

AUG 16 2004

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiffs,

vs.

MICHAEL JOSEPH JACKSON,

Defendant.

) Case No. 1133603

) PRIVILEGE LOG FOR EVIDENCE ITEMS  
) 824, 825, AND 826 (Evid. Code, § 954.)

) ~~UNDER SEAL~~

) Honorable Rodney Melville

) Date: August 16, 2004

) Time: 10:00 am.

) Dept: SM 8

\* unsealed pursuant  
to 6/16/05 court  
order

1 PRIVILEGE LOG

2 I. ITEM 824

3 A. Electronic Mail Messages

4 Item 824 contains three electronic mail messages stored in the Microsoft Outlook format and  
5 2,770 electronic mail messages stored in the Microsoft Outlook Express format. Of the 2,770  
6 messages, 18 are attorney-client privileged communications between Brad Miller, a licensed private  
7 investigator, and Mark Geragos, an attorney for Mr. Jackson. The remaining 2,752 either (a) relate  
8 to other cases involving the same or other lawyers and are attorney-client privileged materials or (b)  
9 are other private documents unrelated in any way to the present case.<sup>1</sup>

10 B. Electronic Documents

11 Item 824 contains 14,010 electronic documents in at least eight formats, as described below:

- 12 • 72 electronic documents in the Adobe Acrobat format;
- 13 • 7,773 electronic documents in the GIF image format;
- 14 • 4,063 electronic documents in the JPG image format;
- 15 • 38 electronic documents in the Microsoft Excel format;
- 16 • 84 electronic documents in the Microsoft Word for Windows format;
- 17 • 1,953 electronic documents in the plain text format;
- 18 • 12 electronic documents in the rich text format;
- 19 • 9 electronic documents in the TIF image format;
- 20 • 6 electronic documents in the Word Perfect format.

21 Of these documents, two are attorney-client privileged communications between Brad Miller  
22 and Mark Geragos. The remaining 14,008 documents and images (a) relate to other cases involving  
23 the same or other lawyers and are attorney-client privileged materials or (b) are other private  
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25 <sup>1</sup> For example, many of the messages appear to be unsolicited e-mails; messages from clients of  
26 Mr. Miller's business; and private, personal messages unrelated to any business matter or the  
27 present case.

1 documents unrelated in any way to the present case.<sup>2</sup>

2 C. Compressed Archive

3 Item 824 contains 317 compressed archive files in the ZIP and CAB formats. These  
4 compressed archives each contain one or more data files and electronic documents. Of these  
5 compressed archives, none appear to contain materials related to the present case. Instead, all  
6 contain (a) data files and documents relating to other cases involving the same or other lawyers and  
7 are attorney-client privileged materials, or (b) other private data files and documents unrelated to the  
8 present case.

9 D. Summary

10 Of the 17,098 electronic mail messages, documents, and compressed archives contained on  
11 Item 824, only 20 appear to relate to the present case. Each of those 20 are attorney-client privileged  
12 communications related to the present case.

13 II. ITEM 825

14 A. Electronic Mail Messages

15 Like Item 824, Item 825 contains electronic mail messages stored in both the Microsoft  
16 Outlook format (nine messages) and the Microsoft Outlook Express format (two messages). Unlike  
17 Item 824, none of the messages on Item 825 relate to the present case. All 11 messages are,  
18 however, either (a) attorney-client privileged communications between Brad Miller and the same or  
19 other lawyers in other cases or (b) otherwise private documents unrelated to the present case.

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22 <sup>2</sup> For example, many of the documents appear to be files placed on the hard drives during the  
23 installation of various applications (e.g. Word for Windows) or the operating system itself (i.e.  
24 Microsoft Windows XP). Other documents and images include essays apparently written by a  
25 relative of Mr. Miller, research on colleges for Mr. Miller's daughter, digital reproductions of  
26 photographs taken while on vacation, and temporary images placed on the hard drive during the  
27 course of normal Internet web browsing.

1           **B.     Electronic Documents**

2           Item 825 contains 17,163 electronic documents as described below. None of these  
3 documents appear related to the present case. Each either (a) relates to a case involving the same  
4 or other attorneys and are attorney-client privileged materials, or (b) are otherwise private documents  
5 unrelated to the present case.

6           The electronic documents on Item 825 are broken down as follows:

- 7           •     19 electronic documents in the Adobe Acrobat format;
- 8           •     9,574 electronic documents in the GIF image format;
- 9           •     6,605 electronic documents in the JPG image format;
- 10          •     72 electronic documents in the Microsoft Excel format;
- 11          •     84 electronic documents in the Microsoft Word for Windows format;
- 12          •     740 electronic documents in the plain text format;
- 13          •     3 electronic documents in the rich text format;
- 14          •     61 electronic documents in the TIF image format;
- 15          •     5 electronic documents in the Word Perfect format.

16           **C.     Compressed Archive**

17           Item 825 also contains compressed archive files in the ZIP and CAB formats. Of these 209  
18 archive files, none appear to be related to the present case. Like those archives on Item 824, all of  
19 the archive files on Item 825 appear to contain data files and documents related to other cases  
20 involving the same or other lawyers and are attorney-client privileged materials, or are otherwise  
21 private data files and documents unrelated to the present case.

22           **D.     Summary**

23           Of the 17,383 electronic mail messages, documents, and compressed archives contained on  
24 Item 825, none appear to relate to the present case. Furthermore, many of them are attorney-client  
25 privileged materials relating to other cases.

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1 **III. ITEM 826**

2 **A. Electronic Mail Messages**

3 Item 826 contains four electronic mail messages stored in the Microsoft Outlook Express  
4 format. None of these messages relate to the present case. Rather, they are all private messages  
5 between Brud Miller and other, unrelated individuals.

6 **B. Electronic Documents**

7 Five-thousand six hundred eighty-eight electronic documents and images are stored on Item  
8 826. None of these documents or images appear to relate to the present case. All 5,688 documents  
9 and images are either (a) attorney-client privileged materials relating to other cases involving the  
10 same or other attorneys, or (b) are personal, private documents unrelated to the present case.<sup>3</sup>

11 Item 826's contents break down as follows:

- 12 • 8 electronic documents in the Adobe Acrobat format;
- 13 • 3,875 electronic documents in the GIF image format;
- 14 • 764 electronic documents in the JPG image format;
- 15 • 6 electronic documents in the Microsoft Excel format;
- 16 • 11 electronic documents in the Microsoft Word for Windows format;
- 17 • 272 electronic documents in the Microsoft Works format;
- 18 • 743 electronic documents in the plain text format;
- 19 • 4 electronic documents in the rich text format;
- 20 • 1 electronic documents in the TIF image format;
- 21 • 4 electronic documents in the Word Perfect format.

22 **C. Compressed Archive**

23 Item 826 contains 84 compressed archive files in the ZIP and CAB formats. As with Items  
24 824 and 825, none appear to contain any materials related to the present case. They all contain data  
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26 <sup>3</sup>Many of the electronic documents on Item 826, in particular, appear to be the financial records  
27 of Mr. Miller's company.

1 files and documents (a) related to other cases involving the same or other lawyers and are attorney-  
2 client privileged materials, or (b) otherwise private and unrelated to the present case.

3 D. Summary

4 As with the contents of Item 825, none of the 5,776 electronic messages, documents, or  
5 compressed archives on Item 826 relate to the present case. All of the materials located on Item 825  
6 are either attorney-client privileged materials relating to other cases, or are unrelated, private data.

7 CONCLUSION

8 The government acquired 40,257 electronic messages, documents, and compressed archives  
9 contained on Items 824, 825, and 826. Of these 40,257 items, only 18 messages and two electronic  
10 documents found on a single hard drive appear to relate to the present case, and these 18 are all  
11 attorney-client privileged communications between Brad Miller and Mark Geragos.

12 Therefore, none of the materials on these hard drives is subject to seizure pursuant to the  
13 search warrant issued in this case. All of them are either attorney-client privileged material or  
14 personal and private material having nothing to do with the present case.<sup>4</sup>

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24 <sup>4</sup>After the completion of this privilege log, defense counsel received a letter from attorney Daniel  
25 V. Nixon asserting, among other things, that his client is Bradley G. Miller and that he asked that  
26 present counsel request certain orders from the court. A true copy of the letter of Daniel V.  
27 Nixon to Thomas A. Mescreau, dated August 13, 2004, is attached hereto as Exhibit A.

1 Dated: August 13, 2004

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Respectfully submitted.

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By:   
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Attorneys for  
MICHAEL JOSEPH JACKSON

PRIVILEGE LOG FOR EVIDENCE ITEMS 824, 825, AND 826 (Evid. Code, § 954.)

BYRNE & NIXON | LLP

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VIA FACSIMILE AND U.S. MAIL

August 13, 2004

Thomas A. Mesereau, Esq.  
Collins, Mesereau, Reddock & Yu LLP  
1875 Century Park East, Suite 700  
Los Angeles, California 90067

Re: Computer Hard-Drives Seized From Bradley G. Miller

Dear Mr. Mesereau:

Thank you for returning my telephone call yesterday afternoon. I appreciate you taking the time out of your busy schedule to confer with me concerning issues involving our client, Bradley G. Miller ("Miller").

In our conversation, you confirmed that members of the presently constituted defense team in the People v. Michael J. Jackson case are in possession of the computer hard-drives seized from Miller's office by law enforcement officials from Santa Barbara County. Further, you indicated that the defense team has been provided copies of Miller's computer hard-drives pursuant to a Court order directing the defense team to review the computer hard-drives and prepare a privilege log identifying all of the files and data that are either privileged or unrelated to the Jackson case. Finally, you stated that Judge Melville expects you to provide him with the privilege log when you return to court early next week, and that the defense team is presently completing the privilege log in an effort to meet the Court's expectations.

I certainly appreciate the position in which you have been placed by the Court's order, and I understand that you are obligated to comply. However, I must respectfully object to any review of Miller's computer hard-drives by any members of the presently constituted defense team, or anyone else for that matter, other than the Court, or a special master.



The computer hard-drives are Miller's property, and contain personal correspondence and attorney work product and attorney client communications on matters wholly unrelated to the Jackson case. I have continuously maintained this position since November 18, 2003, the date the computer hard-drives were wrongfully seized, without a special master, by the Santa Barbara County Sheriff's Department and the Santa Barbara County District Attorney's Office. See, November 18, 2003 letter to District Attorney Thomas Sneddon.

Miller is a private investigator who works for several different attorneys on a variety of civil and criminal matters. His computer hard-drives contain privileged information relating to these other matters, as well as personal correspondence. Therefore, neither law enforcement, nor anyone else other than Miller's counsel, a special master, or the Court acting as a special master, should be engaged in a review of the computer hard-drives.

I should add that my position is not unknown to the prosecution in this case. I have had multiple discussions with Deputy District Attorney Jerry Franklin concerning privilege issues. More specifically, when I last spoke to him concerning the issue of a privilege log in the last week of May 2004, I related to him that I was not in possession of the computer hard drives and that I did not know how long it would take for me to get them. I suggested to him, in an effort to expedite the process, that he obtain copies of the computer hard drives that were imaged by the seizing authorities and provide them to me (along with a copy of the Court's order concerning the preparation of a privilege log) so that I could prepare a privilege log. He told me he would look into it and get back to me. However, I did not hear back from him.

I anticipated that Mr. Franklin's lack of response was attributable to the fact that another, more pressing concern had arisen. This was not the first time that discussions regarding a privilege log were back-burnered. In March 2004, Mr. Franklin and I discussed the privilege log issue. However, any resolution of the issue was put on hold after grand jury subpoenas were issued for Miller and Mr. Asaf Vitchik, and Mr. Franklin's attention turned towards addressing the ultimately successful efforts by Mr. Jackson's former defense team to quash the subpoenas.

In sum, I am most disappointed that after all of my discussions and correspondence with Mr. Franklin and others involving the privilege issue, and my concerns that the attorney client privilege and attorney work product materials contained on the computer hard-drives be protected, this matter has unfolded this way. Notwithstanding the many months that I have been asserting privilege over the contents of the computer hard-drives, the privileges appear to have been violated and the contents of Miller's hard-drives have been exposed to individuals other than Miller's counsel, or a special master.

All of this could have been avoided had the law enforcement officials simply acceded to my request, made to them in Miller's office during the search on November 18, 2003, for a special master. However, my request was summarily rejected by the law enforcement officers at the scene who informed me that Mr. Sneddon had told them that a special master was not needed.

Thomas A. McCreau, Esq.  
August 13, 2004  
Page 3

BYRNE & NIXON | LLP  
Lawyers

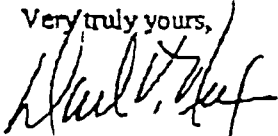
and therefore would not be employed, in the search of Miller's office. I was further told on that date, by the same law enforcement personnel, that it was Mr. Sneddon's view that a special master was not needed because Miller's office was neither a law office nor an office physically connected to a law office.<sup>1</sup>

At this point, in an effort to prevent any further violations of the attorney client and attorney work product privileges, I respectfully ask that you that you request from the Court the following: (1) please assert attorney-client privilege and work product privilege objections to all of the materials on Miller's computer hard-drives (you stated in our telephone conversation that you already planned on asserting privilege as to everything on the computer hard-drives prior to my request); (2) ask the court to appoint a special master to review the hard-drives so that there is no further violation of the attorney client and attorney work product protections, or Miller's privacy; and (3) ask that the court to order those on the defense team who have reviewed the contents of Miller's hard-drives from any dissemination of the information they have seen during their privilege review, except as to those materials determined by a special master to be relevant in the Jackson case, and not privileged or otherwise protected. Finally, I ask that these requests be made *in camera*, under seal, to avoid a public discussion of this highly sensitive matter.

It is not my intention to put you in an awkward position or to in any way request that you violate the Court's order. I understand that you are doing your best to comply with the Court's order. However, I beg your indulgence and simply request that you raise these concerns and issues with the Court so that no further violation of Miller's privacy and the attorney client and attorney work privileges occurs. Please feel free to provide this letter to the Court and counsel if necessary.

Thank you for your assistance. Please keep me apprised of any developments.

Very truly yours,



Daniel V. Nixon  
BYRNE & NIXON LLP

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<sup>1</sup> Mr. Sneddon left me a voice message late in the day on November 18, 2003 stating that he received my letter and that the computer hard-drives and other items seized would not be reviewed until the privilege issues were resolved. However, inexplicably, a special master has never been employed in this case.

PROOF OF SERVICE

I, the undersigned declare:

I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 233 East Carrillo Street, Suite C, Santa Barbara, California, 93101.

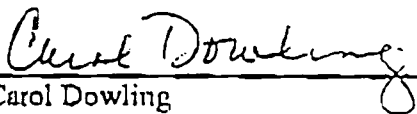
On August 13, 2004, I served the foregoing document **PRIVILEGE LOG FOR EVIDENCE ITEMS 824, 825, AND 826 (Evid. Code, Section 954.)** on the interested parties in this action by depositing a true copy thereof as follows:

Tom Sneddon  
Gerald Franklin  
Ron Zouen  
Gordon Auchincloss  
District Attorney  
1105 Santa Barbara Street  
Santa Barbara, CA 93101  
568-2398

Byrne & Nixon LLP  
Daniel Nixon  
Two California Plaza  
350 South Grand Avenue  
39<sup>th</sup> Floor  
Los Angeles, CA 90071  
Fax - 213-620-8012

- BY U.S. MAIL - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid and deposited during the ordinary course of business. Service made pursuant to this paragraph, upon motion of a party, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit.
- BY FACSIMILE - I caused the above-referenced document(s) to be transmitted via facsimile to the interested.
- BY HAND - I caused the document to be hand delivered to the interested parties at the address above.
- STATE - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed August 13, 2004, at Santa Barbara, California.

  
\_\_\_\_\_  
Carol Dowling