AUG 11 1989
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

IN RE: AMENDMENTS TO LOCAL CRIMINAL RULES ("CrRs")	GENERAL ORDER

The Local Criminal Rules ("CrRs") of this Court are hereby amended as follows:

Rule CrR 48 is added as follows:

CRIMINAL DISCOVERY

In order to expedite the transfer of discoverable material contemplated by the Federal Rules of Criminal procedure between opposing parties in criminal cases and to insure that pretrial discovery motions to the Court are filed only when the discovery procedures outlined herein have failed to result in the exchange of all legitimately discoverable material, the Court adopts the following General Order. It is the intent of the court to encourage complete and open discovery consistent with applicable statutes, case law and rules of the court at the earliest practicable time. Nothing in this order should be construed as a limitation on the court's authority to order additional discovery.

(a) Pretrial Conference

At every arraignment at which the defendant enters a plea of not guilty, or other time set by the Court, the attorney for the defendant shall notify the Court and the attorney for the United States, on the record, or thereafter in writing, whether discovery by the defendant is requested. If so requested, within fourteen days after said request, the attorney for the defendant and the attorney for the Government shall confer in order to comply with Rule 16, Fed. R. Crim. P., and make available to the opposing party the items in their respective possession or under their custody or control or which by due diligence may become known to them. This conference shall be in person. If, however, it is impractical to meet in person, the conference may be conducted via telephone.

(1) Discovery from the Government. At the pretrial conference the attorney for the Government shall comply with the Government's obligations under Rule 16 and:

a. Permit defendant's attorney to inspect and copy or photograph any relevant written or recorded statements or confessions made by the defendant, or copies thereof, within the possession, custody, or control of the Government;

b. Provide the substance of any oral statement made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a Government agent which the Government intends to offer in evidence at the trial;

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c. Permit defendant's attorney to inspect and copy or photograph the defendant's Federal Bureau of Investigation Identification Sheet, and any other state, county or local criminal record information concerning the defendant;

d. Permit defendant's attorney to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies of portions thereof, which are within the possession, custody, or control of the Government, and which are material to the preparation of the defendant's defense or are intended for use by the Government as evidence in chief at the trial, or were obtained from or belong to the defendant;

e. Permit defendant's attorney to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are material to the preparation of the defense or are intended for use by the Government as evidence in chief at trial;

f. Permit defendant's attorney to inspect and copy or photograph any relevant recorded testimony of the defendant before the Grand Jury which relates to the offense charged;

g. Permit defendant's attorney to inspect and copy or photograph any photographs used in any photograph lineup, show up, photospread, or any other identification proceedings or, if no such photographs can be produced, the Government shall notify the

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defendant's attorney whether any such identification proceeding has taken place and the results thereof;

h. Permit defendant's attorney to inspect and copy or photograph any search warrants and supporting affidavits which resulted in the seizure of evidence which is intended for use by the Government as evidence in chief at trial or which was obtained from, or belongs to, the defendant;

i. Inform the defendant's attorney whether any physical evidence intended to be offered in the Government's case-in-chief, the admissibility of which the defendant may have standing to challenge, was seized by the Government pursuant to any exception to the warrant requirement;

j. Advise whether the defendant was a subject of any electronic eavesdrop, wire tap, or any other interception of wire or oral communications as defined by Title 18, United States Code, Section 2510, et seq., during the course of the investigation of the case; and

k. Advise the attorney for the defendant, and provide, if requested, evidence favorable to the defendant and material to the defendant's guilt or punishment to which he is entitled pursuant to Brady v. Maryland and United States v. Agurs. The attorney for the Government is not required, however, to produce any statements of witnesses which fall within the purview of Section 3500 of Title 18, United States Code on Rule 26.2, Fed. R. Crim. P., until such time as required under those provisions.

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2. Discovery From Defendant. At the pretrial conference, the defendant's attorney shall:

a. Permit the attorney for the Government to inspect and copy or photograph all books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial;

b. Permit the attorney for the Government to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to that witness' testimony;

c. Inform the attorney for the Government, in writing, if requested, whether the nature of the defense is alibi. If a defendant intends to rely on the defense of alibi, and the attorney for the Government has made the demand outlined in Rule 12.1(a), Fed. R. Crim. P., at least 10 days before the pretrial conference, the attorney for the defendant shall disclose the substance of any alibi intended to be presented by the defendant and state the specific place or places at which the defendant claims to have been at the time of the alleged offense

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and the names and addresses of the witnesses upon whom the defendant intends to rely to establish such alibi as required by Rule 12.1; within ten days thereafter, but in no event less than ten days before trial, unless the Court otherwise directs, the attorney for the Government shall serve upon the defendant's attorney a written notice stating the names and addresses of the witnesses upon whom the Government intends to rely to establish the defendant's presence at the scene of the alleged offense and any other witnesses to be relied on to rebut testimony of any of the defendant's alibi witnesses.

d. Inform the attorney for the Government whether the nature of the defense is insanity. If a defendant intends to rely upon the defense of insanity at the time of the alleged crime or intends to introduce expert testimony relating to a mental disease, defect, or other condition bearing upon the issue of whether he had the mental state required for the offense charged, he shall give written notice thereof to the Government and file a copy of such notice with the Clerk;

B. Entrapment Defenses and the Discovery of Other Crimes, Wrongs, or Acts Admissible Pursuant to Rule 404(b), Fed. R. Evid. If, during the pretrial conference or thereafter, the attorney for the defendant advises the attorney for the Government that the defense is one of entrapment and provides a synopsis of the evidence of that defense, the attorney for the Government shall, within five days or two weeks prior to trial, whichever is later, disclose a synopsis of any other crimes, wrongs, or acts about

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which the Government has information and which is relevant to said defense and intended for use by the Government in its case-in-chief or in rebuttal.

C. Items Not Subject to Disclosure. This order does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant or the defendant's attorney or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by Government or defense witnesses, or by prospective Government or defense witnesses, to the defendant, the defendant's agents or attorneys.

D. Continuing Duty to Disclose. If, prior to or during trial, any party discovers additional evidence previously requested or ordered which is subject to discovery or inspection under this order, such party shall promptly notify that other party's attorney of the existence of additional evidence or material.

E. Declination of Disclosure. If, in the judgment of the attorney for the Government or of the defendant's attorney, it would not be in the interest of justice to make any one or more of the disclosures set forth in the subsections of this rule, disclosure may be declined. A declination of any requested disclosure shall be in writing, directed to opposing counsel. The declination shall be served on opposing counsel and a copy filed with the Court at least five days before the pretrial motions deadline.

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F. Statements of Witnesses. Statements of Witnesses, including material covered by Rule 26.2, Fed. R. Crim. P., Title 18, United States Code, Section 3500, and Rule 6 of the Federal Rules of Criminal Procedure, are to be exchanged:

1. During the time of trial as provided by Rule 26.2, Fed. R. Crim. P., and 18 U.S.C. §3500; or

2. At any time if the parties agree; and

3. Production of statements of witnesses at a hearing on a motion to suppress evidence will be governed by Rule 12(i), Fed. R. Crim. P.

G. Exchange of Exhibit Lists. No later than seven days before trial, the parties shall exchange a list of exhibits which they intend to introduce during the presentation of their respective cases-in-chief.

H. Further Discovery or Inspection. If discovery or inspection beyond that provided for above is sought by either counsel, the attorney for the Government and the defendant's attorney shall confer with a view toward satisfying these requests in a cooperative atmosphere without recourse to the Court. The request for further discovery may be oral or written and the response shall be in a like manner. Only in the event that either party's request for any discovery or inspection cannot be satisfied without recourse to the Court may either party move for additional discovery or inspection.

Any motion for further discovery or inspection shall be filed in compliance with the Local Rules in effect at the time.

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The cutoff date for filing any pretrial motions shall be 21 days after the date of arraignment unless otherwise ordered by the court.

I. Certification of Compliance with this Order. All motions for discovery or inspection shall contain a certification that counsel have engaged in a pretrial conference and discussed the subject matter of each motion and have been unable to reach agreement of the resolution of the issues. The certification for the motion shall set forth: (1) The statement that the prescribed conference was held; (2) the date of the conference; (3) the names of the parties who attended the conference; and (4) the matters which are in dispute and which require the determination of the Court.

The filing of any such motion for further discovery or inspection which does not include the required certification may result in summary denial of the motion or other sanctions in the discretion of the Court.

J. Modification of Time Periods. All time periods set forth in this order may be modified by written agreement by the defendant's attorney and the attorney for the Government or by order of the Court.

K. Other Pretrial Motions. Except for discovery motions covered by this order, all other pretrial motions shall be filed in accordance with the Federal Rules of Criminal Procedure and the Local Rules for the Western District of Washington which are in effect at the time the pretrial motions are filed.

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This amendment shall be effective immediately upon the filing of this Order.

Dated this 11th day of August, 1989.

BARBARA J. ROTHSTEIN
Chief United States District Judge

JACK E. TANNER
United States District Judge

JOHN C. COUGHENOUR
United States District Judge

CAROLYN R. DIMMICK
United States District Judge

ROBERT J. BRYAN
United States District Judge

WILLIAM L. DWYER
United States District Judge

THOMAS S. ZILLY
United States District Judge

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