CONTENTS

Foreword	
	I
he State o	f Canadian Law Relating to Discovery in Criminal Cases
Introdu	ection.
	ery of the Prosecution by the Defence
1	Discovery Provisions in the Criminal Code and Other Statutes
	(a) The Preliminary Inquiry
	(b) Section 531 of the Criminal Code
	(c) Section 524 of the Criminal Code
	(d) Section 532 of the Criminal Code
	(e) Section 533 of the Criminal Code
	(f) Section 10 of the Canada Evidence Act
	(g) Section 516 of the Criminal Code
	(h) Notice
2,	Common Law Rules
	(a) Prosecutorial Discretion in the Presentation of Evidence
	(b) The Use of Previous Statements of Persons Who Will Be
	Called as Witnesses
	The Discretionary Rule
1	The Rule for "Refreshing Memory"
	Conclusion
Prosecu	torial Discovery of the Defence
1.	Discovery of Incriminating Information
	(a) Section 183(1) of the Criminal Code
	(b) Section 455.4 of the Criminal Code
	(c) The Preliminary Inquiry and the Grand Jury
	(d) Administrative Tribunals, Coroners Inquests and Statements
	Required by Statute
2	(e) Breathalyzer Legislation
2.	Discovery of Actual Defences
	(a) Disclosure of Alibi
Conclus	sion to Part I
	П
_	of Discovery
The Air	n of the Criminal Process and Discovery
The Ad	versary Model of the Criminal Process and Discovery
1.	The Adversary System

2.	The Adversary Trial System and Discovery	38
3.	Guilty Pleas and Discovery	40
Argume	nts Concerning Discovery in Criminal Procedure	41
1.	Prosecution and the Accused: Does Discovery upset the balance of advantage?	42
2.	Discovery and Reciprocity: Should Discovery to the accused be denied since it cannot be made reciprocal because of the principle against compulsory self-incrimination?	45
3.	Perjury and Witness Intimidation: Does Discovery create such opportunities for distortion of the criminal process that it should not be allowed?	47
4.	Discovery and Efficiency: Will Discovery to the accused unduly interfere with the efficiency of the criminal process?	51
	III	
Policy Quest	ions as to Discovery in Criminal Procedure	
	Discovery be Discretionary or Formal?	59
	Prosecutorial Discretion	60
	Judicial Discretion A Formal System	61 63
	·	03
	ion of a Discovery System Within the Existing Pre-Trial System: ry and the Preliminary Inquiry	64
	Background of the Preliminary Inquiry	64
	Can the Preliminary Inquiry Still Serve the Purpose for Which	01
	it Was Established?	66
3.	Does the Preliminary Inquiry Serve Other Purposes besides Determining Committal for Trial?	67
4.	Would the Collateral Functions Fulfilled by the Preliminary Inquiry be Better Fulfilled by a Different Proceeding?	70
5	Two Possible Ways of Integrating a Pre-Trial Discovery Proceed-	, ,
J.	ing Into the Present System	71
	(a) Retention of the Preliminary Inquiry	71
	Uniformity: extension of the preliminary inquiry to cover	
	all offences Non-uniformity: improvement of the preliminary inquiry and	71
	setting up a different proceeding for cases where the prelim-	
	inary inquiry is not available	72
	(b) Abolition of the Preliminary Inquiry	72
	IV	
Sanctions		
	ns Related to Substantive Law	77
	ns Related to the Rules of Evidence	78
	Judicial Comment	78
	Inadmissibility of Evidence	78
<u>-</u>	And the state of t	- -

Proceed	Iural Sanctions
1	I. Adjournment of the Trial
	2. Prerogative Writs: Mandamus
Discre	tion of the Trial Judge
	${f v}$
sues as to	Prosecutorial Discovery
The A	rguments Both For and Against Prosecutorial Discovery of the
Notice	of Alibi and Expert Evidence
The Pro	esent State of Prosecutorial Discovery in Some Other Jurisdictions
Conclu	sion
	VI
	Models for Reform of Pre-Trial Discovery in Criminal Cases
	nnibus Hearing
1.	Description
2.	. Tentative Evaluation of the Omnibus Hearing
Israel	
1.	Description
2.	Tentative Evaluation of the Israeli Model
Vermor	nt
1.	Description
2.	Tentative Evaluation of the Vermont Model
Combin	nation of Other American Models
	Proposed Model of Harvard Journal of Legislation, 1966
	American Bar Association: Standards on Discovery and Procedure Before Trial, October 1970
	Oregon: Proposed Code of Criminal Procedure, November 1972
1	Tennessee: Proposed Code of Criminal Procedure, January 1973
1.	Description (a) Disclosure to the Accused
	(b) Disclosure to the Prosecution
	(c) Timing of Disclosure
	(d) Material Not Subject to Disclosure
	Work Product
	Informants.
	National Security
	(f) Continuing Duty to Disclose and Sanctions to Compel
	Disclosure
2.	Tentative Evaluation of the Combination of Models

1. Description (a) Developments in Statute Law. (b) Developments in Case Law and Informal Practice In General Statements of Witnesses to the Prosecution. Written or Oral Statements of the Accused or Co-Accused Previous Convictions and Information With Respect to Character of Witnesses. Scientific, Forensic, and Medical Evidence and Reports. Other Documents. Right to Interview Prosecution Witnesses. The Indictment. 2. Tentative Evaluation of the English Model. Conclusion VII Proposal for Reform Specific Provisions For A Discovery System. 1. Discovery Procedures. 1. Application of Discovery. 2. Pre-Plea Discovery. 3. Questioning Validity of Plea. 4. Use of Pre-Plea Discovery Statement. 5. Procedure if Plea of Not Guilty Entered. 6. Scheduling Discovery Meeting and Discovery Hearing. 7. Discovery Meeting Summary Memorandum. 8. Period Between Discovery Meeting and Discovery Hearing. 10. Additional Powers or functions of Judge at Discovery Hearing. 11. Procedure Upon Non-Disclosure of Identity of Potential Witnesses by the Prosecution. 12. Procedure Upon Defence Request for Attendance of Disclosed Witnesses for pre-trial Questioning Under Oath. 13. Questioning Committal For Trial. 14. Sanctions. 15. Continuing Duty to Disclose. 11. Material and Information Subject to Discovery. 1. Duty of Prosecution to Inform Itself and Obtain Relevant Material 2. Information and Material to be Disclosed in Pre-Plea Discovery. 3.4. Material and Information to be Disclosed in Pre-Plea Discovery. 5. Material and Information Not Subject to Disclosure. 6. Excision.	England.	
(b) Developments in Case Law and Informal Practice. In General. Statements of Witnesses to the Prosecution. Written or Oral Statements of the Accused or Co-Accused. Previous Convictions and Information With Respect to Character of Witnesses. Scientific, Forensic, and Medical Evidence and Reports. Other Documents. Right to Interview Prosecution Witnesses. The Indictment. 2. Tentative Evaluation of the English Model. Conclusion. VII Proposal for Reform Specific Provisions For A Discovery System. 1. Discovery Procedures. 1. Application of Discovery. 2. Pre-Plea Discovery. 3. Questioning Validity of Plea. 4. Use of Pre-Plea Discovery Statement. 5. Procedure if Plea of Not Guilty Entered. 6. Scheduling Discovery Meeting and Discovery Hearing. 7. Discovery Meeting Summary Memorandum. 8. Period Between Discovery Meeting and Discovery Hearing. 10. Additional Powers or functions of Judge at Discovery Hearing. 11. Procedure Upon Non-Disclosure of Identity of Potential Witnesses by the Prosecution. 12. Procedure Upon Defence Request for Attendance of Disclosed Witnesses for pre-trial Questioning Under Oath. 13. Questioning Committal For Trial. 14. Sanctions. 15. Continuing Duty to Disclose. II. Material and Information Subject to Discovery 1. Duty of Prosecution to Inform Itself and Obtain Relevant Material 2. Information and Material to be Disclosed Upon Plea of Not Guilty or Where the Accused is to be Tried in a Higher Court 5. Material and Information Not Subject to Disclosure.	1.	
In General Statements of Witnesses to the Prosecution. Written or Oral Statements of the Accused or Co-Accused Previous Convictions and Information With Respect to Character of Witnesses. Scientific, Forensic, and Medical Evidence and Reports. Other Documents. Right to Interview Prosecution Witnesses. The Indictment. 2. Tentative Evaluation of the English Model. Conclusion. VII Proposal for Reform Specific Provisions For A Discovery System. 1. Discovery Procedures. 1. Application of Discovery. 2. Pre-Plea Discovery. 3. Questioning Validity of Plea. 4. Use of Pre-Plea Discovery Statement. 5. Procedure if Plea of Not Guilty Entered. 6. Scheduling Discovery Meeting and Discovery Hearing. 7. Discovery Meeting Summary Memorandum. 8. Period Between Discovery Meeting and Discovery Hearing. 10. Additional Powers or functions of Judge at Discovery Hearing. 11. Procedure Upon Non-Disclosure of Identity of Potential Witnesses by the Prosecution. 12. Procedure Upon Defence Request for Attendance of Disclosed Witnesses for pre-trial Questioning Under Oath. 13. Questioning Committal For Trial. 14. Sanctions. 15. Continuing Duty to Disclose. II. Material and Information Subject to Discovery. 1. Duty of Prosecution to Inform Itself and Obtain Relevant Material. 2. Information and Material to be Disclosed in Pre-Plea Discovery. 3.4. Material and Information to be Disclosed Upon Plea of Not Guilty or Where the Accused is to be Tried in a Higher Court 5. Material and Information Not Subject to Disclosure.		
Statements of Witnesses to the Prosecution Written or Oral Statements of the Accused or Co-Accused Previous Convictions and Information With Respect to Character of Witnesses. Scientific, Forensic, and Medical Evidence and Reports. Other Documents Right to Interview Prosecution Witnesses. The Indictment. 2. Tentative Evaluation of the English Model. Conclusion VII Proposal for Reform Specific Provisions For A Discovery System. 1. Discovery Procedures. 1. Application of Discovery 2. Pre-Plea Discovery 3. Questioning Validity of Plea. 4. Use of Pre-Plea Discovery Statement. 5. Procedure if Plea of Not Guilty Entered. 6. Scheduling Discovery Meeting and Discovery Hearing. 7. Discovery Meeting Summary Memorandum. 8. Period Between Discovery Meeting and Discovery Hearing. 9. Functions of Judge at Discovery Hearing. 10. Additional Powers or functions of Judge at Discovery Hearing. 11. Procedure Upon Non-Disclosure of Identity of Potential Witnesses by the Prosecution. 12. Procedure Upon Defence Request for Attendance of Disclosed Witnesses for pre-trial Questioning Under Oath. 13. Questioning Committal For Trial. 14. Sanctions. 15. Continuing Duty to Disclose. 11. Material and Information Subject to Discovery 1. Duty of Prosecution to Inform Itself and Obtain Relevant Materia 2. Information and Material to be Disclosed Upon Plea of Not Guilty or Where the Accused is to be Tried in a Higher Court. 5. Material and Information Not Subject to Disclosure.		
Written or Oral Statements of the Accused or Co-Accused Previous Convictions and Information With Respect to Character of Witnesses. Scientific, Forensic, and Medical Evidence and Reports. Other Documents. Right to Interview Prosecution Witnesses. The Indictment. 2. Tentative Evaluation of the English Model. Conclusion VII Proposal for Reform Specific Provisions For A Discovery System. 1. Discovery Procedures. 1. Application of Discovery. 2. Pre-Plea Discovery. 3. Questioning Validity of Plea. 4. Use of Pre-Plea Discovery Statement. 5. Procedure if Plea of Not Guilty Entered. 6. Scheduling Discovery Meeting and Discovery Hearing. 7. Discovery Meeting Summary Memorandum. 8. Period Between Discovery Meeting and Discovery Hearing. 9. Functions of Judge at Discovery Hearing. 10. Additional Powers or functions of Judge at Discovery Hearing. 11. Procedure Upon Non-Disclosure of Identity of Potential Witnesses by the Prosecution. 12. Procedure Upon Defence Request for Attendance of Disclosed Witnesses for pre-trial Questioning Under Oath. 13. Questioning Committal For Trial. 14. Sanctions. 15. Continuing Duty to Disclose. II. Material and Information Subject to Discovery. 1. Duty of Prosecution to Inform Itself and Obtain Relevant Materia. 2. Information and Material to be Disclosed Upon Plea of Nor Guilty or Where the Accused is to be Tried in a Higher Court 5. Material and Information Not Subject to Disclosure.		
Previous Convictions and Information With Respect to Character of Witnesses Scientific, Forensic, and Medical Evidence and Reports		
Character of Witnesses Scientific, Forensic, and Medical Evidence and Reports. Other Documents. Right to Interview Prosecution Witnesses. The Indictment. 2. Tentative Evaluation of the English Model. Conclusion. VII Proposal for Reform Specific Provisions For A Discovery System. I. Discovery Procedures 1. Application of Discovery 2. Pre-Plea Discovery. 3. Questioning Validity of Plea. 4. Use of Pre-Plea Discovery Statement. 5. Procedure if Plea of Not Guilty Entered. 6. Scheduling Discovery Meeting and Discovery Hearing. 7. Discovery Meeting Summary Memorandum. 8. Period Between Discovery Meeting and Discovery Hearing. 9. Functions of Judge at Discovery Hearing. 10. Additional Powers or functions of Judge at Discovery Hearing. 11. Procedure Upon Non-Disclosure of Identity of Potential Witnesses by the Prosecution. 12. Procedure Upon Defence Request for Attendance of Disclosed Witnesses for pre-trial Questioning Under Oath. 13. Questioning Committal For Trial. 14. Sanctions. 15. Continuing Duty to Disclose. 16. Material and Information Subject to Discovery. 17. Duty of Prosecution to Inform Itself and Obtain Relevant Materia. 2. Information and Material to be Disclosed Upon Plea of Not Guilty or Where the Accused is to be Tried in a Higher Court 5. Material and Information Not Subject to Disclosure.		
Scientific, Forensic, and Medical Evidence and Reports. Other Documents. Right to Interview Prosecution Witnesses. The Indictment. 2. Tentative Evaluation of the English Model. Conclusion. VII Proposal for Reform Specific Provisions For A Discovery System. I. Discovery Procedures. I. Application of Discovery. 2. Pre-Plea Discovery. 3. Questioning Validity of Plea. 4. Use of Pre-Plea Discovery Statement. 5. Procedure if Plea of Not Guilty Entered. 6. Scheduling Discovery Meeting and Discovery Hearing. 7. Discovery Meeting Summary Memorandum. 8. Period Between Discovery Meeting and Discovery Hearing. 9. Functions of Judge at Discovery Hearing. 10. Additional Powers or functions of Judge at Discovery Hearing. 11. Procedure Upon Non-Disclosure of Identity of Potential Witnesses by the Prosecution. 12. Procedure Upon Defence Request for Attendance of Disclosed Witnesses for pre-trial Questioning Under Oath. 13. Questioning Committal For Trial. 14. Sanctions. 15. Continuing Duty to Disclose. II. Material and Information Subject to Discovery. 1. Duty of Prosecution to Inform Itself and Obtain Relevant Material. 2. Information and Material to be Disclosed Upon Plea of Not Guilty or Where the Accused is to be Tried in a Higher Court 5. Material and Information Not Subject to Disclosure.		
Other Documents. Right to Interview Prosecution Witnesses. The Indictment. 2. Tentative Evaluation of the English Model. Conclusion. VII Proposal for Reform Specific Provisions For A Discovery System. I. Discovery Procedures. I. Application of Discovery. 2. Pre-Plea Discovery. 3. Questioning Validity of Plea. 4. Use of Pre-Plea Discovery Statement. 5. Procedure if Plea of Not Guilty Entered. 6. Scheduling Discovery Meeting and Discovery Hearing. 7. Discovery Meeting Summary Memorandum. 8. Period Between Discovery Meeting and Discovery Hearing. 9. Functions of Judge at Discovery Hearing. 10. Additional Powers or functions of Judge at Discovery Hearing. 11. Procedure Upon Non-Disclosure of Identity of Potential Witnesses by the Prosecution. 12. Procedure Upon Defence Request for Attendance of Disclosed Witnesses for pre-trial Questioning Under Oath. 13. Questioning Committal For Trial. 14. Sanctions. 15. Continuing Duty to Disclose. 16. Material and Information Subject to Discovery. 17. Duty of Prosecution to Inform Itself and Obtain Relevant Materia. 2. Information and Material to be Disclosed Upon Plea of Not Guilty or Where the Accused is to be Tried in a Higher Court 5. Material and Information Not Subject to Disclosure.		
The Indictment 2. Tentative Evaluation of the English Model. Conclusion VII Proposal for Reform Specific Provisions For A Discovery System I. Discovery Procedures. 1. Application of Discovery 2. Pre-Plea Discovery. 3. Questioning Validity of Plea. 4. Use of Pre-Plea Discovery Statement. 5. Procedure if Plea of Not Guilty Entered. 6. Scheduling Discovery Meeting and Discovery Hearing. 7. Discovery Meeting Summary Memorandum. 8. Period Between Discovery Meeting and Discovery Hearing. 9. Functions of Judge at Discovery Hearing. 10. Additional Powers or functions of Judge at Discovery Hearing. 11. Procedure Upon Non-Disclosure of Identity of Potential Witnesses by the Prosecution. 12. Procedure Upon Defence Request for Attendance of Disclosed Witnesses for pre-trial Questioning Under Oath. 13. Questioning Committal For Trial. 14. Sanctions. 15. Continuing Duty to Disclose. II. Material and Information Subject to Discovery. 1. Duty of Prosecution to Inform Itself and Obtain Relevant Materia. 2. Information and Material to be Disclosed Upon Plea of No Guilty or Where the Accused is to be Tried in a Higher Court 5. Material and Information Not Subject to Disclosure.		
2. Tentative Evaluation of the English Model. Conclusion. VII Proposal for Reform Specific Provisions For A Discovery System. I. Discovery Procedures. 1. Application of Discovery. 2. Pre-Plea Discovery. 3. Questioning Validity of Plea. 4. Use of Pre-Plea Discovery Statement. 5. Procedure if Plea of Not Guilty Entered. 6. Scheduling Discovery Meeting and Discovery Hearing. 7. Discovery Meeting Summary Memorandum. 8. Period Between Discovery Meeting and Discovery Hearing. 9. Functions of Judge at Discovery Hearing. 10. Additional Powers or functions of Judge at Discovery Hearing. 11. Procedure Upon Non-Disclosure of Identity of Potential Witnesses by the Prosecution. 12. Procedure Upon Defence Request for Attendance of Disclosed Witnesses for pre-trial Questioning Under Oath. 13. Questioning Committal For Trial. 14. Sanctions. 15. Continuing Duty to Disclose. II. Material and Information Subject to Discovery. 1. Duty of Prosecution to Inform Itself and Obtain Relevant Materia. 2. Information and Material to be Disclosed Upon Plea of Nor Guilty or Where the Accused is to be Tried in a Higher Court 5. Material and Information Not Subject to Disclosure.		
VII Proposal for Reform Specific Provisions For A Discovery System 1. Discovery Procedures. 1. Application of Discovery. 2. Pre-Plea Discovery. 3. Questioning Validity of Plea. 4. Use of Pre-Plea Discovery Statement. 5. Procedure if Plea of Not Guilty Entered. 6. Scheduling Discovery Meeting and Discovery Hearing. 7. Discovery Meeting Summary Memorandum. 8. Period Between Discovery Meeting and Discovery Hearing. 9. Functions of Judge at Discovery Hearing. 10. Additional Powers or functions of Judge at Discovery Hearing. 11. Procedure Upon Non-Disclosure of Identity of Potential Witnesses by the Prosecution. 12. Procedure Upon Defence Request for Attendance of Disclosed Witnesses for pre-trial Questioning Under Oath. 13. Questioning Committal For Trial. 14. Sanctions. 15. Continuing Duty to Disclose. II. Material and Information Subject to Discovery. 1. Duty of Prosecution to Inform Itself and Obtain Relevant Materia. 2. Information and Material to be Disclosed Upon Plea of Not Guilty or Where the Accused is to be Tried in a Higher Court 5. Material and Information Not Subject to Disclosure.		
Proposal for Reform Specific Provisions For A Discovery System I. Discovery Procedures I. Application of Discovery 2. Pre-Plea Discovery 3. Questioning Validity of Plea 4. Use of Pre-Plea Discovery Statement 5. Procedure if Plea of Not Guilty Entered 6. Scheduling Discovery Meeting and Discovery Hearing 7. Discovery Meeting Summary Memorandum 8. Period Between Discovery Meeting and Discovery Hearing 9. Functions of Judge at Discovery Hearing 10. Additional Powers or functions of Judge at Discovery Hearing 11. Procedure Upon Non-Disclosure of Identity of Potential Witnesses by the Prosecution 12. Procedure Upon Defence Request for Attendance of Disclosed Witnesses for pre-trial Questioning Under Oath 13. Questioning Committal For Trial 14. Sanctions 15. Continuing Duty to Disclose II. Material and Information Subject to Discovery 1. Duty of Prosecution to Inform Itself and Obtain Relevant Materia 2. Information and Material to be Disclosed Upon Plea of Not Guilty or Where the Accused is to be Tried in a Higher Court 5. Material and Information Not Subject to Disclosure	2.	Tentative Evaluation of the English Model
Proposal for Reform Specific Provisions For A Discovery System. I. Discovery Procedures. 1. Application of Discovery. 2. Pre-Plea Discovery. 3. Questioning Validity of Plea. 4. Use of Pre-Plea Discovery Statement. 5. Procedure if Plea of Not Guilty Entered. 6. Scheduling Discovery Meeting and Discovery Hearing. 7. Discovery Meeting Summary Memorandum. 8. Period Between Discovery Meeting and Discovery Hearing. 9. Functions of Judge at Discovery Hearing. 10. Additional Powers or functions of Judge at Discovery Hearing. 11. Procedure Upon Non-Disclosure of Identity of Potential Witnesses by the Prosecution. 12. Procedure Upon Defence Request for Attendance of Disclosed Witnesses for pre-trial Questioning Under Oath. 13. Questioning Committal For Trial. 14. Sanctions. 15. Continuing Duty to Disclose. II. Material and Information Subject to Discovery. 1. Duty of Prosecution to Inform Itself and Obtain Relevant Material. 2. Information and Material to be Disclosed Upon Plea of Not Guilty or Where the Accused is to be Tried in a Higher Court 5. Material and Information Not Subject to Disclosure.	Conclusi	on
I. Discovery Procedures 1. Application of Discovery 2. Pre-Plea Discovery 3. Questioning Validity of Plea 4. Use of Pre-Plea Discovery Statement 5. Procedure if Plea of Not Guilty Entered 6. Scheduling Discovery Meeting and Discovery Hearing 7. Discovery Meeting Summary Memorandum 8. Period Between Discovery Meeting and Discovery Hearing 9. Functions of Judge at Discovery Hearing 10. Additional Powers or functions of Judge at Discovery Hearing 11. Procedure Upon Non-Disclosure of Identity of Potential Witnesses by the Prosecution. 12. Procedure Upon Defence Request for Attendance of Disclosed Witnesses for pre-trial Questioning Under Oath 13. Questioning Committal For Trial 14. Sanctions 15. Continuing Duty to Disclose 16. Material and Information Subject to Discovery 17. Duty of Prosecution to Inform Itself and Obtain Relevant Material 18. Material and Information to be Disclosed Upon Plea of Not Guilty or Where the Accused is to be Tried in a Higher Court. 19. Material and Information Not Subject to Disclosure.		VII
 Discovery Procedures Application of Discovery Pre-Plea Discovery Questioning Validity of Plea Use of Pre-Plea Discovery Statement Procedure if Plea of Not Guilty Entered Scheduling Discovery Meeting and Discovery Hearing Discovery Meeting Summary Memorandum Period Between Discovery Meeting and Discovery Hearing Functions of Judge at Discovery Hearing Additional Powers or functions of Judge at Discovery Hearing Procedure Upon Non-Disclosure of Identity of Potential Witnesses by the Prosecution. Procedure Upon Defence Request for Attendance of Disclosed Witnesses for pre-trial Questioning Under Oath Questioning Committal For Trial Sanctions Continuing Duty to Disclose Material and Information Subject to Discovery Duty of Prosecution to Inform Itself and Obtain Relevant Material Information and Material to be Disclosed Upon Plea of Not Guilty or Where the Accused is to be Tried in a Higher Court Material and Information Not Subject to Disclosure 	-	
 Application of Discovery Pre-Plea Discovery Questioning Validity of Plea Use of Pre-Plea Discovery Statement Procedure if Plea of Not Guilty Entered Scheduling Discovery Meeting and Discovery Hearing Discovery Meeting Summary Memorandum Period Between Discovery Meeting and Discovery Hearing Functions of Judge at Discovery Hearing Additional Powers or functions of Judge at Discovery Hearing Procedure Upon Non-Disclosure of Identity of Potential Witnesses by the Prosecution Procedure Upon Defence Request for Attendance of Disclosed Witnesses for pre-trial Questioning Under Oath Questioning Committal For Trial Sanctions Continuing Duty to Disclose Material and Information Subject to Discovery Information and Material to be Disclosed Upon Plea of Not Guilty or Where the Accused is to be Tried in a Higher Court Material and Information Not Subject to Disclosure 	-	
 Pre-Plea Discovery. Questioning Validity of Plea. Use of Pre-Plea Discovery Statement. Procedure if Plea of Not Guilty Entered. Scheduling Discovery Meeting and Discovery Hearing. Discovery Meeting Summary Memorandum. Period Between Discovery Meeting and Discovery Hearing. Functions of Judge at Discovery Hearing. Additional Powers or functions of Judge at Discovery Hearing. Procedure Upon Non-Disclosure of Identity of Potential Witnesses by the Prosecution. Procedure Upon Defence Request for Attendance of Disclosed Witnesses for pre-trial Questioning Under Oath. Questioning Committal For Trial. Sanctions. Continuing Duty to Disclose. Material and Information Subject to Discovery. Duty of Prosecution to Inform Itself and Obtain Relevant Materia Information and Material to be Disclosed in Pre-Plea Discovery. Material and Information to be Disclosed Upon Plea of No Guilty or Where the Accused is to be Tried in a Higher Court. Material and Information Not Subject to Disclosure. 		
 Questioning Validity of Plea Use of Pre-Plea Discovery Statement Procedure if Plea of Not Guilty Entered Scheduling Discovery Meeting and Discovery Hearing Discovery Meeting Summary Memorandum Period Between Discovery Meeting and Discovery Hearing Functions of Judge at Discovery Hearing Additional Powers or functions of Judge at Discovery Hearing Procedure Upon Non-Disclosure of Identity of Potential Witnesses by the Prosecution Procedure Upon Defence Request for Attendance of Disclosed Witnesses for pre-trial Questioning Under Oath Questioning Committal For Trial Sanctions Continuing Duty to Disclose Material and Information Subject to Discovery Duty of Prosecution to Inform Itself and Obtain Relevant Materia Information and Material to be Disclosed in Pre-Plea Discovery Material and Information to be Disclosed Upon Plea of Not Guilty or Where the Accused is to be Tried in a Higher Court Material and Information Not Subject to Disclosure 	1.	Application of Discovery
 Use of Pre-Plea Discovery Statement Procedure if Plea of Not Guilty Entered Scheduling Discovery Meeting and Discovery Hearing Discovery Meeting Summary Memorandum Period Between Discovery Meeting and Discovery Hearing Functions of Judge at Discovery Hearing Additional Powers or functions of Judge at Discovery Hearing Procedure Upon Non-Disclosure of Identity of Potential Witnesses by the Prosecution Procedure Upon Defence Request for Attendance of Disclosed Witnesses for pre-trial Questioning Under Oath Questioning Committal For Trial Sanctions Continuing Duty to Disclose Material and Information Subject to Discovery Duty of Prosecution to Inform Itself and Obtain Relevant Materia Information and Material to be Disclosed in Pre-Plea Discovery Material and Information to be Disclosed Upon Plea of Not Guilty or Where the Accused is to be Tried in a Higher Court Material and Information Not Subject to Disclosure 	2.	Pre-Plea Discovery
 Procedure if Plea of Not Guilty Entered. Scheduling Discovery Meeting and Discovery Hearing. Discovery Meeting Summary Memorandum. Period Between Discovery Meeting and Discovery Hearing. Functions of Judge at Discovery Hearing. Additional Powers or functions of Judge at Discovery Hearing. Procedure Upon Non-Disclosure of Identity of Potential Witnesses by the Prosecution. Procedure Upon Defence Request for Attendance of Disclosed Witnesses for pre-trial Questioning Under Oath. Questioning Committal For Trial. Sanctions. Continuing Duty to Disclose. Material and Information Subject to Discovery. Duty of Prosecution to Inform Itself and Obtain Relevant Materia 2. Information and Material to be Disclosed Upon Plea of Nor Guilty or Where the Accused is to be Tried in a Higher Court. Material and Information Not Subject to Disclosure. 	3.	Questioning Validity of Plea
 Scheduling Discovery Meeting and Discovery Hearing Discovery Meeting Summary Memorandum Period Between Discovery Meeting and Discovery Hearing Functions of Judge at Discovery Hearing Additional Powers or functions of Judge at Discovery Hearing Procedure Upon Non-Disclosure of Identity of Potential Witnesses by the Prosecution Procedure Upon Defence Request for Attendance of Disclosed Witnesses for pre-trial Questioning Under Oath Questioning Committal For Trial Sanctions Continuing Duty to Disclose Material and Information Subject to Discovery Duty of Prosecution to Inform Itself and Obtain Relevant Materia Information and Material to be Disclosed in Pre-Plea Discovery Material and Information to be Disclosed Upon Plea of Not Guilty or Where the Accused is to be Tried in a Higher Court Material and Information Not Subject to Disclosure 	4.	
 Discovery Meeting Summary Memorandum Period Between Discovery Meeting and Discovery Hearing Functions of Judge at Discovery Hearing Additional Powers or functions of Judge at Discovery Hearing Procedure Upon Non-Disclosure of Identity of Potential Witnesses by the Prosecution Procedure Upon Defence Request for Attendance of Disclosed Witnesses for pre-trial Questioning Under Oath Questioning Committal For Trial Sanctions Continuing Duty to Disclose Material and Information Subject to Discovery Duty of Prosecution to Inform Itself and Obtain Relevant Materia Information and Material to be Disclosed in Pre-Plea Discovery Material and Information to be Disclosed Upon Plea of Not Guilty or Where the Accused is to be Tried in a Higher Court Material and Information Not Subject to Disclosure 	5.	Procedure if Plea of Not Guilty Entered
 Discovery Meeting Summary Memorandum Period Between Discovery Meeting and Discovery Hearing Functions of Judge at Discovery Hearing Additional Powers or functions of Judge at Discovery Hearing Procedure Upon Non-Disclosure of Identity of Potential Witnesses by the Prosecution Procedure Upon Defence Request for Attendance of Disclosed Witnesses for pre-trial Questioning Under Oath Questioning Committal For Trial Sanctions Continuing Duty to Disclose Material and Information Subject to Discovery Duty of Prosecution to Inform Itself and Obtain Relevant Materia Information and Material to be Disclosed in Pre-Plea Discovery Material and Information to be Disclosed Upon Plea of Not Guilty or Where the Accused is to be Tried in a Higher Court Material and Information Not Subject to Disclosure 	6.	Scheduling Discovery Meeting and Discovery Hearing
 Period Between Discovery Meeting and Discovery Hearing Functions of Judge at Discovery Hearing Additional Powers or functions of Judge at Discovery Hearing Procedure Upon Non-Disclosure of Identity of Potential Witnesses by the Prosecution. Procedure Upon Defence Request for Attendance of Disclosed Witnesses for pre-trial Questioning Under Oath. Questioning Committal For Trial Sanctions. Continuing Duty to Disclose. Material and Information Subject to Discovery Duty of Prosecution to Inform Itself and Obtain Relevant Materia Information and Material to be Disclosed Upon Plea of Not Guilty or Where the Accused is to be Tried in a Higher Court. Material and Information Not Subject to Disclosure. 	7.	
 Functions of Judge at Discovery Hearing Additional Powers or functions of Judge at Discovery Hearing Procedure Upon Non-Disclosure of Identity of Potential Witnesses by the Prosecution Procedure Upon Defence Request for Attendance of Disclosed Witnesses for pre-trial Questioning Under Oath Questioning Committal For Trial Sanctions Continuing Duty to Disclose Material and Information Subject to Discovery Duty of Prosecution to Inform Itself and Obtain Relevant Material Information and Material to be Disclosed in Pre-Plea Discovery Material and Information to be Disclosed Upon Plea of Not Guilty or Where the Accused is to be Tried in a Higher Court Material and Information Not Subject to Disclosure 		
 Additional Powers or functions of Judge at Discovery Hearing. Procedure Upon Non-Disclosure of Identity of Potential Witnesses by the Prosecution. Procedure Upon Defence Request for Attendance of Disclosed Witnesses for pre-trial Questioning Under Oath. Questioning Committal For Trial. Sanctions. Continuing Duty to Disclose. Material and Information Subject to Discovery. Duty of Prosecution to Inform Itself and Obtain Relevant Material Information and Material to be Disclosed in Pre-Plea Discovery. Material and Information to be Disclosed Upon Plea of Not Guilty or Where the Accused is to be Tried in a Higher Court. Material and Information Not Subject to Disclosure. 		
 Procedure Upon Non-Disclosure of Identity of Potential Witnesses by the Prosecution		
12. Procedure Upon Defence Request for Attendance of Disclosed Witnesses for pre-trial Questioning Under Oath. 13. Questioning Committal For Trial. 14. Sanctions. 15. Continuing Duty to Disclose. 16. Material and Information Subject to Discovery. 17. Duty of Prosecution to Inform Itself and Obtain Relevant Materia. 28. Information and Material to be Disclosed in Pre-Plea Discovery. 39. Material and Information to be Disclosed Upon Plea of Not Guilty or Where the Accused is to be Tried in a Higher Court. 19. Material and Information Not Subject to Disclosure.		Procedure Upon Non-Disclosure of Identity of Potential Wit-
 Sanctions Continuing Duty to Disclose Material and Information Subject to Discovery Duty of Prosecution to Inform Itself and Obtain Relevant Material Information and Material to be Disclosed in Pre-Plea Discovery Material and Information to be Disclosed Upon Plea of Not Guilty or Where the Accused is to be Tried in a Higher Court Material and Information Not Subject to Disclosure 	12.	
 Continuing Duty to Disclose	13.	Questioning Committal For Trial
 Continuing Duty to Disclose	14.	Sanctions
 Duty of Prosecution to Inform Itself and Obtain Relevant Materia Information and Material to be Disclosed in Pre-Plea Discovery Material and Information to be Disclosed Upon Plea of Not Guilty or Where the Accused is to be Tried in a Higher Court Material and Information Not Subject to Disclosure 		
 Duty of Prosecution to Inform Itself and Obtain Relevant Materia Information and Material to be Disclosed in Pre-Plea Discovery Material and Information to be Disclosed Upon Plea of No Guilty or Where the Accused is to be Tried in a Higher Court Material and Information Not Subject to Disclosure 	II. Ma	terial and Information Subject to Discovery
 Information and Material to be Disclosed in Pre-Plea Discovery Material and Information to be Disclosed Upon Plea of No Guilty or Where the Accused is to be Tried in a Higher Court Material and Information Not Subject to Disclosure 		
3,4. Material and Information to be Disclosed Upon Plea of Not Guilty or Where the Accused is to be Tried in a Higher Court5. Material and Information Not Subject to Disclosure		
5. Material and Information Not Subject to Disclosure		Material and Information to be Disclosed Upon Plea of Not
	5.	

,

	dems Relating to the Implementation of the Discovery Proposal and
the H	Present Structure of the Courts of Criminal Jurisdiction.
	1. Utilization of Provincial Court Judges.
	(a) Decisions of Provincial Court Judges at the Discovery Hear- ing Would be Final and Would Bind the Trial Judge
	(b) Decisions of Provincial Court Judges Would Not be Final and Could be Reviewed by the Trial Judge
	(c) Mixed Formula: Certain Decisions Would be Final, Others Would be Subject to Review by the Trial Judge
	2. Each Level of Jurisdiction Would Control Its Own Pre-Trial Procedures
	3. Unification of Criminal Courts
Prose	ecutorial Discovery of the Accused
. ;	Statement of Position and Comment
	VIII
Bibliograp	ohy
Appendix	A
	Omnibus Hearing Checklist Presently in Use in the Southern Dis- rict of California.
2. 3	Waiver of Omnibus Hearing Form Presently in Use in the Southern District of California
Appendix	B
1. (Omnibus Hearing Checklist Presently in Use in the Western Dis- rict of Texas