasion of petitioner's privacy. No legitimate interest is enhanced by imposing artificial restrictions on the reasonable conduct of officers executing the warrant. No purpose is subserved, other than that of an exquisite formalism, by requiring that when the officers discovered contraband in the course of this search they return to the issuing magistrate and obtain a second warrant directing the seizure of the additional contraband.

(*Id.*, p. 158.)

The fact that the tapes in this case were "mere evidence" and not contraband did not bar their seizure. (*Warden v. Hayden* (1967) 387 U.S. 294, 310 [18 L.Ed.2d 782, 794-794, 87 S.Ct. 1642]; *People v. Sloss* (1973) 34 Cal.App.3d 74, 82-83.)

(2) Computers

Defendant complains that "the warrant describes all computer systems, and all items relating to computer systems, without giving any specific indications of what is to be searched." (Motion 16:19-21.)

The computers were not described as contraband, but as the likely containers of digitalized documents that constitute relevant evidence. As the search warrant affidavit made clear, there is no way to safely extract documents and information stored in a computer without seizing much of the computer hardware and peripherals for more careful examination away

from the site where they are seized. The actual search of the computers' informational contents awaits defense counsel's long-overdue production of a "privilege log"; the government's acquisition of that information awaits the court's ruling on pending claims of "privilege."

CONCLUSION

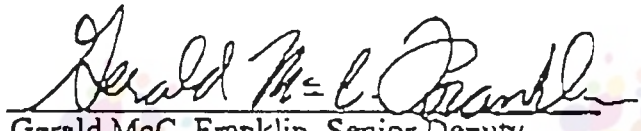
Defendant's "outrageous government conduct" theory is unsupported by the facts mustered in its support, and it is useless as a ground for suppressing evidence. His "standing" to contest the search of premises in which he had no reasonable expectation of privacy, and the seizure of property that has not been shown to belong to him, is problematic and limited. It is defendant's burden to demonstrate he has standing, by competent evidence that Brad Miller worked for Attorney Geragos, not him. In any event, the warrant authorizing the search of Bradley Miller's office was amply supported by a showing of probable cause. The search itself was confined to that required to locate the property described in the warrant. The searching officers seized only those described items, and property that came to view in the course of the search and appeared to have evidentiary value.

The pending "Motion to Suppress [Part I]" should be denied.

DATED: June 30, 2004

Respectfully submitted,

THOMAS W. SNEDDON, JR., District Attorney

By: 

Gerald McC. Franklin, Senior Deputy

Attorneys for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA }
COUNTY OF SANTA BARBARA } SS

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

On June 30, 2004, I served the within PLAINTIFF'S OPPOSITION TO DEFENDANT'S "MOTION TO SUPPRESS" ON STATUTORY AND NON-STATUTORY GROUNDS; MEMORANDUM OF POINTS AND AUTHORITIES on Defendant, by THOMAS A. MESEREAU, JR., STEVE COCHRAN, and ROBERT SANGER, by faxing a true copy to counsel at the facsimile number shown with the address of each on the attached Service List, and then by causing to be mailed a true copy to each counsel at that address.

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

Executed at Santa Barbara, California on this 30th day of June, 2004.

Gerald McC. Franklin

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