

## HYPOTHETICAL PROBLEM

You are a defense attorney with a full caseload. Your client, one of 28 co-defendants, is charged with multiple non-violent offenses and three counts of violating the Street Gang Terrorism and Prevention Act. The prosecutor only learned 48 hours prior to trial that a cell telephone was in evidence. At 2:00 PM the day before the trial, the prosecutor hand delivers an 8-terabyte hard drive of a cell phone dump to defense counsel. It is impossible to review that amount of evidence in such a period short of time.

What issues do you consider in determining your response?

Does it matter if you are a private attorney or conflict public defender who does not appear in the courtroom regularly?

Does it matter if you are a PD in a large circuit where attorneys are in the same courtroom for all their cases and only rotate every 2 – 3 years?

Does it matter if you are a public defender in a rural circuit?

What discussions do you have with your client about the discovery and how it impacts the case (i.e. trial preparation, request for continuance, request for severance, etc)?

**Hypo variation:** Instead of a continuance, the judge orders the State to specify which data from the cell phone dump they plan to use. Does this solve your problem?

**Hypo Variation:** What if it is earlier in the case and the judge wants to move forward with motions hearings, but you still don't have time to review all of the evidence?

After being surprised on your last case with last-minute discovery, you begin to file motions in all your other complex cases requiring all discovery to be disclosed within 30 days of arraignment. You do this knowing that the prosecutor sometimes struggles to get evidence from multiple law enforcement agencies on time.

**Hypo Variation:** What if you are in a rural circuit with limited funds and you know the prosecutor struggles to get defense counsel criminal histories because the prosecutor can't mail the criminal histories to defense counsel. The prosecutor wants to share information via hard drive, but there are not enough.

How do you professionally manage your clients' rights/the victim's rights while meeting discovery obligations?

Is the filing of this type of motion considered professional?

How can both sides handle cases with multiple co-defendants and voluminous discovery professionally?

**Hypo Variation:** Does your calculus change as a prosecutor or defense attorney if a speedy trial has been filed and how do you make choices as a defense attorney to file a demand when you know that there is a discovery issue in a case. As a prosecutor, should you change your approach to discovery knowing that a speedy trial demand has been filed, potentially if the discovery rules might be “relaxed” based on local procedures or case law?

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