

# **Criminal Discovery Checklist and Questionnaire**

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The purpose of this questionnaire is to assist the parties and the Court in determining how discovery should be provided, taking full advantage of the efficiencies and cost savings of digital technology. It is expected that during reciprocal discovery the parties will reach an agreement regarding the form in which information will be exchanged. It is also presumed that the parties will agree before trial upon the methods to be used to present evidence and the technical resources that will be provided by the parties or the court. While each case presents its own set of challenges, the parties are encouraged to share information and plan for trial with a goal of insuring fairness, reducing overall costs, and expediting the process.

Completing this checklist and questionnaire is an evolving process. Some answers may not be immediately available. Some questions can only be answered after discussion with the opposing party and/or the Court. Disputed issues may need to be resolved by the Court.

The purpose of this checklist and questionnaire is to assist the parties and the Court. The parties should be forthcoming as possible in providing the requested information. An answer to this questionnaire, indicating that a party is in possession of any particular item, does not mean that the item is necessarily discoverable or that the party is required to produce it.

### **CONSIDERATIONS FOR COST REDUCTION AND EFFICIENCY**

Compatible litigation support systems, that are available to all the parties, should be used whenever possible. For example, if all the parties have access to a particular database management program, every effort should be made to use that program rather than a specialized program for which only some parties have access.

Information should be disclosed digitally whenever possible. For example, if one party has discoverable digital documents, they should be delivered in digital form, rather than first being reduced to paper.

If digitization will result in overall savings to both parties, cost sharing should be explored. For example, while scanning paper documents may be initially more expensive than photocopying, scanning will result in overall cost savings.

## QUESTIONNAIRE AND CHECKLIST

### PART A: QUESTIONS FOR THE GOVERNMENT

1. For each of the following categories of information, identify whether the documents were originally generated (or received from another agency or third party) in paper form, in digital form, or a mixed form. If the material was received in digital form, indicate what format(s) the data were in originally and currently (e.g., ASCII, .pdf, .tiff, .wpd, .wav, etc.); what software is necessary to view it; and whether the necessary software and/or license can be made available to all parties.

	Paper	Digital	Mixed		Format(s)	Software	Availability
Transcripts							
Investigative Reports							
Laboratory Reports							
Affidavits and Statements							
Wiretap Records							
Telephone Records							
Financial Records							
Medical Records							
Government Agency Records							
Correspondence							
Logs and Summaries							
Other (specify)							

2. State the approximate volume of documents to be turned over to the defense (e.g., the number of bytes or pages).
3. Have the documents been numbered, bar-coded, or otherwise uniquely identified? If so, please explain.
4. Have photocopies of the documents already been provided for each defendant?
5. Are the documents suitable for scanning into electronic data?
6. Has the Government created a database for its documents and other evidence?
  - a. If not, does it intend to do so? (If no, skip the remaining subparts).
  - b. Can the database (or specified portions or fields) physically be provided to the defendants?
  - c. By providing access, can the government protect its work product, Jencks statements, and materials not otherwise subject to discovery?
  - d. Will the defendants be able to modify the database or portions provided to them to add their own comments or other additional fields?

**PART B: QUESTIONS FOR THE DEFENSE**

1. For each of the following categories of information, identify whether the items were originally generated (or received a third party) in paper form, in digital form, or mixed form. If the material is in digital form, indicate what format the data is in (e.g., ASCII, .pdf, .tiff, .wpd, .wav, etc.); what software is necessary to view it; whether the necessary software and/or license can be made available to all parties.

	Paper	Digital	Mixed		Format	Software	Availability
Correspondence							
Photographs or Images							
Charts or Diagrams							
Transcripts							
Business Records							
Medical Records							
Logs or Summaries							
Other (specify)							

2. What hardware and software are available to you for:
  - a. Database creation and maintenance.
  - b. Trial preparation.
  - c. Courtroom presentation.
3. Does the volume of documents or other evidentiary items justify a litigation support database for the case?
4. What are the potential costs of purchasing commercial database software, designing a database for the case, or adapting the software used by the government (if any)?
5. In what format and media will it be most efficient for the defense to receive electronic recordings (e.g., video tape, analog audio tape, digital CD-ROM, DVD, etc.)?
6. Does the defense anticipate the need for expert assistance to convert, transcribe, or otherwise handle evidence received from the government?

**PART C: QUESTIONS REGARDING COURTROOM PRESENTATION (for all parties to answer)**

1. In what format or media is it most convenient for you to handle and present the following types of evidence:
  - a. Text documents.
  - b. Photographs.
  - c. Drawings or diagrams.
  - d. Audio recordings.
  - e. Video recordings.
  - f. Other (specify).
  
2. Do you plan to use the following equipment in your courtroom presentation, and if so, do you plan to use the court's equipment or provide it yourself:
  - a. Computer.
  - b. Digital projector.
  - c. Evidence presenter (e.g., Elmo).
  - d. Overhead transparency projector.
  - e. VCR or DVD player (specify).
  - f. Cassette tape or CD player (specify).
  - g. White board.
  - h. Other (specify).
  
3. Do you require training or assistance to use any of the items above?