

[The demand for discovery must be made within 30 days after arraignment on the indictment in a felony case or the first appearance of counsel, whichever is later, but before the beginning of trial. Where counsel is present at arraignment, demands for discovery and requests for bills of particular should be made as soon as possible so that non-compliance can be dealt with in the form of a motion to compel in the Omnibus Pretrial Motions, which are due within 45 days of arraignment.]

The best practice is to serve the original discovery demand and request for particulars upon the prosecution, and to file a copy of both – along with a certificate of service – with the clerk of the court. This practice keeps the record clear and lays the groundwork for any future motion to compel.

In those jurisdictions with “open file discovery” – a phrase that has different meanings in different places – it still is incumbent upon the defense lawyer to file Brady demands that are tailored to the case at hand. Counsel should never rely on generalized demands for “all favorable evidence.” Discovery, except for Brady material, is limited to “tangible property.”]

_____ COURT OF _____
COUNTY OF _____

-----X

THE PEOPLE OF THE STATE OF NEW YORK

-against-

Index No. _____

[NAME],

Accused.

-----X

DEMAND FOR DISCOVERY

I am the attorney of record for the accused _____. This request is made together with the accompanying Request for a Bill of Particulars to help me prepare for trial. Pursuant to CPL §§ 240.20 and 340.30, I am writing this demand for you to produce the following information relating to the charges pending against Mr. _____:

1. CPL § 240.20(1)(a)

Every written, recorded, and/or oral statement of Mr. _____ made, other than in the course of the alleged criminal transaction, to a public servant engaged in law enforcement activity or to a person then acting under his direction or in cooperation with

him and approximately when Mr. _____ is alleged to have made each statement and where he was when each alleged statement was made.

2. CPL § 240.20(1)(b)

Any transcript of testimony relating to the criminal action or proceeding pending against the accused, given by the accused.

3. CPL § 240.20(1)(c)

Every written report and/or document, or portion thereof, concerning a physical or mental examination, or scientific test or experiment, including any laboratory reports prepared relating to the criminal action or proceeding which was made by, or at the request or direction of, a public servant engaged in law enforcement activity, or which was made by a person whom the prosecutor intends to call as a witness at trial, or which the People intend to introduce at trial, including but not limited to

- a. information regarding the physical examination of Mr. _____, including any photographs of Mr. _____'s physical condition; and memo book entries and each other notation made by each police officer;
- b. the results of any fingerprint tests performed.

4. CPL § 240.20(1)(d)

Every photograph and/or drawing relating to the criminal action or proceeding which was made or completed by a public servant engaged in law enforcement activity or which was made by a person whom the prosecutor intends to call as a witness at trial, or which the People intend to introduce at trial, including but not limited to photographs, diagrams, sketches, memo book entries, and any other such writing pertaining to the location of the arrest and/or the alleged damage done to the trailer.

5. CPL § 240.20(1)(e)

Every photograph and drawing relating to the criminal action or proceeding made by or at the direction of a police officer, peace officer or prosecutor of any property prior to its release pursuant to the provisions of section 450.10 of the Penal Law, irrespective of whether the People intend to introduce at trial the property or photograph, photocopy, or other reproduction.

6. CPL § 240.20(1)(f)

All property alleged to have been obtained from or attributed to the accused.

7. CPL § 240.20(1)(g)

Every tape and other electronic recording which the prosecutor intends to introduce at trial, irrespective of whether such recording was made during the course of the criminal

transaction, including but not limited to all tapes of radio transmissions, tapes of telephone calls, and videotapes, if any, as well as any SPRINT printout and precinct telephone switchboard record or telephone log entries.

8. CPL § 240.20(1)(i)

The approximate date, time, and place (a) of each offense charged, and (b) of Mr. _____'s arrest.

9. CPL § 240.20(1)(h)

Anything required to be disclosed, prior to trial, to the accused by the prosecutor, pursuant to the Constitution of New York State or the United States, including but not limited to all property, evidence, information, or leads to information, which are exculpatory or which could reasonably be expected to weaken or affect any evidence proposed to be introduced against the accused or which would in any manner aid the accused in the preparation of an adequate and proper defense or which are otherwise favorable to the accused or which may lead to exculpatory or arguably exculpatory property, evidence, or leads, regardless of any statute, rule, or regulation otherwise governing the time of disclosure of such items, including but not limited to the items enunciated in CPL § 240.45(1) and (2), on a continuing basis, regardless of whether admissible at trial or not.

Any exculpatory evidence and/or information pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), *United States v. Agurs*, 427 U.S. 97 (1976). Also, specifically indented evidence which defense counsels claim to be exculpatory.

All evidence within the custody or knowledge of the People which might adversely affect the credibility of any witness that the prosecution intends to call at trial (*see Giglio v. United States*, 405 U.S. 150 (1972); *People v. Geaslen*, 54 N.Y.2d 510, 446 N.Y.S.2d 227 (1981); *People v. Cwikla*, 46 N.Y.2d 434, 414 N.Y.S.2d 102 (1979); *People v. Wallert*, 98 A.D.2d 47, 469 N.Y.S.2d 722 (1st Dep't 1983); *People v. Hopper*, 87 A.D.2d 193, 450 N.Y.S.2d 798 (1st Dep't 1982)).

Kindly furnish me with the foregoing within fifteen (15) days at my office. You are required to provide all *Brady* material forthwith (*see People v. Velez*, 118 A.D.2d 116, 504 N.Y.S.2d 404 (1st Dep't 1986)). [In making a *Brady* demand, counsel should consider all the ways that the prosecution's case could fail against the client and demand – in as many and varied ways as possible – material related to these potential failures. For example, in an identification case, defense counsel should seek *Brady* material that shows that one or several witnesses failed to identify the accused and/or anyone else as the perpetrator. Counsel should avoid making *Brady* demands that seek, in whole, “all favorable evidence.”]

If you have any questions concerning this demand, please notify me of them in writing prior to the date by which these items are requested.

Dated: _____, New York

[Date]

Respectfully Submitted,

s/ _____
[Signing Attorney's Name]

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