

ENCLOSURE

62-587-1260

FBI - CENTRAL RECORDS CENTER

HQ - HEADQUARTERS

Class / Case #	Sub	Vol.	Serial #	
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7/18/143625



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#32130

#32130

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMITTEE TO INVESTIGATE)
ASSASSINATIONS, INC.,)
927 15th St., N. W.)
Washington, D. C. 20005)

CIVIL ACTION No. 3651-70

Plaintiff,)

AFFIDAVIT OF

v.)

JOHN E. HOWARD

U. S. DEPARTMENT OF JUSTICE)
10th & Constitution Ave., N. W.)
Washington, D. C.)

Defendant.)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

JOHN E. HOWARD, being first duly sworn, deposes and says:

That affiant is an attorney licensed to practice in the State of
California and is the Chief Deputy District Attorney of Los Angeles
County.

That in June of 1968, affiant was a deputy district attorney
of Los Angeles County, assigned as Head of the Special Investigations
Division.

That in June of 1968, the then Chief Deputy District Attorney
Lynn D. Compton, and David N. Flitts, Head Deputy District Attorney of

7615761, Gdb 6-68
1 the Santa Monica Branch Office, and affiant were assigned to the prosecution
2 of Sirhan B. Sirhan.

3 That Lynn D. Compton is now a justice of the Second District
4 Court of Appeal for the State of California.

5 That David N. Fitts is now a judge of the Superior Court for
6 the County of Los Angeles.

7
8 That preliminary to the trial of Sirhan B. Sirhan, the defense
9 filed a motion for discovery and that the first hearing on said motion for
10 discovery occurred on or about October 14, 1968.

11 That a photographically reproduced copy of that motion for
12 discovery taken from the official transcript on appeal is attached hereto
13 and incorporated herein as Exhibit A.

14
15 That a copy of the Minute Order of the court relative to the
16 motion for discovery is attached and marked as Exhibit B.

17 That a supplemental discovery motion was thereafter made.
18 A photographically reproduced copy of the second motion for discovery
19 taken from the official appellate transcript is incorporated herein as
20 Exhibit C.

21 That a photographically reproduced copy of the Minute Order
22 of the court relative to the granting by the court of the supplemental
23 discovery motion is attached and marked as Exhibit D.

24
25 That at the hearings regarding the motions for discovery, the
26 court ruled that the defense would be provided the material requested in
27 the October 14 motion; that the prosecution would provide necessary copies
28 to the defense; that the prosecution additionally allow the defense to inspect
29 generally the material in the possession of the prosecution as requested in
30 the supplemental motion for discovery.

31
32 That during the investigative phase of the case, the Federal

1 Bureau of Investigation delivered to the prosecution team, extensive reports
2 covering their investigation of the activities of Sirhan B. Sirhan.

3 That these reports were collected into volumes prior to the
4 delivery. Upon receipt of the material, the prosecution reviewed the
5 material and compiled approximately 450 individual witness files based
6 upon reports received from the FBI, Los Angeles Police Department,
7 Los Angeles County Sheriff's Office, as well as the Bureau of Investigation
8 of the District Attorney's Office.

10 That pursuant to the motions granted by the court regarding
11 discovery, the prosecution delivered to the defense copies of all requested
12 witness files. Such delivery by the prosecution was done in open court
13 and reflected in the transcript of the pretrial hearing.

15 That pursuant to the supplemental motion for discovery,
16 Exhibit C, members of the defense team were allowed access to the
17 prosecution's files for the purpose of instituting requests to the court
18 for delivery of material.

19 That Sirhan B. Sirhan was represented by Attorneys Grant B.
20 Cooper, Emile Z. Berman, and Russell Parsons, and that the said
21 material was delivered in open court to one of the said attorneys.

23 That the defense team retained the investigative services of
24 Ron Allen & Assoc. and that the said agency assigned as investigators,
25 Mike McGowan and Robert Blair Kaiser.

X 26 That affiant believed that said Robert B. Kaiser was not a
27 licensed investigator but was acting under the license of the Ron Allen &
28 Assoc. agency and was so accepted by the court and authorized to act as
29 an investigator for the defendant.

31 That the delivery of the material to the defense was for the
32 preparation of the defense and that there was no understanding that the

1 material would be used for literary purposes.

2 That at no time did the prosecution deliver in toto the copy of
3 the FBI report, but only those portions as requested in the motions of
4 discovery.

5 That at the completion of the trial, the prosecution entered
6 into evidence a list of witnesses who had been interviewed and considered
7 as witnesses but who had not actually been called to testify. A list of said
8 witnesses is photographically reproduced and attached and incorporated
9 herein as Exhibit E. Many of said files contained photographically
10 reproduced copies of FBI interviews.

11 That the prosecution did not deliver the FBI file to any
12 individuals except under the order of discovery and only to the defense
13 team.

14 Affiant certifies under penalty of perjury that the foregoing
15 is true and correct.

16
17
18
19
20 JOHN E. HOWARD

21 Subscribed and sworn to before me

22 this day of

23 WILLIAM G. SHARP, County Clerk

24 By _____
25 Deputy

1 RUSSELL E. P. FONE
2 205 South Broadway
3 Los Angeles, California 90012
4 Madison 6 9167
5 Attorney for Defendant

6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10
11 PEOPLE OF THE STATE OF) NO. A 233, 421
12 CALIFORNIA,)
13)
14) Plaintiff,) MOTION FOR DISCOVERY
15)
16 SIRHAN BISHARA SIRHAN,)
17)
18) Defendant.)

19 Comes now the defendant Sirhan B. Sirhan and respectfully
20 moves the court for an order directing:

21 I

22 The District Attorney of the County of Los Angeles is at-
23 taching counsel for the said defendant to inspect and review certain
24 documents, statements, papers, books, booklets, tape recordings,
25 and any and all transcripts thereof, films of any photographs of
26 the said Sirhan B. Sirhan, or moving pictures or the films thereof
27 taken of the said Sirhan B. Sirhan while he was in the custody of
28 the Los Angeles Police Department, the District Attorney of the
29 County of Los Angeles, or any of his deputies, or any other police
30 agency, and any and all statements taken by the Federal Bureau of
31 Investigation or any of its officers or agents which have been de-
32 livered to the possession of the District Attorney of the County of
Los Angeles, or any officer working under the direction and

1 supervision of the District Attorney of the County of Los Angeles.

2 II

3 Also any statements or reports by Dr. Marcus Crayhan, M.D.,
4 or any Deputy Sheriff, police officer, jail attendant, hospital
5 attendant, nurse or nurse's aid working with, under the direction
6 of, or in cooperation with either Dr. Marcus Crayhan or Dr. Phillip
7 Attalla.

8 Also the name of the reporter present at the time Dr. Cray-
9 han and/or Dr. Attalla interviewed Sirhan B. Sirhan, and the notes,
10 transcripts and reports of such reporter.

11 III

12 Also the statements of any person given to the Los Angeles
13 Police and in the possession of or under the direction of the
14 District Attorney of Los Angeles County of any such person who
15 claims to have seen Sirhan B. Sirhan at the Ambassador Hotel the
16 night of the shooting of Senator Robert F. Kennedy.

17 Also the statements of any person given to the Los Angeles
18 Police and in the possession of or under the direction of the
19 District Attorney of Los Angeles County of any such person who
20 claims to have seen Sirhan B. Sirhan at any target or shooting
21 range within six months prior to the shooting of Senator Robert F.
22 Kennedy.

23 IV

24 Also any statement taken by the police, Federal Bureau of
25 Investigation, or an investigative agency including the Bureau of
26 Investigation attached to the office of the District Attorney of
27 the County of Los Angeles, from Dr. Leslie Koltz of the Pasadena
28 City College, from any students at the University of California at
29 Los Angeles who visited or called at the Kennedy headquarters on
30 Wilshire Boulevard, Los Angeles, some days before the assassination
31 of Senator Robert F. Kennedy.

Also any statement or transcript of an interview with Enrique Rabago, one of two men Sirhan B. Sirhan says he talked with at the Ambassador Hotel on the night of June 4, 1968.

VI

Also any statement or report made by Mr. Alfred J. Nicolas, Counsellor at Pasadena City College.

VII

Also any statement or report made by Mr. Elvior Angelino, a teacher of Anthropology at Pasadena City College.

VIII

Also any statement or report made by Mrs. Harrick, Placement Service Offices, Pasadena City College.

IX

Also any statement or report made by Mr. William Beveridge, a gardener, 167 North Sierra Madre, Pasadena, California.

X

Also any statement or report made by Mr. William C. Beveridge employed at Parmenter Auto Supply, 2631 Sierra Grande, Pasadena, California.

XI

Also any statement or report made by Dr. Richard Nelson, M.D., Corona, California, who treated Sirhan B. Sirhan after his injury at the Altavisch Ranch, Corona, California.

XII

Also any statement or report made by the clerk or custodian of the official records concerning the treatment and care rendered Sirhan B. Sirhan at the Corona Community Hospital, Corona, Riverside County, California.

XIII

Also any statement or report concerning statements taken by the Los Angeles Police Department, any representative of the District Attorney's office of the County of Los Angeles, State of California,

1 or any other police agency taken from Sirhan B. Sirhan after his
2 arrest.

3 XIV

4 Also any statement or report taken from Deputy Sheriff
5 Livingston, a Deputy Sheriff of the County of Los Angeles, at one
6 time assigned to the new County Jail, 441 Bauchet Street, Los
7 Angeles, California.

8 XV

9 Also any statement taken from the Range Master, Lloyd Hager,
10 and Carl Buckner, and any other person interviewed at the pistol
11 range (San Gabriel Valley Gun Club, 4001 Fish Canyon Road, Duarte,
12 California).

13 XVI

14 Also the name of the Federal Bureau of Investigation agent
15 who gave a lie detector test to the witness Buckner. We want both
16 his first statement and his second statement.

17 XVII

18 Also the statement or report of a girl whose name is unknown
19 to us who was at the target range.

20 XVIII

21 Also any statement or evidence of any person who saw Sirhan
22 B. Sirhan after he left the range in Fish Canyon on June 4, 1966.

23 XIX

24 Also any statements or reports taken from the person at the
25 gun shop or gun shops where it is contended that Sirhan B. Sirhan
26 purchased ammunition.

27 XX

28 Also the name of any person who claims to have seen Sirhan
29 B. Sirhan practicing with a gun prior to the date of the assassina-
30 tion of Senator Robert F. Kennedy.

31 XXI

32 Also a statement or report from anyone who saw Sirhan B.

1 Sirhan at the Ambassador Hotel, Los Angeles, California, at Senator
2 Kuchel's party prior to the shooting or at the Rafferty party at the
3 Ambassador Hotel in Los Angeles, California.

XXII

4
5 Also the statements or reports of any person who claims to
6 have seen Sirhan B. Sirhan in the kitchen at the Ambassador Hotel
7 some minutes before the shooting.

XXIII

8
9 Also the statements or reports of any person who claims to
10 have been at the Ambassador Hotel at or about the time of the shoot-
11 ing who claims to have had any part in the apprehension of Sirhan B.
12 Sirhan shortly after the shooting of Senator Robert F. Kennedy.

XXIX

13
14 Also any and all photographs and/or films thereof taken at,
15 during, before, and after the shooting of Senator Robert F. Kennedy
16 in the vicinity of the kitchen of the Ambassador Hotel, Los Angeles.

XXX

17
18 Any statement or report by any student at the University of
19 California at Los Angeles or any other person, or photos taken by
20 such a person, or moving pictures, and delivered by the Los Angeles
21 Police and the District Attorney of the County of Los Angeles show-
22 ing the defendant, Sirhan B. Sirhan, at the political rallies or in
23 and about the Ambassador Hotel on June 4, 1968 or June 5, 1968.

XXXI

24
25 Also all statements of any officer or private person who
26 claims to have seen Sirhan B. Sirhan after his arrest and apprehen-
27 sion and until approximately 3 a.m. the morning of his arrest.

XXXII


28
29 Also all reports: criminal, booking, evidence, logs, offi-
30 cer's notes, individual's notes, or statements made by anyone re-
31 garding Sirhan B. Sirhan's activities from the time of his arrest
32 until 3 a.m. the morning of June 5, 1968.

1 time officers of the Los Angeles Police Department, namely Lt. Wil-
2 liam Jordan, Deputy of the Los Angeles District Attorney's office,
3 and Deputy District Attorney John Howard, and District Attorney's
4 Investigator George Murphy, one or more of whom were present at
5 various interviews and occasions.

6 Respectfully submitted,

7

8 DATED: Sept 24 1965



RUSSELL L. BISHOP
Attorney for Lillian B. Sirhan

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

73

OCT 14 1968

19

Department No. 107 A

HERBERT V. WALKER

Judge

A. Nishikawa

Clerk

APPEARANCES:

(Parties and Counsel checked if present.)
Counsel shown opposite parties represented.

V. Minnick

Reporter

Case No. A233421

X/ Evelle J. Younger, District Attorney by

THE PEOPLE OF THE STATE OF CALIFORNIA I. Conpton, D. Fitts and Deputy
J. Howard, Deputy District Attorneys

R. S. Buckley, Public Defender by

vs

Deputy

X/ SIRHAN BISHARA SIRHAN

X/ Russell E. Parsons

Cause is called for hearing on defendant's motions. Defendant's pretrial discovery motion is granted as set forth in his motion for discovery filed September 25, 1968 as contained in paragraphs II through XXXVII. No order is specifically issued as to paragraph I. In paragraph XXXIII, the month of "April" is stricken and corrected to "June" by interlineation. Available copies of statements of witnesses and copies of transcripts of tape recordings are handed to defense counsel by Deputy District Attorney D. Fitts. Deputy District Attorney D. Fitts indicates to Court, certain of requests contained in defendant's motion for discovery have already been complied with and that motion pictures may be viewed at the Los Angeles Police Department by mutual arrangement. Defendant's motion for continuance is argued and granted. Trial is reset for December 9, 1968, 9:30 am. Defendant personally waives time for trial. Pursuant to stipulation of all counsel, hearing on defendant's motion to suppress evidence is continued to October 22, 1968, 9:45 am. Defense counsel to submit written points and authorities with reference to the motion to suppress by tomorrow afternoon. Certain witnesses are instructed to return for the hearing on the motion to suppress evidence. The Court Reporter is directed to prepare an original and four copies of transcripts of these proceedings. The Court Reporter is further directed to prepare an original and three copies of transcripts of the conference of October 2, 1968. The Court states the order of August 2, 1968 with reference to publicity is still in full force and effect.

COOPER AND NELSEN
3915 CAYWOOD AVENUE
LOS ANGELES 4
HOLLYWOOD 5-1291

35

FILED
DEC 23 1963
U.S. DISTRICT COURT
SOUTHERN DISTRICT
OF CALIFORNIA
LOS ANGELES

Attorneys for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,)	No. A-233421
)	
Plaintiff,)	SUPPLEMENTAL MOTION FOR
)	
vs.)	DISCOVERY
)	
SIRHAN BISHARA SIRHAN,)	
)	
Defendant.)	
)	

TO THE HONORABLE EVELLE J. YOUNGER, DISTRICT ATTORNEY OF THE COUNTY
OF LOS ANGELES, LYNN D. COMPTON, CHIEF DEPUTY DISTRICT ATTORNEY, AND
JOHN HOWARD AND DAVID FITTS, DEPUTY DISTRICT ATTORNEYS:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the plaintiff
defendant will move the Court on Monday, the 23rd day of December, 1963, at the hour
of 2:00 p.m., for an Order permitting an inspection, copying and furnishing to the
defendant the following:

1. The statements of or for investigators' reports concerning the
following persons:

Adel Sirhan;
Munir Sirhan;
Salim Sirhan;
Sherif Sirhan;
Mary Sirhan;
Sandy Sirhan;

1 Oliver C. ...

2 Bert Morse;

3 Walter Corwin;

4 Abraham Alex;

5 Gwen Gamm;

6 Peggy Osterkamp;

7 Terry Welch;

8 Edward Van Antwerp;

9 Genevieve Taylor;

10 Joanne Green;

11 Bart Alkällisch;

12 Frank Donatrazuma;

13 Alvin Tolunow;

14 John Fahey;

15 Alvin Clark; and

16 Ivan Garcia (Alex. Garcia or Ivan Alex);

17 Any other former associates of Sirhan.

18 2. The statements of and/or investigators' reports concerning any
19 member of the family regarding threats on any high public officials;

20 3. The statements of and/or investigators' reports concerning the
21 family since June 5 until the present time regarding the shooting of Senator Kennedy.

22 4. The clinical reports of a blood test taken by a male nurse of the
23 Sheriff's Office, or by any other person, at the New County Jail, Daughet Street, at or
24 about 8:00 a.m., June 5, 1968, and copies of any other medical tests of any other kind
25 or character, taken or made of the defendant from said date to the present date;

26 5. The original photostatic copies of Sirhan's diaries, two large note-
27 books, a small notebook, not limited to but including all evidence that the defense
28 attempted to suppress, and any other evidence taken from or near his house on June 5;

29 6. To interview Deputy Sheriff Livingston and all otherendants,
30 either Deputy Sheriffs, jailhouse employees, or trustees, working at the medical facility
31 of the New County Jail on the morning of June 5 from 7:00 a.m. and 7:00 a.m., June 6;

32 Photographs of all of the same persons;

- 1 8. Copies of the photographs taken of the Ambassador's kitchen area
2 and service pantry directly after the shooting, and the copies of the photographs show-
3 ing the physical layout of the steam tables, etc., after the shooting, and any such
4 other photographs as might help the defense, taken of the Embassy Room, the kitchen
5 area and service pantry, possibly including the Colonial Room;
- 6 9. Copies of any drawing done of the kitchen area, service pantry,
7 Colonial Room, and Embassy Room, done for the purposes of showing the different
8 physical locations of the fixtures and equipment located therein;
- 9 10. Access to a scale model map/diag of the kitchen area that the Prose-
10 cution intends to use in Court at the time of trial;
- 11 11. The names of all witnesses that the Prosecution intends to use at the
12 time of trial;
- 13 12. The statements of and/or investigators' reports concerning the
14 traitors and co-workers of Sirhan at the time he was employed at Bart Altfilisch's
15 restaurant;
- 16 13. The statements of and/or investigators' reports concerning other
17 persons in the Corona-Norito area who knew Sirhan;
- 18 14. The statements of and/or investigators' reports concerning all
19 persons who knew Sirhan and were connected with any Y. K. K. Lodge and/or are in
20 the State of California;
- 21 15. The statements of and/or investigators' reports concerning all
22 parties showing Sirhan or leading to show that Sirhan was involved in a conspiracy;
- 23 16. The medical reports of Drs. V. Faustin Radlowski, Henry Cuneo,
24 Thomas V. Noguchi, Seymour Falkow, Marcus Graham, and Lantz;
- 25 17. Any and all other information or material in the possession of or
26 under the control of the District Attorney that may be of assistance to the defense of
27 this case, within the meaning and scope of the case of Brady v. Maryland, 373 U.S. 83,
28 (1963).

29
30 Whenever in this document the words "Statements of and/or investigators' reports"
31 are used, it is intended and shall mean to include and include statements or reports
32 transcribed by means of writing, stenography or typewriting, or by means of mechanical,

photographic or electronic recording, or statements or reports, reported or transcribed by any and all other possible means.

Whenever in this motion inspection of copies are called for, it is intended and shall mean to include and include the originals of any such documents, pictures, records, statements or reports.

Respectfully submitted,

GRANT B. COOPER, EMILE Z. BERMAN
and RUSSELL PARSONS

By *Grant B. Cooper*
GRANT B. COOPER

RUSSELL
COOPER AND NELSON
3310 CRENSHAW AVENUE
LOS ANGELES 4
NORMAN 5-1221

100

DEC 23 1967

11:00 AM

U.S. DISTRICT COURT

Attorneys for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,)	No. A-233421
)	
Plaintiff,)	MEMORANDUM OF POINTS AND
)	AUTHORITIES IN SUPPORT OF
vs.)	SUPPLEMENTAL MOTION FOR
)	DISCOVERY
SIRHAN BISHARA SIRHAN,)	
)	
Defendant.)	

TO THE HONORABLE EVELLE J. YOUNGER, DISTRICT ATTORNEY OF THE COUNTY
OF LOS ANGELES, LYNN D. COMPTON, CHIEF DEPUTY DISTRICT ATTORNEY, AND
JOHN HOWARD AND DAVID FITTS, DEPUTY DISTRICT ATTORNEYS:

The following Points and Authorities in Support of Supplemental Motion for
Discovery are respectfully submitted:

- Powell v. Superior Court, 13 Cal.2d 704 (1957);
- People v. Lopez, 32 Cal.Rpt. 384 P.2d 15 (1963);
(No California Appellate or California Reports citations found)
- Funk v. Superior Court, 52 Cal.2d 423 (1959);
- California Criminal Procedure, Witkin, pp. 264, 265, 266
(Par. 271, 272, 273).

The following points and authorities and comments are taken from the National
Defender Project Newsletter of the National Legal Aid and Defender Association,
American Bar Center, February 1967, Volume IV, No. 1 at page 3:

365, 14 L. Ed 891, have gone far to achieve this goal by assuring indigent defendants, even in noncapital cases, the right to counsel and to appellate review. The problem now facing the court concerns the production of witnesses on behalf of indigents. The Illinois constitution provides, in section 9 of Article II, that in criminal prosecutions the accused is entitled to have process to compel the attendance of witnesses in his behalf. In almost identical language the sixth amendment to the United States constitution provides that the accused in criminal cases is entitled to have compulsory process for obtaining witnesses in his favor. Thus it is at once apparent that the right to summon witnesses is fundamental to our legal system. It is defendant's contention that a right so fundamental should not be made to depend upon the financial circumstances of the defendant. We share this view." 221 N. E. 2d 645, 648.

DUTY OF THE PROSECUTOR TO DISCLOSE EVIDENCE FAVORABLE TO THE DEFENDANT

The trial proceeding has for its fundamental purpose the acquisition of truth in order to do justice between the parties. Although much advancement has been made in expanding discovery in civil cases, in most states discovery in criminal cases is limited (see II Defender Newsletter No. 3 (May 1965)). However, there exists a duty upon the prosecutor to conduct a fair trial, and this ethical responsibility is spelled out in the American Bar Association's Canons of Professional Ethics (No. 5):

"The primary duty of a lawyer engaged in public prosecution is not to convict, but to see that justice is done. The suppression of facts or the screening of witnesses capable of establishing the innocence of the accused is highly reprehensible."

The duty of the prosecutor to disclose information favorable to the defendant has again come under the recent scrutiny of the U.S. Supreme Court. In Brady v. Maryland, 373 U.S. 83 (1963), Brady and his co-defendant were tried separately for the same murder in the perpetration of a robbery. Brady, asked for a copy of his companion's statement, and he was given all statements except one in which his co-defendant admitted the actual act of killing. In the trial court, defense counsel for Brady admitted his part in the murder but asked the jury to return a verdict without capital punishment. Brady was sentenced to death. After his conviction was affirmed, the statement of his co-defendant came to light and Brady sought post-conviction relief, which was denied by the trial court. The Maryland Court of Appeals remanded the case for retrial on the question of punishment because of denial of due process, and the U.S. Supreme Court affirmed this remand. The Supreme Court in its opinion written by Justice Douglas announced:

51
It is not held that the suppression of the prosecution of evidence favorable to an accused upon request violates the process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. 83, 87.

As a result of the Brady decision, many defense counsel now move at the end of the prosecution's case or before to have an in camera inspection by the court of the prosecution's file. Such an inquiry can also extend to the questioning of the prosecutor as to existence and availability of information that might be favorable to the defense. In some instances, defense counsel have requested this information prior to the commencement of the trial. The reasoning set forth in the Brady decision and the subsequent danger of an improper suppression are strong arguments to secure greater pretrial discovery for the defendant. If discovery is denied at the time of trial and it is later learned that the prosecution had actual or constructive knowledge of these matters that would have substantially aided the defense's case, relief by way of post-trial motions and other post-conviction remedies will be sought, which could require a retrial. Both fairness and efficiency require that the prosecution reveal material evidence of substantive value to the defense.

Both the federal and state courts have interpreted the ramifications of the Brady doctrine, and from a sampling of these cases certain general rules can be derived.

United States. In Levin v. Katzenbach, 388 F.2d 267 (D.C. Cir. 1968), the majority and dissenting opinions discuss the various competing factors in granting discovery under the Brady rule. In this case the defendant filed a habeas corpus petition to review a conviction of conspiracy for obtaining a corrupt acquittal in that the defendant received \$55,000 to "fix" the necessary parties, but allegedly kept the money. One of the issues of fact arising during trial was the type of bills used as payment -- either \$1,000 bills or \$50 bills. The prosecution knew of but failed to reveal the statement of a bank official which would have bearing on the type of bills used. The trial court denied the petition because defendant's evidence failed to show that the government counsel deliberately suppressed any evidence. The Court of Appeals reversed and held that negligent nondisclosure by prosecution, in good faith, is grounds for a new trial. Judge Burger in his dissent criticized the diligence exercised by defense counsel in failing to raise these points properly at the time of the original trial. The dissent noted, "In short a litigant is not allowed to gain an advantage out of his own slovenly preparation for trial." 388 F.2d 267, 294.

The U.S. Seventh Circuit Court of Appeals in Miller v. Pate, 342 F.2d 846 (7th Cir. 1965), reversed the grant by the district court of a writ of habeas corpus reviewing a state conviction for murder of an 8-year-old girl and discharging the prisoner. One of the errors arising out of the original trial asserted by the prisoner was the failure of the state prosecutor to reveal the fact that a state chemist had compared a hair which had been found in the vagina of the murdered girl and a sample of the prisoner's pubic hair. The particle taken from the vagina was

probably human hair and was not one belonging to the prisoner. However, the federal district court felt this evidence was of no consequence and the appellate court agreed. The U.S. Supreme Court has granted a petition of certiorari, 384 U.S. 998 (1966), and oral argument was heard by the Court on 11 January 1967. 35 U.S. Law Week 3242.

Florida. In State v. McCall, 186 So.2d 324 (Fla.App. 1966), the defendant in a rape case obtained an order of the circuit court requiring the state to produce for inspection and copying all transcribed statements of witnesses in possession of the state. The defendant sought this information on the grounds that it was necessary for the preparation of trial and the suppression of favorable evidence would be a denial of due process. The appellate court quashed the order of the circuit court, for although the defendant was entitled to copy and inspect his own confession by statute, no general right of discovery of witnesses' statements exists. The court left open the possibility that in an exceptional case or under unusual circumstances such discovery might be authorized.

Illinois. In People v. Hoffman, 203 N.E.2d 573 (Ill. 1965), the defendant made persistent efforts during the trial to examine a pair of men's shorts found in the room of a hotel where he and the murder victim had previously registered as man and wife. The prosecution in the presentation of its case made a deliberate attempt to avoid any reference to the existence of this evidence. The Supreme Court of Illinois reversed the conviction because the evidence suppressed by the prosecution was material and the request for its production was timely.

In People v. Nelson, 210 N.E.2d 212 (Ill. 1965), the defendant was convicted of murder for hiring another to do the killing. The person he hired to commit the murder was the principal witness against him. The defendant expressly requested the production of the results of polygraph examinations given by the police to all persons in connection with this murder. Since the opinion of the polygraph operator on the truthfulness of the subject was inadmissible, the Supreme Court held that denial of the request was not error.

NOTE: In both Illinois cases requests were made by defense, and express discovery demands would appear to strengthen the showing that the evidence, if suppressed by the prosecutor, was both material and important. If the prosecutor attempts to conceal the very existence of the evidence (i.e. the Hoffman case), the court would more likely recognize a greater impact on the defense's case than if defense counsel had been aware of the evidence.

Louisiana. In State v. Dickson, 180 So.2d 403 (La. 1965), a narcotics case, counsel for the defendant in pretrial discovery sought to obtain motion pictures and sound recordings made while the defendant was in the act of committing the crime. The trial judge denied this discovery, and the Supreme Court of Louisiana affirmed. The state had presented the motion pictures at trial but did not produce the sound recordings which were said to be unintelligible. The court noted that defense counsel failed to object to the testimony of the police officers

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that the sound recordings were not usable and failed to ask the trial court to issue an instant subpoena requiring their production in court. The prosecutor was under no independent obligation to introduce the recordings into evidence, for defense counsel was aware of the existence of these recordings and could have required their production in court.

Maryland. A defendant had been convicted of murder and sentenced to death, and his defense had been insanity. During the trial contradictory psychiatric testimony was presented, and two psychiatrists who testified that the defendant was sane had used a clinical psychologist to conduct background tests. On the basis of a statement by the clinical psychologist that the defendant was insane at the time of the offense, the defense sought and was granted a new trial. The order of the trial court granting the new trial was reversed by the Court of Appeals of Maryland. State v. Tull, 212 A.2d 729 (Md. 1966). The Court of Appeals reviewed the propriety of a psychologist's testimony on the issue of insanity and held that he was a technician assisting the doctors, hence his testimony was cumulative. No fundamental unfairness occurred in not presenting the testimony of the psychologist to the jury.

Massachusetts. In Commonwealth v. H. J. Hall, 213 N.E.2d 599 (Mass. 1966), the defendant, a state trooper, was charged with solicitation of a bribe of \$9. During the bench trial a state police major sat through the testimony of a prosecution witness without objection or comment, knowing that the testimony presented to the court differed from what this witness had told him previously. The defendant, with the affidavit of his investigator, moved for a new trial on the failure of the prosecution to reveal this potentially impeaching deviation from prior statement. The Supreme Judicial Court of Massachusetts affirmed the judgment of the trial court. The court held that: (1) the prosecutor did not have knowledge of the evidence suppressed, (2) the testimony of this prosecution witness played no part in the finding of guilty, and (3) the defendant through his investigator was constructively aware at the time of trial of the deviation from prior statement.

Missouri. In State v. Thompson, 393 S.W.2d 1 (Mo. 1966), the defendant was convicted of first degree murder and sentenced to death. A jury found him guilty of shooting and killing a police officer. The defendant and a companion had been riding in a car and were stopped by the police. The companion shot and killed a police officer. The testimony at trial also indicated that the defendant shot and killed another police officer. When the defendant was arrested, two automatic pistols of the same caliber were taken. At trial the defendant claimed that he did not fire his pistol. The empty shells found at the scene were examined by an expert and reported as all having come from one gun, not the gun of the defendant; but this information was not revealed to the defendant. During the trial the prosecutor argued to the jury the failure of the defense to show the whereabouts of any spent shell casings in proving that the defendant did not fire his gun. When the report was discovered the defendant moved to overturn the judgment, but the trial court denied the motion without a hearing. The Supreme Court of Missouri on certiorari reversed because of both the failure to disclose and the argument of the prosecutor.

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The court stated:

"Various courts have held that the suppression of (or failure to disclose), which is in the possession or control of the prosecution which is favorable to defendant and which might be persuasive to a jury, constitutes such a fundamental unfairness as to invalidate a conviction because violation of due process." 396 S.W.2d 697, 700.

This language was criticized as too broad by Chief Justice Starkman in his concurring opinion. 396 S.W.2d 697, 706.

New Jersey. In State v. Cook, 206 A.2d 359 (N.J. 1965), the defendant while in custody on charges of murder was examined by psychiatrists designated by the State. The court granted defense counsel's request for the appointment of a psychiatrist to examine defendant but denied his request to examine the State's medical reports, even though defense counsel was willing to disclose his psychiatric report. The Supreme Court of New Jersey reversed the trial court's denial and held:

"The county prosecutor's function is not to convict but to see that justice is done; he must seek the truth whether it be helpful to the State or defendant. (Citation.) He must deal fairly and may not constitutionally withhold material evidence which favors the defendant. (Citing Brady v. Maryland.) Cross-disclosure of the psychiatric reports, as now sought by the defendant, would not only aid in ferreting out the truth but would also avoid any question of unconstitutional withholding." 206 A.2d 359, 364.

New Mexico. In Trimble v. State, 402 P.2d 162 (N.M. 1965), a member of the clergy was charged with murder, and he claimed self-defense in that the decedent was about to hit him with a chair when the defendant shot him. The defendant alleged that the decedent had made indecent proposals to the defendant's wife, and that he had made a tape recording of one of the decedent's conversations with his wife and had written a letter to his bishop about this matter. The police took from the defendant prior to trial the tape recording and four copies of his letter to the bishop. When they were demanded at trial, the copies of the letters could not be found and the tapes had been erased. The state claimed that no prejudice was shown and that the suppression was not willful, but the Supreme Court of New Mexico reversed because of this lost exculpatory evidence.

In State v. Gomez, 406 P.2d 48 (N.M. 1965), this same court held that under the principles of Brady v. Maryland and Trimble v. State, the defendant was entitled to a supplemental police report referred to in the testimony of a police officer.

New York. In People v. Feltz, 219 N.E.2d 274 (N.Y. 1966), the defendant, a businessman, was convicted of murdering his "book-maker." The principal prosecution testimony against him was that of his girl friend, a prostitute. Another prostitute differed with this prosecution witness as to a preliminary occurrence and had confronted her. The prosecution witness thereafter recanted her story. (She had recanted her story once before.) The Court of Appeals held, with one judge dissenting, that this nondisclosure of the change in the statement of the witness upon confrontation with another was not prejudicial.

Ohio. In McMillen v. Maxwell, 209 N.E.2d 449 (Ohio 1965), the defendant contended on a petition for a writ of habeas corpus that his conviction for murder should be set aside because he was denied a fair trial. The conviction was based upon circumstantial evidence, including the adverse results of a lie detector test administered pursuant to a stipulation between counsel. The witnesses for the state indicated that on the evening of the murder the defendant was in possession of a snub-nosed .38 caliber revolver. The prosecutor had possession of a ballistics report indicating that the murder weapon was a long-barrelled .38 caliber revolver, but failed to disclose it. The Supreme Court of Ohio reversed, and it announced a rule that prejudice from nondisclosure is an issue for determination:

"Whether the prosecutor has a duty to disclose evidence which is favorable to the accused or whether his failure to do so constitutes a denial of due process will depend upon the particular circumstances of each case." 209 N.E.2d 449, 454.

Pennsylvania. In Commonwealth v. Smith, 303 A.2d 219 (Pa. 1968), the defendant was charged with assault and battery on a police officer. The defendant had been stopped for a traffic violation, and an altercation followed. The specific factual issue turned on who struck the first blow. The defendant complained to the local federal authorities that he was beaten after his arrest by the police officers at the station, and the federal grand jury indicted these police officers under the Civil Rights Act. The defendant was convicted and given 30 days imprisonment and a \$1,000 fine. Prior to trial the defendant requested that a subpoena duces tecum be served on the FBI Special Agent in Charge to have him produce the statements made by two witnesses who later testified for the Commonwealth. The trial court denied the request, and the Supreme Court of Pennsylvania, on a remand from the U.S. Supreme Court, reversed. On the value of the statements withheld, the Court noted:

"Thus, denying Smith the opportunity to use such statements would unquestionably be a denial of 'fundamental rights of our citizenry.' But even if the FBI statements corroborate generally what Sweet and Corcoran said or may say at a new trial, as to the details of the physical combat between Smith and Elliott, but differ from the witnesses' courtroom testimony on minor points, such differences can be the subject for consideration of the believability to assign to the witnesses. The question of credibility sometimes depends on the slightest inclination of the scales.

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Where the jury is in doubt as to whether or not to believe a witness, the smallest feather of a palpable exaggeration or an inconsistency in a witness's statement on a minor point may be the very item to tip the scales and discredit the witness on his main testimony."

205 A.2d 219, 225-6.

PRIVILEGE AGAINST SELF-INCRIMINATION

Two recent 5-4 decisions of the U.S. Supreme Court extended the privilege against self-incrimination to not only forbid the use in a criminal prosecution of testimony given under threat of removal from public office in a related non-criminal judicial inquiry, but also to compel reversal of disbarment proceedings based on a refusal to testify and produce records before a state judicial inquiry into a lawyer's unethical practices.

In Gandy v. New Jersey, 35 U.S. Law Week 4135 (16 January 1957), police officers suspected of fixing traffic tickets were warned in the course of a judicial investigation: (1) that any statements might be used against them in criminal proceedings, (2) that they were privileged not to give incriminating disclosures, but that (3) pursuant to statute, refusal to answer would subject them to removal from office. The officers submitted to depositions, and some of the statements were admitted, over objection, in a later criminal conspiracy prosecution. The Court held that:

"...the protection of the individual under the Fourteenth Amendment against coerced confessions prohibits use in subsequent criminal proceedings of confessions obtained under threat of removal from office, and that it extends to all, whether they are policemen or other members of our body politic." 35 U.S. Law Week 4135, 4137.

The majority opinion pointed out that "coercion that vitiates a confession... can be mental as well as physical... [and] the question is whether the accused was deprived of his 'free choice to admit, to deny or to refuse to answer.'" 35 U.S. Law Week 4135, 4136.

Justices Harlan, Clark and Stewart dissented on the grounds that no duress was exerted in obtaining the statements, so that the only issue was whether the threat of dismissal imposed on the exercise of the privilege made the statements inadmissible.

"...[N]othing in the logic or purposes of the privilege demands that all consequences which may result from a witness' silence be forbidden merely because that silence is privileged. The validity of a consequence depends both upon the hazards, if any, it presents to the integrity of the privilege and upon the urgency of the public interests it is designed to protect." 35 U.S. Law Week 4135, 4139.

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265 A.2d 219, 225-6.

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In Garrity v. New Jersey, 35 U.S. Law Week 4135 (16 January 1967), police officers suspected of fixing traffic tickets were warned in the course of a judicial investigation: (1) that any statements might be used against them in criminal proceedings, (2) that they were privileged not to give incriminating disclosures, but that (3) pursuant to statute, refusal to answer would subject them to removal from office. The officers submitted to depositions, and some of the statements were admitted, over objection, in a later criminal conspiracy prosecution. The Court held that

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Respectfully submitted,

87

GRANT B. COOPER,
EMILE Z. BERMAN and
RUSSELL PARSONS

by

Grant B. Cooper
GRANT B. COOPER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

COMBATED

DECEMBER 23, 1966

Re: No. 107

HERBERT T. WALKER

A. WALKER

Class

T. WALKER

Re: No.

APPEARANCES:

Parties and Counsel appearing in person.
Counsel shown opposite parties represented.

M. FOLEY, DEPUTY SHERIFF

Case No. A 233421

X1 EUGENE J. WALKER, District Attorney for

THE PEOPLE OF THE STATE OF CALIFORNIA

J. Howard

Re: No.

R. S. Buckley, Public Defender by

vs

X1 STEPHEN BISHARA SIRHAN

Re: No.

X1 R. Parsons, G. Cooper and E. Berman

Defendant's pre-trial discovery motion is called for hearing. Defendant's pre-trial discovery motion is granted as set forth in his written supplemental motion for discovery filed December 23, 1966 in items 1 through 6 and 8 through 17. Item 7 is abandoned by the defendant. On motion of the defendant, the Court requests the District Attorney to make such investigation as he may deem appropriate to correct the article reported in the Los Angeles Times re defendant having forged a check for \$48.50. The defendant personally and all counsel stipulate conferences during trial may be had in chambers without the defendant. The defendant personally consents to being inoculated for a flu shot. Remanded.

1 EVALL J. YOUNGER
2 District Attorney of Los Angeles County
3 400 Hall of Justice
4 Los Angeles, California 90012
5 Telephone: 626-3333

6 Attorney for Plaintiff

201
ORIGINAL
FILED

FEB 23 1969
CLERK'S OFFICE, Room 903
J. J. Williams
217

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF LOS ANGELES

10
11 PEOPLE OF THE STATE OF CALIFORNIA,)

12 Plaintiff,)

13 v.)

14 SIRHAN BISHARA SIRHAN,)

15 Defendant.)
16

No. A-233421

17 The following names and files are hereby included as
18 People's Exhibit 84 - (Ambassador); People's Exhibit 85 -
19 (Background); People's Exhibit 86 - (Medical); People's Ex-
20 hibit 87 - (Miscellaneous); People's Exhibit 88 - (Range):
21

22 AMBASSADOR

23 ALVAREZ, Richard

24 AUBRY, Richard

25 BRILLENSON, Anthony

26 BRILLENSON, Dolores (Mrs.)

27 BERRY, Lauri Margaret

28 BRESLIN, Mr. James (Jimmy)

29 BRUCE, Rae

30 CARRILLO, Henry

31 CASTEN, Robin

32 CESAR, Thane

1 CHARACH, Theodore R.

2 CUCCIA, Vicky

3 DEAN, Larry

4 DIVYAK, Andrew John

5 DRAVNE, Dick

6 DREW, Richard

7 DUTTON, Fred

8 ELMORE, Ralph

9 ELLIS, Albert Victor

10 EVANS, Arthur W.

11 FARR, Gloria

12 FINLEY, Mrs. Charles (Frances)

13 FINLEY, Mrs. Jeffery (Margaret)

14 FREED, Evan Phillip

15 FRICK, Richard

16 FUNK, Robert

17 GREEN, George

18 GRIFFIN, Becker

19 GUY, Virginia

20 HAMIL, Pete

21 HARDY, James Howard (Cap)

22 HEALY, Robert Leo

23 HEATH, Thaddeus

24 HOLME, Barbara

25 HUNTLEY, Robert

26 JACKSON, Larry

27 JAYNE, David

28 KADAR, Gabor

29 KAWALEC, Stanley Steven

30 KHOURY, John A.

31 LA NYE, Joseph A.

32 LAR. 12025 RELEASE UNDER E.O. 14176

- 1 LEWIS, Dafne
- 2 LOCKE, Suzanne
- 3 LUBIC, Richard C.
- 4 MALLARD, Augustus
- 5 MANKIEWICZ, Frank
- 6 MARCUS, Michael D.
- 7 MARDER, Gary
- 8 MINNIS, Blaise Max
- 9 MURRAY, Barbara J.
- 10 MURRAY, Dave
- 11 MC BROOM, Marcus
- 12 MC DONALD, Hugh
- 13 PLIMPTON, Mrs. Freddy
- 14 FULLEN, John William
- 15 RANELLE, Jennie
- 16 RICH, Timothy Paul
- 17 RICH, Walter G.
- 18 RISING, Nelson
- 19 ROGERS, Warren
- 20 ROSEN, Richard
- 21 RUBIN, Barbara
- 22 SCHLEI, Norbert
- 23 SERRANO, Sandra
- 24 SULLIVAN, Acqueline
- 25 STALPERS, Frans
- 26 TIMANSON, Uno
- 27 TOIGER, Robert A.
- 28 TOWNSEND, Alvin
- 29 TUCK, Richard
- 30 UNKUH, Bradley
- 31 VALIGUER, Sander
- 32 WITKO, Michael

1 WEST, Andrew

2 WILLAMAN, Earl C.

3 WILSON, James S.

4 WITKER, Kristi

5 WITCOBER, Jules J.

6 YARO, Boris

7 YOSHIQ, Niwa

8 BACKGROUND

9 ALEX, Abraham

10 BUCKLES, Jess P.

11 DAVIES, Jack

12 DAY, Donald N. (Sgt.)

13 DILL, John D.

14 DISMUKES, Martin R.

15 DONNOBRANA, Frank
16 (aka RAYIST-LLA, H.R.)

17 DRAKE, Retta

18 EDELMAN, L.R.

19 FETHERSTON, Irene

20 FINEBERG, Sherwood M.D.

21 FUCHS, Kasper M.D.

22 GARCIA, Ivan

23 GARNER, John C. M.D.

24 GEARHART, John Glenn

25 GREENBERG, David S.

26 GREENE, Jeannie (Van Antwerp)

27 GUYM, Gwendalee (Gwen)

28 HAGGERTY, Michael E.

29 HEMINGWAY, Jerrold Bryan

30 HERRICK, Jeanne S.

31 HOGUE, W.E.

32 HOLMES, Milton

1 HOLT, Vernon M.

2 HULSHAM, Robert

3 JACOB, Leslie

4 KOLB, Paul

5 MC KAY, Kendrick

6 GIGER, Edwin R.

7 OSTERHAFF, Peggy

8 FRASER, Marion

9 PETERS, Henry F.

10 SMITH, Bob

11 SYLVAN, Anna

12 TAYLOR, Genevieve

13 VAN ANTWERP, Edward

14 WELSH, Terry Mickey

15 MEDICAL

16 ALTHILLISCH, Burt C.

17 ANDLER, Maxwell M. M.D.

18 BIERMANN, Max Almo

19 DEAN, Roland M.D.

20 HOLT, Albert C. M.D.

21 IRONSIDE, Paul M.D.

22 KRAMER, Patricia

23 LEVINGSTON, Robert W.

24 LEVIS, Robert E. M.D.

25 NELSON, Milton M.D.

26 MC RAY, Herbert

27 KIRBY, Maurice W. M.D.

28 KING, Miss Joyce

29 KOFFER, James L. M.D.

30 KUS, Donald Clark

31 KUTSERS, John D. M.D.

1 SKINNER, Earle C. M.D.

2 TASHMA, Albert M.D.

3 WALKER, Richard Blaire

4 YANSHIN, Leonard J. M.D.

5 MISCELLANEOUS

6 CHRISTIAN, John G.

7 CROWE, Walter S. Jr.

8 DUARTE, Jose A.

9 FARBY, John

10 GENDROZ, Robert

11 GOLDEN GARTER (Alhambra)

12 KHAN, Khalil r

13 ROBBIE'S RESTAURANT (Pomona)

14 CHEN, Jerry

15 RANGE

16 ALTENBAUGH, Charlie

17 ATALIC, William

18 CARDONA, Jesse

19 EDWARDS, Corliss

20 EDWARDS, Robert E.

21 FARRELL, Thomas A.

22 FOSS, Brent C.

23 GOODELL, Maynard

24 GRIMALVA, Richard

25 GRIMALVA, Roberta

26 HAGER, Lloyd

27 HANSEN, Leland B.

28 HARADEN, Parker

29 HIGGS, Harry

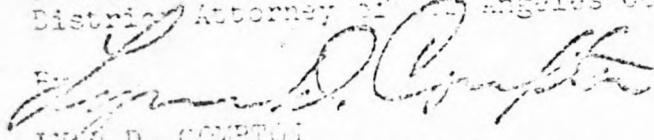
30 HOLBORN, Mike Ray

1 FENDALL, Charles
2 LEE, Harry
3 LEES, Gilbert
4 MILLNER, Charles M. Jr.
5 MITCH, George S.
6 MITCH, Mara
7 MC CHESNEY, Grove
8 PACK, Dean
9 RENTZ, M.R.
10 RIPP, James F.
11 SEM, Kenneth Richard
12 SMOOTZ, Les
13 STEWARD, Richard
14 STIPP, Marion Henry
15 TESCHER, Joseph
16 THORN, Margie
17 THORNBROUGH, James J.
18 TRAWER, Ben
19 TROUP, Orie
20 WEATER, Russell Doyle
21 WHITE, Robert

2 DATED this 28th day of February, 1969.

3 Respectfully submitted,

4 EVELLE J. YOUNGER
5 District Attorney of Los Angeles County

6 
7 IVAN D. COMPTON
8 Chief Deputy District Attorney
9 Attorney for Plaintiff