IN THE UNITED STATE DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, -v.- JUAN MANUEL CONTRERAS SEPULVEDA, et al., Defendants.	No. 78-367

MOTION OF DEFENDANTS GUILLERMO NOVO SAMPOL, ALVIN ROSS DIAZ AND IGNACIO NOVO SAMPOL FOR DISCOVERY AND INSPECTION

Defendants Guillermo Novo Sampol, Alvin Ross Diaz and Ignacio Novo Sampol respectfully move this Court pursuant to Rule 16, Federal Rules of Criminal Procedure, for an order directing the United States Attorney to permit defendants to discover, inspect, copy, photograph and/or subject to scientific analysis the items hereinafter designated which are now, or may hereafter come into the possession, custody or control of the United States, including items the existence of which is now known to the United States Attorney or now known to any agent, agency or department of the United States or Committee of Congress. Said request further embraces all items which by the exercise of due diligence may become known to the United States Attorney or to any agent, agency or department of the United States, or Committee of Congress.

1. All written or recorded statements, or oral admissions whether or not subsequently reduced to writing or summarized in any reports made by defendants now within the possession, custody or control of the United States Attorney or any other governmental agency or Committee of Congress, and/or the existence of which is known, or by the exercise of due diligence

may become known, to the United States Attorney or to such agency or committee. This request includes statements made to persons other than government investigators at any time and the substance of any known oral statement or admission made by defendants not reduced to writing. Said request also includes all such recorded oral statements, or transcripts or summaries thereof, of any statement made by the defendant to Michael Townley involving the subject matter of the instant indictment.

It also includes copies of each defendant's F.B.I. and prosecutor interviews and grand jury testimony.(*)

2. Names and addresses of all expert witnesses consulted by or on behalf of the government in connection with this case and all reports or statements of experts, made in connection with this case, including results or physical or mental examinations and of scientific tests, experiments or comparisons including, but not limited to:

(a) All financial, statistical or accounting compulations and/or analyses.

(b) All voice print comparisons, analyses or tests.

(c) All analyses, tests and results of any tests administered to any defendant , his property, or any physical evidence or object.

(d) Polygraph examinations of prospective witnesses, codefendants, and others whose testimony may be relevant to this case.

(e) Tests conducted to determine the authenticity of documentary evidence. (VERY IMPORTANT.)

3. Minutes of the testimony of all witnesses who appeared before the grand jury. (VERY IMPORTANT)(*)

4. Statements of alleged co-conspirators and all other persons named in the indictment.

(*) THROUGH THE GRAND-JURY TESTIMONY WE MAY BE ABLE TO FIND OUT WHO ARE GOING TO BE THE 5 CUBANS WITNESSES

5. Witness statements to Senate and House Committees.

6. All other statements of witnesses producible at trial under 18 U.S.C. §3500, including but not limited to all reports and/or memoranda which summarize such statements and were prepared on behalf of the United States in connection with the investigation of this case by any government agent.

7. Names and addresses of all potential government witnesses.

8. The names and addresses as well as all statements whether written or oral, or summaries of statements, of any persons who have knowledge pertaining to this case or who have been interviewed by any agent of the government in connection with this case and who are not otherwise identified as potential government witnesses.

9. Discrepancies in statements of witnesses.

10. Names and addresses of any informants who provided the government with any information regarding any defendant or defendants, or the alleged criminal activities charged in the indictment; all written or recorded statements, or oral confessions or admissions subsequently reduced to writing or summarized in any reports, made by an informant, which are now or which may come within the possession, custody or control of the government, or which are known by the government to be in existence or which by the exercise of due diligence may become known by the government to be in existence.

11. All recordings, tapes, transcripts and records pertaining to or resulting from any electronic surveillance conducted by any governmental agency or department in which any conversation participated in by defendant was overheard, or from any such surveillance conducted upon premises in which any defendant had an interest.

12. Publicity releases and material relating to the subject matter of the instant indictment and the defendants which was

released by any agency, department or branch of the government directly or indirectly.

13. All books, papers, checks, documents, letters, memoranda and tangible objects, including photographs and tapes (*) subpoeanaed by the grand jury whether or not said items are referred to in the indictment and whether or not the government intends to offer said items as evidence in this case, as well as a list of the names and titles of each government employee or agent who examined or inspected or is/was otherwise privy to the content of said books, papers, documents, etc.

14. All memoranda, documents, written statements, oral statements recorded or reduced to writing or summarized in writing by any person, concerning (i) the relationship of Michael Townley, the defendants herein, or any other person in any way associated with any of the events forming the basis for the charges herein, to the Central Intelligence Agency or any other governmental agent or agency; (ii) the relationship of any of the persons described in 14(i) supra, to DINA; (iii) the relationship of DINA to the Central Intelligence Agency or any other governmental agent or agency; (iv) advance knowledge of and/or participation by the Central Intelligence Agency, any other governmental agent or agency or DINA in the Letelier assassination or any of the events forming the basis for the charges herein; (v) efforts undertaken by the Central Intelligence Agency, any other governmental agent or agency or DINA to conceal its role in the Letelier assassination or any of the events forming the basis for the charges herein, including the destruction of any evidence by any such agent or agency.

Additionally, defendants seek the production of all investigative files concerning the information described above, whether in the possession of the United States Attorney, the

(*) ALSO THE "TAPES" THAT WERE TAKEN FROM MY APT. THOSE TAPES WERE NOT SUB-POENAED BY ANY GRAND-JURY.

F.B.I., the C.I.A., any committee of Congress or any other agency or department of the government.

15. All memoranda, documents, written statements, oral statements recorded or reduced to writing or summarized in writing by any person, indicating that DINA or any of the defendants in this case were not involved in the Letelier assassination.

16. Any and all documents and other evidence which the United States Attorney has prepared and/or submitted in connection with any extradition and/or removal proceeding relating to this case, as well as any and all transcripts of those proceedings.

17. Any affidavits, warrants, notes, reports, documents, photographs, or sketches relating to any surveillance by any state or federal governmental agent of the defendants, any other persons in any way involved in the events underlying the charges herein, or any organization to which they belong.

18. F.B.I. and local arrest and conviction records of all persons whom the government plans to call as witnesses at trial.

19. Names of investigative agents.

20. The nature and substance of [redacted]s, conversations, dispositions, [redacted]s and [redacted] arrangements between the government and its informers and/or witnesses for information concerning any defendant or defendants, or the alleged criminal activities charged in the indictment, including but not limited to any specific agreement by the government either declining to prosecute said informants and/or witnesses with respect to their participation in any acts encompassed in the indictment, [redacted] to dispose of any such prosecution [redacted].

21. Defendants' prior criminal records.

22. Any books, papers, documents, photographs, tangible objects, buildings or places or copies or portions thereof, which are intended for use by the government as evidence at trial, or which were obtained from or belong to the defendants co-defendants, or co-conspirators.

23. All charts, summaries or calculations which are material to the defense or which the government intends to use as evidence at trial.

24. The criminal records, and descriptions of all illegal conduct by any potential government witness.

25. A description, including all pertinent documents, of any indication that any prospective government witness is suffering or has suffered from any physical or mental disability or emotional disturbance, drug addiction or alcohol addiction.

26. The names and addresses of all persons said to have been present at, or to have personal knowledge of, any utterances, statements or actions of any defendant or any government witness upon which the prosecution intends to rely at trial to establish the offenses charged in the indictment.

27. Any statements or documents, including but not limited to grand jury testimony, and federal, state and local tax returns made or executed by any potential government witness which the government knows, or should have reason to know to be false.

28. Identification of all judicial proceedings involving any person who is a potential government witness.

29. All films and/or video tapes taken or employed in any fashion in connection with this case, including photographs used for identifications purposes, and the facts thereto.

30. Telephone records and hotel or motel records of the defendants.

31. Photographs of any person alleged to have been involved in the events underlying the charges in this case.

32. Copies of all writs ad presequendum or ad testificandum issued to procure the presence of the defendants in the District of Columbia.

33. A description of any "prior act" evidence which the government intends to introduce in this case, and full discovery relating thereto.

34. Any and all documents and evidence, and a description of any information received orally from any foreign government, foreign police force or foreign agency which is in any way material to this case.

35. All investigative reports of any governmental agency which is in any way material to this case.

36. Reports by any federal or state agency, including but not limited to the F.B.I., C.I.A., N.S.A., Military Intelligence and the Justice Department on Orlando Letelier and the Institute of Policy Study.

37. All documents and physical evidence seized by state or federal officers at the scene of the bomb explosion, or any subsequent search of Letelier's home or office.

38. Any surveillance, electronic or otherwise, of Letelier and/or the Institute of Policy Study.

39. Any information in the possession of the government regarding Letelier's association, employment or relationship to the United States government or any foreign government, either friendly or hostile to the United States.

40. Any information in the possession of the government concerning any threats made against Letelier or indicating that his life was in danger.

41. Information in the possession of the government regarding travel by Letelier.

42. A description of the circumstances under which Letelier was permitted to enter and work in the United States and what individuals or agencies were instrumental in arranging for him to live in this Country.

43. Any and all information concerning surveillance of the defendants both prior and subsequent to Letelier's death

44. The names and addresses of all individuals interviewed by the government agents or attorneys in Chile or any other foreign country in relation to this investigation.

45. Any and all information concerning how Michael Townley was brought to this Country, including information concerning the efforts of the government to have him expelled from Chile.

46. Any and all information concerning interrogatories of Townley and any other person by any foreign tribunal or agency in relation to the events underlying the charges in this case.

47. A description of all criminal acts performed by Townley, including any other killings, and at whose behest those criminal acts were performed, if known.

48. Any and all information relating to Townley's employment by any governmental agency and any payments made for said employment

49. A list of all dates and times when Townley met with any representative of the C.I.A. or other governmental agency.

50. Any lists, reports or other information in the possession of the government concerning Cuban exiles, or Cuban "revolutionary" exiles, living in this Country.

51. All documents, information, evidence or material of any kind, now known to the government, or which may become known, or which through diligence may be learned, which is or

may be material to the preparation of the defense, exculpatory in nature or favorable to any defendant or defendants or which may lead to exculpatory material. As emphasized in the accompanying memorandum, defendants vigorously object to having to rely on the prosecutor's discretion for the identification and production of such material, and defendants accordingly submit that full and complete disclosure of the items requested herein will best serve the interest of justice.

Defendants submitted a request for voluntary discovery to the United States Attorney on June 6, 1978. A copy of that letter is attached hereto as exhibit A. The government in response, agreed to provide certain of the requested materials (see exhibit B). However, to date, the government has provided no discovery whatsoever.

WHEREFORE, the defendants respectfully request that this motion be granted.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR DISCOVERY AND INSPECTION

INTRODUCTION

One of the principal causes of injustice in our criminal justice system is the simple fact that the prosecutor and the defendant do not stand on an equal footing in terms of resources for trial preparation. The prosecutor has the advantages of extensive preparation before the indictment is filed, the assistance of entire departments of experienced investigators, experts and support personnel; and a budget which imposes few restraints on his trial preparations, particularly in a case with as much notoriety as the present proceeding. Cf. United States v. Ash, 413 U.S. 300, 309 (1973). Moreover, prosecutors with a bent for conviction rather than justice (cf., Berger v. United States, 295 U.S. 78, 88 (1935)), frequently treat their anticipated evidence at trial, as well as other relevant information in their possession, with unwarranted secrecy, preventing the defendant from learning what will be used against him until it is too late for him to prepare a defense.

Pre-trial discovery is designed to minimize, to the greatest possible extent, these inequities in our present system. As the Advisory Committee's note concerning amended Rule 16 of

the Federal Rules of Criminal Procedure states:

> The extent to which pre-trial discovery should be permitted in criminal cases is a complex and controversial issue. The problems have been explored in detail in recent legal literature, most of which has been in favor of increasing the range of permissible discovery . . . The Rule has been revised to expand the scope of pre-trial discovery. (Emphasis added)

In Dennis v. United States, 384 U.S. 855, 873 (1966), Mr. Justice Fortas expressed similar sentiments:

> In our adversary system for determining guilt or innocence, it is rarely justifiable for the prosecution to have exclusive access to a storehouse of relevant facts. Exceptions to this are justifiable only by the clearest and most compelling consideration.

See also, American Bar Associations' Standards Relating to Discovery and Procedure Before Trial (Approved Draft, 1970); Rezneck, The New Federal Rules of Criminal Procedure 54 Geo. L.J. 1276 (1966); Goldstein, The State and the Accused: Balance of Advantage in Criminal Procedure, 69 Yale L.J. 1149, 1192-98 (1960); Pye, The Defendant's Case for More Liberal Discovery, 33 F.R.D. 82 (1963); Steinberg, Remarks at Panel Discussion, 44 F.R.D. 481 (1968).

Moreover, in Giles v. Maryland, 386 U.S. 66 (1965), Justice White (concurring) said that courts enforcing the mandate of Brady v. Maryland, 373 U.S. 83 (1963) (requiring production by the government of material in its' possession that is exculpatory) should seek to equate "what the state knows at trial /with/ knowledge held by the defense." Giles v. Maryland, 386 U.S. 66 at 96 (concurring opinion).

The case at bar is a dramatic demonstration of the resources at the disposal of the government to generate long and detailed testimony, to invoke unprecedented court remedies and procedures to obtain evidence, to launch an investigation of that evidence and to prosecute using a sizeable staff and budget. Moreover, the advantage it gained through

its access to the grand jury cannot be minimized:

> The Government, it has been said, also has "the most superb engine for discovery ever invented by the legal mind -- namely, the grand jury. Before trial the prosecutor could call every witness with any knowledge of the facts in front of a grand jury and interrogate him with virtually no holds barred. Neither the accused nor his lawyer had any right to be present, to propose questions to object to procedures. The defendant could not even find out the names of the witnesses who testified against him, much less the substance of their testimony." Williams, One Man's Freedom, p. 168.

The prolonged and extensive governmental investigation of this case (see e.g., "The Letelier Investigation," New York Times Sunday Magazine, July 16,1978) has placed in the hands of the government such a massive amount of detail and investigative material that the comparison suggested by Justice White in Giles between the prosecution's knowledge vis a vis that of the defense reveals a distinctly inequitable disproportion. Thus, in line with the precedents cited herein, discovery to defendants should be granted with liberality. In this regard, no Court may indulge in the impermissible presumption that the defendants are in fact guilty of everything charged and therefore know in detail exactly what they did. As Judge (later Mr. Justice) Whittaker said in Smith v. United States, 16 F.R.D. 372 (W.D.Mo. 1954) in response to the argument that discovery requested by a defendant should be denied because the defendant had the information:

> This argument could be valid only if the defendant be presumed to be guilty . . . being presumed to be innocent, it must be assumed "that he is ignorant of the facts on which th pleader founds his charges." Fontana v. United States, 8 Cir. 262 F. 283, 286 . . .
>
> Id., 16 F.R.D. at 374-75.

More recently, speaking in respect to criminal discovery, the Supreme Court has cautioned that the adversary system of trial discovery is hardly an end in itself. The Court held that pre-trial discovery is not a poker game in which players enjoy an absolute right always to conceal their cards until

played. Williams v. Florida, 399 U.S. 78, 82 (1970). And in United States v. Baum, 482 F.2d 1325 (2d Cir. 1973), the Court concluded that ordinarily it is disclosure rather than suppression which promotes the proper administration of criminal justice.

As demonstrated in the discussion which follows, defendants submit that this case presents compelling circumstances requiring extensive pretrial discovery at the earliest possible moment.

A. EVIDENCE FAVORABLE TO THE ACCUSED

Defendants are clearly entitled to production of all evidence within the government's possession, custody or control which is favorable to the accused. Brady v. Maryland, supra. Given the nature of this case, however, two corollaries defining the scope of this right must be discussed.

FIRST, defendants are entitled to all such material in the possession of "the government," and not merely that which has or will conveniently come into, the possession, custody or control of the United States Attorney. See e.g., United States v. Deutsch, 475 F.2d 55 (5th Cir. 1973). In Deutsch, the defendants were jointly indicted for, among other things, offering to pay a postal employee the sum of $50.00 for each credit card he could retrieve from the mail and deliver to the defendants. Citing Brady the defendants moved for the production of the personnel file of the postal employee to whom the bribe was offered for "insight into the character of said prospective witness." 475 F.2d 55, 57. The United States Attorney responded, "This office does not have the personnel file of D.F. Morrison." The trial court ruled that the prosecution could not be compelled to disclose something which it did not have and further ruled that the Postal Service did not appear to be an arm of the prosecution as contemplated by Brady. The Fifth Circuit rejected this argument in its entirety, stating:

> We find no reference in Brady to an arm of the prosecution. It was a post office employee who had been sought to be bribed. The government cannot compartmentalize the Department of Justice and permit it to bring a charge affecting a government employee in the post office and use him as its principal witness, but deny having access to the post office files. In fact, it did not even deny access, but only present possession without an attempt to remedy the deficiency. Cf., Barber v. Page, 1968, 390 U.S. 719 . . . . We do not suggest by citing Barber that the government was obliged to obtain evidence from third parties, but there is no suggestion in Brady that different "arms" of government, particularly the one so closely connected as this one for the purpose of the case, are severable entitles. And, of course, the Brady rule requires the government to supply evidence useful to the defendant simply for impeachment purposes. Giglio v. United States, 1972, 405 U.S. 150 . . . . 475 F.2d 55, 57.

The District of Columbia Circuit Court of Appeals has similarly recognized that the Brady requirement may not be circumvented by the prosecutor's failure to obtain exculpatory material from other governmental agencies, officials or the legislature:

> The duty of disclosure affects not only the prosecutor, but the Government as a whole, including its investigative agencies. Rule 16 and the Jencks Act refer, respectively, to evidence gathered by "the government" and by "the United States," not simply that held by the prosecution.
>
> United States v. Bryant, 439 F.2d 642, 650 (D.C.Cir. 1971).

See also, Harvey Aluminum Inc. v. N.L.R.B., 335 F.2d 749, 754 (9th Cir. 1964).

Thus, under Deutsch and Bryant, the United States Attorney is obliged to obtain from every agent or agency of the government and committee of Congress which has investigated the facts which are the subject matter of the instant indictment, whatever Brady material is in its possession.

SECOND, the United States Attorney is not the judge of what constitutes Brady material. As the Supreme Court held in Dennis:

> The determination of what can be useful to the defense can properly and effectively be made only by an advocate. Dennis v. United States, supra, at 875 (1966).

Cf. Moore v. Illinois, 408 U.S. 786 (1972). Similarly, this Circuit has stated with respect to Brady:

> When there is substantial room for doubt, the prosecution is not to decide for the Court what is admissible or for the defense what is useful . . .
>
> . . . there is no sure way to know how the jury would have viewed any particular piece of evidence. Nor is it possible to know whether revelation of the evidence would have changed the configuration of the trial - where the defendant counsel's preparation would have been different had he known about the evidence, whether new defenses would have been added, whether the emphasis of the old defenses would have shifted. Because the /Brady/ standard requires this kind of speculation we cannot apply it harshly or dogmatically. Levin v. Clark, 408 F.2d 1209, 1212 (D.C.Cir. 1967).

The prosecution is in no position to make strategic decisions affecting the defense of an accused. Rather, the defendants must be given every benefit in determining what is or is not material and favorable to their defense. Simply stated, if the evidence may have any beneficial effect, its production is required under Brady. Consequently, the Courts have required the production of any evidence which is helpful to the defense so long as it is even "arguably favorable." See United States v. Quinn, 364 F.Supp. 432 (N.D.Ga. 1973); United States v. Eley, 335 F.Supp. 353 (N.D.Ga. 1972); United States v. Leichtfuss, 331 F.Supp. 723 (N.D.Ill. 1971).

Moreover, under Brady, all forms of evidence which are favorable to an accused must be produced. For example, the rule requires the prosecution to disclose well in advance of trial the names and addresses of persons known to the government who have information about the accused or about the facts of his case which may be favorable to the accused. United States v. Houston, 339 F.Supp. 762 (N.D.Ga. 1972). It likewise requires

disclosure of any witness statements the government has which might be helpful to the accused's case. Brady also requires disclosure of any evidence which might be used to impeach the government's prospective witnesses (Giglio v. United States, 405 U.S. 150 (1972)); including, for example, their criminal records (United States v. Seijo, 514 F.2d 1357 (2d Cir. 1975) and any prior statements (so that counsel can determine whether they contain impeachment materials)(cf., United States v. Spelling, 506 F.2d 1323, 1333 (2d Cir. 1974)).

In determining what material must be disclosed, it is important to remember that Brady disclosure is not limited to materials or information demonstrated in advance to be "competent evidence." See e.g., United States v. Gleason, 265 F.Supp. 880 (S.D.N.Y. 1967). Furthermore, the Brady requirement applies not only to documents and other tangible evidence, but also to results of scientific tests. Barbee v. Warden, 331 F.2d 842 (4th Cir. 1964). Thus, any polygraph test administered in connection with this case or any scientific tests performed on any tangible item of evidence to determine its authenticity or whether there has been alteration fall within the Brady rule. Finally, the prosecutor must disclose those materials which are discoverable under both Brady and the Jencks Act sufficiently in advance of trial to permit appellant to incorporate them into his defense, as Brady requires, rather than in the midst of trial, as provided by the Jencks Act. United States v. Gleason, supra. Thus, the statements and grand jury testimony of government witnesses are discoverable before trial.

B. STATEMENTS OF DEFENDANTS

Discovery under Rule 16(a)(1)(A) is a matter of right. United States v. Bryant, supra, at 649 (D.C.Cir. 1971). A defendant's statements should not be withheld. Since "it is hardly an overstatement that a lawyer's advice to his client at every stage of a criminal case is, and quite properly should be, dependent upon the contents of the statement given by his client

to the government," United States v. Fancher, 195 F.Supp. 448, 456, n.17 (D.C.Conn. 1961), discovery of such statements is of paramount importance.

All "written or recorded statements or confessions made by the defendant" . . . "within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government" are discoverable by defendant pursuant to Rule 16(a). A defendant's testimony before the grand jury, his conferences with the Assistant United States Attorneys, and his interrogations by F.B.I. agents should all be produced. Certainly, transcripts, summaries or recordings of all of such items are within the possession or control of the "government." Therefore, each defendant is entitled to inspect or copy these items as a matter of right under Rule 16(a).

In addition, all oral statements allegedly made by any defendant, including those which have been summarized by another witness or which have been played on video tape or by recordings before the grand jury, as well as all statements attributed to any defendant by government witnesses in the grand jury should also be disclosed to defendants. United States v. Lubomski, 277 F.Supp. 713 (N.D.Ill. 1967).

The meaning of "statements" is clearly defined in United States v. Federman, 41 F.R.D. 339, 341 (S.D.N.Y. 1967), where the Court held:

> We are concerned here solely with anything in writing or recorded by, or with the knowledge of, defendant, wherein he directly, impliedly or even remotely recited or accounted or even mentioned anything whatsoever having a bearing - no matter how slight - upon the crime charged, regardless of whether its nature may be construed as against his interest or exculpatory or capable of differing interpretations or even saturated with ambiguity. In short, the criterion is the equivalent in writing of whatever the defendant had to say - no matter how he said it - with respect to the crime charged.

A "statement" includes both pre- and post-arrest statements. See United States v. Leighton, 265 F.Supp. 27, 34 (S.D.N.Y. 1967). It further embraces statements made by the defendant to any third party, not merely investigatory agents of the government. United States v. Lubomski, supra. See also, Davis v. United States, 413 F.2d 1226, 1230 (5th Cir. 1969); United States v. Baker, 262 F.Supp. 657, 671-72 (D.D.C. 1966), remanded on other grounds, 401 F.2d 958 (D.C.Cir. 1968); United States v. Knohl, 379 F.2d 427, 441-42 (2d Cir.), cert. denied, 389 U.S. 973 (1967).

The names of all persons to whom incriminating statements were made by a defendant should be produced. Since the names are discoverable by a motion for particulars as to which the scope is narrow, they should be discoverable under Rule 16. See Will v. United States, 389 U.S. 90 at 92 (1967). The Jencks Act limitations of substantially verbatim and contemporaneous statements do not apply to Rule 16. Palermo v. United States, 360 U.S. 343 (1959). Such discovery is also necessary in order for counsel to determine possible prejudice arising from a joint trial, United States v. Bruton, 391 U.S. 123 (1968).

C. EXAMINATIONS AND SCIENTIFIC TESTS RESULTS.

Discovery of this material is expressly authorized by Rule 16(a)(1)(D). Moreover, disclosure of such material is particularly appropriate for the following reasons:

a. Expert testimony cannot be effectively subjected to cross-examination or rebuttal without ample opportunity pre-trial to prepare appropriate materials for that purpose.

b. Expert testimony generally has, in the eyes of a jury, unusually high probative value, coming as it does from a supposedly disinterested party and concerning matters generally beyond the realm of ordinary lay information. If defendants are to be provided an opportunity to present a meaningful defense at trial, their expert witnesses must be

permitted to inspect the government's reports and perform their own independent analysis of the data and conclusions discussed therein in preparation for trial. See, United States v. Dioguardi, 428 F.2d 1033, 1037-39 (2d Cir. 1970), cert. den., 400 U.S. 825.

D. RULE 16(a)(1)(C) DISCOVERY.

Statements of codefendants may be obtained in the discretion of the trial judge under Rule 16 (a)(1)(C), (See United States v. Randolph, 456 F.2d 132, 135-36 (3rd Cir. 1972)), as are recorded statements. United States v. Lubomski, supra; United States v. Leighton, supra at 39. Since grand jury testimony of officers and even employees of a defendant is discoverable, United States v. Hughes, 413 F.2d 1244 (5th Cir. 1969), vacated as moot, 397 U.S. 93, then grand jury testimony of all alleged co-conspirators should be produced.

Although Rule 16(a)(1)(C) requires a showing of "materiality" of books and papers sought for discovery by defendant, the scope of such discovery should be "as far reaching as presently permissible under the civil rules", United States v. Tanner. 279 F.Supp. 457, 470 (N.D.Ill. 1967).

Rule 16(a)(1)(C) requires the government to produce or make available for inspection or copying, all books, papers, documents, tangible objects, buildings or places or copies of portions thereof which are material to the preparation of the defense or intended for use by the government at trial, or which were obtained from or belong to any defendant. In determining what items should be produced under Rule 16(b), requests for the following items should be considered reasonable and material on their face:

1. GRAND JURY MINUTES OF WITNESSES

The Second Circuit said in United States v. Fisher, 455 F.2d 1101, 1105 (2d Cir. 1972), that the grand jury is not intended to be "the private tool of the prosecutor." This Circuit itself has said that witnesses belong neither to

the prosecution nor the defense and should be equally available to both. Gregory v. United States, 369 F.2d 185, 188 (D.C.Cir. 1966).

As emphasized earlier, an immense imbalance exists in this case between the knowledge of the prosecution and the knowledge of the defense. At this moment there can be no question but that the need for broad discovery of grand jury minutes is compelling. The defendants do not know who was called before the grand jury or what documents were presented to the grand jury. They are charged as members of a vague and amorphous conspiracy which has been the subject of a massive investigation. Invoking the privilege of grand jury secrecy to prevent defendants from acquiring some semblance of familiarity with the charges and witnesses and documents arrayed against them makes a mockery of the constitutional right to a fair trial.

As recently stated in anther context "a search of the Constitution and the history of its creation reveals a general disfavor of Government privileges, or at least uncontrolled privileges." In Re Grand Jury Subpoena Duces Tecum Issued to Richard M. Nixon, 360 F.Supp. 1 , (D.C.D.C. 1973), affirmed in part and reversed in part sub nom. Nixon v. Sirica, 487 F.2d 700 (1973). In that proceeding, the Court was obligated to find a path between two competing policies in determining whether presidential tape recordings or private conversations were privileged. One policy was the need to "disfavor privileges and narrow their application as far as possible." Id. at 3296. The other was the need to favor the privacy of "presidential deliberations; to indulge a presumption in favor of the President." Id.

While clearly there are many considerations and factual differences too numerous to mention between the posture of the case at bar, and the proceeding involved In Re Grand Jury

Subpoena Duces Tecum Issued to Richard M. Nixon, supra, that proceeding, in the District Court's opinion, certainly established that the immensely important policy favoring secrecy of presidential deliberations must give way when evidence is needed for the purpose of pursuing a criminal investigation. There can be little doubt but that preserving secrecy of grand jury deliberations, a practice not founded in the Cosntitution, but in the Federal Rules of Criminal Procedure, is in no respect as critical and important a privilege as that attendant to deliberations of the Chief Executive of this or any nation. The District Court so ruled, and that ruling was endorsed by the Court of Appeals in Haldeman v. Sirica , 501 F.2d 714 (D.C.. Cir. 1974).

Thus, the precedents won by the Prosecutor's Office in overcoming the secrecy of presidential deliberations lend support to the defendants' request that the Court provide them access to all grand jury minutes.

Dennis v. United States, supra, substantially qualified the requirement of "particularized need" for the production of grand jury minutes. Following Dennis, the 2nd, 10th and District of Columbia Circuits have set forth standards for making grand jury minutes freely available to the defense. Cargill v. United States, 381 F.2d 849 (10th Cir. 1967); United States v Youngblood, 379 F.2d 365 (2d Cir. 1967); Allen v. United States , 390 F.2d 476 (D.C.Cir. 1968).

In Allen, the Court of Appeals observed:

> We do not hold that the production of a witness' grand jury testimony should be compelled in every case upon a mere request . . . But we think the threshold requirement to show need should not be stretched to a requirement to show a "particularized need," -- a term of art that may serve to obstruct useful discovery.

> The government apparently argues that "articularized need" is required to be shown, even though it has not put forward any reasons for keeping secret a witness' prior testimony.
>
> Id. at 480-481 (Emphasis added).

The Court then rejected the government's argument regarding "particularized need."

It has also been held that conflicts in the testimony of a complaining witness at a preliminary examination can justify discovery of that witness' grand jury testimony before trial. Gibson v. United States, 403 F.2d 166, 169 (D.C.Cir. 1968). Here, for example, Michael Townley has evidenced numerous inconsistencies in his public statements. Finally, pretrial discovery of grand jury testimony is also required to determine whether this indictment is subject to dismissal under the rule of Gaither v. United States, 413 F.2d 1061 (1969).

2. STATEMENTS OF CO-CONSPIRATORS

Under existing law, statements made by alleged co-conspirators of any defendant constitute admissions which occurred during the course and were in furtherance of the conspiracy and are therefore admissible against defendants. United States v. Pugliese, 153 F.2d 497 (2d Cir. 1945); Krulewitch v. United States, 336 U.S. 440, 443-444 (1949). Such statements should be produced under Rule 16 (a)(1)(C) or else be excluded from evidence. The failure to disclose such materials stifles each defendant's right to confrontation and violates his rights to discovery under Rule 16.

The defendants have moved for production of all co-conspirators' statements during the course of and in furtherance of the conspiracy. Under Rule 16(a)(1)(A), the defendant has an absolute right to all written or recorded statements or confessions made by him and that under the rules of evidence a statement by a co-conspirator is admissible against the defendant. Consequently, if a co-conspirator's statement is to be

introduced into evidence against the defendant on the theory that it is the defendant's own statement, fairness dictates that under Rule 16(a)(1)(A) the defendant be allowed to discover this pre-arrest statement along with statements he, himself, uttered. Thus, under Rule 16(a)(1)(A) the government must furnish the defendant with statements of co-conspirators - whether or not named in the indictment - which the government intends to offer into evidence, regardless of whether the co-conpirator will testify as a government witness.

Rule 16 also entitles each defendant to discovery of the pre-trial statements of his codefendants. As one commentator has noted:

> If the government has chosen to proceed against two persons under the same indictment and to bring them to trial together as co-defendants, then it would seem that neither should be considered a prospective government witness as to the other, and their pre-trial statements should not be given the immunity from pre-trial discovery which is provided under the Jencks Act.
>
> Everett, Discovery in Criminal Cases - In Search of a Standard, 1964 Duke Law Review Journal, 477-507

Another commentator has point out - what is obvious in any consideration of trial tactics - why detailed knowledge of co-defendants' pre-trial statements is necessary to prepare and conduct an intelligent defense: (1) the statements are potentially important to defense counsel in preparing to meet the government's case and developing evidence on defendant's behalf; (2) the statements aid defense counsel in deciding whether to make a severance motion and in assisting the judicial determination of such a motion; (3) the statements mitigate the well-known proclivities of some criminal defendants not to give their own lawyers a truthful account of their actions. Resnik. The New Federal Rules of Criminal Procedure, 54 Geo. Law Journal, 1276, 1285 (1966).

Rule 16 (a)(1)(C) requires the production of all documents or tangible items which are material to the defense.

Consequently, the pre-trial statements of a person whose connection with the offense is so intimate that he could have been named a codefendant, rather than an unindicted conspirator, are plainly material to the preparation of the defense, and a request therefor would appear eminently reasonable. United States v. Westmoreland, 41 F.R.D. 419, 427 (S.D. Ind. 1967); ABA Standards Relating to Discovery and Procedure Before Trial, Approved Draft 1970, Section 2.1(a)(ii); Amendments to Criminal Rules, Amended Rule 16 (a)(1)(A), 42 LW 4555 (1974); United States v. McMillan, 489 F.2d 229 (7th Cir. en banc 1972).

The statements requested here include any statement by any co-conspirator (or defendant) whether to a government agent or any other person. In United States v. Lubomski, supra, the Court had occasion to consider whether the government must produce recorded conversations of the defendant with persons other than government agents, which were in the government's possession or custody. The government took the position that Rule 16(a)(1)(A) (then Rule 16(a)(1)) related only to written or recorded statements made to agents of the government, such as the Federal Bureau of Investigation or the Internal Revenue Service. The Court, relying upon United States v. Baker, supra,* ordered production of the requested statements and remarked that it had examined the advisory committee report and had found no basis for the government's contention.

3. WITNESS STATEMENTS TO OTHER GOVERNMENTAL BODIES OR AGENTS.

As previously explained, Brady and Rule 16 apply to material in possession of "the government," and not merely that held by the United States Attorney. Accordingly, this Court should order the government to produce such information and should order that all such statements, all Rule 16 materials and all Brady materials in the possession of any governmental body be produced.

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* See also United States v. Knohl, supra.

4. OTHER STATEMENTS OF WITNESSES.

Statements by government witnesses and/or reports summarizing such statements not otherwise specified above are clearly discoverable as Jencks Acts material, 18 U.S.C. §3500. See also United States v. O'Connor, 273 F.2d 358 (2d Cir. 1959); Jacobs v. United States, 279 F.2d 826 (8th Cir. 1960). Since they are material to the preparation of the defense, however, they are also discoverable pretrial under Rule 16(a)(1)(C). Thus, the government cannot insist that such matters be produced only after its witnesses have testified. Moreover, such insistence as a practical matter would cause prolonged interruption of the trial to permit examination and analysis by defendants and/or their witnesses. In the circumstances of this case there are no compelling reasons for postponing disclosure of discoverable material until the last possible moment. In the interest of achieving an orderly and efficient trial, production of all witness statements and reports in the possession of the government should be ordered immediately.

5. WITNESS LIST.

The defendants should be afforded a list of the government's potential witnesses and their addresses. United States v. Moceri, 359 F.Supp. 431 (N.D.Ohio 1973); United States v. Leightfuss, supra, (38 F.R.D. at 589. See also ABA Standards Relating to Discovery and Procedure Before Trial, §2.1(a)(i). See also United States v. Ahniad, 53 F.R.D. 186 (M.D. Pa. 1971).

The government may contend that a witness list is only required in a capital case. See 18 U.S.C.A. §3432. However, the mere fact that Congress has provided for such discovery in one area (capital offenses) does not preclude this Court from exercising its discretion to require production of a witness list.

See United States v. Moceri, supra; United States v. Richter, 507 F.2d 682 , (9th Cir. 1973). The statute providing for a witness list, first adopted in 1790, provides that a person charged with treason or some other capital offense, must be given a witness list before trial. The purpose of the Act is to assist defense counsel in preparing the defense by interviewing witnesses. Gregory v. United States, supra. This purpose is equally important in a non-capital case. 1 Wright, Federal Practice and Procedure, §254.

The right of the defense to conduct pre-trial interviews with prospective government witnesses was expressly recognized in Gregory v. United States, supra, at 188.

> Witnesses, particularly eyewitnesses, to a crime are the property of neither the prosecution nor the defense. Both sides have an equal right, and should have an equal opportunity, to interview them.

Other circuits are in accord; Callahan v. United States, 371 F.2d 658 (9th Cir. 1967); United States v. Vole, 435 F.2d 774 (7th Cir. 1970); United States v. Miller, 381 F.2d 529 (2d Cir. 1967), cert. den., 392 U.S. (1968).

In United States v. Hardy, D.D.C., Crim. No. 869-68 (unreported, November 12, 1968), Judge Robinson granted the defendant's request for names and addresses of persons with knowledge of the case, reasoning:

> Defendant is seeking discovery of items material to the preparation of his defense which he could obtain in no other way than through the discovery procedures of the Federal Rules. It is his only adequate way to reconstruct the events leading up to and surrounding the crime. To deny discovery in such a case would be to frustrate the very purpose of the more liberal concept embodied in the revised Rule 16(b) [now 16(a)(1)(C)] of the Federal Rules of Criminal Procedure. It should also be noted that disclosure of witness lists, and the subsequent opportunity for defense counsel to interview those with knowledge of the crime, is a step toward prevention of injustices which, when they exist, are rarely discovered until after trial and conviction, if at all . . .

Moreover, effective confrontation and cross-examination of government witnesses, guaranteed by the 6th Amendment (See Pointer v. Texas, 380 U.S. 400 (1965)), requires that a government witness "be identified with his community so that independent testimony may be sought and offered of his reputation for veracity in his own neighborhood . . . . That the jury may interpret his testimony in the light reflected upon it by knowledge of his environment . . . . And that facts may be brought out tending to discredit the witness by showing that his testimony in chief was untrue or biased." Alford v. United States, 282 U.S. 687, 891-92 (1931). Effective trial confrontation can be accomplished only if the identity of the witnesses is known well in advance of trial. In Smith v. Illinois, 390 U.S. 129, 131 (1968), a key prosecution witness admitted on cross-examination that the name he had given on direct was false, but the prosecutor's objections to questions designed to elicit the witness' true name and address were sustained. The Supreme Court held that this procedure violated the right of confrontation and said:

> /When/ the credibility of a witness is in issue, the very starting point in "exposing falsehood and bringing out the truth through cross-examination" must necessarily be to ask the witness who he is and where he lives. The witness' name and address open countless avenues of in-court examination and out-of-court investigation. To forbid the most rudimentary inquiry at the threshold is effectively to emasculate the right of cross-examination itself." (Emphasis added).

Obviously, necessary "out-of-court investigation" cannot be conducted unless the names and addresses of witnesses are furnished well in advance of trial.

6. STATEMENTS AND/OR IDENTITY OF NON-WITNESSES.

These statements are also within the ambit of Rule 16(a)(1)(C). Since these persons will not be called by the government to testify at trial, their statements are not obtainable under the Jencks Act, 18 U.S.C. §3500. The government's very election

not to call these witnesses, however, suggests the possibility that their statements might be helpful to the defense.

In United States v. Hardy, supra, Judge Robinson also ordered the disclosure of non-witnesses with knowledge of the case:

> /T/he necessity for names and addresses of persons with knowledge of the case who the government does not intend to call as witnesses may be even greater than /the need for/ discovery of the names of witnesses who will be called. The former may have information favorable to the accused and that information would not be discoverable under the Jencks Act.

7. DISCREPANCIES IN TESTIMONY OF WITNESSES.

Defendants are entitled to discovery in advance of trial, under Giles v. Maryland, supra, of all discrepancies in the testimony of government witnesses. See State v. Johnson, _____Florida _____, _____So. 2d _____, 14 Crim. L. Rev. (1973) (holding that a defendant is entitled as a matter of fundamental fairness to discovery of any "crucial discrepancy" in a government witness' testimony which is known to the Government).

8. INFORMER'S IDENTITY AND STATEMENTS.

The privilege to withhold from disclosure the identity of an informer is limited by fundamental requirements of fairness. "Where the disclosure of an informer's identity, or the contents of his communication, is relevant and helpful to the defense of an accused or is essential to a fair determination of a cause, the privilege must give way." Roviaro v. United States, 353 U.S. 53, 60-61 (1957). This is particularly so where the informer might conceivably possess direct knowledge concerning the transactions charged in the indictment. Roviaro v. United States, supra, at 63-65.

In the later case of Greene v. McElroy, 360 U.S. 474, 496-497 (1959), the Supreme Court again made clear that secrecy should not be maintained at the expense of denying a party access to the evidence which may be used against him:

> Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment which provides that in all criminal cases the accused shall enjoy the right "to be confronted with the witness against him." This Court has been zealous to protect these rights from erosion. (Emphasis added.)

Defendants accordingly submit that the government should reveal the identity of all informers, whether or not a particular informer is an expected witness, simply because each such individual possesses direct knowledge concerning conduct on the part of a defendant which the government will seek to establish in its case. Moreover, disclosure is also appropriate because there are alleged to be many such informers. Delaying until trial the discovery of the grand jury testimony and other statements of these witnesses produces an intolerable hardship which, in view of the unavailability of such witnesses to the defense, will necessitate long interruptions to permit review of their voluminous testimony and tapes of their conversations, as well as investigation thereof and extensive research about such matters. Defendants should not be put to preparation of their case only in mid-trial since such preparation is inevitably ineffective and in-trial delays caused thereby will undoubtedly alienate the jury.

9. ELECTRONIC SURVEILLANCE.

Defendants are plainly entitled to receive all records of conversations in which any defendant participated. Alderman v.

United States, 304 U.S. 165 (1969). Defendants are also entitled to the records of electronic surveillance conducted on any premises in which he or any other defendant had any possessory or other interest, such as a right of access. Alderman v. United States, supra; Baker v. United States, 401 F.2d 958, 982-84 (D.C. Cir. 1968). Thus, in United States v. Machi, 324 F.Supp. 153 (E.D.Wisc. 1971), the defendants moved for and obtained pretrial production of the order of the court and affidavit in support thereof which allowed wiretapping together with inspection of any and all tapes, memos, records, log reports and other similar data gathered as a result of electronic surveillance and identification of each instance of surveillance, whether or not authorized.

Defendants submit it is also necessary for the United States Attorney to determine and disclose whether personnel of any other government agency. such as the Central Intelligence Agency or the Federal Bureau of Investigation, are aware of or have records pertaining to any electronic surveillance in which any defendant was overheard. It would seem appropriate to examine at the hearing on this motion those personnel of the Central Intelligence Agency and the Federal Bureau of Investigation who would have direct personal knowledge as to whether or not such surveillance occurred and those personnel who have personal knowledge of what is contained in such agency's records of electronic surveillance.

10. PUBLICITY RELEASES

As reflected by the defendants' motion for change of venue, prejudicial pre-trial publicity is a very real issue in this case. In United States v. Leichtfuss, supra, at p. 737, the Court considered production of government generated publicity and remarked:

> The defendants also seek disclosure of all copies and the distribution lists of any names or press releases or photographs prepared by any agency of the government relating to the defendant or the matters alleged in the indictment. I presume that this request is based on the possibility that the government may have caused the release of prejudicial publicity which may affect a defendant's case. I would agree that a defendant in an appropriate case - where the issue of prejudicial publicity exists - would be entitled to such information.

Accordingly, defendants submit they should be afforded access to all press releases and similar publicity material relating to the subject matter of the instant indictment and the individual defendants, which was released by any agency, department or branch of the government directly or indirectly.

12. DOCUMENTS AND TANGIBLE OBJECTS.

Tangible objects "obtained from or belonging to a defendant or obtained from others by seizure or by process" were discoverable under Rule 16 before the 1966 revision. Rule 16(b) now authorizes the discovery of all books, papers, documents, and tangible objects which are material to the preparation of a defense. The objects sought in defendants' accompanying motion may be evidentiary or may lead to evidence, and any document which the government intends to introduce into evidence is obviously material. United States v. Reid, 43 F.R.D. 520, 522 (N.D.Ill. 1967). Inspection of such items is necessary to prepare an adequate defense and to prevent surprise at trial, especially in view of the disparity of opportunity for preparation which we have earlier noted. Thus, in United States v. Tanner, supra, at 470-471, the Court stated:

> We believe, in a case of this type, involving five defendants, and posing the possibility of protracted litigation, the defendant should be provided access in advance of trial to the documents which the government intends to use in proving its case. Such documents, as already indicated, are certainly material to the issues. Requiring the defense counsel to adequately mouth either a legal challenge to documents first seen at trial, or to effectively cross-examine upon a cursory and abrupt inspection of them is neither fair nor necessary.

See also United States v. Hrubik, 280 F.Supp. 481 (D.Alas. 1968); United States v. Crisona, 271 F.Supp. 150 (S.D.N.Y. 1967).

13. DOCUMENTS AND RECORDS OF THE CIA AND OTHER GOVERNMENTAL AGENCIES.

Defendants have moved for the production of all memoranda, written statements, oral statements recorded or reduced to writing or summarized in writing by any person, concerning the relationship of persons involved in this case to the Central Intelligence Agency; advance knowledge of and participation by the Central Intelligence Agency or other governmental agency in the Letelier assassination; and efforts undertaken by any such agencies to conceal their role in that assassination.

The information requested is critical to the defense of several of the defendants. Moreover, the prosecutor has admitted that Townley had contact with the CIA at Langley.

If indeed there was, or is, reason to suspect CIA involvement in the Letelier assassination, the facts and circumstances supportive of that theory are clearly exculpatory in nature. Accordingly a sufficient basis exists for the production of the items and the investigative files requested herein.

14. CRIMINAL RECORDS OF GOVERNMENT WITNESSES.

Effective confrontation and cross-examination at trial requires that these records be produced. Prior convictions may be proved conclusively only by certified copies of conviction. These documents can be obtained only from the clerk of court in the jurisdiction where the conviction occurred. Pre-trial access to the FBI arrest and conviction records is necessary to provide information upon the basis of which these documents may be obtained.

In United States v. Moceri, supra, the Court rejected government objections to the production of criminal records based on the burden of searching FBI files and the infringement of the witness' right to privacy. The Court noted that the force of the government's contentions would be minimized if

defense counsel were ordered not to divulge such information except for impeachment purposes at trial.

It is significant to note that production of these records would be required not only under Rule 16(b) but also by Brady. See Giglio v. United States, supra,

15. NAMES OF INVESTIGATIVE AGENTS.

Defendants' request for discovery of the identity and title of all government agents participating in the investigation of this case as well as copies of any and all statements or reports of said persons seeks information material to the preparation of the defense and is reasonable. Obviously, defense interviews of the individuals whose identities are sought may lead to exculpatory evidence. Furthermore, the information requested is necessary to form the predicate for the filing of further motions.

16. PROMISES AND COMMITMENTS TO GOVERNMENT WITNESSES.

The Supreme Court ruled in Giglio v. United States, supra, that even the inadvertent failure to disclose to the defense the terms of all promises and representations made to a prosecution witness requires a new trial. Here the concessions to individuals such as Michael Townley have been substantial. They should be revealed in detail.

Moreover, the information regarding discussions or arrangements for rewards or dispositions promised to potential government witnesses is necessary to form the predicate for the filing of further motions pertaining to unlawful inducements, or, in any event, to test the credibility of witnesses who, according to the government, participated in some if not all of the alleged criminal acts upon which the instant indictment is based.

In the last analysis discovery of all matters discussed above, even to the extent they are contained in grand jury

minutes, should be ordered promptly to preserve substantial and constitutional rights of the defendants and because a wrongful denial of access to such materials, even to the grand jury minutes, will necessitate a new trial. Worthy v. United States, 383 F.2d 524 (D.C.Cir. 1967); Duncan v. United States, 379 F.2d 148, 153 (D.C.Cir. 1967).

To the extent that any of the items of discovery sought herein are considered so-called secret documents or privileged matter, such items are nevertheless discoverable where necessary for the preparation of a defense. DeChamplain v. McLucas, 367 F.Supp. 1291, (D.D.C. 1973).

D. THE NEED FOR PROMPT DISCOVERY

The timing of production in this case is especially critical. The investigation has been underway for several years.

Defendants have a right to have their counsel fully prepared for trial. That right can be vitiated if the government waits until the last minute and then inundates defendants with a huge volume of transcripts, documents, tape recordings and names of witnesses complied over a comfortable two year period by scores of full time prosecutors, investigators and others. Such a tactic was held improper in United States v. Seafarers International Union, 343 F.Supp. 749 (E.D.N.Y. 1972) because its purpose is to catch a defendant in a "squeeze between early trial and adequate preparation". Id. at 788.

It will be absolutely impossible for defense counsel to read, examine and study the massive amount of material which rightfully must be produced if its production is not immediately forthcoming. Moreover, each defendant has the right to listen to, inspect, read or examine produced materials in privacy in order to facilitate consultations with his client and permit the discussion of defense strategy. These crutial rights can not be subordinated to the mere convenience of the government.

At the very least, the United States Attorney is obliged to establish compelling reasons for each refusal to produce requested material or for his withholding of production until some later date. The mere recitation of shibboleths can not justify a deliberate perpetuation of an imbalance of knowledge, and defendants submit that if the Court diligently pursues the necessity for secrecy, it will quickly conclude that the only objectives to be served by concealment are unfair surprise to the defense at trial and a long and protracted trial constantly delayed for purposes of study and examination of material by defense counsel.

It is indisputable that delayed discovery will severely handicap the defense, and, in the case of arguably helpful items, it will constitute a violation of the constitutional guarantees to effective assistance of counsel, due process of law and a speedy trial. The American Bar Association Standards, The Prosecution Function and the Defense Function, §3.11, p.100 (Approved Draft 1971), state that "it is unprofessional for a prosecutor to fail to disclose to the defense at the earliest feasible opportunity evidence which would tend to negate the guilt of the accused or mitigate the degree of the offense or reduce the punishment."

The United States Attorney is presumably ready for trial. If so, all exculpatory evidence and other matters described herein should now be available for production. Accordingly, there is no reason why it should not voluntarily and immediately be disclosed to defendants and no reason why this Court should refuse to order its disclosure.

CONCLUSION

FOR THE ABOVE-STATED REASONS, DEFENDANTS' MOTION FOR DISCOVERY AND INSPECTION SHOULD BE GRANTED.

Respectfully submitted,

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PAUL A. GOLDBERGER
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June 6, 1978

Eugene Propper, Esq.
Special Attorney
Justice Department
Washington, D.C.

Re: United States v. Guillermo Novo, Ignacio Novo and Alvin Ross Diaz

Dear Mr. Propper:

1. Any relevant written or recorded statements made by the defendants or copies thereof, within the possession, custody or control of the government, the existence of which is known or by the exercise of due diligence may become known to the attorney for the government. This request calls for discovery of written or recorded statements and recordings of defendants' conversations by any means of mechanical recordation or electronic surveillance, whether made before or after arrest and/or indictment and whether or not in response to interrogation. This term "statements" includes the "substantially verbatim" as well as the "mere summary" and encompasses defendants' statements whether before or after arrest and in whatever form preserved. This request also called for discovery of the time, place and circumstances of such statements.

2. The substance of any oral statement made by the defendants, whether before or after arrest (a) during a conversation with any person who in fact was a government agent or informer or who is now a government witness, or (b) in response to interrogation by any person then known to defendants to be a government agent. This request is designed to reach those statements by defendants which have not been preserved in any writing or recording. This request also calls for discovery of the time, place and circumstances of such statements.

3. Any recorded testimony of defendants before a governmental agency, entity or instrumentality or before a grand jury, state or federal.

4. Defendants' prior criminal record, if any, as is within the possession, custody or control of the government, the existence of which is known or by the exercise of due diligence may become known to the attorney for the government.

5. Any books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the government

Ex. A

and which are material to the preparation of the defense. This request includes but is not limited to any books, papers, documents, photographs or other tangible objects, or copies thereof, which came into the possession, custody or control of the prosecution by subpoena, seizure or request directed to:

(a) any person whom the prosecution intends to call as a witness at trial; and

(b) any corporation, partnership, employee organization, pension fund, financial institution, enterprise or other association wherein a person whom the prosecution intends to call as a witness at trial was an officer, employee, agent, member, trustee, associate, partner or had an interest therein.

This request also specifically includes but is not limited to any books, records or other documentation within the possession, custody or control of the government having to do with financial or business activity or any witness the prosecution intends to call at trial.

6. Any books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the government and which are intended for use by the government as evidence at the trial.

7. Any books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody or control of the government and which were obtained from or belong to the defendants, co-defendants or co-conspirators.

8. Any books, papers, documents, photographs, tangible objects, buildings or places, or copies thereof, which are within the possession, custody or control of the government that (a) are to be referred to in any future indictment; (b) relate to any statement of fact in any future indictment; (c) constitute the fruits or means of perpetrating any of the offenses which will be set forth in any future indictment; or (d) were presented to the grand jury in its investigation of the criminal offenses which will be referred to in any future indictment.

9. All results or reports of physical or mental examinations and of scientific tests or experiments, including fingerprints and explosives examinations, or copies thereof, which are within

the possession, custody or control of the government, the existence of which is known or by the exercise of due diligence may become known to any attorney for the government and which are either (a) material to the preparation of the defense or (b) are intended for use by the government as evidence-in-chief at the trial.

10. All charts, summaries or calculations reflecting the contents of voluminous writings which are either (a) material to the preparation of the defense or (b) intended for use by the government as evidence-in-chief at the trial.

11. A written list of the names, addresses and qualifications of all experts the government intends to call as witnesses at trial, together with all reports made by such experts or, if reports have not been made, a brief description of the opinion and subject matter of the opinion to which each is to testify.

12. Any documents reflecting or relating to any wire communications or oral communications intercepted by the government to which defendants were a party or during which defendants were present, or which were obtained by interceptions directed against the defendants, co-defendants or co-conspirators or to which any witness the prosecution intends to call at trial was a party, wheither or not such interceptions were authorized or lawful. The terms "wire communcation", "oral communication", and "interception" are used here as defined in 18 U.S.C. Section 2510. This request includes, one-party "consent" aural acquisitions. The request includes, without limitation, logs, transcripts and tapes of the intercepted communications, a list of all communications to which defendant has been identified as a party, all applications to the Court and orders of the Court with respect thereto, all inventory orders, inventories and reports or service thereof and competent evidence of all the facts and circumstances concerning the authorization for the applications to intercept any wire communciations involved in this case.

13. The date, time and place of every occasion on which any surveillance, mail cover, search and/or seizure, whether electronic, photographic, mechancial, visual, aural or of any other type, was made of defendants, their residences, any entity associated with them, together with all documents, photographs, recordings, or other materials resulting from or reflecting or relating to such occasions, including but not limited to affidavits and warrants utilized thereto.

14. Any and all written or oral statements or utterances - formal or informal - made to the prosecution, its agents and representatives by any person which are in any way conceivably

contrary to the testimony or expected testimony of that person or any other person whom the prosecution intends to call as a witness at trial or which otherwise reflect upon the credibility, competency, bias or motive of prosecution witnesses.

15. All relevant statements, trial testimony, grand jury testimony and handwritten or informal notes of interviews in the possession, custody or control of the government which were made by any person who is a witness or prospective witness in this case which was made or given either (a) prior to the time such person was a prospective witness in this case or (b) in connection with an investigation or proceeding other than this case.

16. All statements required to be produced under 18 U.S.C. Section 3500, including but not limited to handwritten and other informal notes of interviews. If any such statements or notes have been or are intended to be discarded or destroyed, please identify such statements and notes in sufficient detail to permit a request to the Court for appropriate relief in advance of trial.

17. Please inform me, either by furnishing the pertinent documents or otherwise, of any and all evidence of criminal conduct - state or federal - on the part of any person whom the prosecution intends to call as a witness at trial of which the prosecution, its agents and representatives have become aware.

18. Please inform me, either by furnishing the pertinent documents or otherwise, of any and all promises, understandings or agreements, formal or informal, between the prosecution, its agents and representatives and persons (including counsel for such persons) whom the government intends to call as witnesses at trial, together with copies of all documentation pertaining thereto. This request includes, but is not limited to, such promises, understandings or agreements as may have been made in connection with other cases or investigations. This request includes information concerning any payment of monies to any prospective witness.

19. Please inform me, either by furnishing the pertinent documents or otherwise, of any and all evidence that any person who is a government witness or prospective government witness in this case is or was suffering from any physical or mental disability or emotional disturbance, drug addiction or alcohol addition at any time during the period of the indictment to the present.

20. Any and all statements - formal and informal, oral or written - by the prosecution, its agents and representatives to any person (including counsel for such persons) whom the prosecution intends to call as a witness at trial pertaining in any way to the possibility, likelihood, course or outcome of any government action - state or federal, civil or criminal - or im-

migration matters against the witness, or anyone related by blood or marriage to the witness, or anyone associated in business with the witness, or any corporation, partnership, joint venture or other association employing the witness or in which the witness has an interest.

21. The names and addresses of all persons whom the prosecution, its agents and representatives believe to have relevant knowledge and/or information with reference to the charges contained in the indictment but whom the prosecution does not propose to call as witnesses at trial.

22. Set forth as precisely as possible the date, time and place of any utterances, statements or actions by the defendant upon which the prosecution intends to rely at trial in order to establish the offenses charged in the indictment.

23. Identify by name and address all persons said to have been present at or to have personal knowledge of the utterances, statements or actions of the defendants upon which the prosecution intends to rely at trial to establish the offenses charged in the indictment.

24. Please inform me of the names of any witnesses or prospective witnesses in this case who are or have been in the Witness Protection Program and furnish all documents pertaining to any offers by the government to any witness or prospective witness to enter the Witness Protection Program.

25. A list of all documents used, obtained or written in connection with the investigation preceding the indictment that the government destroyed, for whatever reason, including but not limited to rough notes of interviews, reports, memoranda, subpoenaed documents and other documents.

26. A written list of the names and addresses of all government witnesses which the attorney for the government intends to call in the presentation if its case-in-chief, together with any record or prior convictions of any such witnesses which is within the possession, custody or control of the government, the existence of which is known or by the exercise of due diligence may become known to the attorney for the government

27. Any statements or documents, including but no limited to grand jury testimony and federal, state and local tax returns made or executed by any potential government witness at the trial in this action which the government knows, or through reasonable diligence, should have reason to know is false.

28. Please inform me of any statements reflecting, relating or referring to any discussion or conversation in which the government suggested that an individual might possibly be afforded more favorable treatment in any regard in the event such individual offered evidence against defendants. This request includes a list of the date(s), time(s) and place(s) of each such occurrance and the name(s) of the person(s), including counsel, who were present.

29. A list of all persons (and their counsel) who were asked by the government or its representatives whether they or their clients would and/or could implicate defendants in any criminal wrongdoing.

30. Please inform me of all judicial proceedings in any criminal cases involving (as a witness, unindicted co-conspirators or defendants) any person who is a potential government witness at the trial in this action.

31. Any and all actions, promises or efforts - formal or informal - on the part of the government, its agents and representatives to aid, assist or obtain benefits of any kind for any person whom the government considers a potential witness at trial, or a member of the immediate family of such witness, or for the corporation, partnership, unincorporated association or business employing such potential witness or in which the witness is an employee, director, shareholder, trustee, partner member, agent or servant. This request includes, but is not limited to, (a) letters to anyone informing the recipient of the witness' cooperation; (b) recommendations concerning federal aid or benefits; (c) recommendations concerning licensing, certification or registration; (d) promises to take affirmative action to help the status of the witness in a profession, business or employment or promises not to jeopardize such status; (3) aid or efforts in securing or maintaining the business or employment of a witness; (f) aid or effects concerning a new identity for the witness and his family, together with all other actions incidental thereto; (g) direct payments or money or subsidies to the witness; or (h) any other activities, efforts or promises similar in kind or related to the items listed in (a) through (g) above.

32. In addition to the information and material requested above, any documents, books, papers, photographs, scientific tests or experiments, tangible objects, written or recorded statements of anyone, grand jury transcripts and oral statements of anyone, reports memoranda, names and addresses of persons, or other evidence or information which either tends to exculpate defendants or tends to be favorable or useful to the defense as to either guilty or punishment, or tends to affect the weight or credibility of the evidence to be presented against defendants,

or which will lead to evidence favorable to or exculpatory of defendants which is within the possession, custody or control of the government, the existence of which is known or by the exercise of due diligence may become known to the attorney for the government.

33. All films and/or video tapes taken in connection with this case.

34. Please state whether or not during the course of the investigation of this matter, the defendants' photograph, likeness, or image was exhibited to anyone not then employed by a law enforcement agency. This request includes a list of the date(s), time(s) and place(s) of each occurrance and the name(s) of the person(s) including counsel who were present. This request also includes providing me with a copy of any and all photographs, drawings, film or video tape exhibited either individually or as part of a group.

35. Please provide me with a copy of all telephone toll records of the defendants in the possession of the government which indicate telephone calls between the defendants and any other member (named or unnamed) of the alleged conspiracy. This request includes but is not limited to any telephone calls made to Chile or to any other foreign jurisdiction.

36. Please provide a copy, if in the possession of the government of any and all hotel or motel records relating to the defendants.

37. In order to properly prepare a defense, I need to confer with my clients as to their knowledge or lack thereof, of the identity of the individuals named as their alleged co-conspirators. Please provide me, therefore, with a photograph of each individual the government will allege was part of the conspiracy charged in any forthcoming indictment.

40. A copy of all writs, whether ad prosequendum or ad testificandum issued to procure the presence of the defendants in the District of Columbia.

41. Whether evidence of similar acts is intended to be introduced agaisnt the defendants or any co-defendant or co-conspirator. If so, provide full Discovery in regard to these similar acts.

42. Please state whether or not during the course of the investigation of this matter any foreign government, foreign

police force or foreign agency participated, provided information, provided intelligence or in any other way aided, assisted or furthered this investigation. Provide copies of all reports, records, memoranda, notes or transcripts of testimony provided by these foreign governments.

43. A copy of all documents used, obtained or written in connection with the complaint filed by the government regarding probation violation of Guillermo Novo.

44. Supply copies of all F.B.I., C.I.A., N.S.A. and other agency investigative reports relating to this case.

45. Opportunity to interview government witness Michael Vernon Townley.

45A. Opportunity to interview Townley's wife.

46. Request an all agency check in regard as to whether or not any of the defendants presently apprehended or co-conspirators were electronically intercepted by any government law enforcement agency.

47. Reports of any federal or state agency including but not limited to the F.B.I., C.I.A., N.S.A., Military Intelligence and the Justice Department on Orlando Letelier and the Institute of Policy Study.

48. Copies of all documents and physical evidence seized by the government, either state of federal, at the scene of the explosion including,but not limited to, on any subsequent search of Letelier's home or office.

49. Any electronic surveillance of Letelier and/or the Institute of Policy Study.

50. Any information the government ahs in regard to Letelier's assocation, employment or relationship with the United States government or any foreign government, either friendly or hostile to the United States.

51. Any information any government agency has in its possession either oral, electronic or written regarding previous threats made to Letelier and the source of said threats.

52. Reports in government's possession regarding international trips, business or otherwise, made by Orlando Letelier while living in the United States.

53. Any governmental reports by any agency including but not limited to the C.I.A., F.B.I., N.S.A., that indicate awareness or not that Letelier's life was in danger.

54. Indicate the circumstances under which Orlando Letelier was permitted to enter and work in the United States and what individuals or agencies in the United States were instrumental in permitting him to live here.

55. Copy of Senate or Congressional investigative reports regarding:

a) Letelier's assassination
b) Michael Vernon Townley's ties to C.I.A. and/or F.B.I.

56. Copies of all F.B.I. or C.I.A. surveillance reports on defendants and co-conspirators both prior to and subsequent to Letelier's death.

57. Names and addresses of all individuals interviewed by government agents or attorneys in Chile.

58. Copies of all reports and memoranda which indicate relationship between C.I.A. and D.I.N.A.

59. Indicate the full circumstances including any reports or memoranda, under which Michael Vernon Townley was brought to the United States including efforts by this country to have Townley expelled from Chile.

60. Copies with all interrogatories of Townley and other witnesses before any tribunal court or agency in the country of Chile.

61. List all criminal acts committed by Townley - including those performed as an agent of either D.I.N.AN, any other Chilean agency or the C.I.A., whether committed in the United States of America or in any other country.

62. Employment records of the C.I.A. or N.S.A. regarding Michael Vernon Townley's employment. Also include all records of payments made by any United States government agency to Townley.

63. Indicate dates and times Townley met with any representative of the C.I.A.

64. Any reports indicating the connection of any defendant or co-conspirator to any United States government agency, i.e., payments . . .

ADDRESS ALL MAIL TO:
UNITED STATES ATTORNEY
ROOM 3136 - C
UNITED STATES COURT HOUSE BUILDING
3RD AND CONSTITUTION AVENUE NW.

WASHINGTON, D.C. 20001

June 16, 1978

Mr. Paul A. Goldberger, Esquire
401 Broadway
New York, New York 10013

Re: United States v. Guillermo Novo, Ignacio Novo and Alvin Ross

Dear Mr. Goldberger:

This letter is in response to your June 6, 1978, letter which contains ten pages of requests for information.

1. All relevant written statements will be provided pursuant to Rule 16(a)(1)(A) of the Federal Rules of Criminal Procedure. Our definition of "statement" is that contained in 18 U.S. Code §3500(e).

2. Any oral statement by a defendant, which the Government intends to use at trial, made either before or after arrest, will be provided if the statement was made to a person whom the defendant, at the time of the statement, knew was a Government agent. This is in accordance with Rule 16(a)(1)(A) of the Federal Rules of Criminal Procedure. All other statements will be provided only in accordance with 18 U.S. Code §3500.

3. Recorded testimony of a defendant before a grand jury will be provided in accordance with Rule 16(a)(1)(A).

4. The defendant's prior criminal record, if known by the Government, will be provided in accordance with Rule 16(b) of the Federal Rules of Criminal Procedure.

5. The Government will provide the information required in Rule 16(c) of the Federal Rules of Criminal Procedure.

6. The Government will comply with Rule 16(c) of the Federal Rules of Criminal Procedure.

Ex. B

7. The Government will provide to the defendant copies of any documents and make available for inspection tangible objects seized from the defendant in accordance with Federal Rule of Criminal Procedure 16(c). The Government will not provide this with respect to codefendants.

8. This request is much too broad. We will provide discovery of Rule 16 material in accordance with our responses to other requests in this letter.

9. The Government will comply with this request pursuant to Rule 16(b) of the Federal Rules of Criminal Procedure.

10. This request is somewhat unclear. If the request is to see Government exhibits, prepared by the Government for use at trial, they will be shown to the defense immediately prior to the trial.

11. The reports of all Government experts to be called at trial will be disclosed pursuant to Rule 16(b) of the Federal Rules of Criminal Procedure. The names of the experts will be disclosed at the time of trial.

12. This request seems to be an informal motion pursuant to 18 U.S. Code §3504. If it is such, the appropriate written motion should be made, with the required particularity set forth (i.e., names, addresses, telephone numbers and dates).

13. If the Government possesses any such information and it intends to introduce it at trial, it will disclose these facts to the defendant after indictment.

14. The Government will, of course, disclose to the defense any information, including testimony, which it deems to fall under Brady v. Maryland and Agurs v. United States.

15. and 16. The Government will turn over to the defendant at the time of trial all statements made by persons who will be called as Government witnesses at the trial. Handwritten documents which the Government possesses will be included, assuming they fall within the ambit of the Jencks Act.

17. The Government, at the time of trial, will disclose to the defense all impeachable convictions on the part of its witnesses. The law does not require, and the Government will not disclose, any other information. See answer to Number 61.

18. This will be turned over with the Jencks material at the time of trial.

19. This information if there is any of this nature, will be disclosed at the time of trial.

20. See answer to Number 18.

21. The Government is not required to open its files or to disclose the names of persons interviewed. If a person not to be called by the Government has information which falls under the doctrine of Brady v. Maryland and Agurs v. United States, it will be provided.

22. All statements by the defendant will be disclosed as indicated in response 2 and 3.

23. The Government will not disclose this information pre-trial.

24. The Government will disclose at the time of trial the names of witnesses in the witness protection program. No documents will be provided and no information on persons who have not been placed in a program because that person refused an offer to be in the program will be provided.

25. The Government has no knowledge at this time of any documents having been destroyed.

26. Since this is not a capital case, the Government will not disclose the names of its witnesses until the day of trial. Impeachable convictions of these witnesses will be provided at that time.

27. The Government, at this time, has no tax returns.

28. This material will be provided with the Jencks material at the time of trial.

29. The Government will not disclose this information, since the Government is not required to open its files for discovery.

30. As indicated earlier, impeachable convictions of Government witnesses will be provided; other information in this request will not.

31. This information will be provided to the defense with the Jencks material immediately prior to trial.

32. The Government will disclose to the defense, at the appropriate time, all information in its possession mandated by Brady and Agurs.

33. and 34. This request is encompassed in some of the defendant's earlier requests and the Government will comply in accordance with the provisions of Rule 16 of the Federal Rules of Criminal Procedure. Films and videotapes will not be provided unless they fall under Rule 16(c). The Government will provide photographic array information, in which the defendant's photograph was exhibited, prior to trial pursuant to Rule 16 of the Federal Rules of Criminal Procedure, and certainly in sufficient time for any motions to be filed.

35. All telephone toll records which the Government intends to introduce in its case in chief at trial will be provided pursuant to Rule 16(c) of the Federal Rules of Criminal Procedure. This includes toll records which were obtained from or belong to the defendant.

36. These documents will be provided in accordance with Rule 16(c) of the Federal Rules of Criminal Procedure.

37. The Government will supply photographs, after indictment, of all conspirators, of which it has a photograph.

38. and 39. Is this another case?

40. The Government will disclose copies of all writs used to procure the presence of the defendant in the District of Columbia.

41. The Government is not aware at this time what evidence it intends to introduce at trial. In any event, the Government is not required to disclose the evidence it intends to introduce unless that evidence fits into one of the Rule 16 categories.

42. The Government is not required to provide this information and will not do so. Investigative tactics and investigative reports are not open to the defense pursuant to Rule 16(2).

43. I believe I gave you most of these documents. However, should you not have a particular one, I will be happy to provide it.

44. The law does not mandate disclosure of Agency investigative reports and the Government will not do so. Rule 16(2).

45. Mr. Seymour Glanzer, Esquire, represents Mr. Michael Townley and he should be contacted if you desire to interview Mr. Townley.

45a. Mr. Townley's wife is not in this country. Should you desire to interview her, however, you should also contact Mr. Glanzer.

46. See the answer to request Number 12.

47. See the answer to request Number 44.

48. All documents seized by the Government at the scene of the crime, which will be introduced by the Government at trial, will be disclosed in accordance with Rule 16. This includes documents which may have been located in the Letelier home or office, if they will be introduced at trial. No other documents, either from the crime scene or from Mr. Letelier's home or office, will be disclosed.

49. This request is not germane to any issue in this case and any such information, if it exists, will not be provided.

50. Mr. Letelier's relationship with the United States Government or any other government, other than his position as former Ambassador to the United States from Chile, is not relevant to this case and any such information will not be provided.

51. This information will be provided if the Government determines that it falls under the tenets of Brady and Agurs. Otherwise, unrelated threats received by Mr. Letelier are not relevant.

52. The travels of Mr. Letelier prior to his murder are not relevant.

53. This information is not relevant and will not be disclosed, unless it falls under Brady and Agurs.

54. This information is not relevant and will not be disclosed. It is relevant, however, that while in the United States, Mr. Letelier was an Ambassador or former Ambassador from Chile.

55. The Government does not possess any Senate or Congressional investigative reports and requests for same should be made to the appropriate Senate or House Committees.

56. All surveillances leading to information which the Government will disclose at trial will be made known to the defense. No other surveillances, if any, will be disclosed.

57. The names and addresses of persons, wherever they may be, who have been interviewed by the Government do not have to be disclosed to the defense, unless they are to be called at trial as witnesses for the Government or unless they provide information which the Government deems to fit under Brady or Agurs.

58. The relationship, if any, between the CIA and DINA is not relevant to this case. If any such relationship is found to exist which is relevant and helpful to the defense, that information will be disclosed.

59. This is relevant only to Mr. Townley. Therefore, it will not be produced.

60. This will be made available with the Jencks material.

61. If Mr. Townley has impeachable convictions, the Government will make them available to the defense. The law prohibits further questioning by the defense at trial and the Government will not make the requested information available, if it exists at all.

62. Mr. Townley can be questioned at trial regarding all his prior employment. The United States will disclose to the defense, with the Jencks material, all promises, including payments, made to Mr. Townley, for his testimony. Employment records of the CIA or NSA are not relevant and will not be provided.

63. The dates and times, if any, that Mr. Townley met with any representative of the CIA is irrelevant to this case and will not be provided.

64. The Government is not clear what this request, which asks for the connection of any defendant or co-conspirator to any United States Government agency, means. Please clarify.

Our agreement to turn over the Jencks material of our witnesses at a time prior to what is mandated by the Jencks Act is conditioned upon reciprocal disclosure, pursuant to United States v. Nobles, 422 U.S. 225 (1975), of the same materials in the possession of the defense other than those statements by the defendants themselves. Barring that type of reciprocal disclosure, our position would be that the Jencks material would be turned over only after the witnesses' direct testimony has taken place.

Sincerely yours,

EARL J. SILBERT
United States Attorney for
the District of Columbia

By: Eugene M. Propper

EUGENE M. PROPPER
Assistant United States Attorney

E. Lawrence Barcella, Jr.

E. LAWRENCE BARCELLA, JR.
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, -v.- JUAN MANUEL CONTRERAS SEPULVEDA, et al., Defendants.	No. 78-367

ORDER

This matter having come before the Court on defendants Motion For Discovery and Inspection, whereupon the Court having considered the motion, the memoranda filed in support thereof and in opposition thereto and having further considered the argument of counsel it is by the Court this ____ day of _____, 1978,

ORDERED, that defense Motion For Discovery and Inspection be, and the same hereby is, granted.

_____
J U D G E