

**Research Memorandum #74:
Prosecution Discovery and the Work Product Privilege**

Nibbles v. State, 202 Maj. 2d 791 (20XX-25): “Appellant’s investigator took the stand to rebut the testimony of a key prosecution witness she had interviewed. When the prosecutor’s question on cross-examination as to whether she had taken notes of the interview was answered in the affirmative, the prosecution moved, and the court ordered, that the notes be turned over for the prosecution’s inspection. Whereupon, counsel for the defendant raised the Work Product Privilege as a bar to such submission. Initially, we note that the Work Product Privilege applies to criminal as well as civil litigation. This privilege protects certain materials prepared by an attorney. At its core, the work product doctrine shelters the mental processes of the attorney, providing a privileged area within which he can analyze and prepare his client’s case. But the doctrine is an intensely practical one, grounded in the realities of litigation in our adversary system. One of those realities is that attorneys often must rely on the assistance of investigators and other agents in the compilation of materials in preparation for trial. It is therefore necessary that the doctrine protect material prepared by agents for the attorney as well as those prepared by the attorney himself. . . . The privilege derived from the work product doctrine is, however, not absolute. Like other qualified privileges, it may be waived. Here respondent sought to adduce the testimony of the investigator and contrast her recollection of the contested statements with that of the prosecution’s witnesses. Appellant, by electing to present the investigator as a witness, waived the privilege with respect to matters covered in her testimony.”