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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY OF SANTA BARBARA

MAR 16 2004

GARY M. BLAIR, EXEC. OFFICER
By: Alicia Alcocer
ALICIA ALCOCER, Deputy Clerk

7 Attorneys for Plaintiff

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

12
13 THE PEOPLE OF THE STATE OF CALIFORNIA,

No. 1133603

14 Plaintiff,

PLAINTIFF'S REQUEST FOR
RECONSIDERATION BY
COURT OF ITS "FINDINGS
AND ORDER RE: CLAIMS OF
WORK PRODUCT PRIVILEGE"

15 v.

16 MICHAEL JOE JACKSON,

17 Defendant.

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19
20 On March 11, 2004, the Court filed its "Findings And Order Re: Claims Of Work
21 product Privilege" ("Order"). That order followed extensive briefing by both parties and
22 argument by counsel on January 16, 2004.

23 In making its Order, the Court found:

24 "2. None of the tapes at issue in this proceeding qualify for absolute
25 work product protection. Nothing in the tapes describes legal
26 theories or reveals the notes or impressions of any attorney, or the
27 agent of any attorney. In point of fact, some of the material is
28 unrelated to the present case, and one tape is a copy of a publicly-
aired television broadcast." (Order 2:18-23.)

1 The Court went on to "consider[]" whether the tapes are entitled to protection as
2 qualified work product since they were, for the most part, compiled or created at the direction
3 of defense counsel by an investigator hired for that purpose. . . .

4 To the extent the qualified protection does apply, the court finds that
5 on the facts the prejudice to the investigative process inherent in
6 denying access to materials otherwise properly seized pursuant to
7 search warrant outweighs the intrusion upon the evidence gathering
8 activities of a defense investigator and that no injustice or prejudice to
9 the defense would result from the release of the seized materials."
(Order 2:24 -3:13.)

10 The Court found,

11 "however, that the balance weighs against release of the audiotape
12 marked as No. 818. The tape records an interview conducted by a
13 defense investigator for Attorney Geragos in early 2003. While the
14 questions asked are of a general enough nature so as not to qualify
15 for absolute protection, some prejudice to the defense would exist in
16 identifying areas of general interest to it and in having its own
17 investigative work turned over to the prosecution. The persons
18 interviewed are equally available to the prosecution. The Court finds
19 nothing on the tape that threatens a miscarriage of justice if not
20 revealed. The defense observes that, generally, evidence that might
21 impeach prosecution witnesses is not discoverable. While this is not
22 a standard applicable to seizures pursuant to a search warrant, it is a
23 factor to consider in evaluating the question of prejudice." (Order
24 3:17 - 4:2.)

25 Request for Reconsideration

26 The People respectfully submit that the Court erred, not in concluding that Audiotape
27 No. 818 comes within the "qualified work product" privilege (Code Civ. Proc., § 2018, subd.
28 (b)) -- doubtlessly, it does -- but in applying the "qualified work product" privilege to evidence
in this criminal prosecution. That is so because, as a matter of law, only "core" work product is
put beyond the reach of the prosecutor in a criminal case.

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1 Only "Core" Work Product Is Protected In Criminal Cases¹

2 Discovery in criminal cases is limited by Part 2, Title 6, Chapter 10, sections 1054
3 through 1054.9 ("Discovery") of the Penal Code.

4 Section 1054.6 declares:

5 Neither the defendant nor the prosecuting attorney is required to
6 disclose any materials or information which are work product as
7 defined in subdivision (c) of Section 2018 of the Code of Civil
8 Procedure, or which are privileged pursuant to an express statutory
9 provision, or are privileged as provided by the Constitution of the
10 United States. (Emphasis added.)

11 In *Izazaga v. Superior Court* (1991) 54 Cal.3d 356, our Supreme Court was careful
12 to

13 note . . . that [Penal Code] section 1054.6 expressly limits the
14 definition of 'work product' in criminal cases to "core" work
15 product, that is, any writing reflecting "an attorney's impressions,
16 conclusions, opinions, or legal research or theories." Thus, the
17 qualified protection of certain materials under Code of Civil
18 Procedure section 2018, subdivision (b), applicable in civil cases, is
19 no longer applicable in criminal cases. The more recent statute
20 limiting the definition of work product in criminal cases carves out
21 an exception to civil and criminal cases alike. [Citations.]

22 (54 Cal.3d 356, at p. 382, n. 19.)

23 Thus, unless the attorney claiming a "work product privilege" as to a given
24 videotape, audio tape or other document seized in this case can persuade the court that it is
25 "core" work product, i.e., a "writing that reflects an attorney's impressions, conclusions,
26 opinions, or legal research or theories" with respect to his efforts on behalf of defendant

27 ¹ What follows is a lightly-reworked reprise of a discussion that appeared on pages 8 and 9 of our
28 "Plaintiff's Memorandum Regarding Defendant's Claim Of The Attorney-Client And Attorney Work
Product Privileges," filed on January 16th, three weeks before the defense filed its responsive
memorandum on the subject and very possibly overlooked by the court in preparing for the hearing on
February 13th.

1 Jackson or another client of his, rather than merely "qualified" work product, that attorney's
2 claim of a work-product privilege in the seized must be rejected.

3 Conclusion

4 Only evidence constituting an attorney's "core" work product is privileged from
5 inspection following its warranted seizure in a criminal investigation. We respectfully request
6 that the court amend its "Order re: Claims Of Work Product Privilege" and direct its clerk to
7 make Item 818 available for release to the Sheriff.

8 DATED: March 16, 2004

9 Respectfully submitted,

10 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY
11 County of Santa Barbara

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13 Gerald McC. Franklin, Senior Deputy

14 Attorneys for Plaintiff

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3 STATE OF CALIFORNIA
4 COUNTY OF SANTA BARBARA } SS

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

10 On March 16, 2004, I served the within PLAINTIFF'S REQUEST FOR
11 RECONSIDERATION BY COURT OF ITS "FINDINGS AND ORDER RE: CLAIMS OF
12 WORK PRODUCT PRIVILEGE" on Defendant, by MARK JOHN GERAGOS, and on
13 associated counsel, by faxing a true copy to counsel at the facsimile number shown with the
14 address of each on the attached Service List, and then by causing to be mailed a true copy (two
15 true copies, to Attorney Geragos) to each counsel at that address.

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

17 Executed at Santa Barbara, California on this 16th day of March, 2004.

18 mjfacts.com mjfacts.com
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20 _____
21 Rosemary Moll

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