Using "John Leo Brady" to your advantage

By

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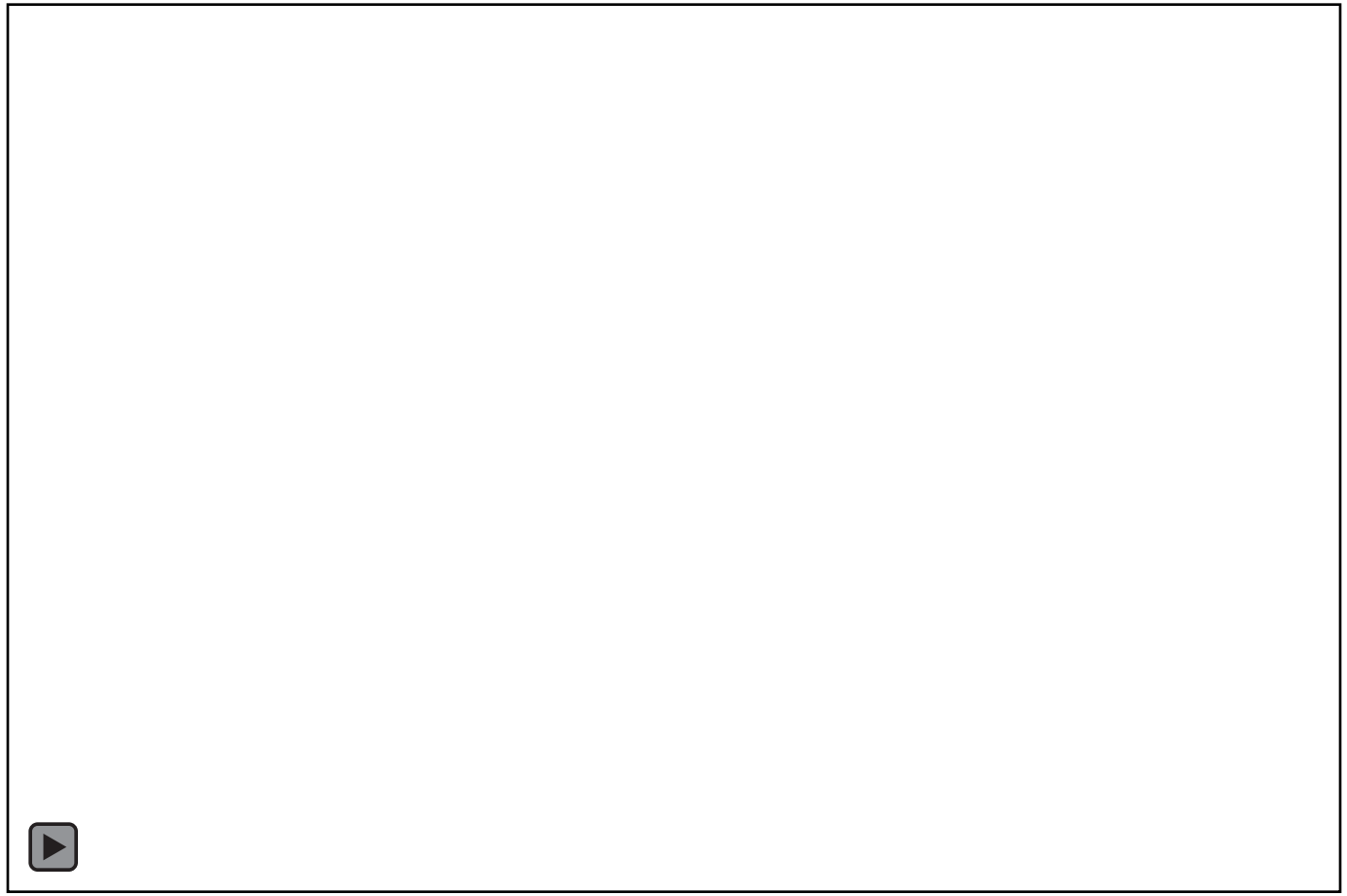


“In a society made up of people who are not perfect, crime is to be expected. But the greatest crime of them all, one never to be expected or ever tolerated, is a failure of justice.”

Clarence Darrow

circa 1900

First off…

You need to know

John Leo Brady

Who was "Brady"? - A quiz

Brady was a defendant being prosecuted in the state of Maryland for:

1) Robbery

2) Home burglary

3) Commercial burglary

4) Murder

5) Arson

#4 Murder **(Clarence Gideon was the one accused of breaking into a pool hall)**

The Brady decision was based on:

1) A sentencing issue

2) An issue that would have exonerated Brady

3) An error that resulted in the reversal of Brady's conviction by the U.S. Supreme Court

#1 A sentencing issue

This was Brady…

Brady was on trial for first degree murder in the state of Maryland along with a codefendant named Boblit. Brady's lawyer conceded guilt to the jury but argued that his life should be spared from execution. Brady was convicted and sentenced to death. After all appeals and postconviction matters were concluded, Brady learned that the state had withheld a statement made by his codefendant which, although implicated Brady in the crime, excluded him as the actual killer. Brady argued that this statement violated due process by not being turned over to his defense team. His position was that had the jury learned that he did not do the actual killing, that the jury would have voted to spare his life. In 1963 the United States Supreme Court agreed in Brady v. Maryland and reversed for a new sentencing hearing.

COMMON MISCONCEPTIONS OF BRADY OBLIGATIONS

1) **Prosecutors only have to turn over "exonerating" evidence**
2) **Only *Brady* evidence in the hands of the prosecution has to be turned over to the defense**
3) **Evidence that falls under *Brady* can be given to the defense the day of trial**
4) **Prosecutors don't have to "look" for *Brady* material. They only have to turn it over if they come across it.**
5) **Prosecutors never have to turn over their handwritten notes**

Brady covers more!

Prosecution must turn over to the defense:

1) Evidence that tends to exonerate the accused
2) Evidence that materially impeaches any fact or witness
3) Evidence that would lessen the punishment
4) Any evidence that supports a valid defense to the charge
5) Any material exculpatory evidence*
6) And more… (later)

*Exculpatory evidence is material if there is a reasonable probability that the conviction or sentence would have been different had these materials been disclosed

The first thing you do!

You have to do the prosecutor's job as soon as possible:

- **Preserve what law enforcement can destroy (text messages, Facebook postings by victim, emails)**
- **Get the victim's phone! There is gold inside!**
- **911 calls, messaging between officers and station (even between themselves at the scene)**
- **Send a letter to the assigned prosecutor and law enforcement agency, certified!**

Preservation letter

To: Prosecution office and Law enforcement agency
Re: Preservation of evidence in case #

Dear (Prosecutor) and (Detective) (officer) **CERTIFIED MAIL**

This correspondence is being sent in reference the above investigation that is pending in your office. The following evidence is either in your possession, in the possession of law enforcement, a state agency or a witness connected to this investigation. I am formally requesting that you obtain and that no one discards or make any alterations of any kind to any messaging between officers or officer to station, two way dispatch messaging, 911 calls, photographs, documents, writings or audio/video tapes as well as all electronic devices including but not limited to computers, laptops, iPads, cellular phones, and smart phones as well as any emails, text messages, instant messages of any form and through any provider or application, backups of any device, hard drives, backup hard drives, photographs and social media accounts including but not limited to Facebook, Google, Instagram, SnapChat, and any online cloud backups which may contain information related to this investigation as well as items that can be fingerprinted, any substance capable of being tested for DNA and/or other lab analysis without first notifying me and allowing me a reasonable opportunity to inspect, photograph, view, download and/or conduct independent testing. I am further requesting that any hand written notes taken by any law enforcement officers relative to the above investigation be preserved for inspection by the court to learn if they fall under matters required to be turned over to the defense pursuant to the U.S. Supreme court case of Brady v. Maryland, 373 U.S. 83 (1963). I may be contacted at the above address, phone or e mail for the purpose of this preservation request.

Why send to prosecutor AND detective?

The reason to send it to BOTH prosecution and Law Enforcement is two fold:

1) **The prosecutor is responsible for complying with "Brady" and they are charged with what the police have learned that may fall under that obligation**
2) **By sending it to the main detective or law enforcement officer, you have a wonderful area to cross examine the witness if he or she does not comply with the preservation request (juries do not like it when the cops do not gather ALL the evidence to present to them)**

The motivation behind Brady

"By requiring the prosecutor to assist the defense in making its case, the Brady rule represents a limited departure from a pure adversary model. This is because the prosecutor's role transcends that of an adversary. The prosecutor is the representative not of an ordinary party to a controversy, but of a sovereignty... whose interest... in a criminal prosecution is not that it shall win a case, but that justice shall be done." (emphasis added)

***United States v. Bagley*, 473 U.S. 667 (1985) – footnote 6; Berger V. United States, 295 U.S. 78, 88 (1935)**

Kyles v. Whitley, 514 U.S. 419 (1995)

"The individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police."

(***Kyles*** **at 437)**

You HAVE to file a motion!

"The more specifically the defense requests certain evidence, thus putting the prosecutor on notice of its value, the more reasonable it is for the defense to assume from the nondisclosure that the evidence does not exist, and to make pretrial and trial decisions on the basis of this assumption... The reviewing court may consider directly any adverse effect that the prosecutor's failure to respond might have had on the preparation or presentation of the defendant's case."

Bagley **at 682-83**

And…

“When the prosecutor receives a specific and relevant request, the failure to make any response is seldom, if ever, excusable”

(Bagley at 681)

Missouri and 37 other states require a defendant to request favorable information, sometimes in writing, before the prosecution's obligation to disclose is triggered. Ten states (Missouri included) also place an additional condition on the defense: *"the defendant must make a showing to the court that the items sought may be material to the preparation of his defense and that the request is reasonable or the defendant must show "good cause" for discovery of such information".*

But Beware!

"When a defendant makes only a general request under <u>Brady</u> it is the state that decides what information must be disclosed. The prosecutor's decision on disclosure is final."

See: *<u>Johnson v. Butterworth</u>*, 713 So.2d 985 (Fla. 1998)

What the prosecutor will say when they argue the motion

- **I know my obligations. I don't have to be told!**
- **I don't have to do YOUR job!**
- **It's all in the discovery I have sent**
- **I shouldn't have to look for the material they are asking for**
- **If I become aware of it, I'll turn it over**

As an example, the following may be requested for the prosecutor to search for, obtain and disclose to the defense (this *includes* work product and privileged information):

1) **Emails (prosecutor to police, police to prosecutor, state witnesses to police or prosecutor and police or prosecutor to witness, lay and expert)**
2) **Text messages and instant messages**
3) **Any messages between officers or officer to station**
4) **Two-way dispatch messages**
5) **911 calls**

6) Audio and/or videotapes (including those captured via body cameras or cell phone cameras)

7) Any records stored, sent or received via Dropbox or similar cloud computing or FTP (file transfer protocol) websites

8) All electronic devices including but not limited to computers, laptops, iPads, cellular phones and smart phones that may contain discoverable material relative to the above prosecution

9) All social media accounts that may bear upon the above prosecution including but not limited to Facebook, Google, AOL, Yahoo, Twitter, Instagram, Snap Chat and any online cloud backups which may contain information related to this prosecution

10) All handwritten notes of law enforcement officers to be reviewed in camera for *Brady* material

11) All handwritten or memorialized notes of the prosecutor concerning witness interviews of law enforcement officers, experts and lay witnesses involved in the above prosecution where questionable *Brady* material may be located (an in camera review by the judge may determine disclosure). Such notes are intended to include but are not limited to investigations and trial preparation of witnesses

12) Any and all medical records including psychiatric and clinical reports that may have relevance to the above prosecution or to any valid defense including those covered by HIPAA (in camera).

13) Any and all electronic devices including cell phones and computers belonging to witnesses listed by the government which may contain *Brady* material

14) The name and address of any witness known to the prosecution that has given a statement to the prosecution or law enforcement that is contrary to the prosecution's theory of the case including pre and post interviews conducted during polygraph testing as well as any witness or evidence that would support a valid defense

15) Any favorable treatment of any kind given or offered to any government witness in return for cooperation as well as any favorable treatment, money or anything of value requested by a state witness in return for cooperation

16) Any Facebook postings made by the alleged victim relevant to this case including those that were taken down but can be retrieved by the government

17) All contents of investigative files (to include all agencies that contributed to the prosecution) that include notes, memorandum and reports. This also applies to the notes of any witness coordinator.

ABA Rule 3.8

ABA Model Rules of Professional Conduct Rule 3.8 - Special Responsibilities of a Prosecutor requires a prosecutor to "make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in conjunction with sentencing, to disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor."

(It provides an escape clause for an in camera production when timely disclosure could endanger a witness or otherwise unfairly prejudice the prosecution before trial)

So include that along with the more specific “Brady” motion

Then get them to reply to your granted requests

…And do it by having the prosecutor turn over the requested information for your review or state in open court what he or she has reviewed and found. Or you may consider a written document for the prosecutor to sign…

Western District of Missouri (Federal court)

Ask for a “certificate of compliance” for the prosecutor to sign and file when discovery is provided to the defense

(Required to show due diligence)

Five states (Colorado, Florida, Idaho, Massachusetts and New Mexico) require prosecutors to certify, in writing, that they have exercised diligent, good faith efforts in locating all favorable information, and that what has been disclosed is accurate and complete to the best of their knowledge or belief. Massachusetts provides:

"When a party has provided all discovery requested by this rule or by court order, it shall file with the court a certificate of compliance. The certificate shall state that, to the best of its knowledge and after reasonable inquiry, the party has disclosed and made available all items subject to discovery other than reports of experts, and shall identify each item provided "

In fact, the W.D. Mo. Federal Scheduling order states:

"The government is advised that if any portion of the government's investigative file or that of any investigating agency is not made available to the defense for inspection, the court will expect the trial counsel for the government or any attorney under the trial counsel's immediate supervision who was familiar with the Brady/Giglio document will have reviewed the applicable files for the purpose of ascertaining whether evidence favorable to the defense is contained in the file". (W.D. Mo. Scheduling and trial order note following section VI (A) & (B)).

Style of case

I have personally looked in the following documents, reports, notes, records and witness statements for any information required by the United States Supreme Court opinion of *Brady v. Maryland*, 373 U.S. 83 (1963) to be turned over to the defense to include a search for anything that is exonerating to the defendant, exculpatory in nature, anything that would support a valid defense, any material inconsistent statements or impeachment of any witness or evidence as well as anything that would lessen punishment and have provided all such information to the defense in writing:

1) A review of my notes taken in witness meetings to include trial preparation

2) A review of any existing notes taken by law enforcement to include personal observations and witness interviews

3) Any and all medical records (including psychiatric, and those covered by HIPAA) that may have relevance to the above prosecution

4) A review of any confidential documents involving any investigative team working on the above case (eg: Child Protection team notes, reports, witness statements and documents)

5) Any and all electronic devices in the possession of the state including cell phones and computers belonging to the alleged victim and listed state witnesses if it is believed such contain information relative to the above prosecution

6) The existence, name and address of any witness known to the prosecution that has given a statement to the state or law enforcement that is contrary to the state's theory of the case including pre and post polygraph interviews

7) Any favorable treatment given or offered to any state witness in return for cooperation as well as any favorable treatment, money or anything of value requested by a state witness in return for cooperation

8) Any Facebook postings made by the alleged victim in the above prosecution that were taken down but can be retrieved by the state relative to the above case

9) Any text messages received by the state from any witness in the above prosecution that are discoverable under *Brady*.

10) Inquiry made of the arresting officer/detective of all the areas mentioned in the first unnumbered paragraph

_____ _____

Assigned prosecutor Date

Does the defense have a duty to "look" for Brady?

There is some law out there that suggests the defense has a duty to conduct a "due diligence" search for *Brady* by looking in areas equally available to it (See: *Denton V. State*, 246 So. 3rd 413 (Fla. 4th DCA 2018); *United States v. Higgs*, 663 F.3d 726, 735 (4th Cir. 2011). And no suppression was found when the information was "in a source where a reasonable defendant would have looked." (*United States v. Wilson*, 901 F.2d 378, 381 (4th Cir. 1990). Or if a search of public records could reveal the same information, there is no *Brady* violation (*Grant v. Lockett*, 709 F.3d 224, 231 (3rd Cir. 2013).

But not so where the material is in the hands of the investigative agencies not accessible to the defense

It has been held that the "burden-shifting" prosecution argument of due diligence has been rebuked by the United States Supreme Court. "This due diligence defense places the burden of discovering exculpatory information on the defendant and releases the prosecutor from the duty of disclosure. It relieves the government of its *Brady* obligations."

"…Our decisions lend no support to the notion that defendants must scavenge for hints of undisclosed *Brady* material when the prosecution represents that all such material has been disclosed."

***Banks v. Dretke*, 540 U.S. 668, 695 (2004)**

In a nutshell

"A rule thus declaring 'prosecutor may hide, defendant must seek', is not tenable in a system constitutionally bound to accord defendants due process"

Banks v. Dretke, **540 U.S. 688, 696 (2004)**

What if you “catch them” hiding Mr. Brady?

Some jurisdictions maintain the "no harm no foul" attitude because, after all, you have the Brady material before trial and can take advantage of it. Other jurisdictions call for the potential of contempt proceedings and a minority of jurisdictions (Connecticut, Maine and North Carolina) which include the northern district of West Virginia, hold "the court may enter such order as it deems just under the circumstances up to and including the dismissal of the indictment (for egregious violations) with prejudice” (N.D. W. Va. L.R. Crim. P. 16.11). The Western District of Missouri allows for dismissal (see sentencing order slide)

DUTY TO PRESERVE

Once the police or State possesses "materially exculpatory evidence" there is a duty to preserve it. Destruction may be cause for a due process dismissal.

What happens when they lose or destroy the evidence before the defense can see or test it?

Youngblood **holds "If the evidence in question is only potentially useful, as opposed to clearly exculpatory, then a criminal defendant must prove bad faith on the part of the police to make out a due process violation. (See *Arizona v. Youngblood*, 488 U.S. 51 at 57 (1988))**

Get the last word!!!

Consider asking for a special jury instruction that is actually found in *Youngblood* (Pages 59-60):

"If you find that the state has allowed to be destroyed or lost any evidence whose content or quality are in issue, you may infer that the true fact is against the State's interest."

Do you know what "double blind" perjury is?

Due process is violated when a prosecutor makes a deal with defense counsel but exacts a promise that the lawyer will not tell his client so that the client can testify that "no deal" has been given for his trial testimony. *Brady* requires disclosure!

(See: *Hayes v. Brown*, 399 F.3d 972, 981 (9th Cir. 2005); *Napue v. Illinois*, 360 U.S. 264 (1959); *Phillips v. Ornoski*, 673 F.3d 1168, 1183,1186 (9th Cir. 2012))

Hide the Ball…

Do you REALLY think the prosecutor is not playing that game?!

You Bet

So you have to get them to say they looked and what they found.

Prime example

POLICE INTERVIEW

Cop: ***"Who robbed the liquor store"?***

Witness: ***"I don't know"***

Cop: ***"If you don't tell me who robbed the liquor store, I'll call child services and have your 5 year old taken away".***

Witness: ***"Ok, it was Jake"***

Cop: ***"No it wasn't. Jake has an alibi. Try Freddy the snake"***

Witness: ***"Ok, it was Freddy the snake"***

Police Report

“Witness ID’d Freddy the snake as the person who robbed the liquor store”

What you are entitled to receive…

EVERYTHING THAT PRECEDED THE LAST IDENTIFICATION:

"I don't know"

The threat to take away witness's child if she did not make an ID

"It was Jake" (someone else identified by witness)

The statement by officer challenging the identification of "Jake"

The suggestion by officer that the person suspected was "Freddy the snake"

Consider the case out of Louisiana of *Wearry V. Cain*, 136 Sup.Ct. 1002 (2016)

The U.S. Supreme court reversed due to *Brady* violations that included:

1)The State failed to disclose that a testifying witness told fellow inmates that the state's "star" witness told him to "make sure Wearry gets the needle cause he jacked me over" and

2)Another testifying witness said that the "star" witness "told him what to say and that it would help him get out of jail"

3)And another testifying witness said on the stand that he was not testifying for a deal when in fact he contacted authorities for that very reason (and that was withheld)

4)And a medical record was withheld that would have proven that the facts in the testimony of a state witness could not have happened due to injury

Not one of the reasons for a Brady violation had to do with "exonerating" the defendant, Wearry. But they ALL amounted to material impeachment of critical witnesses and the defense was entitled to this information to use in cross examination

Did you know you may be entitled to the prosecutor's witness preparation notes???

WHAT? Are you kidding me!!!

That's right. You are entitled to MATERIAL IMPEACHMENT OR CONTRADICTORY STATEMENTS of a witness the prosecutor expects to call for trial. It doesn't matter that it occurs in a prosecution witness preparation meeting. IT'S BRADY, plain and simple.

So put it in your motion!

Want proof?

A Florida prosecutor was preparing his witnesses for trial in a murder case where self-defense was in issue. Witnesses were inconsistent on whether a shotgun or hand gun was fired first (a critical fact). The prosecutor withheld his notes taken from a police officer witness during trial preparation that case doubt on that fact (witness stated he first thought he heard firecrackers). The death sentence was reversed for a new penalty phase by the State Supreme Court citing the Brady obligation of turning over material impeachment (prosecutor's notes)

***Young v. State*, 739 So.2d 553 (Fla. 1999)**

Is inadmissible evidence subject to Brady?

The prosecution is not required to turn over "Brady information" in matters involving inadmissible evidence BUT they are required when the information "might lead to admissible evidence".

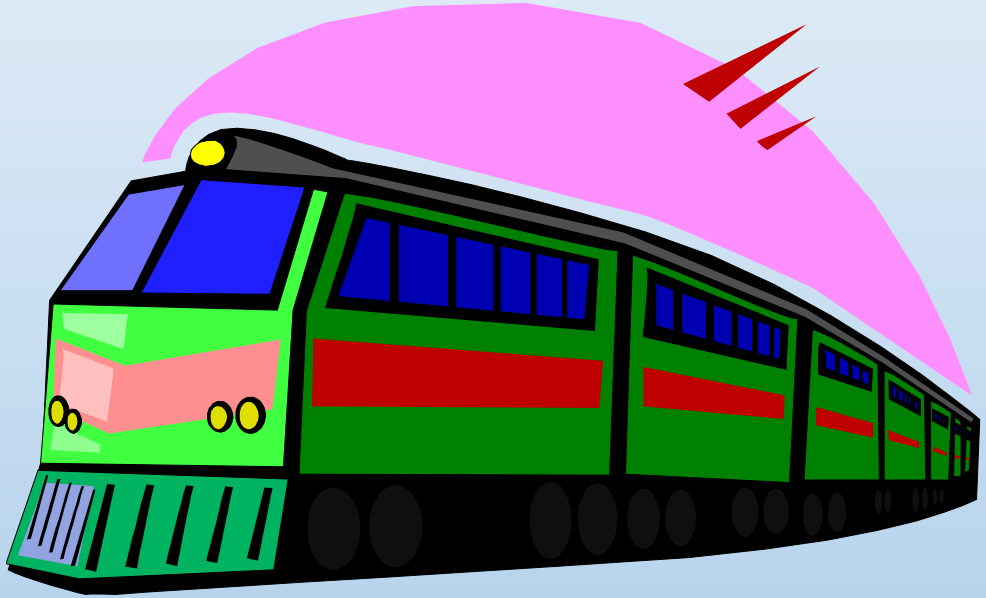
(See *Wood v. Bartholomew*, 516 U.S. 1 (1995))

If the results of a polygraph are inadmissible, the state may not have to provide them to the defense (Wood v. Bartholomew). But what about the pre test or post test interview? Did the subject lie there or change his "story" as to the offense facts? If it constitutes *material impeachment* then it has to be turned over.

In other words, even if you are not entitled to the document, report or record, you ARE entitled to ALL Brady material in those records

So when the prosecutor takes the position that the records are not subject to disclosure, your response is that you are not asking for the records, you are asking for the information IN THOSE RECORDS that falls under *Brady* to be disclosed to you.

There is only one way to stop this train…



- ✓ ***FILE A <u>BRADY</u> MOTION***
- ✓ ***CALENDAR IT FOR HEARING***
- ✓ ***GET THE COURT TO GRANT THE MOTION (prosecutor to review exempt records for <u>Brady</u>; and turn over the other material requested for defense review)***
- ✓ ***SET ANOTHER HEARING FOR THE PROSECUTOR TO CONFIRM REVIEW OF EXEMPT RECORDS AND STATUS OF ALL ITEMS TO BE TURNED OVER (ITEM BY ITEM) OR CONSIDER GETTING THE COURT TO ORDER A "CERTIFICATE OF COMPLIANCE" BY THE PROSECUGTOR***
- ✓ ***ASK THE JUDGE FOR A "<u>BRADY</u> SCHEDULING HEARING" TO CONTINUE DISCLOSURE BY THE GOVERNMENT***
- ✓ ***HAVE THE JUDGE RULE THAT ANY ISSUES AS TO "MATERIALITY" QUESTIONED BY THE PROSECUTOR SHOULD RESULT IN AN INCAMERA REVIEW BY THE JUDGE TO MAKE THE CALL***

The Feds have a memo

MEMORANDUM FOR DEPARTMENT PROSECUTORS

Subject: Guidance for Prosecutors Regarding Criminal Discovery (January 2010)

Lists the "gathering and reviewing of criminal discovery" as it relates to *Brady v. Maryland* and *Giglio v. United States*.

Covers:

"Where to look"

"What to review"

"Making the disclosure"

In 2010 the Department of Justice provided guidance to all assistant United States attorneys handling criminal cases about their obligations under *Brady v. Maryland*. In that memorandum sent out to the Washington, DC circuit entitled "Memorandum for Department Prosecutors" it began by writing "Department policy states":

"It is the obligation of federal prosecutors, in preparing for trial, to seek all exculpatory and impeachment information from all members of the prosecution team. Members of the prosecution team include federal, state, and local law enforcement officers and other government officials participating in the investigation and prosecution of the criminal case against the defendant"

In the section entitled “what to review” the prosecutor is directed to look into the following (as well as other) non-exhaustive areas:

1) The investigative agency’s entire investigative file, including documents such as electronic communications, inserts, emails, etc. should be reviewed for discoverable information. Should sensitive information ordinarily not discoverable be contained within the review document, the entire document is not necessarily discoverable but rather only the discoverable information contained in it.

2) Confidential informant information should be reviewed in its entirety, including past cases in which the confidential informant cooperated. It should include all proffers, immunity and other agreements. Validation assessments, payment information, and other potential witness impeachment information should be included within this review.

3) Substantive case related communications may contain discoverable information. They are most likely to occur (a) among prosecutors and/or agents, (b) between prosecutors and/or agents and witnesses and/or victims, and (c) between victim-witness coordinators and witnesses and/or victims. Such communications may be memorialized in emails, memoranda, or notes (Note: material exculpatory information that the prosecutor receives during a conversation with a law enforcement officer or witness is no less discoverable than if that same information were contained in an email).

4) Information obtained in witness interviews whether memorialized in writing or overheard by law enforcement officers or prosecutors. Any material variance in a witness's statements should be memorialized and turned over to the defense as "Giglio" information.

5) Trial preparation meetings with witnesses are also subject to a "Brady" review. New information that is exculpatory or impeachment information should be disclosed to the defense.

6) Police officers' notes should be reviewed to determine whether or not they contain material impeachment or exculpatory information. Particular attention should be paid to notes gathered during discussions with the defendant or material witnesses.

So *WHEN* does it have to be disclosed?

The State must "timely deliver" Brady material to the defense.

"Timely pretrial disclosure" is defined in Miller v. United States, 14 A.3d 1094 (D.C. 2011) as "the defense's ability to meaningfully use the information" (see also Perez v. United States, 968 A.2d 39 (D.C. 2009) and Kyles V. Whitley, 514 U.S. 419, 437 (1995))

10 states, including Missouri, have established two separate time limits. One for the period within which the defendant must file a discovery request for favorable information and another for the period within which the prosecution must disclose the information (within 10 days after service of discovery request)

And they can't "dump" it on you!

United States v. Bortnovsky, 820 F.2d 572 (2nd Cir. 1987) holds that the government does not fulfill its obligation under *Brady* merely by providing mountains of documents to defense counsel who are left unguided as to which documents would be discoverable under *Brady*. (see also United States v. Skilling, 554 F.3d 529 (5th Cir. 2009) and United States v. Hsia, 24 F.Supp.2d 14 (D.D.C. 1998)

When can the prosecution withhold Brady?

Prosecutors may withhold materially impeaching information (*except exonerating*) when:

1) The witness being impeached is withdrawn from the prosecution witness list (unless this witness impeaches another government witness set to testify)

2) The prosecution and defense are *actively* engaged in plea discussions. See *United States v. Ruiz*, 122 S.Ct. 2450 (2002)

Beware of Ruiz!!!

The U.S. Supreme Court refused cert in *Alvarez V. City of Brownsville*, 904 F. 3rd 382 (5th Cir. 2018) where the court held that Brady does not apply to the plea bargaining stage but instead is a trial right. There, Alvarez was charged with assault on 3 jailers and decided to plead guilty to avoid a more harsh sentence. Three years into his sentence a video surfaced showing the jailers started the altercation and demonstrated his innocence. The 5th Circuit held that even *exculpatory* evidence does not have to be turned over before the entry of a plea. This is now in addition to *impeachment* evidence (under Ruiz).

Holding…

Brady is a trial right…

Brady is a trial right…

Brady is a trial right…

So, what do you do???

This is why it is SO IMPORTANT to file the motion to disclose Brady material during the discovery phase. Because once you sit down with the prosecutor and begin negotiations, the rules change.

I would even suggest that in light of *Ruiz* and Alvarez that you state on the record during your *Brady* hearing that negotiations have not begun and that any and all *Brady* material in that hands of the prosecution and law enforcement be turned over (by a date certain)

Rule change in Federal Court

- **October 21, 2020 Federal Rule of Criminal Procedure 5 (f) was amended**
- **The Due Process Protections Act was created. It Read:**
- **"At the first scheduled court date at which both the prosecutor and defense counsel are present, the judge must issue an oral and written order confirming the prosecutor's disclosure obligations under *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny , and the possible consequences of violating such order."**
- **The rule requires each Judicial Council of the Circuit in which a district court is located to promulgate a model order for judges to use for this purpose. (GET IT!!!!)**

Western District of Missouri (Federal court)

"Within 10 days of scheduling order, *Brady* is to be turned over"

(disclosure order is a continuing one)

Affidavit (CJA 23 form) which will then be filed in ECF. Defendant advised of the char contained in the complaint and supporting affidavit, penalties faced if convicted, and hi rights. Government moves to detain. Preliminary Hearing and Detention Hearing scheduled for Monday, February 1, 2021, at 9:00 am. Defendant remanded to the custod of the US Marshal pending further order of this Court.

Pursuant to the Due Process Protections Act, the Court confirms the United States' obligation to disclose to the defendant all exculpatory evidence--that is, evidence that favors the defendant or casts doubts on the United States' case--as required by Brady v. Maryland and its progeny, and orders the United States to do so. Failure to disclose exculpatory evidence in a timely manner may result in consequences, including exclusio of evidence, adverse jury instructions, dismissal of charges, contempt proceedings, disciplinary action, or sanctions by the Court. Counsel appearing for USA: Michael Oli Counsel appearing for Defendant: Troy Stabenow. Pretrial/Probation Officer: Dylan Nance. Time in court: 3:00 pm to 3:08 pm. To order a transcript of this hearing please contact Angel Geiser, 573-556-7564. This is a TEXT ONLY ENTRY. No document is attached. (Geiser, Angel) [2:21-mj-03004-WJE] (Entered: 01/27/2021)

ARREST WARRANT RETURNED EXECUTED on 1/27/2021 as to Cecil Jason Robinson. **Pursuant to the E-Government Act and Federal Rules of Criminal Procedure 49.1(a), access to this document is restricted to case participants and the court.** (Warren, Melissa) [2:21-mj-03004-WJE] (Entered: 01/27/2021)

NOTICE OF VIDEO HEARING as to Cecil Jason Robinson. This is the official notice this hearing. Initial Appearance set for Video Teleconference 1/27/2021 03:00 PM befor Magistrate Judge Willie J. Epps, Jr. Video Teleconference link will be provided to the parties by email. For the public or media to request court hearing audio access, please email mow_help@mow.uscourts.gov. Signed on 01/27/2021 by Magistrate Judge Willie Epps, Jr. This is a TEXT ONLY ENTRY. No document is attached. (Geiser, Angel) [2:2 mj-03004-WJE] (Entered: 01/27/2021)

TIP

Brady **can be the best "Private Investigator" the defense can have. You are directing the prosecutor to go out and look for Reasonable Doubts!**

Brady the "Sleeping Giant"

Now go out and wake him up!

End your trial with these quotes…

(If the arresting office is guilty of withholding Brady material and you catch him)

"If we cannot find the truth, what is our hope of justice?"

From the book ***Presumed Innocent***

by Scott Turow

...and this power house quote

From

***Olmstead v. United* States, 277 U.S. 438 (1928)**

Justice Louis D. Brandeis writing for the U.S. Supreme Court

“Decency, Liberty, and Security alike command that government officials be held to the same rules of conduct that are commands to the citizen. In a government of laws existence of that government is imperiled if it fails to observe the law scrupulously. For good or for ill it teaches the whole people by its example. For crime is contagious. If the government becomes a lawbreaker, it breeds contempt for the law. It promotes anarchy and encourages every man to become a law unto himself. To declare that in the administration of our criminal laws that the end justifies the means or to declare that the government may commit a crime in order to secure the conviction of a private citizen would bring terrible retribution. Against that pernicious doctrine, this court should resolutely set its face.”

QUESTIONS?

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